

Savings Bank Life Insurance

Henry G. Vogel

Follow this and additional works at: <https://scholarship.law.stjohns.edu/lawreview>

This Recent Development in New York Law is brought to you for free and open access by the Journals at St. John's Law Scholarship Repository. It has been accepted for inclusion in St. John's Law Review by an authorized editor of St. John's Law Scholarship Repository. For more information, please contact selbyc@stjohns.edu.

nal transfer tax on firearms may possibly be effective, not as a crime deterrent, but as a means to enable states, requiring licenses for the possession of firearms, to enforce their licensing provisions. The federal authorities could give the names and addresses of firearms taxpayers to the state authorities. It is logical to suppose that criminals possessing guns would not register and pay the nominal tax; but then, because of the tax, the federal government would have jurisdiction and might concurrently help the state capture the criminal.

As a further step to federal crime control, it would be very expedient to have the United States Constitution amended to forbid the carrying of concealed deadly weapons. In view of the fact that fifteen states have no constitutional provisions for the bearing of arms and therefore can pass such legislation,⁷⁰ and at least twenty-nine other states have upheld statutes forbidding the carrying of concealed weapons or concealed deadly weapons,⁷¹ there is every indication that such a proposed amendment would attract the required two-thirds of the state legislatures.

ALFRED M. ASCIONE.

SAVINGS BANK LIFE INSURANCE.—The legislatures of the several states have long realized that the public has a vital interest in the conduct and affairs of the numerous life insurance companies. By stringent state regulation many abuses deemed inimical to this public interest have been eliminated. Supervision alone, however, has proven ineffectual in certain instances, particularly in the field of industrial insurance¹ where the sale by private companies has been marked by high cost, high-pressure salesmanship by solicitors and excessive number of lapses.²

⁷⁰ California, Delaware, Illinois, Iowa, Maryland, Minnesota, Nebraska, Nevada, New Hampshire, New Jersey, New York, North Dakota, Virginia, West Virginia, and Wisconsin.

⁷¹ Alabama, Arizona, Arkansas, Colorado, Florida, Georgia, Idaho, Indiana, Kansas, Kentucky, Louisiana, Massachusetts, Michigan, Mississippi, Missouri, Montana, New Mexico, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah, Washington, and Wyoming (the missing states are Connecticut, Maine, Rhode Island, and Vermont).

¹ VANCE, *LAW OF INSURANCE* (2d ed. 1930) 38. "Industrial insurance is the name applied to that kind of life insurance which is procured by working men usually engaged in industrial enterprises. It is peculiar in that it is usually granted in small amounts without medical examination and primarily intended to provide proper care for the insured during his last sickness and after his death." The newspapers frequently use "burial insurance" as a synonym for industrial insurance.

² Louis D. Brandeis, *Wage Earners' Life Insurance*, *Collier's Weekly*, Sept. 15, 1906. "The sacrifice incident to the present industrial insurance system could be avoided only by providing an institution for insurance which would

Cognizant of the shortcomings of regulation alone and desirous of creating a secure but low-priced form of life insurance for the small wage earner, the New York Legislature, following the example of Massachusetts,³ has enacted a law⁴ permitting⁵ mutual savings banks in this state to organize insurance departments under certain prescribed conditions.⁶

The Act under discussion eliminates the possibilities of high-pressure tactics by providing that:

“Savings and insurance banks shall not employ solicitors of insurance and shall not employ persons to make house to house collections of premiums.”⁷

However, to facilitate collection of premiums and for the performance of various ministerial duties, agents may be appointed.⁸ The insurance banks may also establish offices apart from the bank buildings to aid in performing the work of the department as far as administrative affairs are concerned.⁹

recognize that its function is not to induce working people to take insurance regardless of whether they really want it or can afford to carry it, but rather to supply insurance upon terms to those who do want it and can carry it; an institution which would recognize that the best method for increasing the demand for life insurance is not eloquent, persistent persuasion, but as in the case of other necessities of life, is to furnish a good article at a low price.”; see Warsoff, Book Review (1939) 13 ST. JOHN'S L. REV. —.

