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RATE REGULATION AND THE CASUALTY ACTUARY — REVISITED

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Regulation is with us, to stay, and only a proper appreciation of its impact upon all parties, public and private, stock and non-stock, organization and independent, can produce the reconciliation of conflicting interests that will make it work effectively and for the good of all.

— Thomas O. Carlson

In the aftermath of the SEUA Case (322 U.S. 533), Public Law 15, effective March 9, 1945, gave the states until January 1, 1948 (later extended to June 30, 1948) to enact regulatory legislation so as to prevent complete application of the federal anti-trust acts to the insurance industry. The resulting casualty rating legislation, largely variations of a model bill drafted by an All-Industry Committee (AIC) in cooperation with the National Association of Insurance Commissioners, was described by Thomas O. Carlson in a paper entitled "Rate Regulation and the Casualty Actuary" and presented to this Society in 1951.[1]

Over twenty years have elapsed since the enactment of legislation in the wake of Public Law 15. During this period several administrative actions and court decisions have served to interpret many sections of the rating laws. Numerous amendments to the rating laws have been proposed and many enacted. In some states substantial revisions have occurred and today, as

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[1] Carlson, T. O., "Rate Regulation and the Casualty Actuary," *PCAS* Vol. XXXVIII, p. 9.

in the past, some advocate even more far-reaching change — federal regulation.

With the passing of sixteen eventful years, one might expect that Carlson's paper on regulation would be of little value today, but this is not the case. Therefore, the authors of this paper have sought to supplement Carlson's paper rather than to supplant it.

In addition to reviewing the proposed and enacted legislation since 1951, one can, in 1967, review the statutory language by reference to its administration by insurance commissioners and to its interpretation by the courts during the past sixteen years. The administration of the statutes has been no more uniform than their wording, which Carlson termed a "maze of legalistic meanderings and by-paths." Thus, in two states with so-called "file and use" laws, one simply acknowledges filings while the other stamps them approved for use. In two states with similar versions of the "model bill," one may routinely approve almost all submissions, while the other may have complex filing requirements promulgated by administrative order and may approve only those filings which conform to its "accepted" ratemaking formula. Even with this broad diversity, it is instructive in determining the meaning of identical (and similar) sections of the regulatory laws to see how they have been administered in the several states.

The final determination of what a law means lies with the courts. Unfortunately, there is no shortage of insurance rate cases to quote from, and the authors have attempted to be selective. Most of the quotations are from five cases, which are very briefly summarized in Appendix B. It is hoped that the summaries will help make the context of each quotation clear. The intent is to present a judicial over-view of ratemaking procedures, not a definitive list of relevant cases on the issues examined. The five most frequently quoted cases are drawn from five states and deal with automobile (3), fire (1) and compensation (1) insurance. While this diversity may appear to be a handicap, it should be noted, for example, that one automobile case[2] was quoted by a court in a compensation decision and another[3] was cited in a court decision involving a telephone company and a public utility commission. The latter auto case, drawn from a state where the commissioner has the power to fix auto rates, also was cited in a court decision

[2] *National Bureau of Casualty Underwriters* v. *Superintendent of Insurance of the State of New York*, 6 A.D. 2d 72, 174 N.Y.S. 2d 836 (1958), reversed for mootness 6 N.Y. 2d 842. (See Appendix B)

[3] *Massachusetts Bonding and Insurance Company* v. *Commissioner of Insurance*, 329 Mass. 265, 107 N.E. 2d 807 (1952). (See Appendix B)

in a state where the commissioner does not have such power. Thus, certain principles propounded by the courts are not limited in application to the jurisdiction, line of insurance, or even industry involved, but rather have broad validity. In reviewing the case summaries and commentaries, the reader is cautioned that the authors are not lawyers.

> *Each ferry ought to be under a public regulation, to wit, that it give attendance at due time, a boat in due order and take but reasonable toll.*
>
> — Lord Hale (1670)

These basic rules of regulation laid down almost three hundred years ago by Sir Matthew Hale, Lord Chief Justice to the King's Bench during the reign of James I, for an industry providing a public service are embodied, in embellished form, in the insurance codes of today. The sections of the insurance laws dealt with in this paper are designed largely to provide a means for ascertaining whether the toll be reasonable or not. Attention is focused upon the regulation of rates for casualty insurance other than compensation insurance. The statutes will be examined by paragraph in the same order as in Carlson's paper, first as they have been interpreted by the Commissioners and the courts, where administrative orders and court decisions have been made, second by reviewing the changes in the statutes which have occurred at the state level and finally in relation to proposed amendments thereof. The text of several sections of the AIC (Casualty and Surety Rate Regulatory Model) Bill is presented in Appendix A, along with detailed descriptions of the more substantive differences between the existing rating laws and the Model Casualty Bill.

(a) Base Criteria for Rates (AIC Bill § 3(a)4)

In practice, the criteria "not excessive, inadequate or unfairly discriminatory" have been broadly interpreted to mean just or reasonable. Generally, neither the legislature nor the regulatory authorities have provided precise, legal definitions of the terms. "The legislatures have specified that the authority to approve or disapprove a rate filing is vested in the Commissioner of Insurance. The question as to whether the rates specified in the filings are either inadequate or excessive is not addressed to this Court."[4]

[4] *John S. Carroll, Hubert Safran,* and *David Hahn on behalf of all other persons similarly situated,* Plaintiffs, v. *J. Richard Barnes,* Defendant, District Court in and for the City and County of Denver and state of Colorado (1967). (See Appendix B)

In those cases where the courts have felt it necessary to provide some interpretation of the statutory criteria they have generally held that rates must be high enough to provide for the payment of losses and expenses, and to provide a margin for profit. A Minnesota court[5] in commenting on what constituted a "reasonable" rate stated: "The workmen's compensation rate must be high enough to provide the revenue necessary to cover the amount needed for the payment of workers' claims and also to cover the expenses and provide a profit to the insurance carrier." Similar language was used by the Wisconsin court[6] in a fire rate case when it stated that rates should be sufficient to cover future losses, expenses and a margin for profit.

The statutory definitions of the criteria provided by a few states should probably be taken as providing a range of reasonableness, rather than an exact test of the rates. For example, it is doubtful that it was the legislative intent in California to test the adequacy of rates *solely* by the standard that "No rate shall be held to be inadequate unless (1) such rate is unreasonably low for the insurance provided and (2) the continued use of such rate endangers the solvency of the insurer using the same. . . ."[7] Rather, the definition of inadequacy must be read with that of excessiveness in providing a range within which rates are acceptable. This may be illustrated by a Massachusetts case, in which the commissioner maintained that in order for the rates to be inadequate they must be confiscatory. In striking down the commissioner's contention, the court states: "We are of the opinion that the statute imposes upon the commissioner the duty of fixing a rate that lies somewhere between the lowest rate that is not confiscatory and the highest rate that is not excessive or extortionate."[8] In the same decision the court quoted an earlier case which held that "The mere fact that a rate is nonconfiscatory does not indicate that it must be deemed to be just and reasonable."[9] Apparently Carlson's remarks concerning a "zone of reasonableness" continue to be relevant. It may be noted at this point that a mere statement by the commissioner in a disapproval order that rates are excessive, inadequate or unfairly discriminatory is insufficient to be upheld. Several courts have commented on this point. In the words of an Illinois court: "It is not sufficient for the Director [of Insurance] to say that the

[5] *State ex. rel. Minnesota Employers' Association et. al.* v. *Faricy et. al.*, 363 Minn. 468, 53 N.W. 2d 457 (1952). (See Appendix B)

[6] *Fire Insurance Rating Bureau* v. *Rogan*, 4 Wis. 2d 558, 91 N.W. 2d 372 (1957). (See Appendix B)

[7] *California Insurance Code*, Article 2 § 1852(a). (See Appendix A, section (a))

[8] *Mass. Bonding* v. *Commissioner, op. cit.*

[9] *Banton* v. *Belt Line Railway*, 268 U.S. 413, 423, 455. Ct. 534, 537, 69 L. Ed. 1020.

rates are excessive or inadequate or unfairly discriminatory. The language of the act is that he give notice *wherein* the rates are discriminatory or excessive or inadequate."[10]

Carlson noted that unfortunately there were many who felt that it should be possible to determine from the statistics an incontrovertible or actuarially exact result. Regrettably, there remain a few quixotic accountants, legislators and regulators who seek the development of an actuarially exact formula which would eliminate judgment and end controversy over trend factors, development factors, limitations, etc. The concept has been embodied in the proposed (and never enacted) "statistical rating law,"[11] in the administrative orders of some insurance departments,[12] and in proposals from intervenors at public hearings.[13] But like Shangri-La the final, actuarially exact formula is never discovered, because, alas, it does not exist. On this issue, the courts also have upheld Carlson's view. That the work of the actuary is an art in which there will be differences of opinion was recognized in a Wisconsin fire rate case when the court stated:

> In filing proposed new rates it seems to us that the statute contemplates that the bureau is faced with the difficult problem of estimating what will happen in the future. The best guide to the future is what has happened in the past. Its calculations must be based on estimates advisedly made rather than on conjecture. . .
>
> In reviewing the proposed rates the duty of the commissioner and his staff is the same. . . . It is not surprising that the Bureau's staff and the commissioner's staff should arrive at different estimates when there is no mathematical formula or slide rule that will permit the calculation of exact percentages of earned premiums to be allocated for future expenses, losses and underwriting profits.[14]

In a workmen's compensation rate case, a Minnesota court addressed itself to the question of whether or not the State Board in setting rates must limit itself to the use of a mathematical formula:

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[10] *National Bureau of Casualty Underwriters* v. *McCarthy*, Circuit Court, Cook County, Illinois (1956).

[11] Muir, J., "Problems of Rating Organization," *PCAS* Vol. XLIX, pp. 190–191.

[12] See, for example, the administrative orders of the Kentucky Insurance Department.

[13] See, for example, the proposals of T. Grayson Maddrea in the 1966 Virginia and Maine Hearings.

[14] *Fire Bureau* v. *Rogan, op. cit.*

> [T]here is not certainty that mathematically sound adjustments would produce results more accurate than those used by the Board . . . We do not mean . . . that the Board is required to use a mathematically precise formula but to make the various adjustments. The Board, at its discretion, may consider facts and circumstances which are not incorporated in the formula for the computation of a given adjustment.[15]

It would appear from these and other cases that the courts recognize the need for flexibility and judgment in the application of the basic criteria for rates.

Since 1951 several items relating to the basic criteria of rates have appeared on the agenda of various committees of the NAIC. For example, it has been feared that unfair discrimination may have resulted from the use of (1) different profit and contingency factors, (2) non-uniform rating systems for assigned risks, (3) excessive term discounts, (4) fictitious fleets, (5) certain class systems, and (6) schedule rating and/or expense modification. Interest also has been shown in the criteria of not excessive and not inadequate. It can be argued that if a rate is unfairly discriminatory, then it is either excessive or inadequate. Discussion of one criterion is bound to raise discussion of another or all three because as Carlson pointed out it is not possible to apply the three criteria separately. The problem of application is compounded because of a lack of definition of the criteria. In 1951 the statutes in only six, ten, and seven states provided guidelines as to the meaning of excessive, inadequate and unfairly discriminatory, respectively, whereas in 1967 it appears that the statutes in nine, thirteen and ten states, respectively, have attempted definitions of the criteria.

In May, 1960 the National Association of Independent Insurers (NAII) expressed its concern over the absence of definitions of rate excessiveness and inadequacy in most state laws.[16] At the same time the NAII proposed to remedy this and other rate regulatory problems with the introduction of its "Proposed Casualty, Surety, Fire, Marine and Inland Marine Regulatory Bill." The bill adopted the California-Missouri type definition of excessive:

> No rate shall be held to be excessive unless (1) such rate is unreasonably high for the insurance provided and (2) a reasonable

[15] *State* v. *Faricy, op. cit.*

> degree of competition does not exist in the area with respect to the classification to which the rate is applicable.[16]

The bill incorporated a new definition of inadequate:

> No rate shall be held to be inadequate which upon reasonable assumptions of prospective loss and expense experience will not produce an underwriting loss.[16]

To date no state has adopted this definition; however, its basic concept appears to be embodied within the more encompassing Indiana definition:

> No rate shall be held to be inadequate unless such rate is unreasonably low for the insurance coverage provided and is insufficient to sustain projected losses and expenses, or unless such rate is unreasonably low for the insurance coverage provided and the use of such rate has, or if continued, will have, the effect of destroying competition or creating a monopoly.[16]

Although some members of the NAIC have expressed their concern over the lack of definitions for the basic criteria,[17] the NAIC's proposed consolidated fire and casualty bill provides no definitions of these terms. However, because of the continued interest in the subject of definitions for the criteria, it is likely that the NAIC may suggest definitions at some future date.

(b) Basis of Rates (AIC Bill § 3(a)1)

In reviewing this paragraph in the model bill, Carlson noted that the controversial point was probably the adjective "underwriting" which precedes the noun "profit." Subsequently, many of the other terms used in this paragraph, even the initial "due consideration" have been debated. Occasionally at rate hearings, an opponent to a rate filing has charged that the filing was inadequate in that it did not present statistics on one of the items listed in this paragraph. The Kentucky insurance department has ordered that a form accompany each filing indicating where information is to be found on each of the items listed in this paragraph; however, in general, it has been required that the filer only submit information relevant to

[16] 1960 *Proceedings of the National Association of Insurance Commissioners (PNAIC)* Vol. II, pp. 596 ff.

[17] See e.g., 1963 *PNAIC* Vol. I, p. 226 and 1967 Vol. I, p. 181.

proposed changes. This latter view was summarized by a Colorado Court in a recent auto rate case as follows:

> . . . It is claimed by plaintiffs [individuals opposing the filing approved by the commissioner] that, unless each of the items mentioned in 72-12-3(1)(b) and 72-11-3(1)(d) [the sections of the Colorado statutes giving the "basis of rates"] is included, the filing is incomplete. However, this position is contrary to the legislative provision that the filing contain such information as is appropriate in accordance with the judgment of the rating organization. It also represents a misinterpretation of the wording "due consideration." "Due consideration," properly interpreted, means not that all of the items mentioned must be a part of the filing, but that the factors specified must be given due consideration. Very obviously, due consideration can mean to include or exclude. . . . As previously stated, the statute only requires a filing to contain information as to which there is not sufficient information theretofore on file with the Commissioner of Insurance. The court finds no statutory requirement to support that which has already been approved. Since no change was requested, no support was required. . . .[18]

An equally liberal interpretation of the phrase "due consideration" was given in a different situation under a fire insurance rating statute by a Wisconsin court. The statute required the consideration of the loss and expense experience for the proceeding five years. The commissioner claimed he had considered the five years of data but that he gave more weight to the latest year.

The companies objected, claiming he was bound to use the five year average; however, the court upheld the commissioner.

> The bureau contends that the statute requires a five year average to be used. Members of the commissioner's staff testified that they gave due consideration to the figures for the five prior years but that they made certain calculations based on the trends shown thereby. The statute is not as rigid as the bureau contends. The statute provides that due consideration shall be given to the experience of the fire insurance business during a period of not less than the most

[18] *Carroll, J. S. and others* v. *Barnes, op. cit.*

recent five years for which experience is available, but nothing therein directs that an average be used.[19]

With the foregoing interpretation of "due consideration" one would expect that there could be little controversy over the phrase "past and prospective loss experience." Prior to the development of the model bill there had been several court cases, in those few states then regulating fire rates, over the merits of paid loss-written premium versus incurred loss-earned premium ratios in ratemaking.[20] In general, the model casualty bill gives the filer considerable latitude as to how he may support his filing. The appropriate loss ratio issue seldom has been significant in the post SEUA period. It has occasionally been raised, often implicitly and occasionally explicitly, but it has never been considered significant by the courts which always have held in favor of incurred-earned ratios. Similarly, to the authors' knowledge, only once in the various administrative proceedings where the issue has been raised has there ever been any serious question of the propriety of incurred-earned ratios.[21]

While it is relatively easy to determine how to measure past experience, prospective experience presents a difficult problem. Although a few rate administrators, in isolated instances, have objected on general principles to the use of trend and projection factors, most administrators and the courts have recognized their appropriateness. (See, for example, the quotation from the Wisconsin fire case given above.) The only question is how such factors are to be developed and used. The statutes provide no clear-cut guidelines. Where both the filer and the commissioner have evaluated the trends and come to different conclusions, the courts generally have held for the commissioner.[22]

In a New York auto rate case,[23] the superintendent of insurance relied upon the average experience of the past five years (rejecting the filer's use of the two most recent years) as one of his grounds for disapproving the filing. The court stated: "Our conclusion that loss experience has wors-

[19] *Fire Bureau* v. *Rogan, op. cit.*

[20] See, for example, *Aetna Insurance Co.* v. *Hyde,* 315 Mo. 113, cert. dis. 485 Cit. 174; *National Fire Insurance Co.* v. *Thompson,* 281 U.S. 331; *Bullion* v. *Aetna Insurance Co.,* 151 Ark. 519.

