

discrimination. Interest on quarterly and semiannual premiums may be charged when transactions constitute a bona fide loan to the insured. 1910 Atty. Gen. 431.

207.09 History: 1947 c. 520; Stats. 1947 s. 207.09; 1969 c. 276 s. 585 (3); 1969 c. 337 s. 88.

207.10 History: 1947 c. 520; Stats. 1947 s. 207.10.

207.13 History: 1947 c. 520; Stats. 1947 s. 207.13; 1969 c. 337.

CHAPTER 208.

Fraternal Benefit Societies.

208.01 History: 1911 c. 216; 1911 c. 664 s. 27; Stats. 1911 s. 1956; 1917 c. 55 s. 1, 2; 1923 c. 291 s. 3; Stats. 1923 s. 208.01; 1925 c. 130; 1927 c. 170; 1931 c. 176; 1933 c. 344 s. 1; 1945 c. 517; 1961 c. 545.

Revisor's Note, 1933: The absence of a revisor's note to any section in this bill is to be understood as indicating that the changes are only verbal and that no change of substance is proposed. [Bill 51-S, s. 1]

Editor's Note: Ch. 344, Laws 1933, amended and revised ch. 208, Stats. 1931, which was derived from various enactments of prior years and which related to fraternal benefit societies.

It is doubtful whether a subordinate branch of the Modern Woodmen of America, organized under ch. 188, is a benevolent society. The fact that the members of a fraternal benefit society are identical with the stockholders of a corporation does not prevent dealings between the 2 bodies. Trustees Onalaska Camp v. Onalaska M. W. H. Asso. 179 W 486, 192 NW 33.

Under the plan of a mutual benefit association, which includes levying an assessment on the members of a particular class on the death of a member of such class to pay over to the beneficiary of the deceased member the amount collected less certain deductions, the association is engaged in the business of insurance, and is therefore violating the general incorporation law, ch. 180. State ex rel. Martin v. Dane County Mut. Ben. Asso. 247 W 220, 19 NW (2d) 303.

208.02 History: Stats. 1931 s. 208.01 (3) (b), (c); 1933 c. 344 s. 2; Stats. 1933 s. 208.02.

208.03 History: Stats. 1931 s. 208.01 (4), (5); 1933 c. 344 s. 3; Stats. 1933 s. 208.03; 1945 c. 586; 1947 c. 40; 1959 c. 462; 1965 c. 501; 1967 c. 338; 1969 c. 337.

It is very doubtful whether a mutual benefit company which issues a policy upon the life of a person at the instance of the insured for the benefit of one to whom he was under great moral, if not legal, obligations can resist its payment. At any rate one who is substituted as beneficiary in such a policy under an agreement to receive the money which might be paid pursuant to it in trust for another person cannot avoid the performance of that agreement because the person originally named as beneficiary had no insurable interest in the life of the insured. Hurd v. Doty, 86 W 1, 56 NW 371.

A benefit society organized for the mutual support of its members, their families or kindred cannot issue a certificate to one not of a member's family or kindred; and a new certificate issued in favor of a person not of his family or kindred in lieu of one for the benefit of the parents of a member is void. Groth v. Central Verein, 95 W 140, 70 NW 80.

A mutual benefit association licensed as a fraternal or beneficiary association in 1902 and continually as such since that time was a mutual benefit society, and its agents were without powers conferred on other insurance agents generally, and consequently were unauthorized to bind the association by an oral contract of life insurance, the bylaws of the association being construed to negative authority of an agent to so bind it. Neuberger v. Aid Asso. for Lutherans, 207 W 133, 240 NW 885.

Provisions in the constitution of a fraternal benefit society, an accident insurance certificate issued thereby, and a form for application therefor, in relation to statements, representations or warranties by an insured in an application, are subordinate to, and are of no effect insofar as conflicting or inconsistent with 209.06, Stats. 1933. Spray v. Order of U. C. T. 221 W 329, 267 NW 50.

A voluntary association which upon the death of a member sends out notices to surviving members requesting payment of a dollar from each member but having no bylaws requiring such payment is not amenable to the insurance laws of the state. 18 Atty. Gen. 142.

A benevolent association granting a maximum disability benefit of \$240 a year is not exempt from provisions of ch. 208, Stats. 1927, although incorporated prior to the effective date of that chapter. 18 Atty. Gen. 144.

