

1977 Senate Bill 258

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CHAPTER 339, Laws of 1977

AN ACT to repeal chapter 201 (title), 201.24, chapter 203 (title), 203.09, chapter 204, chapter 206 (title), 206.01, 206.02, 206.19, 206.22, chapter 207 (title), chapter 209, chapter 212 and 601.01 (1); to renumber 201.045, 201.71 to 201.74, 201.76 to 201.82, 203.24, 206.181, 206.201, 206.46, 206.47, 207.04 and 211.01 to 211.17; to renumber and amend chapter 211 (title) and 612.36; to amend 76.37 (1) and (3), 185.983 (1) (intro.), 185.992 (intro.), 600.03 (10) and (27) (a), 601.01 (title), 601.32 (2) (b), 601.62 (1), 610.47, 612.01 (3), 613.02 (1) (b), 618.11 (7) and 618.36 (1); and to create 19.12, 112.07, 612.36 (2), chapter 616 (title), 620.05, 641.02 and 814.05 of the statutes, relating to miscellaneous insurance code revisions.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 19.12 of the statutes is created to read:

19.12 Bond premiums payable from public funds. Any public officer required by law to give a suretyship obligation may pay the lawful premium for the execution of the obligation out of any moneys available for the payment of expenses of the office or department, unless payment is otherwise provided for or is prohibited by law.

NOTE: This provision is part of s. 204.11, repealed by this act. It has nothing to do with the law of insurance but deals solely with the duties and powers of public officials. As such, it belongs in ch. 19 and is transferred there with minor editorial change.

SECTION 2. 76.37 (1) and (3) of the statutes are amended to read:

76.37 (1) Every license issued pursuant to under ss. 76.30 to 76.37 and chs. ~~200 to 212 and~~ 600 to 649 shall certify that payment of the license fee or tax and the fee required by s. 601.31 (2) has been made, be signed by the commissioner of insurance, and be in such form as is approved by the attorney general.

(3) No action ~~shall~~ may be commenced to compel the issuance of the certificate of authority provided for by chs. ~~200 to 212 and~~ 600 to 649 until the license fee imposed by ss. 76.30 to 76.37, and the fees under s. 601.31 have been fully paid.

SECTION 3. 112.07 of the statutes is created to read:

112.07 Premium on bond allowed as expense. Any fiduciary required to give a suretyship obligation may include as a part of the expense of executing the trust the lawful premium paid a surety corporation for executing the obligation.

NOTE: This provision is part of s. 204.11, repealed by this act. It has nothing to do with the law of insurance but deals solely with the proper conduct of fiduciaries. As such it belongs in ch. 112 and is transferred there without change.

SECTION 4. 185.983 (1) (intro.) of the statutes is amended to read:

185.983 (1) (intro.) Every such voluntary nonprofit sickness care plan shall be exempt from the state insurance ~~laws code~~, with the exception of ss. ~~201.045~~ 601.04, 601.31, 632.79 and 632.91 but the sponsoring association shall:

SECTION 5. 185.992 (intro.) of the statutes is amended to read:

185.992 Requirements of plans. (intro.) Every such interscholastic benefit plan shall be exempted from the state insurance ~~laws code~~, with the exception of ss. ~~201.045~~ 601.04 and 601.31 but the sponsoring association shall:

SECTION 6. Chapter 201 (title) of the statutes is repealed.

SECTION 6m. 201.045 of the statutes is renumbered 601.04.

SECTION 7. 201.24 of the statutes is repealed.

NOTE: Section 201.24 is no longer necessary. Subsection (1) is covered by s. 610.21. Subsection (2) is covered by ch. 620, as applied to all insurers by s. 620.01 (2), and by s. 612.36, as amended by this act. Subsection (3) is covered by s. 620.21 (2). Subsections (5) and (6) are no longer needed, since their principles are applied to all relevant kinds of insurers by ss. 611.60 and 611.61 and corresponding sections of other chapters. Subsection (7) is unnecessary after the repeal of the remainder of the section.

SECTION 8. 201.71 to 201.74 and 201.76 to 201.82 of the statutes are renumbered 616.71 to 616.74 and 616.76 to 616.82, respectively.