[21] In the matter of National Bureau of Casualty Underwriters proposed revision of automobile liability insurance rates for private passenger cars and miscellaneous classes for the State of Maryland, Commissioner's decision of January 7, 1966.

[22] *Mass. Bonding* v. *Commissioner, op. cit.*

[23] *NBCU* v. *Superintendent, op. cit.*

ened since promulgation of the current rates appears to be strongly and additionally fortified by all the evidence of trends which the record contains. . . ." The court noted the rise in average paid claim costs, accident frequency and pure premiums, concluding: "Again giving effect to the presumption that the current rates were lawfully established and, therefore, neither unreasonable nor more than adequate, we find in the record no substantial evidence supportive of the determination that those rates remain adequate. . . . We are constrained, therefore, to annual the [commissioner's] determination and necessarily under the circumstances, to remit the cases for further proceedings." However, the inadequate rates continued in effect during the entire proceedings, even though the court annulled the commissioner's determination.

It would appear that the need to make adjustments to, and projections from, the premium and loss experience has been recognized both by administrators and by the courts.

Carlson noted that there was some controversy concerning underwriting profit. The controversy continues today. An example of a court relying upon this section of the statute when considering the question of investment income is given by the Colorado case previously cited. The plaintiffs [individuals opposing the commissioner's approval of the rate increase] claimed that the commissioner erred in not considering investment income. The court replied:

> As to the second part [income from the investment of assets off setting unearned premiums] of this issue [investment income], plaintiffs admit that the judicial authority, insofar as is applicable, is split on the question. Aside from the decisions of other jurisdictions one of the factors which the Colorado statute specifies to be considered is "a reasonable margin for margins [sic] and contingencies . . ." It is noted that the figure for profits and contingencies of 5% is a relatively low figure. Undoubtedly this figure is utilized based upon the fact that there may be other income accruing to an insurance company. The statutory language specifies only a reasonable margin of underwriting profit and makes no reference to any other source of income. The statute, therefore, indicates that, for purposes of rate making, consideration be given specifically to underwriting profit and none other. . . .[24]

[24] *Carroll, J. S. and others* v. *Barnes, op. cit.*

The "judicial authority" on the underwriting profit question consists largely of contradictory fire insurance cases from the late 1920's and early 1930's. To the authors' knowledge, there have been no court cases during the post SEUA period holding that investment income should be included in ratemaking. The attitude of the courts was probably best summarized in the Massachusetts case previously cited, where the court did not discuss investment income from the theoretical, or even legalistic (as did Colorado), point of view, but pragmatically stated: "We might add that even if interest was earned [on the investment of assets offsetting reserves] in the amount suggested by the petitioner the net amount after taxes would not substantially affect the premium charges."[25] At the administrative level, this issue has frequently been raised, but investment income has been included in the ratemaking process formally in only two states.[26] In one of these states, the situation is still clouded by extensive litigation; in the other, reflection of investment income appears to contradict past cases in the state,[27] although it does have some precedent in the state. Regarding underwriting profit, per se, it should be noted that administrative and judicial precedent can be found for a number of different profit precentages.

Another portion of the "Basis of Rates" paragraph which has been subject to varying interpretations is the reference to "past and prospective expenses both countrywide and those specially applicable to this state." In practice this usually has been interpreted to permit the use of countrywide expense provisions *except* for the provision for state and local taxes, licenses and fees. The use of a state tax provision higher than the countrywide average has been contested but upheld in at least one state.[28] More than one administrator has felt that individual state expense data should be used in rate-making. One jurisdiction has provided for the incorporation of such data in rate filings.[29] However, this appears to be an exception to general practice, and the use of countrywide expense data (for items other than taxes) appears to be generally accepted. In both the New York and Massachusetts cases previously cited the issue of varying expenses by

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[25] *Mass. Bonding* v. *Commissioner, op. cit.*

[26] Maryland and Virginia.

[27] *Hartford Mutual Insurance Company* v. *Commonwealth,* 201 Va. 491, 112 S.E. 2d 142 (1960); Commonwealth of Virginia at the relation of the State Corporation *Commission* v. the *Aetna Casualty and Surety Company* et. al., Case No. 17680 (1967).

[28] *American Equitable Assurance Co.* v. *Gold,* 249 N.C. 461, 106 S.E. 2d 875 (1959).

[29] Kentucky Insurance Department.

state (and territory) was raised and the court found the normal procedure of not so doing to be reasonable.[30]

It appears that very few changes have been made in this section of the insurance laws. The two changes of significance both occurred in Florida's new law, effective October 1, 1967, which specifically provides for consideration of relevant judgment factors and investment income. The inaction at the state level is also reflected in the consolidated bill proposed by the NAIC which includes no changes affecting casualty rates in the "basis of rates" section (§ 3(a) 2 of the proposed bill).[31] This situation should not be interpreted to mean that this section of the law is completely satisfactory to all interested parties. The proposed consolidated bill of the National Association of Independent Insurers is a case in point.[32] Section 3a of this bill provides:

> Rates shall be made only by insurers or rating organizations and in accordance with the following provisions:
>
> (a) To the extent applicable, consideration shall be given to the following factors:
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> (1) As a guide to reasonable assumptions as to prospective experience:
>
> a. Past loss experience, if any, of the filer or other insurers or advisory or rating organizations, within or without this state;
>
> b. Past countrywide expense experience, if any, and those expenses, if any, especially applicable to this state, of the filer or other insurers or advisory or rating organizations;
>
> c. Any combination of any of the foregoing factors;
>
> (2) The judgment of the filer and its interpretation of any data relied upon;
>
> (3) A reasonable margin for underwriting profit and contingencies;
>
> (4) Dividends, savings or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members or subscribers;

[30] *NBCU* v. *Superintendent, op. cit.; Mass. Bonding* v. *Commissioner, op. cit.*
[31] 1963 *PNAIC* Vol. I, pp. 226 ff.
[32] 1960 *PNAIC* Vol. II, pp. 607 ff.

(5) All other factors, including trend factors, deemed by the filer to be relevant.

(c) Expense Provisions (AIC Bill § 3(a)2)

There probably has not been much difficulty of interpretation with this provision because few expense variations are used by most filers within a line of insurance. In a recent presidential address T. E. Murrin[33] comments on the need for more refinement of expense analysis in ratemaking. Buffinton has given us an example of a needed application of this section of the statute.[34] The principle sanctioned by this paragraph of the statute has long been recognized in workmen's compensation insurance and other casualty lines.

No changes of consequence have been made at the state level in this section of the law nor have any been proposed in the major consolidated bills mentioned in this paper.

(d) Classifications and Rating Plans (AIC Bill § 3(a)3)

Although the phraseology of this section appears clear, it has led to considerable debate. Notwithstanding the fact that the all-industry phraseology appears in most states, national rating organizations and independent insurers alike have experienced difficulty in having classification and rating plans approved in a number of states. Sometimes, a state will accept a countrywide classification plan but subsequently refuse to approve any modification of the plan. This results in an individual filer having perhaps a dozen different class plans in effect in different states for a given line of insurance at the same time. While in practice the courts have accepted the principle of classification of risks, there have been a number of cases in which existing classes have been attacked as either too broad or too narrow. Since the controlling statute usually offers little in the way of guidelines as to the reasonableness of a classification system, the results of these cases do not appear to be very helpful in drawing any general conclusions. With regard to rating plans, the situation has become even more complex due to the introduction of multi-peril policies. To trace through administrative decisions and court cases the evolution of the several rating plans described by Carlson appears to be too large a task to accomplish within this

[33] Murrin, T. E., "Presidential Address," *PCAS* LII, p. 138.

[34] See Buffinton, P. G., "The Low Valued Risk — A Study of the Premium Required for Habitational Risks of Various Policy Amounts," *PCAS* XLIX, p. 119 ff.

paper. However, in general the courts have upheld the use of prospective[35] and retrospective[36] experience rating plans.

Few, if any, significant changes have been made by the states in this section of the law, nor has the NAIC proposed any changes therein. The proposed NAII bill, however, reads in this regard as follows:

> Section 3.
>
> (c) Manual, minimum, class rates; rating schedules or rating plans may be made and adopted. Risks may be grouped by classification for the establishment of rates and minimum premiums. Classification rates may be modified under rating plans to produce rates for individual risks. Classification of risks and rating plans used in modification of classification rates may be based upon any differences among risks deemed by the filer to have a probable effect upon losses or expenses.[37]

The last sentence of this section would increase considerably the latitude given the rate maker, over that provided in the AIC Bill, in individual risk rating. Connecticut has a provision which comes close to giving this much flexibility, specifically ". . . such rating plans may include application of the judgment of the insurer. . . ."[38] Another example of a flexible provision is Missouri's which allows classification rates to "be modified to produce rates for individual or special risks which are not susceptible to measurement by any established standards."[39]

(e) Rate Filings (AIC Bill § 4 Except Both the Fourth Sentence in Subsection (a) and All of Subsection (h))

In a vast majority of the states, the controlling statute clearly gives the authority (indeed the duty) to make filings to the individual insurer which may delegate the authority to a rating organization. It would seem obvious that the filer is given the initiative both in this paragraph and in others to

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[35] See, for example, *Century Cab Inc.* v. *Commissioner of Insurance*, 327 Mass. 652, 100 N.E. 2d 481 (1951) and *North Little Rock Transportation Co.* v. *Casualty Reciprocal Exchange*, 85 S. Supp. 961 (1950), aff'd 181 F. 2d 174, cert. den, 340 U.S. 823, 71 S. Ct. 56.

[36] See, for example, *State Compensation Insurance Fund* v. *McConnell*, 46 Cal. 2d 330, 294 p. 440 (1956).

[37] 1960 *PNAIC* Vol. II, pp. 607 ff.

[38] § 38.187(a)3 *Connecticut Insurance Law.*

[39] § 379.470(6) *Missouri Insurance Law.*

develop a rate schedule using his experience (supplemented as desired), his formula, and his judgment. If the end product, the rates, meet the basic criteria then the commissioner should approve them. Unfortunately, this is an oversimplification.

The commissioner and his staff must use some guidelines in judging the rates. Their standards may develop into a ratemaking formula with judgments different from those adopted by the filer. If the two formulas result in widely different results, the filer's rates are disapproved and he must decide whether to adopt all or part of the commissioner's formula and try again or to appeal to the courts — a decision not lightly made. In some situations it may appear to the filer that he cannot achieve approval of a rate filing unless it is based upon a certain formula or upon certain ratemaking principles adopted by the commissioner.

There have been a number of court cases in which the filer has accused the commissioner of exceeding his authority and illegally attempting either to require a ratemaking formula or to indirectly fix rates by disapproving those that differ from the commissioner's calculations. The courts have generally agreed that such activities are illegal. However, it is often difficult to distinguish between a careful analysis of a filing coupled with a properly drawn disapproval order giving findings and reasons for disapproval and an illegal attempt to fix rates.

In the Wisconsin case previously cited, the rating bureau had charged that the commissioner was attempting to fix rates, although the commissioner denied this contention in court. The court stated:

> The bureau contends that in effect the commissioner has adopted the figures prepared by his staff and in his decision and order he is attempting to do indirectly what he could not do directly. The bureau contends that the effect of the commissioner's determination is that no rates will be approved by him that do not comply with his staff's computations. The position of the bureau is understandable when the exhibits prepared by the commissioner's staff are considered in the light of the testimony given by members of his staff. If the bureau is correct in its argument the decision of the commissioner is invalid. However, in view of his statements both in the circuit court and before this court he is precluded from so asserting in the future.[40]

[40] *Fire Bureau* v. *Rogan op. cit.*

Editorializing, the court noted that if the commissioner attempted to fix rates, his disapproval order was illegal. The court accepted his statement that he was not setting rates, but precluded him from asserting that he would not approve any filing that did not comply with his staff's calculations. In the New York case previously cited, the court noted that the Superintendent could not fix rates and that there was no statutory formula for ratemaking. It also noted that he was not bound by his own past practice and was not bound to a rigid formula of his own construction.[41] Carlson noted that for practical reasons it was (and generally it still is) customary to treat all states as though prior approval were required. In practice, many insurance departments ignore the waiting periods and there are often long delays between the date of filing and the final action on the rate filing. Today, many segments of the industry have backed a movement to modify rating laws so that not only would prior approval not be required but rates could be used when filed or be used without filing. Four states (Florida, Georgia, Indiana, and Louisiana) have substantially changed their laws in this direction. It is interesting to note that the end result desired by many of those supporting these changes is embodied in the AIC Model Bill, which does not require prior approval and which provides for the use of rates 15 days after they have been filed (i.e. rates are deemed to be approved 15 days after they are filed, unless they are actually disapproved beforehand). Perhaps, if the attitude of filers twenty years ago was that AIC states be treated as if prior approval were not required, the laws would have been administered as they were written and there would be little need for revision of the statutes.

An interesting sidelight on the application of the deemer provision is found in an Illinois case which was cited in the discusssion of statutory standards. The Director of Insurance had disapproved an auto filing on the grounds that it failed to meet the statutory standards. However, he gave no notice as to wherein the filing was deficient. The court stated:

> ". . . In fact there is abundant evidence that when the director was asked wherein they did not comply he refused to give any information. On that ground alone I think the court would be fully justified in saying that the rates became effective at the expiration of the first 15 days."[42]

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[41] *NBCU* v. *Superintendent, op. cit.*
[42] *NBCU* v. *McCarthy, op. cit.*

Thus, the court invoked the deemer provision at the conclusion of the 15 day waiting period. This action had a salutary effect because although the new rates were not allowed to be used until the court issued its decision they did not lie in abeyance until further consideration was given to them by the Insurance Director.

The major legislative changes pertaining to the subsections covered by Carlson's section (e)-1, which pertains to the filing requirements and the confidentiality of the filing, involve the addition of Florida and Georgia to those states which do not require formal rate filings. Since 1951 the number of states providing for public inspection of filings prior to their effective date has increased from 2 to 7. Tennessee's law now specifically provides for reference filings (i.e. the filer may incorporate, by reference, into his filing any part of any existing filing and supporting information in the Commissioner's possession which is open to public inspection) but requires insurers not members or subscribers of a licensed rating organization to file a satisfactory statement of their qualification to make rates (§ 6356.22(a)). Wisconsin now specifically requires the filing of short rate tables.

The Commissioner's proposed consolidated bill does not provide for any substantial changes in the subsections of the rating laws covered by Carlson's section (e)-1.

In regard to Carlson's section (e)-2, it may be noted that Indiana's code now authorizes agency filings (§ 4(g)1). An agency filing is a filing made by a bureau *solely* on behalf of the affiliate(s) requesting the filing rather than on behalf of all affiliates. The Commissioners' bill makes no changes in this section of the law which pertains to an insurer authorizing the Commissioner to accept bureau filings made on the insurer's behalf.

Section (e)-3 of Carlson's paper is captioned "review and approval" and it pertains to the so-called "waiting period" and "deemer" provisions of the AIC Bill. The recent no file laws in Florida and Georgia and modified prior approval laws in Indiana and Louisiana have eliminated the waiting period and deemer provisions in whole or in part in these four states. Of the seven other jurisdictions which appear to have changed this subsection of their insurance codes, only one shortened the waiting period. The other six lengthened the waiting period — generally to 30 days with provisions for an extension not to exceed from 15 to 60 additional days before the deemer becomes applicable.