A labor union composed of more than 500 members not restricted to persons engaged in hazardous occupations, maintaining a sick and health benefit plan, is subject to ch. 208, Stats. 1937. 27 Atty. Gen. 260.

Ch. 208 applies to a labor organization which provides for a death benefit plan included in monthly dues at no extra cost. The mere fact that there is no enforceable obligation on the part of the organization to make any payments of death benefits is immaterial. 27 Atty. Gen. 718.

A fraternal benefit society under ch. 208, Stats. 1947, may not issue group life insurance policies. 38 Atty. Gen. 44.

208.06 History: Stats. 1931 s. 208.01 (8); 1933 c. 344 s. 6; Stats. 1933 s. 208.06.

208.07 History: Stats. 1931 s. 208.01 (9); 1933 c. 344 s. 7; Stats. 1933 s. 208.07.

208.09 History: Stats. 1931 s. 208.02 (1), (2); 1933 c. 344 s. 9; Stats. 1933 s. 208.09; 1943 c. 162; 1959 c. 51.

208.10 History: Stats. 1931 s. 208.02 (5); 1933 c. 344 s. 10; Stats. 1933 s. 208.10.

A member of a mutual benefit society may change the beneficiary named in his certificate without the consent of such beneficiary, by complying with the society's bylaws. Ormond v. McKinley, 163 W 205, 157 NW 786.

The enactment of ch. 376, Laws 1891, did

not impair the right of certificate holders to change the beneficiary named in the certificates issued to them prior to its enactment. *Sueiflow v. Supreme Lodge, K. & L. of H. 165 W 291, 162 NW 346.*

A bylaw of a fraternal benefit society providing that any agreement entered into by a member not to change the beneficiary shall be null and void, and the provision in sec. 1957 (5), Stats. 1913, that he may change the beneficiary named without the consent of such beneficiary, became part of the terms and conditions of the certificate. Where a holder of such a certificate changed the beneficiary for a valuable consideration paid to him and later made another change, the second beneficiary had no legal or equitable right to the proceeds of the certificate as against the third beneficiary. *Malancy v. Malancy, 165 W 642, 163 NW 186.*

Although both the Illinois statute under which a benefit society was incorporated and its charter authorized it to issue certificates in favor of blood relatives of an insured, the society, by a bylaw, might so restrict the permitted beneficiaries as to exclude all cousins not first cousins. Such a bylaw became a part of every contract of insurance entered into by the society, whether so expressed therein or not. The right of an insured in such a society to change the beneficiary named in his certificate without the latter's consent must be exercised in accordance with the bylaws. Such a change without such compliance is invalid and leaves the original certificate in force, notwithstanding a provision in the bylaws that the surrender of the old and the issue of the new certificate should cancel the former, where the society issued the new certificate upon false or mistaken information as to the blood relationship of the new beneficiary. *McGough v. Hogan, 175 W 607, 185 NW 174.*

208.11 History: Stats. 1931 s. 208.02 (5m); 1933 c. 344 s. 11; Stats. 1933 s. 208.11.

208.12 History: Stats. 1931 s. 208.02 (10); 1933 c. 344 s. 12; Stats. 1933 s. 208.12; 1945 c. 517.

208.13 History: Stats. 1931 s. 208.02 (11); 1933 c. 344 s. 13; Stats. 1933 s. 208.13; 1935 c. 185; 1937 c. 256; 1941 c. 111; 1949 c. 206; 1959 c. 51.

208.14 History: Stats. 1931 s. 208.03 (1); 1933 c. 344 s. 14; Stats. 1933 s. 208.14; 1945 c. 517.

Revisor's Note, 1933: Reputable physician is understood here to mean a legally qualified physician, and the language is changed accordingly. [Bill 51-S, s. 14]

208.15 History: Stats. 1931 s. 208.03 (2) (a), (c); 1933 c. 344 s. 15; Stats. 1933 s. 208.15; 1937 c. 256; 1943 c. 147; 1959 c. 76; 1965 c. 501.