NOTE: The motor club law is moved intact to new ch. 616.

SECTION 9. Chapter 203 (title) of the statutes is repealed.

SECTION 10. 203.09 of the statutes is repealed.

NOTE: Section 203.09 has its roots in the 19th century, in an entirely different economic and social environment. It has not been substantially changed since it was enacted as ch. 73, laws of 1876. It is no longer in use and is not compatible with our more structured governmental system in the late 20th century. It serves no useful purpose. Of the 5 states with such laws on the books in recent years, Indiana's was repealed in 1972 (Ind. P.L. 191, repealing Burn's Indiana Stats., ss. 39-2101 through 2104 (1971)) and Ohio's was repealed in 1976 (136 Ohio Laws, House Bill 338, effective January 9, 1976, repealing PAGE's OHIO code, ss. 1709.01 through 1709.07).

SECTION 11. 203.24 of the statutes is renumbered 636.04.

SECTION 12. Chapter 204 of the statutes is repealed.

NOTE: Section 611.19 and ch. 623 make s. 204.06 unnecessary.

SECTIONS 1, 3 and 41 of this bill place the provisions of s. 204.11 in more appropriate places in the statutes.

SECTION 13. Chapter 206 (title) of the statutes is repealed.

SECTION 14. 206.01 and 206.02 of the statutes are repealed.

NOTE: To the extent that the definitions in s. 206.01 are needed, they are transferred to more appropriate places in the statutes, either to general definition sections or as definitions in individual sections where the terms are used.

Section 206.02 is so uncertain of application that it is not useful. Provisions of chs. 611 and 617 adequately protect policyholders.

SECTION 15. 206.181 of the statutes is renumbered 632.43.

SECTION 16. 206.19 of the statutes is repealed.

NOTE: Section 206.19 is unnecessary because of the provisions of ch. 645.

SECTION 17. 206.201 of the statutes is renumbered 623.06.

SECTION 18. 206.22 of the statutes is repealed.

NOTE: Section 206.22 is replaced by ss. 618.11 (7) and 620.05, created by this act.

SECTION 19. 206.46 and 206.47 of the statutes are renumbered 630.05 and 630.10, respectively.

SECTION 20. Chapter 207 (title) of the statutes is repealed.

SECTION 21. 207.04 of the statutes is renumbered 628.33.

NOTE: Section 207.04 involves both unfair marketing practices and contract provisions. It is renumbered to a place that is appropriate for its main thrust, which is a specified unfair marketing practice.

SECTION 22. Chapter 209 of the statutes is repealed.

NOTE: The comprehensive provisions of ch. 645, dealing with rehabilitation and liquidation of insurers, makes ss. 209.03 and 209.12 unnecessary.

SECTION 23. Chapter 211 (title) of the statutes is renumbered chapter 641 (title) and amended to read:

CHAPTER 641
EMPLOYEE WELFARE FUNDS
AND PLANS

SECTION 24. 211.01 to 211.15 and 211.17 of the statutes are renumbered 641.06 to 641.20 and 641.25, respectively.

SECTION 25. Chapter 212 of the statutes is repealed.

NOTE: Chapter 212 is no longer necessary. It was enacted to provide for the creation of domestic stock title insurers. There are none that are active in the business. All active insurers doing this line of business in this state are foreign.

There is no longer any need for special organizing provisions for title insurers, if there ever was one. Chapter 611 will serve admirably. Title insurers should be subject to the rest of the insurance code. Thus there is no reason to preserve any part of ch. 212 with the possible exception of the license fee provisions in s. 212.03.

The financial provisions of chs. 611 and 623 replace those of s. 212.01.

The provisions of ch. 611 conferring powers on insurance corporations make s. 212.02 unnecessary.

Except for the license fee provisions of s. 212.03, discussed below, none of the provisions of s. 212.03 are needed any longer in view of the applicable provisions of chs. 601, 611, 623 and 645. The provisions of those chapters are more stringent than those of ch. 212, as they should be.

