previous year. Such a failure or refusal is a
continued failure to comply with the statute.
Unpaid license fees bear interest from the
time when they should have been paid. "Travelers" Ins. Co. v. Fricke, 99 W 407, 74 NW 372,
78 NW 407.

601.32 History: 1967 c. 43; 1967 c. 291 s. 14;
c. 337 ss. 19, 88: Stats. 1969 s. 601.32.

601.41.

See notes to sec. 1, art. IV, on legislative
power generally and on delegation of power,
citing State ex rel. United States F. & G.
Co. v. Smith, 184 W 309, 199 NW 95.

601.42.

The commissioner of insurance is entitled
to a reasonable time in which to make the in­
vestigation before granting or revoking a li­
ence and is called upon to exercise his judg­
ment and discretion. State ex rel. Court
of Honor of Illinois v. Giljohnam, 111 W 377, 87
NW 234; In re Court of Honor of Illinois, 109 W
625, 83 NW 497; Travelers" Ins. Co. v. Fricke, 89
W 307, 74 NW 372, 78 NW 407.

601.44.

601.45.

601.46 History: 1969 c. 337; Stats. 1969 s.
601.46.

601.47 History: 1969 c. 337; Stats. 1969 s.
601.47.

601.48 History: 1969 c. 337; Stats. 1969 s.
601.48.

601.49 History: 1969 c. 337; Stats. 1969 s.
601.49.

601.61.

601.62 History: 1969 c. 337; Stats. 1969 s.
601.62.

601.63 History: 1969 c. 337; Stats. 1969 s.
601.63.

601.64 History: 1969 c. 337; Stats. 1969 s.
601.64.

Editor's Note: The penalty provision of sec.
654, R. S. 1878, in respect to the failure to
file reports, was construed in State v. United
States M. A. Asso. 60 W 76, 33 NW 80; and
the similar provision of sec. 1864, Stats. 1886,
was construed in State v. Columbia Nat. Life

601.71.

601.72 History: 1969 c. 337; Stats. 1969 s.
601.72.

601.38 (2), Stats. 1927, requiring a foreign
insurance company desiring to do business in
Wisconsin to constitute the insurance com­
missioner its attorney to accept service on its
behalf, clearly puts foreign insurance cor­
porations outside of the general foreign in­
surance corporation statute (262.09, Stats.
1927). A foreign insurance corps by its ac­
ceptance of a license to do business in Wis­
consin is bound to hold itself amenable to the
jurisdiction of the state courts. State ex rel.
Aetna Ins. Co. v. Fowler, 196 W 491, 230 NW
584.

601.73.

CHAPTER 617.

Regulation of Insurance Holding
Companies and Intercompany
Transactions Relating to Insurers.

Legislative Council Note. 1969: New hold­ing
company legislation is urgently needed in
view of recent economic developments that
pose a serious threat to the proper regulation
of the insurance industry. In 1968 dozens of
holding company formations involving insur­
ance companies occurred or were in process.
Many of the larger property — liability and
life insurers had already formed holding com­
panies even before 1968. The holding company
development has already had a profound impact not only on
the insurance business, but on all American indus­
try. It is attracting attention by many regul­
atory agencies at both the federal and
state level. It poses problems and issues related to insurance regulation, as well as
broader considerations involving such ques­
tions as the degree of concentration of and pyramidng of economic power to be tolerat-
ed and the adequacy and rationale of anti-
trust laws.

Not all of these broader issues can be re-
solved within the scope of this revision. Even
many matters of insurance regulation which
have been raised by this new development
cannot be fully taken care of at this time by
any emergency proposal. It is clear, however,
that some new regulatory authority is needed
immediately to protect Wisconsin policyhold-
ers from the potential abuse of the holding
company development. It is also clear that it
would be unwise to make emergency legisla-
tion await either the resolution of broader
policy issues or a more elaborate analysis of
the insurance implications of the holding
company movement.

Both the potential abuse and the need for
emergency action was demonstrated on Jan-
uary 14, 1969, by an incident involving a New
York insurer which has achieved national au-
tority.

After being acquired by a noninsurance
holding company, the Great American
Insurance Company, which is admitted to do
business in Wisconsin, and which had a sur-
plus of over $300 million at year-end 1968,
voted a dividend of over $171 million payable
to its parent holding company.