This "review and approval" subsection of the rating law appears to have sparked the greatest amount of controversy within the industry and between major segments of the industry and the NAIC. While the NAIC and segments of the industry, including the National Association of Mutual Insurance Agents, favor retention of the AIC approach, the American Insurance Association, American Society of Insurance Management, Insurance Company of North America, National Association of Casualty and Surety Agents, National Association of Insurance Agents, National Association of Insurance Brokers, and the National Association of Independent Insurers among others favor adoption of either modified prior approval (which could be called, just as well, modified file and use), file and use, or no file legislation.[43] The subject continues to be debated by the NAIC and industry. While those expounding a more liberal approach would be gratified by formal adoption of their view by the NAIC, it is likely that whatever progress is made in this direction, in the short run at least, will be made on a state by state basis after an independent or legislative in-depth analysis of the issues such as occurred in those states taking the more flexible tack.

No changes of consequence have been made at the state level or recommended by the NAIC in the subsections covered in Carlson's sections (e)-4, captioned "filing after use," (e)-5, entitled "rate in excess of normal" and (e)-6, captioned "special filings." The premium volume affected by these subsections is relatively small, although the so-callled "consent to rate" provision has become more important because of the extremely tight market experienced in recent years, particularly in some areas for certain coverages, e.g., substandard automobile insurance in congested urban areas.

(f) Supporting Information (AIC Bill § 4(a), Next to the Last Sentence Only)

As Carlson noted, this provision has been interpreted to mean that an insurer may file simply by referring to the filing of a rating bureau. This practice is quite common today. Carlson's fear that the reference filer may in some cases represent a larger volume than the rating bureau filing is probably less true today since so many large independent companies utilize their own data in establishing rates.

The question of whether supporting information should be provided with

[43] See 1966 *PNAIC*, Vol. I, pp. 156 ff.

a filing is not an easy one to answer. If the burden to request such information is placed upon the commissioner, then the filer will face additional delays since the waiting period commences after all the requested information has been supplied. Furthermore, if the filer does not support his proposal, it is easier for the commissioner to disapprove, since he will have only requested the information he feels necesssary and the filer will not have amassed any body of evidence in the record from which to appeal. In a number of cases, issues raised by the filer, the commissioner and by intervenors have been dismissed by the courts on the grounds that there was insufficient evidence to make a determination.[44] Since the initiative to file lies with the filer, it would seem that the burden of proof also is his, and that he weakens his position by not providing sufficient supporting information to prove his case. It also may be noted, that this paragraph should be read together with the section of the "basis of rates." For example, in giving due consideration to past and prospective loss experience, the filer may include his own experience, the experience of other filers, his interpretation of the data, etc.[45]

This part of the rating laws has been subjected to very little revision — nor has the NAIC recommended any changes. The proposed consolidated bill of the NAII, however, reads in this regard as follows: "Such filing shall be accompanied by the information upon which the filer supports such filing. The filer may incorporate by reference into its filing all or part of any existing filing and supporting information and any other relevant information or material in the Commissioner's possession which is open to public inspection."[46] As previously mentioned, Tennessee's statute provides for such reference filing.

(g) Disapproval (AIC Bill § 5)

The statutes generally provide that the filer has the right of hearing if a filing is disapproved and that the commissioner shall specify in what respects he finds such a filing fails to meet the statutory requirements. (As noted in an Illinois case above, the mere recitation of the requirements is insufficient.) Furthermore, it is usually required that the commissioner give findings of facts and determinations in addition to his order.

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[44] For example, *State* v. *Faricy, op. cit., Mass. Bonding* v. *Commissioner, op. cit., NBCU* v. *Superintendent, op. cit., NBCU* v. *McCarthy, op. cit., Carroll, J. S. and others* v. *Barnes, op. cit.*

[45] See *Carroll, J. S.* v. *Barnes, op. cit.* See also the regulations of the Kentucky Insurance Department.

[46] See 1960 *PNAIC*, Vol. II pp. 607 ff.

> Such findings are necessary in aid of intelligent judicial review. . . . The difficulties inherent in the statutory scheme of regulation, whereby the superintendent may not directly fix rates but must approve or disapprove proposed rates *in toto* furnish an additional ground for requiring findings in terms of the statistical and monetary factors involved. In many cases the area of dispute might thus be narrowed and the treatment of new filings expedited, after a decision adverse in part, and without the necessity of judicial review.[47]

The frequent citation of court cases in this paper does not imply that the ratemaker can expect to win court if he cannot convince a commissioner. In general (but not without exception), a court will not disturb the action of a commissioner unless he has exceeded his powers, made a mistake of law, or acted contrary to the evidence (or without its support). This is illustrated by a Massachusetts case in which the petitioners, a group of insurance companies, had challenged the Commissioner's rates on the grounds that he had used a three year average, although there was a clear upward trend. The petitioners maintained that the latest year (1950) should have been used in setting rates (for use in 1952). The court did not disagree with the petitioners allegations, and in fact stated:

> The evidence, oral and documentary, introduced by the petitioners is impressive and tends strongly to support their estimate of the probable conditions of 1952. It is not challenged by the commissioner or contradicted by any evidence introduced by him. If the commissioner had fixed the rates on the basis of the 1950 loss data it would be difficult to say that he was wrong. But the question is not what this court would decide if it were in the position of the commissioner. It is elementary that the fixing of rates is not a proper judicial function. *New England Telephone & Telegraph Co.* v. *Department of Public Utilities,* 327 Mass. 81, 85, 97 N.E. 2d 509, 512; *American Employers' Ins. Co.* v. *Commissioner of Insurance,* 298 Mass. 161, 169, 10 N.E. 2d 76. This court does not sit as a board of review to substitute its judgment for that of the Legislature or of the commission lawfully constituted by it, as to matters within the province of either. *Boston & Albany Railroad* v. *New York Central Railroad Co.,* 256 Mass. 600, 618–619, 153 N.E. 19, 25.[48]

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[47] *NBCU* v. *Superintendent, op. cit.*

[48] *Massachusetts Bonding and Insurance Company* v. *Commissioner of Insurance,* 329 Mass. 265, 107 N.E. 2d 807 (1952). (See Appendix B)

However, the court affirmed the commissioner's action.

It is worth reemphasizing that even if the court did not affirm the commissioner's action, the practical result would be that the case would have been sent back to the commissioner for further proceedings. Thus, even when a court reverses a commissioner's decision, the case is generally sent back to the commissioner and may ultimately become a moot question.

Since Carlson did not construct a table of exceptions to AIC § 5 no attempt was made to determine the changes which may have taken place in the corresponding sections of the state laws. It is worthwhile, however, to review briefly the subsections of § 5, examine the criticism they have received, and discuss some of the changes in these subsections.

Subsection (a) provides that if the Commissioner disapproves a filing within the waiting period or an extension thereof, he must so inform the filer by written notice specifying therein how the filing fails to meet the requirements of the law. Thus, under an AIC type law, the Commissioner may disapprove a filing before it has become effective *without* holding a hearing, the filer does have a right to a hearing on the disapproval order but the disapproved rates may not be used in the interim unless the filer obtains a stay of the Commissioner's order, which is an unlikely event. The NAIC bill would continue this approach. Under the enacted and proposed "no file" and "file and use" laws, by their very nature, rates are not disapproved *prior* to filing. Under a "no file" law rates are not formally filed and with a "file and use" law and under certain conditions with a "modified prior approval" law the rates are effective when they are filed and therefore are subject to the so-called subsequent disapproval provision which, as in the AIC Bill, requires a hearing to be held before the Commissioner may issue a disapproval order. Under this provision time shifts to the side of the filer since he may continue to use the effective rates until they are disapproved. Also, it would seem that the filer might be more successful in having a disapproval order stayed because such stay would in effect preserve the status quo (i.e. continue to allow the insurer to use its existing rates) and because if the order were not stayed the filer would not have any rates in effect unless he were to file another set of rates acceptable to the Commissioner. By the same token, if the stay were denied and the Commissioner refused to approve another filing, the filer would be left without a set of effective rates. It is of interest to note that the proposed NAII bill provides that a disapproval order would not take effect for at least 90 days.

Subsection (b) pertains to disapproval of special surety or guaranty filings. The NAIC bill contains no changes in this section while the NAII bill would treat *all* disapprovals in the same manner.

Subsection (c) contains the "subsequent disapproval" provision of the AIC Model Bill which provides for not less than 10 days' written notice of a hearing, specification of the filings' deficiencies, a reasonable period after the hearing before the filing becomes invalid, and immunity to policies made or issued before the expiration of the effective filing. The NAIC Bill makes no change in this provision.

Subsection (d) contains the infamous "aggrieved party" provision. All of the major proposed bills discussed in this paper include revision of this provision. The NAIC Bill requires an aggrieved party to have "a specific economic interest affected by the filing" and states that "no rating or advisory organization shall have any status under this Act to make application for a hearing on any filing made by an insurer . . ." The NAIC Bill makes no substantive changes in the other provisions of this subsection.

The final subsection of § 5 reinforces the validity of classification plans and individual risk rating provided for in § 3(a)3. No change of substance has been suggested for this subsection in any of the previously discussed bills.

(h) Rating Organizations (AIC Bill § 6)

Prior to the advent of the SEUA decision, rating organizations insisted upon countrywide adherence to their manual rates and rules by member insurers. The rating organization interpreted the statistics, set the rates and enforced their use. With the model bill, many of these functions were transferred to the states, which became the enforcers of the filed rates and the final interpreter of the statistics. The transition from the pre SEUA concept of a rating bureau to today's concept has been dramatic indeed. This is illustrated by comparing countrywide adherence rules to the filing procedure adopted by the newly formed Insurance Rating Board.

> IRB will make *general filings* on behalf of all members and subscribers. However, for individual companies these means will be available to depart from such general filings: Companies may *deviate* from IRB actions when permitted to do so according to the deviation statutes of the various states. The facilities of IRB and the expertise of its staff will be available for consultation and assistance in the preparation of *agency filings*. The Executive Com-

> mittee is authorized to establish appropriate *special procedures* to handle situations that cannot be resolved satisfactorily through normal filing procedures, statutory deviations or agency filings.[49]

The rating bureau is being transformed from a fixer and regulator of prices in the industry to largely an information service. The transition is not complete, and has not been painless, as indicated by the many court cases concerning the right of partial subscribership, deviation, etc.

Carlson did not include a table of exceptions to the rating organizations section of the AIC Bill; however, an examination of the appropriate section of the state laws indicates that most read as does the AIC Bill. One would conclude, therefore, that few changes have occurred in the intervening years at the state level. The four subsections of this section primarily deal with (a) licensing, (b) right of full or partial subscribership, (c) prohibition against bureau rule regulating dividends, and (d) authorizing cooperation among rating bureaus and insurers. The consolidated bill proposed by the NAIC makes no changes in these subsections but adds the following subsections from the AIC Model Fire Bill:

> (e) *Any rating organization may provide for the examination* of policies, daily reports, binders, renewal certificates, endorsements or other evidences of insurance, or the cancellation thereof, and may make reasonable rules governing their submission. *Such rules shall contain* a provision that in the event any insurer does not within sixty days furnish satisfactory evidence to the rating organization of the correction of any error or omissison previously called to its attention by the rating organization, it shall be the duty of the rating organization *to notify the [commissioner] thereof.* All information so submitted for examination shall be confidential.
>
> (f) Any rating organization may subscribe for or purchase actuarial, technical or other services, and such services shall be available to all members and subscribers without discrimination.

The bill proposed by the NAII includes editorial changes and defines a bureau member as insurer entitled to participate in the management of the bureau.

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[49] "The New Insurance Rating Board" (Insurance Information Institute, N.Y. August, 1967), emphasis added.

(i) Deviations (AIC Bill § 7)

The varying administration of virtually identical rate regulatory code provisions is illustrated by Regulation No. 12 of the Alabama Insurance Department under date of September 1, 1961 relating to property and liability rate deviations. The regulation specified that both Alabama and countrywide earned premiums, incurred losses and underwriting gain or loss along with acquisition expenses, general expenses, and taxes incurred (related to written and to earned premiums) be submitted for the most recent five-year period for fire and allied lines and for the most recent three years, at least, for casualty and inland marine coverages. The implication apparently is that no deviation would be approved until the insurer had written business at bureau rates in Alabama for five and three years, respectively.

The regulation also stated that no action would be taken on a deviation filing until the insurance department was notified by the concerned rating bureau of its position on the deviation and whether it desired a hearing, whereas Section 28–399 of the Code appeared to require the department to set a time and place for a hearing when it notified the bureau of the deviation filing. While neither the Alabama statute nor the AIC deviation provision specified any time limit on calling a hearing, Regulation No. 12 was even more deficient in this regard because apparently it would enable the bureau to delay the deviation indefinitely simply by not taking action to notify the department.

Neither the Alabama code nor the AIC bill required that deviations commence and expire on particular dates each year yet Regulation No. 12 required all deviations to become effective on May 1 of each year and expire the following April 30. Furthermore, the regulation advised that retroactive approval of deviations (apparently of those filed after May 1) was prohibited by a 1947 decision of the Alabama attorney general.

It seems obvious that Regulation No. 12 could seriously handicap insurers who wished to deviate, first because of the delaying opportunity afforded the bureau on the deviation hearing and second because of tying deviations to a single date while allowing bureau filings to be made at any time of the year.

Widespread dissatisfaction with administrative and statutory roadblocks to competitive opportunity has led to a liberalization of the deviation section of several state laws. In states having "no file" or "file and

use" laws the need for a deviation section in the code may be eliminated entirely. Since Carlson's paper was written at least six jurisdictions with AIC deviation provisions have eliminated the restriction on deviations to uniform percentage decreases or increases. At least ten jurisdictions have eliminated the one year limitation on the duration of deviations. This action is in accord with the following model bill provision recommended by the NAIC Subcommittee to Review Fire and Casualty Rating Laws and Regulations:[50]

Sec. 7 — DEVIATIONS Marked to show additions *to* (underlined) and deletions *from* (in brackets [ ]), the AIC Casualty Bill.

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.] 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. Such application shall specify the basis for the modification and [shall be accompanied by the data on which the applicant relies.] a copy [of the application and data] shall also be sent simultaneously to such rating organization. [The Commissioner shall set a time and place for a hearing at which the insurer and such rating organization may be heard and shall give them not less than ten days' written notice thereof. In the event the Commissioner is advised by the rating organization that it does not desire a hearing he may, upon the consent of the applicant, waive such hearing.] In considering the application [for permission] to file such deviation, the Commissioner shall give consideration to the available statistics and the principles for rate making as

[50] 1963 *PNAIC* Vol. I, pp. 226 ff.

provided in Section 3 (Making of Rates) of this Act. The Commissioner shall issue an order permitting the [modification] deviation for such insurer to be filed if he finds it to be justified and it shall thereupon become effective. He shall issue an order denying such application if he finds that [the modification is not justified or that the resulting premiums would be excessive, inadequate or unfairly discriminatory.] the deviation applied for does not meet the requirements of this Act.

Each deviation permitted to be filed shall [be effective] remain in effect for a period of not less than one year from the effective date [of such permission] unless [terminated] sooner withdrawn by the insurer with the approval of the Commissioner or until terminated in accordance with the provisions of Section 5 (Disapproval of Filings).

Section 5, Disapproval of Filings, of the Model Bill received scant attention in Carlson's item (g) because according to Carlson the section was of interest primarily from the legal angle. The section, however, has been the focus of considerable criticism especially as it pertains to the "rights" of a rating organization in hearings on deviation and independent filings. An NAIC subcommittee which studied the problem recommended amendment of the "aggrieved party" subsection so that no rating organization would have "aggrieved party" status with regard to any filing in effect or being considered by the insurance department.[51] As previously mentioned, this amendment has been incorporated into the bill proposed by the NAIC.

(j) Advisory Organizations [AIC Bill § 10]

Four of the seven states which according to Carlson had no provision in their law regarding advisory organizations have since enacted such a provision. Of the three remaining states only Massachusetts and New Hampshire, for automobile liability, make no reference to advisory organizations. A 1961 report of the U.S. Senate Committee on the Judiciary was especially critical of the laxity of regulation of advisory organizations in the way of license requirements and periodic examination.[52] The proposed consolidated bills of the NAIC and the NAII have the same provisions as

[51] See 1962 *PNAIC* Vol. II, pp. 504–505.

[52] *The Insurance Industry*, Report No. 831, 87th Congress 1st Session, August 29, 1961, Committee on the Judiciary United States Senate.