208.16 History: Stats. 1931 s. 208.03 (2) (d) part; 1933 c. 344 s. 17; Stats. 1933 s. 208.16; 1965 c. 501.

208.161 History: 1965 c. 501; Stats. 1965 s. 208.161.

208.162 History: 1965 c. 501; Stats. 1965 s. 208.162.

208.17 History: 1965 c. 501; Stats. 1965 s. 208.17.

208.18 History: Stats. 1931 s. 208.03 (2) (e); 1933 c. 344 s. 19; Stats. 1933 s. 208.18.

208.19 History: Stats. 1931 s. 208.03 (2) (f); 1933 c. 344 s. 20; Stats. 1933 s. 208.19.

A member of a fraternal benefit society, a member transferred from one class to another, was entitled to a transfer of a proper accounting value of his interest in the fund of the class from which he was transferred. *United Order of Foresters v. Miller, 178 W 299, 190 NW 197.*

A fraternal benefit association was not estopped to change bylaw provisions for old-age benefits. Members of a fraternal benefit association, certain to be wrecked if old-age benefits are paid, have no vested rights precluding rescission of bylaw provisions therefor. *Zerbel v. Supreme Assembly of Equitable Fraternal Union, 199 W 298, 226 NW 288.*

208.20 History: Stats. 1931 s. 208.03 (3); 1933 c. 344 s. 21; Stats. 1933 s. 208.20.

208.21 History: 1963 c. 344; Stats. 1963 s. 208.21.

208.23 History: Stats. 1931 s. 208.03 (7), (8); 1933 c. 344 s. 23; Stats. 1933 s. 208.23; 1951 c. 726; 1969 c. 276 s. 597 (3).

An amendment to the bylaws of a fraternal benefit association, providing that insurance should not cover cases of disappearance, substantially changed the contract and was unreasonable and invalid as to a benefit certificate theretofore issued, even though the insured had agreed that the laws of the association thereafter enacted should become a part of the contract; and hence the beneficiary, notwithstanding such amendment to the bylaws, was entitled to recover on such certificate where death was presumed from prolonged absence. *DeLorenzo v. Supreme Lodge, Knights of Pythias, 222 W 141, 268 NW 217.*

208.24 History: Stats. 1931 s. 208.03 (15); 1933 c. 344 s. 24; Stats. 1933 s. 208.24.

Revisor's Note, 1933: The provision regarding change of venue of actions to the federal courts is struck out because said provision is unconstitutional. *Terral v. Burke Cons. Co. 257 US 529; Forest Trucking Co. v. R. R. Comm. 271 US 583; Wisconsin v. Philadelphia & Reading Coal & Iron Co. 241 US 329.* [Bill 51-S, s. 25]

208.25 History: Stats. 1931 s. 208.03 (16); 1933 c. 78; 1933 c. 344 s. 25; 1933 c. 454 s. 10; Stats. 1933 s. 208.25; 1969 c. 337 s. 88.

The commissioner of insurance has no discretion in acting upon an application for a license to do business if the applicant has complied with the conditions of the law. *State ex rel. Covenant M. B. Asso. v. Root, 83 W 667, 54 NW 33.*

The question whether a corporation is within the statute so as to be entitled to a license concerns only the state; private persons can-

not maintain an action to determine whether a license shall be issued. Wisconsin Independent Order of Foresters v. Insurance Commissioner, 98 W 94, 73 NW 326.

Under secs. 1955e and 1955f, Stats. 1898, the commissioner of insurance is to be satisfied that the applicant is entitled to a license and should be given a necessary or reasonable time to examine and investigate into the affairs and condition of the company. Mandamus will not issue to compel him to grant a license where he is investigating in good faith. State ex rel. Court of Honor of Illinois v. Giljohann, 111 W 377, 87 NW 245.

208.27 History: 1945 c. 517; Stats. 1945 s. 208.27; 1953 c. 56.

208.28 History: Stats. 1931 s. 208.04 (22); 1933 c. 344 s. 28; Stats. 1933 s. 208.28; 1943 c. 146; 1963 c. 266.

208.29 History: Stats. 1931 s. 208.04 (22m); 1933 c. 344 s. 29; Stats. 1933 s. 208.29.

208.34 History: Stats. 1931 s. 208.04 (29); 1933 c. 344 s. 34; Stats. 1933 s. 208.34; 1969 c. 276 s. 585 (1).

208.35 History: Stats. 1931 s. 208.04 (30); 1933 c. 344 s. 35; Stats. 1933 s. 208.35; 1949 c. 634; 1961 c. 562; 1969 c. 337 s. 88.

An act of congress separating fraternal and insurance activities of a lodge fraternity and authorizing insurance to be carried on under different corporate entity and in conjunction with legal reserve life insurance does not change the character of fraternal insurance. The tax being upon a business, a corporation may be licensed without payment of such tax upon payments made upon old fraternal certificates. 20 Atty. Gen. 1095.