Immediately after declaration of the divi-
dend, the New York insurance department
launched an investigation to determine what
effect so large a dividend would have on the
financial condition of the company and on the
amounts of insurance it would safely be able
to write in the future. The New York De-
partment noted that it did not have authority
to disapprove even such a large dividend. Al-
though the dividend may not have endan-
gered the solidity of the particular company
at all, the fact that such a payment can be
made in the way it was made raises issues
far transcending the individual case and its
individual merits. Wisconsin would find
itself in the same position even as to a domes-
tic insurer, not to speak of an authorized for-
eign one. A separate bill (S. B. 391) has al-
ready been introduced to deal with this par-
cular problem. If that bill becomes law,
section 617.33 of this act may be dropped.

There are other potential abuses, besides ex-
cessive dividends, in the holding company
development. They include all of the devices
for “pyramiding” that have been ingeniously ex-
ploited in other contexts. They encompass
the full range of less than arm’s-length trans-
actions that benefit affiliates at the expense
of the insurer. They permit evasion of ins-
urance laws and regulations by a parent
holding company through payments to insur-
ance agents and employees for example, that
could not be done by an insurance company
alone.

The statutory provisions proposed here are
designed to give the commissioner power to
prevent such abuses.

First, it requires all insurers doing business
in Wisconsin controlled by holding com-
panies or otherwise having affiliates to report
to the commissioner, as fully as he may wish,
the details about the intercorporate relation-
ships of the insurers and their affiliates.

Second, it gives the commissioner the pow-
er to examine any person affiliated with an
authorized insurer and to exercise some regu-
latory power over him, to the extent neces-
sary to complete the supervision of the au-
thorized insurer.

Third, it authorizes the commissioner to re-
quire reports on transactions between an in-
surer and any affiliate and in some cases to
disapprove or prohibit them.

Fourth, it subjects controlling persons to a
residual liability for the obligations of the
controlled insurer.

The position of the holding company prob-
lem in the framework of the general revision
of the insurance laws is a complex one. While
the core of the proposed new legislation will
be in ch. 617, to be created by this bill, there
are also amendments to existing statutes.
It touches the corporate structure and pro-
cedures of both domestic and foreign com-
panies, and it affects the general administra-
tion of the insurance laws as well as the
special delinquency proceedings of ch. 646.

For this reason, ch 645 is also amended to
permit application of that machinery to in-
surers endangered by intercorporate machi-
nations.

Finally, some duplication with other pend-
ng proposals must be taken into account.
Both chs 691 which is already before the legis-
lature and ch 611 which hopefully will be
ready this session will, if enacted, include
provisions serving the general purposes of
holding company control, to which parts of
the contents of this special act can be assim-
ilated. (Bill 600-5)

617.04 History: 1969 c. 398; Stats. 1969 s.
617.01.

617.02 History: 1969 c. 398; Stats. 1969 s.
617.02.

Legislative Council Note, 1969: What consti-
tutes control of an insurer cannot be defined
in precise terms for all situations. Sub. (1)
adopts 10% of the voting stock as the point
beyond which there is a presumption of con-
trol. The presumption of control is rebut-
able, and any party is free to prove either
control or lack of control, at any level of stock
ownership. The definition is adapted from
the regulations under the Securities Act of

Sub. (2) defines “affiliate” as any other cor-
poration that is part of the same system of
jointly or mutually controlled enterprises.
Since in such a system the potentially dan-
gerous transactions can take place among cor-
porations under common control as well as
between a controlled corporation and its di-
rectly controlling person, this draft deals con-
sistently with all affiliates, which include the
highest of the hierarchy, if there is any. Affili-
ates may be either insurers or noninsurers,
corporations of natural persons. Although
abuses are perhaps more likely in the case of
noninsurer control over an insurer, the same
possibilities do exist when an insurer controls
another insurer. (Bill 600-5)

617.03 History: 1969 c. 398; Stats. 1969 s.
617.03.

Legislative Council Note, 1969: The power
to make exceptions is a necessary correlative to
the broadly stated requirements of this chapter.
The usual procedure for establishing an excep-
tion would be a rule under s. 227.614. An indi-
vidual insurer or group of insurers could be exempted by an order. The exception could be terminated in the same way it was created. (Bill 600-S)