Section 10 of the AIC Bill. In regard to the examination of advisory organizations, which is provided for in Section 12 of the AIC Bill, the NAIC Bill makes no changes while the NAII, though substantially equivalent, adds language detailing the purpose of such examinations and the types of information that may be examined.

(k) Exchange of Information [AIC Bill § 13(b)(c)]

Only Vermont of the seven states in which the provisions of Carlson's section (k) were not applicable has amended its law to include these provisions. No other changes of substance appear to have been made in the appropriate sections of the state laws. The NAIC Bill proposes no changes in these subsections while the NAII Bill broadens the language of paragraph (b) of Section 13 of the AIC Bill to include within its scope advisory organizations and statistical agencies within and outside the state.

(l) Recording and Reporting of Loss and Expense Experience (AIC § 13(a))

A cursory reading of this paragraph of the model bill would lead one to expect that each insurance commissioner would be issuing his own statistical plan and collecting data. As Carlson noted, in most of the states the promulgation of the various statistical plans was by a letter addressed to all carriers listing approved plans and statistical agencies. And there ended most of the controversy outlined by Carlson. Currently the plans are modified almost annually, and a few states do ask for the inclusion of special codes. Du Rose has presented a detailed discussion of this section of the statute, and of an alternative means of gathering statistics which would more closely correspond to the wording of the statute.[53]

Only minor changes appear to have been made in this section of the state laws. No change is proposed in the NAIC Bill and the NAII bill generally follows the AIC Bill approach.

SUMMARY

Although there have been numerous minor changes in rate regulatory laws since 1951, only four states adopted major revisions in their codes.

[53] DuRose, S. C., "A Uniform Statistical Plan and Integrated Rate Filing Procedure for Private Passenger Automobile Insurance." *PCAS* Vol. XLV, p. 41.

These revisions and those suggested by the AIA and the NAII have been directed toward placing greater reliance upon competition as a regulator of rates and thus permitting the flexibility in ratemaking procedure which Carlson believed to be so essential. His conclusions that rate regulation has resulted in a thorough and on-going review of rate making procedure and that it has led to greater consistency and uniformity in practice remain valid. As he further noted, regulation unfortunately has sometimes resulted in undue formularization of judgment, delays and provincialism. Despite the trend toward greater flexibility widened by the changes in regulatory laws, it appears that price regulation is with us to stay.

APPENDIX A

EXCEPTIONS TO MODEL BILL PHRASEOLOGY

It should be noted that these summaries have been prepared from an actuarial, rather than a legal, viewpoint.

(a) Basic Criteria for Rates

"Rates shall not be excessive, inadequate or unfairly discriminatory."

State	Basic Exception	Definition of		
		Excessive	Inadequate	Unfairly Discriminatory
Alabama	1			
Alaska*				
Arizona*		18	19	
Arkansas*				
California*		8	3	
Delaware*				5
District of Columbia				2
Florida*		20	21	
Georgia		8	22	
Idaho*			3	
Indiana*		8	23	
Iowa*				
Kansas	4			
Louisiana*				
Maine				5
Maryland*				
Massachusetts	6[a]			5
Minnesota			7	
Mississippi	4			
Missouri		8	3	
Montana*	24[b]	24	24	24
Nebraska			9	
Nevada*				
New Hampshire*	10[a]			5
New Jersey*	1			
New York*	25, 26, 27, 28			
North Carolina	11			
Oklahoma		12	3	2
Oregon*	13			
Puerto Rico*	26[b]			
Rhode Island			14	15
South Carolina*	29[b]	30		
South Dakota*				
Tennessee	16			
Texas	17			
Utah*				
Vermont*	31			
Virginia*				
Washington*	32			33
West Virginia*				

* Combined Rate Law (at least in part) for Fire and Casualty Insurance

a — Motor Vehicle (Liability) Only
b — In Addition To AIC Model Bill Phraseology

(a) Basic Criteria for Rates

Explanations of Exceptions to Model Bill Phraseology
(Numbers in Parentheses Refer to Carlson's Original References)

1. (1) ". . . rates that are not unreasonably high or inadequate for the safety and soundness of the insurer, and which do not unfairly discriminate between risks in this state" (Ala. § 292), (N. J. § 17; 29 A-4 continuing: "involving the same hazards and expense elements").
2. (24) "Nothing in this section shall be taken to prohibit as unfairly discriminatory the establishment of classifications or modifications of classifications of risks based upon the size, expense, management, individual experience, location or dispersion of hazard, or any other reasonable considerations attributable to such risks provided such classifications and modifications apply to all risks under the same or substantially similar circumstances or conditions" (D.C. § 35-1503(c)), (Okla. § 902 D.).
3. (19) "No rate shall be held to be inadequate unless (1) such rate is unreasonably low for the insurance provided and (2) the continued use of such rate endangers the solvency of the insurer using the same, or unless (3) such rate is unreasonably low for the insurance provided and the use of such rate by the insurer using same has, or if continued will have, the effect of destroying competition or creating a monopoly" (Idaho § 348 (4)), (Mo. § 379.470 (3)), (Okla. § 902 A), (Calif. Art. 2 § 1852 (a)).
4. (2) "Rates shall be reasonable, adequate and not unfairly discriminatory" (Kans. § 40-1112 (4)), (Miss. § 5834-02 (a)).
5. (25) Same as 2 except: Add "unreasonable or" before "unfairly discriminatory," delete "the" before "size," add "purpose of insurance" after "individual experience" and delete "attributable to such risks" after "considerations" (Me. § 2763.3), (Mass. § 5.4(c) (not for compulsory auto), (Del. § 2303 (5)(d) Also change "of classifications of risks" to "of classifications or risks"), (N.H. Ch. 329-B § 3(f)).
6. (3) For compulsory motor vehicle liability *only* ". . . to fix and establish or secure and maintain fair and reasonable classifications of risks and adequate, just, reasonable and non-discriminatory premium charges . . ." (Mass. § 113 B).
7. (20) "No rate shall be held to be inadequate if the information furnished by the insurer in support of the filing shows that the business being written at the rate proposed in the filing is being written by the insurer at a profit" (Minn. § 70.36 (4)).
8. (16) "No rate shall be held to be excessive unless such rate is unreasonably high for the insurance provided and a reasonable degree of competition does not exist in the area with respect to the classification to which such rate is applicable" (Mo. § 379.470 (2)), (Calif. Art. 2 § 1852 (a)), (Ga. 56-507 (a)), (Ind. Sec. 3a. (4)).
9. (21) "No rate shall be held to be inadequate for use in this state if its use will not endanger the solvency of the insurer charging such rate and if it bears a reasonable relation to the loss and expense ratios of such insurer in all states in which it is licensed for the same class of risk" (Nebr. § 44-1403 (4)).
10. (5) Motor Vehicle Liability Only: "Rates . . . shall be adequate, reasonable, and nondiscriminatory as against citizens or classes of citizens of this state . . ." (N.H. § 412:15).
11. (8) Casualty Other Than Automobile Liability: "The Commissioner shall not approve any rate, rate manual, classification of risks, rating plan, rating schedule or other rating rule which is excessive, inadequate, unreasonable or unfairly discriminatory" (N.C. § 58-131.13). "Whenever the Commissioner finds, . . ., that . . . [the] application of an approved classification, rating

schedule or other rating rule is unwarranted, unreasonable, improper or unfairly discriminatory, he shall order the Bureau or insurer to revise or alter the application [etc.] . . ." (N.C. § 58–131.16).

Automobile Liability Only: "Whenever the Commissioner, . . ., shall determine, . . ., that the rates charged or filed on any class of risks are excessive, inadequate, unreasonable, unfairly discriminatory, or otherwise not in the public interest, or that a classification or classification assignment is unwarranted, unreasonable, improper or unfairly discriminatory he shall . . . [have them] altered" (N.C. § 58–248.1).

12. (16) Same as note 8 except: add "(1)" after unless; replace "provided and a" with "provided; or (2) a"; and add "and such rate is unreasonably high for the insurance provided" after "applicable" (Okla. § 902 A).

13. (9) "Rates shall be just, reasonable and not unfairly discriminatory" (Ore. § 737.110 (5)).

14. (22) "And if the insurer using the rate or premium shall show to the satisfaction of the Commissioner that it is writing such kind or class of insurance at a profit, . . ., the rate or premium used is not inadequate (R.I. § 27–9–20).

15. (26) "If the insurer making or issuing a contract or policy at a rate or premium less than that provided by any filing shall, . . ., show to the satisfaction of the Commissioner that the rate or premium was used in good faith to meet an equally low or lower net cost to the insured of a competitor, . . ., the rate or premium is not unfairly discriminatory" (R.I. § 27–9–20).

16. (11) "Rates shall be fair, reasonable, adequate and not unfairly discriminatory" (Tenn. § 6356.21.4).

17. (12) *Motor Vehicle:* "Just, reasonable, and adequate for the risks to which they respectively apply, and not confiscatory as to any class of insurance carriers authorized by law to write such insurance" (Tex. Art. 5.03). *Casualty Insurance and Fidelity, Guaranty and Surety Bonds:* "Rates shall be reasonable, adequate, not unfairly discriminatory, and non-confiscatory as to any class of insurer" (Tex. Art. 5.14).

18. (15) "No rate shall be held to be excessive if the director finds that free competition exists in the area and in the classification covered by such rate" (Ariz. § 17.(a)).

19. (18) "No rate shall be held to be inadequate unless the director finds that the loss experience of the insurer in the classification covered by such rate has been adverse for a continuous period of not less than two years immediately preceding the date of such finding" (Ariz. § 17.(a)).

20. Same as note 8 except conditions are numbered and "area" is replaced with "Florida" (Fla. § 627.062 (2)(a)).

21. Same as note 3 except change "such" to "the" throughout. In Point 3 add "the" before "same," and add "of" before "creating" (Fla. § 627–062 (2)(b)).

22. (Basically same as note 3) "No rate shall be held inadequate unless (1) it is unreasonably low for the insurance provided, and (2) continued use of it would endanger solvency of the insurer, or unless (3) the use of such rate by the insurer using same has, or will, if continued, tend to destroy competition or create a monopoly" (Ga. § 56–507(a)).

23. (Basically same as note 3) "No rate shall be held to be inadequate unless such rate is unreasonably low for the insurance coverage provided and is insufficient to sustain projected losses and expenses; or unless such rate is unreasonably low for the insurance coverage provided and the use of such rate has, or if continued, will have, the effect of destroying competition or creating a monopoly" (Ind. § 3a.(4)).

24. (4) In addition to AIC phraseology: "No insurer . . . shall fix . . . any rate for insurance upon property in this state which discriminates unfairly between risks in the application of like charges and credits or which discriminates unfairly

between risks of essentially the same hazard and having substantially the same degree of protection, [shall be charged], nor shall any rate be such as to endanger the solvency of such insurer" (Mont. § 40–3612). "No rate shall be held to be excessive, inadequate or unfairly discriminatory if the Commissioner finds that free competition exists in the area and classification covered by such rate. No rate shall be held to be inadequate unless the Commissioner finds that the continued use of such rate shall endanger the solvency of the insurer charging such rate" (Mont. § 40–3613).

25. (6) "Rates shall be reasonable and adequate for the class of risks to which they apply" (N.Y. § 183.(b)).

26. (6) "No rate shall discriminate unfairly between risks involving essentially the same hazards and expense elements or between risks in the application of like charges and credits" (N.Y. § 183(1)(c)), (P.R. § 1204(1)(c)).

21. "Whenever the Superintendent finds, . . . , that unfair discrimination exists in . . . rates made or used . . . he may order . . . remov[al] [of] such discrimination, but the same shall not be removed by increasing the rate on any risk affected by the order unless such increase is approved by the Superintendent as reasonable" (N.Y. § 186.1).

28. (7) "Whenever the Superintendent shall determine, . . . , that the rates charged or filed, . . . , are excessive, unfairly discriminatory, inadequate or unreasonable, he shall order that such rates be appropriately adjusted" (N.Y. § 186.2).

29 "If [the Commissioner] shall conclude, . . . , that there is unfair discrimination, he shall order the discrimination removed and require . . . [the] promulgat[ion of] a rate which is not unfairly discriminatory" (S.C. § 37–707). In addition to AIC phraseology.

30. (17) "If . . . rates . . . are excessive or unreasonable in that the results of the business of such companies in this State during the five years next preceding the year in which the investigation is made, as indicated by the official annual statements of the insurance companies . . . , show an aggregate underwriting profit in excess of a reasonable amount'" (S.C. § 37–708).

31. (13) "Rates shall be just, reasonable and adequate, taking into consideration all factors reasonably attributable to the classes of risks involved" (Vt. § 4655(b)).

32. (14) "Premium rates shall not be excessive, inadequate, or unfairly discriminatory. This section does not apply to casualty insurance" (Wash. § 45.19.02).

33. "No insurer shall . . . permit any unfair discrimination between insureds or subjects of insurance having substantially like insuring, risk, and exposure factors, and expense elements. . . ." (Wash. § 45.18.48).

(Carlson numbers not used: 7, 10, 23)

(b) Basis of Rates

The following division of the phraseology into six parts has been added for convenience in reference.

"Due consideration shall be given

1) to past and prospective loss experience within and outside this state,
2) to catastrophe hazards, if any,
3) to a reasonable margin for underwriting profit and contingencies,
4) to dividends, savings or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members or subscribers,
5) to past and prospective expenses both countrywide and those specially applicable to this state, and
6) to all other relevant factors within and outside this state."

State	Exceptions						
	(b)-1	(b)-2	(b)-3	(b)-4	(b)-5	(b)-6	Other
Alabama	1	NR	2	3	NR	4	
Alaska		5	NR			NR	
Arkansas						NR	
California	7	5, 7	7	7, 9	7	7, 8	
Colorado			10				
Delaware		5				NR	
District of Columbia	11				11	11	12, 13, 14, 15
Florida	7	5, 7	7	7	7	7, 8	16
Georgia	7	5, 7	7, 17	7, 9	7	7	
Hawaii	18				18	18	
Illinois							14
Indiana		5		19		NR	
Iowa		5					
Kansas	20	20	20, 10	20, 36	NR	20	
Massachusetts	NR[a], 21	NR[a]	NR[a]	NR[a]	NR[a], 21	NR[a], 21	
Michigan							14
Mississippi			10		22	23	
Missouri	24	20	20	20	20	20, 25	20, 12
Nevada		5					
New Hampshire	NR[a]	NR[a], 5	NR[a]	NR[a]	NR[a]	NR[a]	
New Jersey		5	2	3	NR	4	
New York		5	2	26		4	
North Carolina	NR	NR	NR	NR	NR	NR	
Ohio							27, 12
Oklahoma							12, 13, 14, 15
Oregon	28						
Pennsylvania	21				21	21	12, 13, 14
Puerto Rico	29	5	2	3	NR	30	
South Carolina		5					
SouthDakota		5					
Tennessee			10	3	NR		
Texas	35[a]	NR[a]	NR[a], 10	NR[a], NR	35[a], 31	NR[a]	
Vermont		5		26			
Virginia		5					32[a]
Washington		5			NR		33
West Virginia							34
Wyoming				26		NR	

NR — No Reference
a — Motor Vehicle (liability) only

(b) Basis of Rates

Explanations of Exceptions to Model Bill Phraseology
(Numbers in Parentheses Refer to Carlson's Original References)

1. (1) "To past experience within the state and without the state when necessary, and due consideration may be given prospective loss experience within the the state and without the state when necessary over such period of years as appears to be fairly representative of the frequency of the occurrence of the particular risk" (Ala. § 392).
2. (8, 10) "To a reasonable profit for the insurer" (Ala. § 392), (N.J. § 17:29A-4(c)), (N.Y. § 183(d) with "for the insurer" deleted), (P.R. § 1204(1)(d) as N.Y. but add "underwriting").
3. (11) "In the case of participating insurers, to policyholders' dividends" (Ala. § 392), (N.J. § 17:29A-4(c)), (P.R. § 1204(1)(d)), (Tenn. § 6356.21(2) with phrase reversed, i.e. "to policyholders' dividends, in the case of participating insurers"), (Kans. § 40-1112(1) same as Tenn. in addition to AIC phraseology.).
4. (16) "To all factors reasonably related to the kind of insurance involved" (Ala. § 392), (N.J. § 17:29 A-4(c)).
5. "To the conflagration and castastrophe hazards." All of these jurisdictions have combined fire and casualty rate laws (at least in part) and that is why "conflagration" is included.
6. Same as 3, Tennessee version, but in addition to standard phraseology (Kans. § 40-1112(1)).
7. (2) "Consideration shall be given, to the extent applicable, to . . ." (Calif. § 1852(b)), (Fla. § 627.072(1)), (Ga. § 56-507(b)).
8. (17) "Including judgment factors, deemed relevant . . ." (Calif. § 1852(b)), (Fla. § 627-072(1) excluding "deemed relevant").
9. (12) "Consideration may also be given in the making and use of rates to dividends . . ." etc. (Calif. § 1852(b)), (Ga. 56-507(b)).
10. (9) "Underwriting" excluded before "profit" (Kans. § 40-1112(1)), (Miss. § 5834-02(b)), (Tenn. § 6356.21(2)), (Tex. Art. 5.14.1).
11. "District" in place of "state" (D.C. § 35-1503(b)).
12. (20) "To physical hazards" (D.C. § 35-1503(b)), (Mo. § 379.470(4)), (Ohio, § 3937-02(4)), (Okla. § 902.B), (Pa. § 1183(a)).
13. (21) "To safety and loss prevention factors" (D.C. § 35-1503(b)), (Okla. § 902.B), (Pa. § 1183(a)).
14. (22) "To underwriting practice and judgment" (D.C. § 35-1503(b)), (Ill. 1065.3 § 456(1)(a)), (Mich. § 500.2403(1)(a), (Okla. § 902.B), (Pa. § 1183a) which adds "to the extent appropriate").
15. (23) "To whether classification rates exist generally for the risks under consideration: to the rarity or peculiar characteristics of the risks"; (D.C. § 35-1503(b)), (Okla. § 902.B.).
16. "To investment income or [*sic*] unearned premium reserves and loss reserves" (Fla. § 627.072(1)).
17. "To a reasonable margin for underwriting ["profit" appropriately omitted by error] and contingencies" (Ga. § 56-507(b)).
18. "Territory" in place of "state" (Hawaii § 181-693.(a)(1)).
19. "Unabsorbed premium deposits" and "subscribers" deleted (Ind. § 3a (1)).
20. (7) "May" instead of "shall" (Kans. § 40-1112(1)), (Mo. § 379.470(4)).
21. "Commonwealth" in place of "state" (Mass. § 5(a)1), (Pa. § 1183 (a)).
22. (14) "and country-wide expense experience" (Miss. § 5834-02(b)).