208.38 History: 1895 c. 175 s. 12; Stats. 1898 s. 4575e; 1925 c. 4; Stats. 1925 s. 348.475; 1955 c. 696 s. 277; Stats. 1955 s. 208.38; 1969 c. 337, 424.

208.39 History: 1965 c. 501; Stats. 1965 s. 208.39.

208.40 History: 1965 c. 501; Stats. 1965 s. 208.40.

CHAPTER 209.

Insurance—Miscellaneous Provisions.

209.03 History: 1870 c. 56 s. 37; 1870 c. 59 s. 26; R. S. 1878 s. 1974; 1889 c. 480; Ann. Stats. 1889 s. 1949a, 1974; 1895 c. 175 s. 10; Stats. 1898 s. 1974; 1905 c. 167 s. 1; Supl. 1906 s. 1974; 1923 c. 291 s. 3; Stats. 1923 s. 209.03; 1933 c. 487 s. 249; 1969 c. 337.

209.04 History: 1870 c. 56 s. 28; 1870 c. 59 s. 23; 1871 c. 13 s. 3, 5; 1878 c. 214; R. S. 1878 s. 1976; 1880 c. 240 s. 4; Ann. Stats. 1889 s. 1976; Stats. 1898 s. 1976; 1905 c. 38 s. 1; Supl. 1906 s. 1976; 1907 c. 501; 1909 c. 116, 290; 1911 c. 27; 1917 c. 107, 213; 1923 c. 291 s. 3; Stats. 1923 s. 209.04; 1933 c. 144; 1933 c. 487 s. 239, 250; 1933 c. 489 s. 31; 1939 c. 468; 1943 c. 436; 1947 c. 75; 1951 c. 574; 1955 c. 366, 600; 1957 c. 74, 448; 1959 c. 352, 575, 602; 1961 c. 397, 562, 624; 1963 c. 299, 314, 344; 1963 c. 459 s.

52; 1965 c. 461; 1967 c. 73; 1967 c. 92 s. 22; 1967 c. 254; 1969 c. 144; 1969 c. 336 s. 176; 1969 c. 337 ss. 82, 88.

1. Agent defined.
2. Regulations.
3. Authority of agent.
4. Corporations excluded.
5. Penalty.
6. Exchange business.

1. Agent Defined.

Retail dealers of an automobile sales corporation which arranged insurance upon cars, to be effective on retail sale at a price which included a premium of insurance, were agents of the insurance company, within 209.04, Stats. 1925, and were required to hold certificates of authority. Chrysler S. Corp. v. Smith, 9 F (2d) 666.

An insurance agent who does not have a certificate of authority in the form prescribed by the commissioner of insurance is subject to the penalty provided. The fact that the insurance corporation has given him a certificate in a different form is no protection. 2 Atty. Gen. 427.

An examining physician is not an agent within secs. 1976 and 1977, Stats. 1915, 5 Atty. Gen. 442.

2. Regulations.

209.04 (3) (d) empowers the commissioner to issue regulations with respect to fidelity insurance. Sims v. Manson, 25 W (2d) 110, 130 NW (2d) 200.

3. Authority of Agent.

An oral agreement for present insurance, made by the agent of an accident association, is binding upon it, notwithstanding the insured's application contained, but without his knowing it, a clause to the effect that no liability should exist for any injury which might be sustained prior to the acceptance by the insurer's general manager of the application and fee, and the policy, issued subsequent to the receipt of the application and fee, was dated 2 days after the oral agreement between the agent and the insured. Mathers v. Union M. A. Asso. 78 W 588, 47 NW 1130.

If the insured accepts a policy which prohibits a local agent from waiving any of its provisions he is bound by it, and any attempted waiver by such agent after such acceptance merely by virtue of his agency is a nullity. Hankins v. Rockford Ins. Co. 70 W 1, 35 NW 34; Stevens v. Queen's Ins. Co. 81 W 335, 51 NW 555.

A company which issues a policy upon an application taken by one of its agents cannot disclaim his agency in the doing of anything necessarily implied in its taking and in the forwarding of it. If, however, the agent's authority is limited, and the insured has knowledge, actual or constructive, of the fact, a waiver as to a matter not within the agent's authority is ineffectual. Bourgeois v. Mutual Fire Ins. Co. 86 W 402, 57 NW 38.

By issuing a policy with knowledge of facts which by its terms would avoid it an agent who takes risks thereby waives such provisions, whether or not such is his intention.