³ MASS. STAT. (1907) c. 561, §§ 1-32. Massachusetts was the first state to enact a law permitting its savings banks to create insurance departments and New York is the only other state to follow its example.

⁴ N. Y. Laws 1938, c. 471, §§ 307-339.

⁵ *Id.* § 308 provides that the savings banks may create an insurance department. The statute is therefore permissive and not mandatory.

⁶ *Id.* §§ 308, 309. The trustees, after having given thirty days notice, shall hold a special meeting for the purpose of voting on the establishment of an insurance department. The motion to establish the said department shall be carried by a two-thirds majority vote of the trustees and not more than thirty days thereafter a certified and sworn copy of the vote must be filed with the Superintendents of Banks and Insurance. The bank must then establish a special expense guarantee fund, a special insurance guarantee fund and the fact that this has been done must be certified to under oath by the president or vice-president of the savings bank and such certification filed with the Superintendents of Banks and Insurance. Then if both Superintendents are satisfied that all the conditions aforesaid have been duly complied with, and if the Superintendent of Banks is of the opinion that the financial condition of the bank is satisfactory, they shall issue a joint certificate declaring said insurance department established.

⁷ *Id.* § 320. As against the condemnation of solicitation its proponents have argued forcefully that without such persuasion many persons in dire need of insurance would not avail themselves of the same.

⁸ *Ibid.* Other savings banks may be appointed agents of the savings insurance bank if the Superintendent of Insurance approves; U. S. Bureau of Labor Statistics, Bulletin No. 615 (1935) 63. In Massachusetts, agent banks receive, as a transmission fee, two per cent of the premiums they collect and transmit.

⁹ N. Y. Laws 1938, c. 471, § 320.

The primary purpose of the Act is to make life insurance available to the small wage earner at a materially lower cost.¹⁰ This is effected by the elimination of solicitors,¹¹ provisions for examination of applicants and reduction of overhead. When we eliminate the solicitor we reduce the premiums to the extent of commission that he would have received. Under industrial insurance, as issued by the private companies, there is usually no physical examination of applicants.¹² Consequently we have a greater hazard with a concomitant rise in premiums. This difficulty is provided against by the Act which commands that the Superintendent of Insurance shall prescribe rules relating to the health and acceptability of the applicant.¹³ Lastly, the Act permits the insurance banks to maintain the insurance department in the main banking building.¹⁴ The already existing facilities and structures will thus be available for the use of the insurance department without great cost or large initial outlay.¹⁵

The third major defect of private industrial insurance is the excessive number of lapses.¹⁶ The Act seeks to reduce the number of lapses by providing that every life and endowment policy must have a guaranteed cash surrender, paid up, or extended term insurance value after full premiums have been paid for six months.¹⁷ It is further provided that loans may be made on policies after payment of one year's premiums.¹⁸ These provisions grow in significance when it is realized that industrial insurance, with very few exceptions, has no surrender value until one, two, three or four years' premiums are

¹⁰ See editorial, N. Y. Times, Mar. 2, 1938, p. 18, col. 3. In a communication received by the writer from the Superintendent of Insurance of the State of New York, it was stated that in Massachusetts bank insurance is lower in cost than either industrial or ordinary insurance as sold by the private companies.

¹¹ N. Y. Laws 1938, c. 471, § 320.

¹² See note 5, *supra*.

¹³ N. Y. Laws 1938, c. 471, § 324.

¹⁴ *Id.* § 320.

¹⁵ *Id.* 314 provides that: "Expenses pertaining to the conduct of both the savings and insurance departments, such as office rent and the salaries of the general officers, shall be apportioned *equitably* between the two departments." In a communication received by the writer from the Superintendent of Insurance it would appear that the bank examiner will decide, in the first instance, whether or not the allocation is equitable.