617.11 History: 1969 c. 398; Stats. 1969 s. 617.11.

617.12 History: 1969 c. 398; Stats. 1969 s. 617.12.

Legislative Council Note, 1969: This section has been drafted broadly to impose a duty on persons not otherwise subject to the jurisdiction of this state, to provide information to the commissioner. It reflects the view that there are sufficient contacts with the state to give Wisconsin legislative jurisdiction over persons attempting to acquire control of domestic insurers even though all affected transactions may be carried on entirely outside the state by persons having no other connection with the state. This conclusion is based on the notion that the combination of powers of the state and federal government flowing from enactment of the McCarran-Ferguson Act, 15 USC s. 1012 (b) (1964) extends the reach of the state significantly. (Bill 600-S)


Legislative Council Note, 1969: Every transaction between affiliates has the potential for abuse. This section therefore not only provides standards by which such transactions shall be judged but also gives the commissioner a broad continuum of power that can be tailored for the differing needs of different classes of cases.

Some transactions require only disclosure to the commissioner, others require an opportunity for disapproval. Details are to be specified by rule. The power of the commissioner with respect to nondomestic insurers is limited to a requirement of post facts reporting, though the information thus gained may enable him to act on the basis of other powers, such as those in ch. 645. (Bill 600-S)

617.22 History: 1969 c. 398; Stats. 1969 s. 617.22.

617.23 History: 1969 c. 398; Stats. 1969 s. 617.23.

Legislative Council Note, 1969: One of the dangers inherent in the holding company relationship is that the parent may drain from the subsidiary insurer so much surplus that the insurer is no longer solid. This section would, in effect, make the holding company and other affiliates a guarantor of the insurer's obligation to the extent that they have recently withdrawn assets from the insurer. This is not fully consistent with the notion of limited liability that is characteristic of the modern corporation. But limited liability is not inherent in "corporateness". Historically it was not "of the essence". Rather, corporate organization was often used in an early time as a device for compulsory mobilization of capital from subscribers. It had a purpose quite inconsistent with the limitation of liability to money actually invested. Moreover, as the owners of bank shares have had occasion to know in the recent past, liability limited to investment has not always been the rule in even the modern corporation. Here, the amount recovered is limited to re-
coupment; this is a kind of statutory remedy against unjust enrichment.

A question has been raised about the fairness of making two different affiliates liable under sub. (2) (a) and (b) for the same dividends. But they are together only liable to repay the dividends once. It should be left to the courts to determine, on the basis of all the facts, which of the two is primarily liable, if they wish to litigate that question (which would occur only rarely). For the purposes of this protective device, it is desirable to make it as easy as possible for the receiver to collect, whatever corporate manipulations have taken place since the dividend was declared.

Sub. (3) distinguishes between domestic and foreign insurers. For the former, re-
coupment should result in complete payment of legitimate claims; for the latter, Wisconsin should only be concerned to the extent necessary to protect Wisconsin policyholders.

This is a significant change from earlier drafts.

Sub. (4) attempts to reach another of the dangers of the holding company arrangement by restricting the parent's ability to use intercorporate transfers and manipulations to impose economic loss on those who should not be asked to bear it. In the unusual but pos-
sible case where dishonest manipulations have produced an insolvent insurer, other manipulations might also produce insolvency in the dividend recipient made liable for re-
payment to the delinquent insurer under s. 9.

And the manipulations would almost certainly be such as to make the funds untraceable under any general equitable doctrines. Sub. (4) would force solvent affiliates to assume the liability for making dividend repayments which fall on insolvent affiliates. It is limited to "upstream" affiliates only. (Bill 600-S)

Editor's Note: Sec. 617.23 of 600-S was amended by inserting a new subsection (2) and renumbering the following subsections.

CHAPTER 619.

Risk Sharing Plans.

Editor's Note, 1969: Ch. 144, Laws 1969, which created this chapter, contains extensive explanatory notes; these notes are printed in full in the bound volume containing the session laws, Laws of Wisconsin, 1969.

619.01 History: 1969 c. 144; Stats. 1969 s. 619.01.

619.02 History: 1969 c. 144; Stats. 1969 s. 619.02.

619.03 History: 1969 c. 144; Stats. 1969 s. 619.03.

CHAPTER 625.

Rate Regulation.

Editor's Note: Ch. 144, Laws 1969, which