



Specifics of Insurance Law

[Danielle D. Hansen, J.D.]

Insurance law has been an interesting practice, due to the fact that there is very little federal regulation on this topic. Outside of the McCarran-Ferguson of 1945 and the more recent Gramm-Leach-Bliley Act of 1999, the federal government, generally speaking, allows each individual state the freedom to regulate this business. This week at LawCrossing, we'll take a look at insurance law and the various nuances that make this field unique.

In 1945, Congress passed the McCarran-Ferguson Act. This bill essentially stated that the states will have the right and the responsibility to regulate their own Departments of Insurance. Prior to this law, there was a hodgepodge of laws involving insurance at many levels. Different states had different insurance needs. Florida had its weather, for example, California and New York had their preponderance of automobiles, and farm belt states had their crops and livestock. It made sense for the federal government to turn over control to the states, and that's exactly what they did.

Each state (and U.S. territory such as Puerto Rico and Washington, DC) now has its own Insurance Code, with different language and various degrees of depth. Moreover, the Insurance Codes give regulatory power to the Commissioners of Insurance, and each commissioner's regulations are published separately from the Insurance Codes. This entire process is further complicated by the fact that some insurance laws aren't mandated in the Insurance Code at all. Parts of workers' compensation, for example, is often covered in a state's Labor Code, even though it's broadly considered a form of insurance.

In 1999, the Gramm-Leach-Bliley act was enacted. Also known as the Financial Services Modernization Act, this was the federal government's first main venture into insurance regulation in more than 50 years since McCarran-Ferguson. GLB basically legislated the business of finance, including insurance, more than insurance companies themselves.

For example, GLB declared that banks and similar financial institutions could engage in the practice of insurance, with restrictions of course. This provision mainly arose from the practice of banks and financial holding companies issuing insurance for mortgages that bank customers would receive on their homes. Instead of having to insure the money through an outside insurer, mortgagees can now do so through their bank. GLB also made it easier for insurance companies to be licensed in more than one state and required certain privacy protections and disclosures to protect consumers.

One of the nuances of insurance law that makes it a bit difficult for attorneys to practice is that each state has its own language in its own Insurance Code. What you and I might call "health insurance" is called "disability insurance" in some states. The same exact concept is regulated similarly among the states, but the terminology is different.

The same holds true for concepts such as auto insurance. You can do online legal research for "auto insurance" in some states and get zero hits. So then you try "automobile insurance" and also get zero hits. By this time, you're scratching your head and wondering does this state regulate auto insurance at all. Of course it does, but it's up to you to find the proper terminology to get to the laws you need. Some states might call it "motor vehicle insurance" or "car insurance," so keep at it until you find the right phrases. Searches for workers' compensation, as another example, might prove futile if a particular state still makes reference to

the outdated phrase "workman's compensation." All you can do is investigate the proper terminology for the particular state you're looking into.

Shifting to a lighter note, there's always the myriad of regulations that go into the insurance policy itself. These policies are an interesting breed of contract. We're all taught early on that it's a wise idea to consult an attorney before signing any contract, but when it comes to an insurance policy, most people just skim through the big print to make sure the main things are covered, then sign away.

We pay attention to the premium payment, of course, and the deductibles. But the average person doesn't put much thought into what exactly goes into that policy...or how they're created.

State laws take this into account. Lawmakers long ago realized that insurance policies are contracts that almost every person will use in their lifetimes. To that end, they've enacted legislation to make these contracts as clear as possible...or at least as clear as an issue of Sports Illustrated. Seriously.

To eliminate the "small print" that can often elude an unwary customer's eyes, states require fonts to be of a certain size. In addition, these contracts must be written simply enough to be read and understood by an average person, using a standard readability scale called the Flesch Index.

39 different states refer to Flesch in their



insurance laws, with mandated "readability" levels different among the states. The index was established by Rudolf Flesch as a tool to gauge the simplicity of certain written documents. It's a complicated system to calculate, but in general, the following matters are taken into consideration:

The length of the document

The total number of words

The total number of syllables

The total number of sentences (This is further compounded by the Flesch rule that the number of sentences is calculated by counting the number of ending punctuation marks, such as the periods, question marks, and exclamation points. So, "Did you remember to sign your policy?!" would count as two sentences because two different punctuation marks are used at the end.)

Different things are added into the equation, and then a bunch of stuff is divided by a bunch of other stuff. It would take a week to explain it all. Finally, the equation yields one number, and THAT is your Flesch Readability Score.

The higher the score, the easier something is to read.

For example, your typical daily comic strip in a newspaper has a Flesch Score of 92, a very high number for a very simple thing to read. Not quite as simple is the I.R.S. Tax Code, which has a Flesch score of a NEGATIVE 6. A big difference. Somewhere in between lie general magazines and books. The average New York Times, for example, scores about a 40.

Now we didn't just choose that newspaper or its score of 40 at random. We picked this one because the state of Arizona mandates that its life and health (and others) insurance policies be rated at a minimum Flesch score of 40 (Arizona Insurance Regulations § R20-6-216). So as you can see, Arizona requires its policies to be no more complicated than a typical issue of the Times.

The policies can, however, be more complicated than Sports Illustrated, which has a Flesch Index of about 65 (Remember, the higher the

score, the easier the reading).

40 seems to be the typical number mandated by most states' Departments of Insurance, although New Jersey allows its Commissioner to accept lower scores "at his sole discretion" if some criteria are met.

Connecticut and Florida require, for example, even higher scores, which means they require even easier-to-read policies. Their minimum Flesch Index is 45. Massachusetts' is a whopping 50.

Other states are more vague in their readability provisions. In its health insurance policy provisions, California, for example, mandates that the Commissioner of Insurance "shall not approve any disability policy for insurance...if the commissioner finds that it contains any provision...which is unintelligible, uncertain, ambiguous, or abstruse, or likely to mislead a person to whom the policy is offered, delivered or issued."

A Bulletin issued by the Department of Insurance went on to state that California insurers must submit the Flesch Readability Test score for each policy and benefit rider. Although no minimum score is mandated, the Department still wants to know the score of each policy.

Policy writers at insurance companies are not to be envied. Every word they write into a policy-especially if that word is three syllables and is followed by a semi-colon-will somehow figure into the math they'll have to do later. Either that, or they can move to one of the 11 states such as Illinois that makes no mention of Flesch.

Yes, insurance policies and all their complications are still in the realm of the states. From state to state, you'll find all different terminologies to describe the same exact things...a frustrating proposition.

The landmark McCarran-Ferguson Act essentially put the states in charge of their own

Departments of Insurance. The Feds were smart enough to get out of that racket in 1945. We don't believe that Mr. McCarran and Mr. Ferguson intended that the states get bogged down in comparing their policies' readability to those of comic books and magazines, but one never knows.