¹⁶ Epstein, *The Insurance Racket*, Am. Mercury, Sept., 1930. The following statistics are taken from page five of the article: "Of the nearly 72,000,000 industrial policies outstanding in the year 1928, only 952,809, totaling \$209,913,564, matured whereas 1,759,987, to the sum of \$317,320,916 were surrendered and 5,802,441, valued at \$1,594,472,261, were lapsed. We thus have the spectacle of eight persons in the prosperous year of 1928 losing either most or all of their investment as against one person who attained the goal of insurance." It has been proven in Massachusetts that lapses in policies issued by the savings banks of that state are roughly some 50% less than in cases of industrial insurance. For complete statistics see Cassady, *Massachusetts Savings Bank Life Insurance*, p. 20.

¹⁷ N. Y. Laws 1938, c. 471, § 317.

¹⁸ *Ibid.*

fully paid.¹⁹ These private policies never have any loan value in the vast majority of cases.²⁰ It can then readily be seen that our legislature, to prevent these numerous lapses, has adopted the theory that if a policyholder is entitled to receive the cash surrender value or a loan on his policy at a comparatively early date, he is less likely to permit it to lapse.²¹ The legislature has also recognized that small wage earners are often induced, by high-pressure tactics, to purchase industrial insurance without regard to whether they really need or can afford it. Realizing that these tactics contribute largely to the great number of lapses they have been eliminated as hereinbefore stated.

The insurance will be available to any person who is a resident of New York State or who is regularly employed here.²² If the insured moves from the state, his policy nevertheless remains valid and enforceable but the removal disqualifies him from taking out any additional insurance of this type.²³ The law sets no minimum²⁴ but does state that no bank shall issue any policy or annuity contract in excess of \$1,000.²⁵ If the applicant has already obtained from other insurance banks policies of life insurance aggregating \$3,000, he shall be denied any further insurance.²⁶ This \$3,000 aggregate provision has been inserted largely at the insistence of the private insurance companies who have pointed out that in Massachusetts a person may take out a \$1,000 policy in each of the twenty-four insurance banks, thus totaling \$24,000 of savings bank insurance upon one life.²⁷ If this was permitted, there would be serious competition between bank and private insurance, and the intent to benefit only the small wage earner would be frustrated.²⁸

¹⁹ N. Y. World-Telegram, Dec. 7, 1938, p. 4, col. 1; U. S. Bureau of Labor Statistics, Bulletin No. 615 (1935) 38.

²⁰ *Ibid.*

²¹ U. S. Bureau of Labor Statistics, Bulletin No. 615 (1935) 38. The following quotation relates to statistics compiled in Massachusetts where insurance banks have been in existence for some thirty-two years: "During the period 1908-1931 the average ratios of insurance lapsed to new insurance written were 54.5% in the case of private industrial insurance, 21.0% in the case of private ordinary insurance and 2.6% in the case of savings bank insurance."

²² N. Y. Laws 1938, c. 471, § 319.

²³ U. S. Bureau of Labor Statistics, Bulletin No. 615 (1935) 13.

²⁴ The standard premium rates as sent to the writer by the Superintendent of Insurance set the minimum at \$250.

²⁵ N. Y. Laws 1938, c. 471, § 316. Section 324 of the Act allows the Superintendent of Insurance to prescribe the various types of life insurance which the banks may sell. They include whole life policies, limited term and limited payment policies, endowment policies, etc. It is most significant to note that two attractive features of industrial policies, namely double indemnity and disability clauses, have not been made a part of the insurance bank policies either by the Act or the standard forms.

²⁶ *Id.* § 316. Section 329 provides that all policyholders shall be given dividends as therein described.

²⁷ Cassady, *Massachusetts Savings Bank Life Insurance*, pp. 27, 28, 29.

²⁸ N. Y. Times, Feb. 9, 1938, p. 31, col. 3.

It is significant that the Act provides for separation of the funds of the insurance banks.²⁹ The accounts of the insurance department are to be kept separate and distinct from those of the banking department and in no event shall the assets of the banking division be applicable to the liabilities and obligations of the insurance department. To prevent any misconception on the part of the applicant as to this separation of funds it is provided that each policy shall contain the following provision :

"The only assets of this bank which are liable for and applicable to the payment and satisfaction of the liabilities, obligations and expenses of the insurance department are the assets of the insurance department of this bank." ³⁰

Though the Act does not expressly so provide it would seem as a corollary to the foregoing that the assets of the insurance department could not in any way, in the absence of fraud, be resorted to by creditors of the banking division.