23. (18) "To all factors reasonably attributable to the class of risks" (Miss. § 5834-02.(b)), (N.Y. § 183(d)), (P.R. § 1204(1)(d)).

24. (5) "Due consideration shall be given to past and prospective loss experience within this state and consideration may also be given to past and prospective loss experience outside this state to the extent appropriate" (Mo. § 379.470(4)).

25. (19) "Which the insurer or rating organization deems relevant to the making of rates" (Mo. § 379.470(4)).

26. "In the case of participating insurers to policyholders' . . ." etc. (N.Y. § 183(d)), (Vt. § 4655), (Wyo. § 52-1503(a)(1)).

27. (24, 25) "The experience or judgment, or both, of the insurer or rating organization making the rate": (Ohio § 3937.02(2)). "The experience of other insurers or rating organizations"; (Ohio § 3937.02(3)). Also note 16 in section (d).

28. "Retrospective" instead of "past" (Ore. § 737.110(2)).

29. "Puerto Rico" instead of "State" (P.R. § 1204(1)(d)).

30. ". . . including trend factors" (Ind. § 3a(1)).

31. (15) "To expenses of operation" (Tex. Art. 5.14.1.).

32. "In the case of motor vehicle insurance as defined in section 38.1-21, consideration shall be given to all sums distributed by the State Corporation Commission from the Uninsured Motorist Fund in accordance with the provisions of sections 12-65 and 12-66 to the companies writing motor vehicle bodily injury liability and property damage liability insurance on motor vehicles registered in the State"; (Va. Art. 4 § 38-252(3)).

33. (26) "In addition to other factors required by this section, rates filed by an insurer on its own behalf may also be related to the insurer's plan of operation and plan of risk classification" (Wash. § 45.19.03(4)).

34. (27) "To such factors as expense, management, individual experience, underwriting judgment, degree or nature of hazard or any other reasonable considerations, provided such factors apply to all risks under the same or substantially the same circumstances or conditions" (W. Va. § 3.(3)).

35. (6) "To insure the adequacy and reasonableness of rates the Board may take into consideration past and prospective experience, within and outside the State, gathered from a territory sufficiently broad to include the varying conditions of the risks involved and the hazards and liabilities assumed, and over a period sufficiently long to insure that the rates determined therefrom shall be just, reasonable and adequate, and to that end the Board may consult any rate making organization or association that may now or hereafter exist" (Tex. Art. 5.04).

(Carlson numbers not used: 3, 4, 13)

(c) Expense Provisions

"The systems of expense provisions included in the rates for use by any insurer or group of insurers may differ from those of other insurers or groups of insurers to reflect the requirements of the operating methods of any such insurer or group with respect to any kind of insurance, or with respect to any subdivision or combination thereof for which subdivision or combination separate expense provisions are applicable."

(d) Classifications and Rating Plans

"Risks may be grouped by classifications for the establishment of rates and minimum premiums. Classification rates may be modified to produce rates for individual risks in accordance with rating plans which establish standards for measuring variations

in hazards or expense provisions, or both. Such standards may measure any differences among risks that can be demonstrated to have a probable effect upon losses or expenses."

State	(c) Expense Provisions (Model Bill § 3.2)	(d) Classifications and Rating Plans (Model Bill § 3.3)	
		Omissions	Different Phraseology
Alabama			1
California	1		2
Colorado	2		
Connecticut			3
Delaware	3		8
District of Columbia	NR		4
Florida			22
Georgia	1		2
Hawaii	4		
Illinois	5		6
Indiana			23
Kansas	6	5	
Louisiana			7
Maine			8
Massachusetts	NR[a]–		9, 8
Michigan			6
Mississippi		5	10
Missouri			11, 12
New Hampshire	NR[a]	NR[a]	8
New Jersey	NR, 7		13
New York	8		
North Carolina	NR		14[a], 15[a]
			15
Ohio	9		16
Oklahoma	10		4
Pennsylvania			17
Puerto Rico	11		
Rhode Island		18	19
Tennessee	12	5	
Texas	NR	5	20[a], 21
Vermont	NR	NR	
Wyoming	13		

NR — No Reference
a — Motor Vehicle (Liability) Only

(c) Expense Provisions

1. Omits the final clause "for which . . . applicable" (Calif. § 1852(c)), (Ga. 56-507(c)).
2. Omits "with respect to any kind of insurance or" (Colo. § 72-12-3(1)(c)).
3. Substitute "insurance company(s)" for "insurer(s)" throughout (Del. § 2303(4)).
4. Substitute "class" for "kind" in "kind of insurance" (Hawaii § 181-693(2)).
5. Substitute "company(s)" for "insurer(s)" throughout (Ill. 1065.3 § 456(1)(b)).
6. Add after the second "combination": "The commissioner of insurance, . . ., approves the application of separate expense provisions; but this subdivision shall not be construed to require uniformity among all insurers with respect to the application of other subdivisions of this section" (Kans. § 40-1112(2)).
7. No reference — see note 1 in section (a) for only reference to expenses.
8. Substitute "one or more kinds of insurance or subdivisions of kinds of insurance, or classes of risks, or any part or combination of the foregoing, for which . . ." for "To any kind . . . combination . . . combination" (N.Y. § 183(f)3.).
9. Last "subdivision or combination" omitted (Ohio § 3937.02(B)).
10. Last "with respect to" omitted (Okla. § 902 C.).
11. Add "filed by any casualty insurance rating organization" (P.R. § 1204(2)).
12. "The systems of expense provisions included in the rates for use by any group, such as participating and nonparticipating groups of insurers, may differ from those of other groups of insurers to reflect the requirements of the operating methods of any such group with respect to any kind of insurance, or any subdivision or combination thereof, for which the commissioner approves the application of separate provisions" (Tenn. § 6356.21.2).
13. Substitute "of insurances" for "thereof" (Wyo. § 52-1053(a)2.).

(d) Classifications and Rating Plans

Explanations of Exceptions to Model Bill Phraseology
(Numbers in Parentheses Refer to Carlson's Original References)

1. (4, 5) "Every rating organization, and every insurer which makes its own rates, shall make rates that are not unreasonably high or inadequate for the safety and soundness of the insurer, and which do not unfairly discriminate between risks in this state, and shall, in rate-making, and in making rating plans (a) adopt basis classifications, which shall be used as the basis of all manual, class, schedule or experience rates" (Ala. § 392).
2. (6) In addition: "Classifications or modifications of classifications of risks may be established based upon size, expense, management, individual experience, location or dispersion of hazard, or any other reasonable conditions. Such classifications and modifications shall apply to all risks under the same or substantially the same circumstances or conditions (Calif. § 1852(d), (Ga. § 56-507(d)).
3. Substitute "provide for recognition of variations in hazards or in expense requirements, or both; such rating plans may include application of the judgment of the insurer and may . . ." for "establish standards for measuring variations in hazards or expense provisions, or both. Such standards" (Conn. § 38.187(a)(3)).
4. (7) See note 2 (24) in section (a).
5. (1) Omit third sentence (Kans. § 40-1112(3)), (Miss. § 5834.02(d)), (Tenn. § 6356.21.3), (Tex. Art. 5.14.2.).
6. In second and third sentences after ". . . plans which . . ." substitute "measure variation in hazards or expense provisions, or both. Such plans may

measure any differences among risks that have a probable effect upon losses or expenses. . . ." (Ill. 1065.3 § 456(1)), (Mich. § 500.2403(c)).

7. (10) In addition (after first sentence): "Rates may be established on the basis of any classifications submitted by any insurer or group of insurers, provided such classifications are found to be reasonable . . ." (La. § 1404.3(b)).
8. (9) See note 5 (25) in section (a) in addition to AIC phraseology.
9. (11) For Compulsory Motor Vehicle Liability Only: Provision is included for "fair and reasonable classifications of risks" (Mass. § 113B). Also see note 6 (3) in section (a).
10. (12) Second sentence adds "or in experience" after "hazards" (Miss. § 5834-02(d)).
11. Omit "rating plans which establish" in second sentence (Mo. § 379.470(6)).
12. (13) In addition: "Classifications or modifications of classification or any portion or any division thereof, of risks may be predicated upon size, expense, management, individual experience, purpose of insurance, location or dispersion of hazard, or any other reasonable considerations, provided such classifications and modifications shall be applicable to the fullest practicable extent to all risks under the same or substantially the same circumstances or conditions. Classification rates may also be modified to produce rates for individual or special risks which are not susceptible to measurement by any established standards;" (Mo. § 379.470(6)).
13. (14) Same as note 1 through "state" continuing "involving essentially the same hazards and expense elements, and shall, in rate making, and in making rating systems (a) adopt basic classifications, which shall be used as the basis of all manual, minimum, class, schedule, experience or merit rates; (b) adopt reasonable standards for construction, for protective facilities, and for other conditions that materially affect the hazard or peril, which shall be applied in the determination or fixing of rates (N.J. § 17:29A-4).
14. (15) "The Compensation Rating and Inspection Bureau of North Carolina . . . [has among its] functions . . . to maintain rules and regulations and fix rates for automobile bodily injury and property damage insurance and equitably adjust the same as far as practicable in accordance with the hazard of the different classes of risks as established by said bureau (N.C. § 58-246(1)).
15. (16) See note 11 (8) in section (a).
16. (17) In addition same as note 13, except substitute "apply" for "shall be applicable to the fullest practicable extent" (Ohio § 3937.02(C)). "Special filings may be made at any time with respect to any individual or special risks whose size, classification, degree of exposure to loss, previous loss experience, or other relevant factors call for the exercise of sound underwriting judgment in the promulgation of rates appropriate to such individual or special risks" (Ohio § 3937.03(D)).
17. (18) See note 58 in section (e).
18. (2) Omit second and third sentences (R.I. § 27-9-4.3).
19. (19) See note 62 in section (e).
20. "The Commissioner is hereby authorized and empowered to require sworn statements from any insurer affected by this Act, showing its experience on any classification or classifications of risks and such other information which may be necessary or helpful in determining power classification and rates or other duties or authority imposed by law. The Commissioner shall prescribe the necessary forms for such statements and reports, having due regard to the rules, methods and forms in use in other states for similar purposes in order that uniformity of statistics may not be disturbed" (Tex. Art. 5.05(d) motor vehicle).

21. (21) Second sentence: substitute "in such risks on the basis of any or all of the factors mentioned in the preceding paragraph" (Tex. Art. 5.14.2). The words "preceding paragraph" refer to basis of rates section (b).

22. In addition: "Such classifications and modifications shall apply to all risks under the same or substantially the same circumstances or conditions (Fla. § 627.072(3)).

23. "Risks may be grouped by classifications, by rating schedules or by any other reasonable methods, . . . etc." (Ind. § 3a(2)).

(Carlson numbers not used: 3, 8, 20.)

(e) Rate Filings

1. "Every insurer shall file with the Commissioner every manual of classifications, rules and rates, every rating plan and every modification of any of the foregoing which it proposes to use. Every such filing shall state the proposed effective date thereof, and shall indicate the character and extent of the coverage contemplated. When a filing is not accompanied by the information upon which the insurer supports such filing, and the (Commissioner) does not have sufficient information to determine whether such filing meets the requirements of the Act, he shall require such insurer to furnish the information upon which it supports such filing and in such event the waiting period shall commence as of the date such information is furnished. . . . A filing and any supporting information shall be open to public inspection after the filing becomes effective."
2. Filings may be made by a rating organization on behalf of a member or a subscriber.
3. "The commissioner shall review filings as soon as reasonably possible after they have been made in order to determine whether they meet the requirements of this Act." Subject to the exception specified in (e)-6 below, the commissioner has a waiting period of 15 days in which to consider the filing, which period may be extended by him for an additional period not to exceed 15 days upon proper notice to the filer. A filing is deemed approved unless disapproved by the commissioner within the waiting period or any extension thereof. This is the so-called "deemer" provision.
4. ". . . the commissioner may, by written order, suspend or modify the requirement of filing as to any kind of insurance, subdivision or combination thereof, or as to classes of risks, the rates for which cannot practicably be filed before they are used."
5. "Upon the written application of the insured, stating his reasons therefore, filed with and approved by the commissioner, a rate in excess of that provided by a filing otherwise applicable may be used on any specific risk."
6. "Any special filing with respect to a surety or guaranty bond required by law or by court or executive order or by order, rule or regulation of a public body, not covered by a previous filing, shall become effective when filed. . . ."