The insurance department shall invest its funds in the same class of securities and in the same manner that the deposits of the savings departments are required by law to be invested.³¹ This section aims at safe and uniform investment of funds. It will not be essential for the insurance banks to employ a large staff of investment experts and personnel since it is probable, although not mandatory, that the insurance department will avail itself of the experts and staff employed by the banking department.

The Act provides for equality of taxation between the insurance banks and the private domestic insurance companies engaged in the life insurance business.³² This section was enacted largely because of the clamor of the private companies who argued justly that, if taxation was not made on an equal basis, their new competitor, the insurance bank, would have an unfair advantage.³³

Several other striking provisions of the Act are the three provisions providing for guarantee funds. Section 309 provides that a special expense guarantee fund and a special insurance fund must be created before the bank may establish an insurance department. The special expense guarantee fund, its purpose being to guarantee the payment of expenses incurred in running the insurance department, must be not less than \$5,000. The trustees, in their discretion, may set the amount of the fund at any value above the minimum, provided that the Superintendent of Insurance consents to the arrangement. The fund may be retired, with the approval of the Superintendents of

²⁹ N. Y. Laws 1938, c. 471, § 314.

³⁰ *Id.* § 324.

³¹ *Id.* § 315; for type of investments that a savings bank may make see N. Y. BANKING LAW §§ 239, 239a.

³² *Id.* § 339.

³³ N. Y. Times, Feb. 9, 1938, p. 31, col. 3.

Banks and Insurance, whenever in the opinion of the trustees it is no longer required. Under the same conditions a special insurance guarantee fund, its purpose being to guarantee losses or obligations arising from the insurance business, must be created consisting of not less than \$20,000 in amount.³⁴ As a further safeguard there shall be a body corporate known as the General Insurance Guarantee Fund. The Superintendent of Insurance, with the consent of the Governor, shall appoint four trustees for specified terms to act as the board of directors and the Deputy Superintendent of Insurance in charge of savings bank life insurance shall automatically be a trustee of said corporation.³⁵ Each month the insurance banks must pay four per cent of all amounts paid to it as premiums on policies or in the purchase of annuities during the preceding month.³⁶ This fund is designed as a safeguard for the insured in cases where the insurance reserve of a bank is impaired.³⁷

It is submitted, in view of the success of insurance banks in Massachusetts, that this Act will be a distinct benefit to the small wage earner by giving him access to a lower-priced and more secure form of insurance which will be tendered to the public on its merits.

HENRY G. VOGEL.

PERSONS ERRONEOUSLY CONVICTED.—Legislation having indemnity for errors in the administration of criminal justice as its purpose has been found to have firm support in well-rooted legal doctrines.¹ At one time, European legislators were seriously hampered in enacting such laws by disagreement among legal theorists as to whether compensation could be upheld as an act of grace on the part of the state or a legal duty.² Beyond doubt, if we indemnify the taking of property, we should indemnify injustices to human beings. It is con-

³⁴ N. Y. Laws 1938, c. 471, § 311.

³⁵ *Id.* § 321. The following quotation is an excerpt from a communication received from the Superintendent of Insurance: "In Massachusetts there has never been any call on the General Insurance Guarantee Fund to pay death losses. In fact no bank has ever had to call upon its own \$20,000 special insurance guarantee fund except in one instance where one bank dipped in to the extent of four or five hundred dollars."

³⁶ *Id.* § 326.

³⁷ See N. Y. Laws 1938, c. 471, § 336. (If an insurance bank violates the provisions of this Act or any other law, the Superintendent of Insurance may bring an action to have it dissolved.)

¹ MERKEL, JURISTISCHE ENZYKLOPADIE (3d ed. 1904) § 708 (supported on same theory as eminent domain); BORCHARD, CONVICTING THE INNOCENT (1932) 392 (considered on the same theory as compulsory social insurance).

² See MERKEL, JURISTISCHE ENZYKLOPADIE (1st ed. 1885) § 63 (before enacting laws sound in economic theory, the European legislator demands the support of recognized legal theory).