The more substantive departures from the Model Bill provisions are noted below:

State	(e)-1 Filing Required And Confidential Until Effective	(e)-2 Filings by Rating Bureau	(e)-3 Review and Approval: Waiting Period	(e)-4 Filing After Use	(e)-5 Rate in Excess of Normal	(e)-6 Special Filings
Alabama	1, 2		3	NR	NR	NR
Alaska	4		5			
Arizona	6		7, 8			
Arkansas	6, 9					
California	10	NR	NR	NR	NR	NR
Colorado	11, 76		8, 12	NR		
Connecticut			13			
Delaware	4, 6		8, 14			
Dist. of Col.	2, 15		8, 16	NR	NR	NR
Florida	10	NR	NR	NR	17	NR
Georgia	10, 18		NR	NR	NR	NR
Idaho	19	19	19	19	19	19
Illinois	20		21			22
Indiana	23	24	25			NR
Kansas	2, 26		3	NR		
Kentucky			13			
Louisiana	4, 27		28, 29			NR
Maine	9		8, 30			NR
Maryland	31					
Massachusetts	32[a]	32[a]	32[a]	32[a]	32[a]	32[a]
	9	—	8, 30			NR
Michigan	11, 77		33, 78		61	
Minnesota			34			
Mississippi	27, 35		3	36	37	
Missouri	38	38	38	38	38	38
Montana	39					
Nevada	4					
New Hampshire	2[a], 41[a]		30[a], 42[a]	NR[a]	NR[a]	NR[a]
	2		30, 40			
New Jersey	2, 43		44	NR	45	NR
New York	46		47		48	
North Carolina	49[a]	50[a]	30[a], 42[a]	NR[a]	51[a]	NR[a]
	2, 52	—	30, 42	NR	51	NR
Ohio	6, 9		8, 53			
Oklahoma	15, 27, 54		8, 34	55	56	
Oregon			8			
Pennsylvania	6, 9		8, 13		57	58
Puerto Rico	59		60		61	
Rhode Island	6, 62					
South Carolina			13			
South Dakota	4		13			
Tennessee	4, 68, 71		3	NR	NR	64
Texas	65[a]	65[a]	65[a]	65[a]	65[a]	65[a]
	2, 27, 35		13	NR	NR	67
Utah	68, 73		8, 69			NR
Vermont	2, 27, 70		3	NR	NR	NR
Virginia	4, 68, 71		30, 42		61	
Washington	2	72	3			
West Virginia	73		34			
Wisconsin	74		75			
Wyoming	27		8, 30			NR

NR — No reference
a — Motor vehicle (liability) only

(e) Rate Filings (Model Bill § 4)

Explanations of Exceptions to Model Bill Phraseology
(Numbers in Parentheses Refer to Carlson's Original References)

1. ". . . File . . . a copy of the rating plan upon which such rate is based, or by which such rate is fixed or determined" (Ala. § 394).
2. (1) No provision as respects public inspection (Ala. § 394), (D.C. § 35.1504(a)), (Kans. § 40-1113(a)), (N.H. motor vehicle liability § 412:14), (N.J. § 17:29A-6), (N.C. § 58-131.13), (Tenn. § 6356.22(a)), (Tex. Art. 5.15(a)), (Vt. § 4655), (Wash. § 48.19.440).
3. (9) No waiting period, 30 day deemer (Ala. § 395), (Kans. § 40-1113(c)), (Miss. § 5834-03(c)), (Tenn. § 6356.22(c)), (Vt. § 4654), Wash. § 48.19.440).
4. "Every insurer shall file . . . every manual, minimum, class rate, rating schedule or rating plan and every other rating rule, and each modification of any of them which it proposes to use" (Alaska § 21.39.040(a)), (Del. § 2304(a), (La. § 1407.A (1)), (Nev. § 694.070.1), (S.D. § 4 (1)), (Va. § 38-241).
5. In section (d) of Model Bill ". . . or any extension thereof" omitted in last two sentences (Alaska § 21.39.040(d)).
6. Omits: ". . . and in such event the waiting period shall commence as of the date such information is furnished" (Ariz. § 18(a)), (Ark. § 241(3)), (Del. § 2304(a)), (Ohio § 3937.03(A)), (Pa. § 1184(a)), (R.I. § 27-9-7).
7. (10) 15 day waiting period, with no extension, *no deemer* (Ariz. § 18(c)).
8. (11) Disapproval only after hearing (Ariz. § 19), (Colo. § 72-12-5(3)), (Del. § 2304(c)), (D.C. § 1504(c)), (Me. § 2765), (Mass. § 7), (Ohio § 3937.04), (Ore. § 737.135(1)), (Pa. § 1185(a)), (Utah § 31-18-4), (Wyo. § 52-1505), (Okla. § 9036).
9. Omits "its interpretation of any statistical data it relies upon" (Ark. § 241 (3)), (Me. § 2764), (Mass. § 6(a)), (Ohio § 3937.03(A)), (Pa. § 1184(a)).
10. (2) Normal rate filings not required, however, see note 3 in section (1) for requirement regarding maintenance of records.
11. Supporting information to determine whether filing meets requirements, if needed, must be requested by the Commissioner within 15 days after date of filing (Colo. § 72-12-4(2)(a)), (Mich. § 500.2406(1) (within 10 days)).
12. 15 day waiting period, no extension unless for hearing, deemer equivalent (Colo. § 72-12-5(3)).
13. (21) 30 day waiting period, 30 day extension, deemer (Conn. § 38-188(e)), (Ky. § 304.621(4)), (Pa. § 1184(d)), (S.C. 37-694), (S.D. § 4(4)), (Tex. 5.15(e)).
14. (13) No waiting period specified. However, Commissioner is to "review filings as soon as reasonably possible. . . ." Filing deemed approved unless disapproved (Del. § 2304(c)).
15. "Every company shall file . . . all rates and rating plans, rules and classifications which it uses or proposes to use . . . " (D.C. § 35-1504), (Okla. § 903A — omit "rules").
16. (14) "Rates may become effective immediately upon filing or at such future time as the company or rating organization making them may specify. They shall remain in effect unless and until changed by the company or rating organization making them, or adjusted by order of the Superintendent in accordance with the provisions of this chapter" (D.C. § 35-1503(f)).
17. "With written consent of the insured filed with the insurer . . ." Approval by the Commissioner not necessary (Fla. § 627.181).

18. "Every insurer shall maintain with the commissioner copies of the rates, rating plans, rating systems, underwriting rules, policy or bond forms used by it" (Ga. § 56-522.1).

19. (3) Filing is required only if the commissioner upon biennial review and hearing shall determine that reasonable competition does not exist with respect to certain classes of insurance, whereupon provisions analagous to those in the model bill become applicable (Ida. § 347, § 346, § 350).

20. Second sentence adds ". . . he shall, within fifteen days of such filing, give written notice to such company stating wherein such filing appears not to meet the requirements of . . ." this Article and before "request . . . company to furnish information . . ." (Ill. 1065.4 § 457(1)).

21. In addition: "Any waiting period may be further extended upon request of any such company or rating organization" (Ill. 1065.4 § 457(4)).

22. In addition: "Any filing, other than a special filing with respect to a surety or guaranty bond, the proposed effective date of which is less than fifteen days from the date it is filed, shall become effective on the proposed effective date unless disapproved prior thereto, and shall not be subject to the waiting period. . . ." (Ill. 1065.4 § 457(5)).

23. Omit: "Shall state the proposed effective date thereof, . . ." in the second sentence, and the entire third sentence. Substitute, in place of the third and last sentence, "The commissioner shall have the right to request any additional relevant information. A filing and any supporting information shall be open to public inspection as soon as stamped 'filed' within a reasonable time after receipt by the commissioner, and copies may be obtained by any person on request and upon payment of a reasonable charge therefor" (Ind. § 4b, c).

24. In addition: "That any subscriber may withdraw or terminate such authorization, either generally or for individual filings, by written notice to the commissioner and to the rating organization and may then make its own independent filings for any kinds of insurance, or subdivisions, or classes of risks, or parts or combinations of any of the foregoing, . . . , or may request the rating organization, within its discretion, to make any such filing on an agency basis solely on behalf of the requesting subscriber" (Ind. § 4g(1)).

25. "Filing shall become effective upon the date of filing by delivery or upon the date of mailing by registered mail to the commissioner, or on a later date specified in the filing" (Ind. § 4d). See also note 15 in Section (i).

26. Second sentence reads: "Every such filing shall indicate the character and extent of the coverage contemplated and shall be accompanied by the information upon which the insurer supports the filing."
Remainder of the subsection omitted (Kansas § 40-1113(a)).

27. Omit third and fourth sentence (La. § 1407.A(1)), (Miss. § 5834-03(a)), (Okla. § 903A and second sentence), (Tenn. § 6356.22(a)), (Tex. Art. 5.15(a)), (Wyo. § 52-1504(a)), (Vt. § 4655 and second sentence).

28. Omits Model Bill Section (c) which begins: "The [Commissioner] shall review filings. . . ."

29. In addition: "When a filing of adjustments of rates for existing classifications of risks (1) does not involve a change in the relationship between such rates and the expense portion thereof, and (2) does not involve a change in rate relativities among such classifications on any basis other than loss experience, such filing shall be effective upon the date or dates specified in the filing and shall be deemed to meet the requirements of this part" (La. § 1407F.).

30. (15) No waiting period. No deemer (Me. § 2764), (Mass. § 6), (N.H. § 4), (N.H.M.V.L. Ch. 412), (N.C. auto liability § 58–248), (N.C. § 58–131.13), (Va. § 38–253), (Wyo. § 52–1504).

31. Last sentence reads: "The Commissioner may, on the date a filing is received, place the filing on file in his office for public inspection" (Md. § 243(c)(1)).

32. (4) "The commissioner shall, annually on or before September fifteenth, after due hearing and investigation fix and establish . . . premium charges to be used . . . for the ensuing year . . ." (Mass. compulsory Motor Vehicle Liability § 113B.).

33. In addition to AIC phraseology: ". . . where a filing is not accompanied by supporting information and such information is required by the commissioner . . . such filing shall be deemed to meet the requirements . . . unless disapproved by a commissioner within 15 days after such information is furnished" (Mich. § 500.2408(2)).

34. 30 day waiting period, 15 day extension with deemer (Minn. § 70.38(4)). (Okla. § 902G), (W. Va. § 4(2)(e)).

35. In addition to second sentence AIC phraseology: ". . . and shall be accompanied by the information upon which the insurer supports the filing" (Miss. § 5834–03(a)), (Tenn. § 6356.22(a)), (Tex. Art. J. 15(a) also "by the policies and endorsement forms proposed to be used").

36. (24) "If the commission in its discretion shall determine that a filing is impractical or unnecessary as to a kind, class, subdivision or combination of insurance, it may by written order suspend the requirement of filing as to kind, class, subdivision or combination until otherwise ordered by it" (Miss. § 5834–03(e)).

37. (27) "A rate in excess of that provided by approved filings may be used on specific risk with the written consent of the commission and the insured" (Miss. § 5834–03(f)).

38. (2) No filing required, but "Such agreements [to adhere to rates, etc. by two or more insurers] shall be submitted in written form to the superintendent for his consideration together with such information as he may require to determine whether they are consistent with (the act) . . . and otherwise in the public interest" (Mo. § 379.465(4))

39. (5) "Every rating bureau shall file . . ." (Mont. § 40-3604(1)).

40. (17) Commissioner may suspend filing for 30 days pending investigation as to whether it meets requirements of the Act (N.H. § 5(a)).

41. Reads in toto: "Every insurance company authorized to transact business in this state which insures against loss by reason of the liability to pay damages to others for damage to property or bodily injury including death arising from the operation, maintenance, or use of motor vehicles within this state, shall file with the insurance commissioner individually or in collaboration with others, in such forms as he may prescribe, its classification of risks and premium rates applicable thereto, together with a schedule or rating to be in use and such other statistical information as the commissioner may require" (N.H. motor vehicle liability § 412:14).

42. (16) Prior approval necessary (N.H. motor vehicle liability § 412:15), (N.C. auto liability § 58–248 within 90 days), (N.C. § 58–131.13), (Va. § 38–253).

43. ". . . every insurer shall, before using or applying any rate to any kind of insurance, file with the commissioner a copy of the rating-system upon which such rate is based, or by which such rate is fixed or determined (N.J. § 17L29A–6).

44. (18) No waiting period specified in the law; however, 90 day deemer provision is included (N.J. § 17:29A-7).

45. "Upon written application of an insurance company, broker or agent, which application shall include the signed consent of the applicant for insurance. . . ." etc. (N.J. § 17:29A-7.1).

46. "Every rating organization and every authorized insurer shall file . . . every rate manual, schedule of rates, classification of risks, rating plan, and every other rating rule and every modification of any of the foregoing which it proposes to use" (N.Y. § 184.1).

47. (19) Prior approval necessary for motor vehicle insurance required by section 17 of the vehicle and traffic law and fore surety bonds given in lieu of such required motor vehicle insurance (N.Y. § 184.7). New York Insurance Department, however, construes this to apply to all automobile liability insurance.

48. "Agreements may be made among insurers with respect to the equitable apportionment among them of insurance which may be afforded applicants who are in good faith entitled to but unable to procure such insurance through ordinary methods and such insurers may agree among themselves on the use of reasonable rate modifications for such insurance, . . . subject to the approval of the superintendent" (N.Y. § 184.10).

49. (6) Rates are made and filed by statutory administrative bureau (N.C. auto liability § 58-248).

50. "Before the commissioner of insurance shall grant permission to any . . . insurance company or any other insurance organization to write automobile bodily injury and property damage insurance in this State, it shall be a requisite that they shall subscribe to and become members of the North Carolina Automobile Rate Administrative Office" (N.C. § 58-247(a)).

51. "A rate in excess of that promulgated by the rating bureau may be charged on any specific risk provided such higher rate is charged with the knowledge and written consent of both the insured and the Commissioner" (N.C. auto liability § 58-248.2), (N.C. § 58-131.18).

52. Reads in toto: ". . . Every rating bureau or insurer which makes its own rates shall file . . . every rate manual, classification of risks, rating plan, rating schedule, and every other rating rule which is made or used by it, and upon . . . request, all other information concerning the application and calculation of rates made or used by it" (N.C. § 58-131.13).

53. (20) Rates effective immediately upon filing (Ohio § 3937.03(C)).

54. (7) "All schedules and insurance rates . . . shall be open to inspection to the public after such filings are made" (Okla. § 904.A).

55. (26) "Rates or risks which are not by general custom of the business or because of rarity or peculiar characteristics written according to normal classification or rating procedure and which cannot be practicably filed before they are used may be used without being filed. The board may make such examination as it may deem advisable to ascertain whether any such rates meet the requirements of this article (Okla. § 902G).

56. (28) Approval not necessary (Okla. § 902 H.).

57. "Upon the written consent of the insured stating his reasons, therefor . . ." etc. (Pa. § 1184(g)).

58. (30) In addition: "Any filing with respect to a contract or a policy covering any risk or kind or insurance or subdivision thereof for which classification rates do not generally exist in the industry, or which by reason of rarity or peculiar characteristics does not lend itself to normal classification or rating procedure, shall become effective when filed and shall be deemed to meet the requirements of this Act (Pa. § 1184(e)).

59. "Every rating organization and every authorized insurer shall file . . . every rate manual, schedule of rates, classification of risk, rating plan, and every other rating which is made or used by it, and all other information concerning the application and calculation of rates made or used by it, and every modification of any of the foregoing which it contemplates to use" (P.R. § 1205(1)).

60. 30 day waiting period, with up to 60 day extension with deemer (P.R. § 206(1)(a)).

61. "Upon written application of the insurer, stating the reasons therefor . . ." etc. (P.R. § 1209), (Mich. § 500.2414), (Va. § 38-262 ". . . accompanied by the written consent of the insured or prospective insured . . ."). In Michigan, the word "insurer" is a typographical error in the law.

62. (8) In addition: ". . . provided, however, that classification rates may be modified without additional filing to produce rates for individual risks which are lower than those filed and which evaluate variations in physical or moral hazards, individual risk experience or expense provisions and which are not inadequate or unfairly discriminatory" (R.I. § 27-9-7).

63. In addition: "The insurer may incorporate by reference into its filing all or part of any existing filing and supporting information in the commissioner's possession which is open to public inspection. However, any insurer not a member or subscriber of a licensed rating organization shall file with the commissioner a satisfactory statement of its qualification to make rates" (Tenn. § 6356.22(a)).

64. (31) "Any such filing with respect to a fidelity, surety or guaranty bond shall be deemed approved from the date of filing to the date of such formal approval or disapproval" (Tenn. § 6356.22(d)).

65. (4) "The Board [of Insurance Commissioners] shall have the sole and exclusive power and authority to determine, fix, prescribe, and promulgate . . . rates of premiums to be charged and collected by all insurers writing any form of insurance on motor vehicles in this state . . ." (Tex. Motor Vehicle Art. 5.01).

66. No waiting period specified; however, a 30 day deemer provision with possible 30 day further postponement is included. (Tex. Art. s.15(c)).

67. (32) "Any filing for which there is no approved rate shall be deemed approved from the date of filing to the date of such formal approval or disapproval" (Tex. Art. 5.15(d)).

68. In third sentence substitute "may" for "shall" (Utah § 31-18-3 (2)), (Va. § 38-241).

69. (10) 15 day waiting period with extension until additional supporting information is furnished. No deemer provision specified in the law (Utah § 31-18-3(2)).

70. "Every insurance company and rating organization . . . shall file . . . any schedule of rates, rules, regulations or forms and such other information concerning the same as shall be suggested, approved or made by any such company or organization" (Vt. § 4654).

71. (7) "A filing and any supporting information shall be deemed to be a public record" (Va. § 38-241).

72. "Every insurer as to casualty insurance shall file with the Commissioner its rates and rating schedules, or it may adopt advisory rules and rates of rating organizations" (Wash. § 48.19.440).

73. (7) A filing and any supporting information shall be open to public inspection as soon as the filing is made (Utah § 31-18-3(2)),(W.Va. § 4(2)(b)).

74. Add: "including short rate tables" to first sentence. Add "such short rate tables shall specify the percentages of the premium to be charged or retained by the insurer, and shall cover all policies of insurance the term of which is less than the term prescribed for such insurance by the rate and rating schedules as filed by such insurer or by a rating bureau or organization in behalf of such insurer" (Wis. § 204.40(1)).

75. (23) Add: "A filing made by an insurer for a kind of insurance or subdivision thereof as to which such insurer is not a member of or subscriber to a rating organization shall be deemed to meet the requirements of this act unless disapproved by the Commissioner after notice and hearing and findings made in accordance with the requirements of The Section on Disapproval of Filings" (Wisc. § 240.40(5)).

76. "Within fifteen days after the date of the filing, together with any additional information, if any, in support of the filing . . . the Commissioner shall place the filing . . . on file in his office for public inspection . . ." Col. § 72-12-5(2)).

77. "In lieu of the filing requirements . . . as an alternative method . . . any insurer or rating organization may file . . . Every such filing . . . shall state the effective date thereof, shall take effect on said date, shall not be subject to any waiting period . . . and shall be deemed to meet the requirements . . . A filing and any supporting information shall be open to public inspection, if the filing is not disapproved" (Mich. § 500.2430(1)).

78. For the "alternative filing" method in Note 77. Within 15 days after such filing the Commissioner may give written notice to the filer specifying how he contends filing fails to comply with requirements and fix a date for a hearing with at least 10 days notice. The Commissioner, after hearing, may disapprove the filing but such order must be entered within 30 days of the date of the filing and it may require an adjustment of premium up or down, "if the amount is substantial and equals or exceeds the cost of making the adjustment." Disapproval orders not based upon a hearing whose notice is given within 15 days of the filing may not order premium adjustment (Mich. § 500.2430(2) and (3)).

(Carlson numbers not used: 12, 22, 25, 29)

(i) Deviations (Model Bill § 7)

Any member of or subscriber to a rating organization "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." There is no waiting period except for that introduced by a 10-day notice of hearing to the rating organization, which may waive the hearing. Prior approval is required. Deviation filings are to be judged in general by same criteria as other filings (see (a) above). Deviations are effective for a period of one year unless terminated sooner with the approval of the (Commissioner).

	Exceptions				
State	Scope	Hearing	Approval	Waiting Period	Duration
Alabama	1	2			
Alaska	3	4			5
Arizona		4	6	7	
California	NR				
Colorado	8				
Delaware	3		9		
District of Columbia	10	2, 11			12
Florida	NR				
Georgia	NR				
Hawaii	13				
Indiana	14, 15	4, 15	6, 15		12, 16
Indiana	14, 15	4, 15	6, 15		12 16
Iowa	3	4			5
Kansas	17	4			12
Massachusetts	NR[a]				
Michigan	3	4	18		5
Minnesota					12
Mississippi	19				
Missouri	NR				
Nevada	3	4			5
New Hampshire	NR[a]				
New Jersey	20	2			12
New York	21	4			5
North Carolina	NR[a]				
	22	2			12
Ohio		4, 24	6, 23, 24		12
Oklahoma	25	4	6	7	12
Pennsylvania		4	6	26	5
Puerto Rico		4			12
Rhode Island		4	6	27	5
South Dakota	3	4			5
Tennessee	1				5
Texas	NR				
Utah	3	4			5
Vermont	25	2			12
Washington		6		26	12
West Virginia		2			
Wisconsin		6, 23	28		

NR - No Reference

a - Motor Vehicle (Liability) Only

(i) Deviations

Explanation of Exceptions to Model Bill Phraseology
(Numbers in Parentheses Refer to Carlson's Original References)

1. (1) "For a kind of insurance or for a subdivision or combination thereof, for which . . . the (supervisor) has approved the application of separate expense provisions" (Ala. § 399), (Tenn. § 6356-24). In these two states the foregoing is the only basis for a deviation.
2. (10) No time limit on notice of hearing (Ala. § 399), (D.C. § 35-1506(f) "reasonable time"), (N.J. § 17:29A-10), (N.C. § 58-131.15), (Vt. § 4655), (W. Va. § 7(b)).
3. (3) "To file a deviation from the class rates, schedules, rating plans or rules respecting any kind of insurance, or class or risk within a kind of insurance, or combination thereof" (Mich. § 500.2450(1)), (Alaska § 21.39.070(a) "Uniform percentage deviation"), (Del. § 2307), (Iowa § 7), (Nev. § 694.280), (S.C. § 37-730), (S.D. § 7), (Utah § 31-18-6(1)).
4. (11) No provision for a hearing (Kans. § 40-1115). Except for provision for appeal by minority (Kans. § 40-1116) same as model bill § 8 (Mich. § 500.2456), (Alaska § 21.39.080), (Ind. § 11a), (Iowa § 8), (Nev. § 694.290), (N.Y. § 184.11 within 30 days), (Ohio § 3937.07), (Okla. see § 903), (Pa. § 1187), (R.I. § 27-9-19 or if disapproved § 27-9-18), (S.D. § 8), (Utah § 31-18-7), (P.R. § 1230), (Ariz. § 27), (La. § 1411).
5. (22) "For a period of not less than 1 year . . ." etc. (Mich. § 500.2452(2)), (Alaska § 21.39.070(b)), (Iowa § 7), (Nev. § 694.280), (N.Y. § 185.4), (Pa. § 1187), (R.I. 27-9-26), (S.D. § 7), (Tenn. § 6356.24), (Utah § 31-8-6(2)).
6. (13) No approval required (Ariz. § 20(b), (Ind. § 9C.a "effective upon date of filing"), (Ohio § 3937.06), (Okla. § 906.F), (Pa. § 1187), (R.I. § 27-9-26), (Wis. § 204.43), (Wash. § 48.19.440).
7. (17) 15 days (Ariz. § 20(b)), (Okla. § 906.F).
8. Substitute "rates made," "make," "are applicable," "made" for "filings made," "file," "are included in the filings of the rating organization," and "filed" respectively throughout the paragraph with "so filed" omitted (Colo. § 72-12-8).
9. (14) In addition: "All term policies issued pursuant to such deviations may remain in force until their expiring dates" (Del. § 2307).
10. (4) ". . . may deviate such filings . . ." "The Superintendent shall approve any such deviation unless he finds that . . . [it] would be inconsistent with the provisions of this chapter" (D.C. § 35-1506(f)).
11. (12) "Unless he approves the deviation within thirty days he shall . . . grant a hearing" (D.C. § 35-1506(f)).
12. (21) No time limit on duration of deviation (D.C. § 35.1506(f)), (Kans. § 40-1115), (Ind. § gc.), (Minn. § 70.41), (N.J. § 17:29A-10), (N.C. § 58.131.15), (Ohio § 3937.06), (Okla. § 906.F.), (P.R. § 1214), (Vt. § 4655 (c)), (Wash. § 44.19.440).
13. "For a class of insurance, or for a class of insurance . . ." (Hawaii § 181-697).
14. ". . . may file with commissioner a deviation from the rates, rating schedules, rating plans, rating systems or rules respecting any kind of insurance, division, subdivision classification, or any part or combination of any part of the foregoing" (Ind. § 9a).
15. "When a filing or deviation involving a rate adjustment depends upon a change in the relationship between the proposed rates and the anticipated

production expense portion thereof from the relationship anticipated under any rates previously filed and currently in effect for the company or rating organization involved . . ." (Ind. Sec. 7a.) ". . . on file for a waiting period of twenty (20) days before it becomes effective . . . such filing or deviation shall be deemed to meet the requirements of this act unless disapproved (1) within such waiting period, or, (2) if a hearing has been called and written notice thereof given by the commissioner during such waiting period, then within ten (10) days after the commencement of such hearing . . . the commissioner may at any time within the waiting period call a hearing upon not less than ten (10) nor more than fifteen (15) days' written notice . . ." (Ind. § 7b).

16. In addition: "A change in the rates, rating schedules, rating plans, rating systems or rules to which the deviation applied shall not terminate the deviation without the consent of the insurer to which the deviation applies" (Ind. § 9c).

17. (6) "For a kind of insurance, or for a subdivision or combination thereof" (Kans. § 40–1115).

18. (15) As an alternative a deviation "shall become effective immediately as of the date filed . . . any . . . disapproval . . . must be entered within 30 days of application . . . If such deviation shall be disapproved, the insuring provisions of any contract or policy issued prior to the time the order becomes effective shall not be affected" (Mich. § 500.2452(1)).

19. (1) ". . . for a kind, class or classes of insurance, or for a subdivision or combination thereof for which . . . the commission has approved the application of separate expense provisions by such rating organization" (Miss. § 5834–06).

20. (7) ". . . to a particular kind or kinds of insurance" (N.J. § 17:29A–10).

21. ". . . may make written application . . . for permission to deviate from the rates, schedules, rating plans or rules filed on its behalf by such rating organization" (N.Y. § 185.4).

22. (9) ". . . request . . . for approval of a deviation from a filing approved by him and made by a rating organization of which it is a member or subscriber" (N.C. § 58–131.15).

23. (14) ". . . shall not affect any contract or policy made or issued prior to the expiration of the period set forth in said order" (Ohio § 3937.04), (Wis. § 204.41.4(b)).

24. (16) Disapproval only ". . . after a hearing upon not less than twenty days written notice . . ." (Ohio § 3937.04).

25. (4)(8) Deviation must be uniform in its application and not inconsistent with the provisions of the article (Okla. § 906.F.), (Vt. § 4655(c) continues "in its application to all risks in the state of the class to which such deviation is to apply").

26. (18) 30 days, but the commissioner may authorize earlier (Pa. § 1187), (Wash. § 48.19.440).

27. (19) 30 days (R.I. § 27–9–26).

28. (20) 15 days with possible 15 day extension (Wis. § 204.43).

(Carlson numbers not used: 2, 5)

(k) Exchange of Information
(Model Bill § 13(b), (c))

1. Interchange of Rating Plan Data. "Reasonable rules and plans may be promulgated by the Commissioner for the interchange of data necessary for the application of rating plans."
2. Consultation with Other States. "In order to further uniform administration of rate regulatory laws, the Commissioner and every insurer and rating organization may exchange information and experience data with insurance supervisory officials, insurers and rating organizations in other states and may consult with them with respect to rate making and the application of rating systems."

State	Exceptions (k)–1	Exceptions (k)–2
Alabama	1	1
California	NR	3
District of Columbia	NR	NR
Florida	NR	3
Georgia	NR	4
Indiana	NR	5
Massachusetts	NR[a]	NR[a] 2
Mississippi	NR	NR
Missouri	NR	6
New Hampshire	NR[a]	NR[a]
New Jersey	NR	NR
North Carolina	NR	NR
Oklahoma	NR	NR
Oregon		2
Puerto Rico		2
Rhode Island		2
Tennessee		2
Texas	7[a] 7	2[a], 8[a] 2
Washington		6

NR — No Reference
a — Motor Vehicle (Liability) Only

(k) Exchange of Information (Model Bill § 13(b), (c))

Explanations of Exceptions to Model Bill Phraseology

(Numbers in Parentheses Refer to Carlson's Original References)

1. (1) Substitute "loss experience" for "data" (Ala. § 393).
2. (4) "May consult and cooperate" (Ala. § 393), (Mass. § 15(c)), (Ore. § 737.525 (2)), (P.R. § 1217), (R.I. § 29-9-40), (Tenn. § 6356.27(c)), (Tex. Art. 5.05 (c) Motor vehicle, (Tex. Art. 5.19(e)).
3. (5) "Licensed rating organizations and admitted insurers are authorized to exchange information and experience data with rating organizations and insurers in this and other states and may consult with them with respect to rate-making and the application of rate systems" (Calif. § 1853.7), (Fla. § 627.314(4)).
4. "Exchange of Information or Experience Data: Consultation with Rating Organizations and Insurers.
   Cooperation among rating organizations or among rating organizations and insurers in rate making or in other matters within the scope of this Act is hereby authorized." Continues as in Model Bill § 11(b).(Ga. 56-511 only provision in Ga.). In the other states it is in addition to AIC phraseology (Colo. § 72-12-7(3)), (Ill. 1065.6 § 459(4)), (Ind. § 8 f.), (Kans. § 40-1114 (e)), (Mont. § 40-3629.(3), etc.
5. Add: "Advisory organization or statistical agency" to groups allowed to exchange information, etc. (Ind. § 16a.b.).
6. (5) "Every rating organization and insurer may exchange information and experience data with insurers and rating organizations in this and other states and may consult with them with respect to rate making and the application of rating systems" (Mo. § 379.465.1), (Wash. § 45.19.38).
7. ". . . requiring the interchange of loss experience . . ." in lieu of "data" (Tex. Art. 5.05(b) motor vehicle), (Tex. Art. 5.19(b)).
8. See note 35 in section (b) for consultation with "any rate making organization or association."

(Carlson numbers not used: 2, 3)

(l) Recording and Reporting of Loss and Expense Experience

For convenience in reference the five sentences in the Model Bill phraseology have been noted here separately.

1. "The commissioner shall promulgate reasonable rules and statistical plans, reasonably adopted to each of the rating systems on file with him, which may be modified from time to time and which shall be used thereafter by each insurer in the recording and reporting of its loss and countrywide expense experience, in order that the experience of all insurers may be made available at least annually in such form and detail as may be necessary to aid him in determining whether rating systems comply with the standards set forth in Section ——."
2. "Such rules and plans may also provide for the recording and reporting of expense experience items which are specially applicable to this state and are not susceptible of determination by a prorating of countrywide expense experience."
3. "In promulgating such rules and plans, the commissioner shall give due consideration to the rating systems on file with him and, in order that such rules and plans may be as uniform as is practicable among the several states, to the rules and to the form of the plans used for such rating systems in other states."

4. "No insurer shall be required to record or report its loss experience on a classification basis that is inconsistent with the rating system filed by it."
5. "The commissioner may designate one or more rating organizations or other agencies to assist him in gathering such experience and making compilations thereof, and such compilations shall be made available, subject to reasonable rules promulgated by the commissioner, to insurers and rating organizations."

(1) Recording and Reporting of Loss and Expense Experience

State	Exceptions					
	(1)–1	(1)–2	(1)–3	(1)–4	(1)–5	Other
Alabama	NR	NR	NR	NR	NR	1
Arizona					2	
California	NR	NR	NR	NR	NR	3
Colorado	4				5	
Delaware					6	
District of Columbia	NR	NR	NR	NR		
Florida	7		7	7	3	
Georgia	NR	NR	NR	NR	NR	3
Illinois				8	9, 10	
Indiana		11		12		
Kansas					13	
Kentucky					14	
Massachusetts	NR[a]	NR[a]	NR[a]	NR[a]	NR[a]	15[a]
	4	—	—	—	—	—
Michigan				16	16	
Minnesota					5	
Mississippi	17	NR			18	
Missouri	NR	NR	NR	NR	NR	
Montana	NR	NR	NR	NR	NR	
Nebraska					5	
New Hampshire	NR[a]	NR[a]	NR[a]	NR[a]	NR[a]	19[a]
	—	—	—	—	—	—
New Jersey	NR	NR	NR	NR	NR	20
New York	21					22
North Carolina	NR[a]	NR[a]	NR[a]	NR[a]	NR[a]	23[a]
	NR	NR	NR	NR	NR	24
Ohio	25, 26	NR	NR	27		
Oklahoma	NR	NR	NR	NR	NR	
Oregon	17				28	
Pennsylvania					29	30
Puerto Rico	21	31			NR	32
South Dakota	37				37	
Texas	17[a], 25[a], 33[a]	NR[a]		NR[a]	34[a]	35[a]
	17, 25, 33	NR		NR[a]	34	—
Utah					5	
Vermont	4, 36				5	
Virginia				38		
West Virginia	39					

(I) Recording and Reporting of Loss and Expense Experience (Model Bill § 13(a))

Explanations of Exceptions to Model Bill Phraseology
(Numbers in Parentheses Refer to Carlson's Original References)

1. (15) "Every insurer shall file annually on or before July 1 with the rating organization of which it is a member or subscriber or with such other common agency representing a group of insurers as the Bureau may approve, and with the Bureau, a statistical report showing its premiums and its losses on all kinds of insurance to which this article is applicable, together with such other information as the Bureau may deem necessary for the proper determination of the reasonableness and adequacy of rates. Such statistical report filed with the rating organization may be consolidated and filed by such common agency. Such data shall be kept and reports made in such manner and on such forms as may be prescribed by the Bureau. All such annual filings . . . shall be kept under lock and key . . ." (Ala. § 393).
2. (11) In addition: "But no insurer shall be required to file its experience with an organization of which it is not a member or subscriber" (Ariz. § 32(a)).
3. (16) "Every insurer, rating organization or advisory organization and every group, association or other organization of insurers which engages in joint underwriting or joint reinsurance shall maintain reasonable records, of the type and kind reasonably adapted to its method of operation, of its experience or the experience of its members and of the data, statistics or information collected or used by it in connection with the rates, rating plans, rating systems, underwriting rules, policy or bond forms, surveys, or inspections made or used by it so that such records will be available at all reasonable times to enable the Commissioner to determine whether such organization, insurer, group or association, and in the case of an insurer or rating organization, every rate, rating plan and rating system made or used by it, complies with the provisions of this chapter applicable to it. . . . Such records shall be maintained in an office within this state or shall be made available for examination or inspection within this state by the Commissioner at any time upon reasonable notice" (Calif. § 1857), (Fla. § 627.318(1)), (Ga. 56–522).
4. (2) "The Commissioner may promulgate . . ." (Col. § 72–12–14), (N.H. § 7), (Vt. § 4655(d)).
5. (11) In addition: "No insurer shall be required to record or report its experience to a rating organization or agency unless it is a member of such organization or agency" (Colo. § 72–12–14), (Minn. § 70.47), (Nebr. § 44–1432 add "or subscriber"), (Utah § 31–18–12(1)).
6. In addition: "Each company shall report its loss or expense experience to the lawful rating organization or agency of which it is a member or subscriber. Any company not reporting such experience to a rating organization or other agency may be required to report such experience to the Commissioner. Any report of such experience of any company filed with the Commissioner shall be deemed confidential and shall not be revealed by the Commissioner to any other company or other person, but the Commissioner may make compilations including such experience" (Del. § 2312(a)).
7. Substitute "Rating systems in use" (1–1) and "Rating systems in use in this state" (1–3) for "Rating systems on file with him" and "used" for "filed" (1–4) (Fla. 627–331).
8. (10) In addition: "No company shall be required to record or report any experience on an experience classification which it does not use in the making of its rates or to record or report its experience on any basis or statistical plan that differs from that which is regularly employed and used in the usual course of such company's business . . ." (Ill. 1065.13 § 466(1)).

9. (11) In addition: "Nor shall it be required to report such experience to any rating organization of which it is not a member or subscriber, or to an agency operated by or subject to the control of such a rating organization" (Ill. 1065.13 § 466(1)).

10. (12) In addition: "Any company not reporting such experience to a rating organization or other agency designated by the Director, shall report such experience to the Director . . . The experience of any company filed with the Director shall be deemed confidential and shall not be revealed by the Director to any other company or other person, provided, however that the Director may make compilations of all experience, including the experience of any such company, or of such experience and the compilation made by the designated rating organization or other agency" (Ill. 1065.13 § 466(1)).

11. In the first phrase substitute "approve" for "promulgate" and omit last phrase after "annually" (Ind. § 16a).

12. Substitute "approving" for "promulgating" (Ind. § 16a).

13. (11) In addition: "Provided that nothing in this Act shall be construed to require, nor shall the commissioner adopt any rule to require, any insurer to record or report its loss or expense experience on any basis or statistical plan not consistent with the rating system filed by it" (Kans. § 40–1118(a)).

14. (11, 13) "No insurer shall be required to report such experience to any licensed rating or qualified advisory organization of which it is not a member or subscriber. The experience of individual insurers thus reported to the commissioner shall not be revealed by him, except by court order, but the commissioner shall make a compilation of all such experience to the extent he may deem practicable and he shall, to the extent he may deem practicable, make a consolidation of all compilations filed with him and those made by him. All such compilations and consolidations shall be available to licensed insurers and licensed rating and qualified advisory organizations and shall also be open to public inspection, subject to reasonable rules promulgated by the commissioner" (Ky. § 304.641(1)).

15. (17) "The commissioner . . . may at any time require any company to file with him such data, statistics, schedules or information as he may deem proper or necessary to enable him to fix and establish or secure and maintain fair and reasonable classifications of risks and adequate, just, reasonable, and nondiscriminatory premium charges for such policies or bonds . . ." (Mass. § 113 B Compulsory Motor Vehicle Liability).

16. (10, 11) In addition: ". . . No insurer shall be required to record or report its loss or expense experience on any basis or statistical plan that differs from that which is regularly employed and maintained in the usual course of such insurer's business, or to any rating organization or agency of which it is not a member or subscriber" (Mich. § 500.2472(1)).

17. (6) Substitute "biennially" for "annually" (Miss. § 5834–07(a)), (Ore. § 737.520 (1)), (Tex. Art. 5.05(a) motor vehicle), (Tex. Art. 5.19(a)).

18. "The commission may designate and empower any association, organization or other facility representing casualty insurance companies which transact business in this state . . ." etc. (Miss. § 5834–07(a)).

19. (18) "Every insurance company . . . shall file with the insurance commissioner, individually or in collaboration with others, in such form as he may prescribe, its classification or risks and premium rates applicable thereto, together with a schedule or rating to be in use and such other statistical information as the commissioner may require (N.H. § 412:14 Motor Vehicle Ins.).

20. (19) "Every insurer shall file annually with the rating organization of which it is a member or subscriber, or with such other agency as the commissioner may approve at the request of such rating organization, or with the commissioner, if such insurer is not a member or a subscriber of a rating organization, a

statistical report showing a classification schedule of its premiums and its losses on all kinds of insurance to which this act is applicable, together with such other information as the commissioner may deem necessary for the proper determination of the reasonableness and adequacy of rates" (N.J. § 17:29A-5).

21. (7) "Every authorized insurer shall annually file with the rating organization of which it is a member or subscriber, or with such other agency as the (Commissioner, Superintendent) may approve, a statistical report showing a classification schedule of its premiums and losses on all kinds or types of insurance business to which this section is applicable, and such other information as the (Commissioner, Superintendent) may deem necessary or expedient for the administration of the provisions of this (chapter article) the (Commissioner, Superintendent) from time to time may prescribe the form of such report including statistical data conforming to established classifications. Such statistical reports shall be consolidated in accordance with regulations prescribed by the (Commissioner, Superintendent)" (N.Y. § 183.5) (P.R. § 1215).
"Statistical plans and rules shall be promulgated for the recording and reporting of expense experience on a countrywide basis" (N.Y. § 183.6), (Also see note 31 for P.R.).

22. (20) In addition: "The superintendent shall have power, in his discretion to prescribe by regulation, uniform classifications of accounts to be observed, and statistics to be reported by insurers and other organizations which are subject to the provisions of this article. He may also in his discretion prescribe by regulation, forms of reporting such data by insurers and such other organizations. Such classifications of accounts, and statistics to be reported and forms of reporting shall be reasonable and may vary with the kind or type of insurer or organization. No such regulation or amendment thereto shall be promulgated by the superintendent except upon notice and after hearing to all insurers and organizations affected thereby. Any regulation or amendment thereto shall be promulgated by the superintendent at least six months before the beginning of the calendar year in which the same shall take effect. Any regulation or order of the superintendent made under this section shall be subject to judicial review by any insurer or organization aggrieved thereby" (N.Y. § 189).

23. (21) ". . . the Commissioner of insurance is hereby authorized to compel the production of all books, data, papers and records and any other data necessary to compile statistics for the purpose of determining the pure cost and expense loading of automobile bodily injury and property damage insurance in North Carolina" (N.C. § 58-248 automobile liability).

24. (22) "Every insurer shall annually on or before October 1, file with the rating bureau of which it is a member or subscriber, or with such other agency as the commissioner of insurance may approve or designate, a statistical report showing a classification schedule of its premiums and losses on all classes of insurance to which this article is applicable, and such other information as the Commissioner may deem necessary or expedient for the administration of the provisions of this article" (N.C. § 58-131.14).

25. (4) "Reasonably adapted to each of the rating systems on file with him" omitted (Ohio § 3937.12 also "statistical plans"), (Tex. Art. 5.05(a) motor vehicle), (Tex. Art. 5.19(a)).

26. (5) "Which may be modified from time to time and which shall be used thereafter"; "in the recording" and "countrywide expense" omitted (Ohio § 3937.12).

27. (10) "No insurer shall be required to record or report its loss experience in a manner that differs from that which is regularly employed and maintained in the usual course of such insurer's business" (Ohio § 3937.12).

28. ". . . subject to reasonable procedures and allocation of costs thereof . . ." (Ore. § 737.520(2)).

29. (11) In addition: "Nor shall any insurer be required to report its experience to any agency of which it is not a member or subscriber" (Pa. § 1193(a)).

30. (23) In addition: "Such rules and plans shall not place an unreasonable burden of expense on any insurer" (Pa. § 1193(a)).

31. (9) "Statistical plans and rules may be promulgated for the recording and reporting of expense experience as to items which are specifically applicable to Puerto Rico and are not susceptible of determination by a prorating of expense experience elsewhere" (P.R. § 1215(2)).

32. "The commissioner may, in his discretion, prescribe by regulation, uniform classifications of accounts to be observed, and statistics to be reported by insurers and other organizations which are subject to the provisions of this chapter. He may also in his discretion prescribe by regulation, forms of reporting such data by such insurers and organizations. Such classifications of accounts, and statistics to be reported and form of reporting shall be reasonable and vary with the kind or type of insurer or organization . . ." (P.R. § 1216).

33. (8) In addition: ". . . after due consideration . . ."; substitute "rates" (Motor Vehicle) or "rating plans" (other Casualty) for "rating systems" and "loss experience and such other data as may be required, in order that the total loss and expense experience of all insurers" for "loss . . . experience, . . . insurers" (Tex. Art. 5.05(a) motor vehicle), (Tex. Art. 5.19(a)).

34. (14) "The Board may designate one or more rating organizations or other agencies to gather and compile such experience" (Tex. Art. 5.05(a) motor vehicle), (Tex. Art. 5.19(a)).

35. (24) "The Commissioner is hereby authorized and empowered to require sworn statements from any insurer affected by this Act, showing its experience on any classification or classifications of risks and such other information which may be necessary or helpful in determining proper classification and rates or other duties or authority imposed by law. The Commissioner shall prescribe the necessary forms for such statements and reports, having due regard to the rules, methods and forms in use in other states for similar purposes in order that uniformity of statistics may not be disturbed" (Tex. Art. 5.05(a) motor vehicle).

36. Add: ". . . unless exempted in writing by the commissioner" before "in the recording . . . of its loss . . ." (Vt. § 4655(d)).

37. "reasonable" omitted (S.D. § 4655(d) 13).

38. "or on its own behalf" in addition (Va. § 38-261).

39. ". . . loss and expense experience . . . countrywide experience, . . ." (W. Va. § 13).

(Carlson numbers not used: 1, 3)

APPENDIX B

National Bureau of Casualty Underwriters vs. Superintendent of Insurance of the State of New York
Mutual Insurance Rating Bureau vs. Superintendent of Insurance of the State of New York

Appellate Division, Supreme Court, New York, June 17, 1958

The petitioners, the National Bureau of Casualty Underwriters and the Mutual Insurance Rating Bureau, had filed a rate increase for automobile liability insurance with the Superintendent of Insurance and had based their proposal upon policy years 1955–1956. The Superintendent disapproved the filing, stating (1) that the two year base was unreliable and that a five year base, policy years 1952 through 1956, was more realistic, and (2) that the percentage loading for general administration expense, based upon countrywide data, was unsound. After a review of the trends in costs and frequencies, the court found that the evidence did not support (1) and annuled the Superintendent's determination, remitting it for further proceedings not inconsistent with its opinion. With regard to (2) the court noted that the filer's method was consistent with the requirements of the Superintendent for the compilation of expense data. The case was appealed by the Superintendent, who accepted a refiling of the increase before his appeal was heard, thus rendering it moot. The case was cited, although not as the basis for the decision, by the court in *Matter of the New York Compensation Board v. Superintendent of Insurance*, 8 A.D. 2d 455 (the citation appears on p. 456), affirmed 8 N.Y. 2d 803.

Massachusetts Bonding and Insurance Company v. Commissioner of Insurance, Massachusetts, 1952

Massachusetts Bonding and Insurance Company along with forty-nine other stock and thirteen mutual insurers objected to the auto rates fixed by the Massachusetts Commissioner for 1952. Their case was joined to another case, brought by an automobile owner who alleged that the Commissioner had erred in fixing rates by failing to consider certain relevant points. (Expenses by territory, traffic hazards peculiar to the territory, interest on loss reserves.) The commissioner defended himself by stating that in order to prove him wrong the companies must show the rates to be confiscatory. The court dismissed the commissioner's defense, dismissed the alleged errors in the second case (largely for lack of evidence), and although it agreed with the logic of the insurers' complaint in the first case it refused to substitute its judgment for the commissioner's and dismissed their complaint, thus upholding the commissioner. This case was subsequently cited in *New England Tel. & Tel. Co. v. Department of Public Utilities*, 121 N.E. 2d 896, and in several insurance cases, including *Travelers Indemnity Co.* v. *Williams*, 190 So. 2d 27 (Florida, 1966).

John S. Carrol, Hurbert Safran and David Hahn on behalf of all other persons similarly situated, Plaintiffs, v. J. Richard Barnes, Defendant

District Court, Denver, Colorado, April 21, 1967

The plaintiffs objected to automobile rate filings made by the National Bureau of Casualty Underwriters and the National Automobile Underwriters Association which

had been approved by Insurance Commissioner Barnes. The plaintiffs objected to the use of incurred loss-earned premium ratios, the failure to use investment income, the use of basic limits experience rather than total experience, the failure to include in the filing all items included in the "basis of rates" section of the statute, and the failure of the Commissioner to audit all data. The court examined the issues point by point, finding in each case against the plaintiffs and in favor of the Commissioner, noting that incurred loss-earned premium ratios were the accepted way of analyzing insurance data, that the statute required the consideration of underwriting (not investment) income, that the filer need only supply data to support changes and that the Commissioner's duties with regard to examination had been carried out as required by statute. The compaint was dismissed and the Commissioner's order affirmed. At this writing, the case has been appealed.

Fire Insurance Rating Bureau, an unincorporated association, Appellant, v. Paul J. Rogan, Commissioner of Insurance of the State of Wisconsin, Respondent

Supreme Court of Wisconsin, June 26, 1958

The Insurance Commissioner had disapproved rate filings for fire and extended coverage insurance and approved rate filings for separately written windstorm insurance. The rating bureau appealed, a circuit court upheld the commissioner, and this appeal was taken to the Wisconsin Supreme Court. The rating bureau contended that the commissioner erred both in not using the five year average loss ratio (but instead giving greater weight to the latest year in reviewing rates) and in not permitting a sufficient margin for profit and contingencies. Further, it argued that the commissioner exceeded his authority in that he was attempting to fix rates. The Court held that the commissioner's review had "considered" the five years of experience and that *undue emphasis was given by both parties to the profit question. With regard to the question of fixing rates, the Court stated that the commissioner had recognized (in his statements to the Court) that he could not fix rates and was precluded from doing so. The Court affirmed the commissioner's action.

State ex. Rel. Minnesota Employer's Association et. al. v. Faricy et. al.

Supreme Court of Minnesota, May 6, 1952

The Minnesota Employers' Association and others challenged the compensation rates set by a three man board headed by Insurance Commissioner Faricy. A district court upheld the board and appeal was taken to the Supreme Court. The case was complex in that a number of technical points in the ratemaking calculations were challenged. The court found that the board had not presented evidence to substantiate the modification of certain factors in the formula and further found that although there had been almost annual rate adjustments the actual loss ratio had remained substantially below the expected loss ratio. The court reversed both the district court and the board and ordered further proceedings.

DISCUSSION BY HARRY T. BYRNE

Messrs. Hartman and Lange accomplished a formidable task when they brought up to date the analysis of rate regulatory laws which was contained in the paper which Mr. Carlson presented to this society in 1951.