Under s. 212.03, title insurance premiums of the companies to which the license fee provision applies are to be treated like fire insurers. The only

question is to what companies it applies. There is some language in the complicated section that can be interpreted as making the license fee provision applicable to both domestic and foreign title insurers. But it is also easily possible to read it (and it has been so interpreted in practice) as applying only to domestic title insurers. The insurance laws revision committee so treats it.

Since there are no active domestic title insurers, repeal of this license fee provision would not now make a practical difference. It would make a difference only if a domestic title insurer were subsequently organized or an existing one became active, for they would then arguably pay a license fee at the fire insurance rate rather than the casualty rate. Foreign title insurers are now taxed at the casualty rate. Thus symmetry suggests simply repealing the chapter and subsuming title insurance to casualty insurance for license fee purposes. While there is no principled ground for deciding at what rate to tax a given line of insurance, title insurance falls more naturally with casualty than with fire insurance for most purposes. While it has been the policy of the insurance laws revision committee to leave the revenue laws completely alone, there is a good case to be made for an exception here. This act, therefore, simply repeals ch. 212, not retaining the special license fee treatment of domestic title insurers.

SECTION 26. 600.03 (10) and (27) (a) of the statutes are amended to read: /

600.03 (10) "This code" or "the insurance code" means chs. ~~200 to 212~~ and 600 to 649.

(27) (a) "Insurer" means any person or association of persons doing an insurance business as a principal, and includes fraternal benefit societies, gift annuity societies, ~~title guaranty corporations~~, cooperative associations organized under s. 185.981, 1973 stats., and voluntary benefit plans organized under s. 185.991, 1973 stats. It also includes any person purporting or intending to do an insurance business as a principal on his or her own account.

NOTE: It is not necessary to name title insurers in s. 600.03 (27) (a) to make them insurers. It is self-evident that they are. Section 610.21 (3) (a) makes this clear.

SECTION 27. 601.01 (title) of the statutes is amended to read:

601.01 (title) Construction and purposes.

SECTION 28. 601.01 (1) of the statutes is repealed.

SECTION 29. 601.32 (2) (b) of the statutes is amended to read:

601.32 (2) (b) One ~~per cent~~ percent of the sum of the taxes, fees and dues paid by ~~such~~ the company under ~~chs. ch.~~ 76 ~~and 212~~ and s. 601.93 for ~~said~~ the preceding calendar year.

SECTION 30. 601.62 (1) of the statutes is amended to read:

601.62 (1) HEARING REQUIRED. Whenever the insurance laws code expressly so ~~provide~~ provides, the commissioner shall hold a hearing before issuing an order.

SECTION 31. 610.47 of the statutes is amended to read:

610.47 Transition provisions for miscellaneous unincorporated insurers. Except for associations under ss. 185.981 and 185.991, and except as otherwise provided in this code, all unincorporated domestic insurance associations, societies or organizations shall be reorganized as corporations under ch. ~~202~~, 611, 612, 613 or 614 before January 1, 1973, or the commissioner shall thereupon petition for and the court shall forthwith issue an

order for liquidation under s. 645.42 on the ground of failure to incorporate as here required.

SECTION 32. 612.01 (3) of the statutes is amended to read:

612.01 (3) SCOPE. Except as otherwise provided, this chapter applies to all corporations organized under this chapter or operating under ~~ch. 202 on May 24, 1973~~ it pursuant to s. 610.43.

SECTION 33. 612.36 of the statutes is renumbered 612.36 (1) and amended to read:

612.36 (1) (title) GENERAL. ~~Town~~ Except as provided in sub. (2), town mutuals are subject to ch. 620 but shall be restricted as provided in s. 620.03 (1) unless individually exempted by the commissioner under s. 620.03 (2). In applying the restrictions of ch. 620 all assets of town mutuals shall be treated as if they were required to satisfy the compulsory surplus requirement, except to the extent that the commissioner by rule determines otherwise.

SECTION 34. 612.36 (2) of the statutes is created to read:

612.36 (2) REAL ESTATE. Section 620.23 (1) (c) does not apply to town mutuals. Except under s. 620.21 (2), no town mutual may own real estate that in the aggregate exceeds, in value measured at cost, one mill on the dollar of the insurance in force.

NOTE: This amendment continues in effect that portion of s. 201.24 (2) that applies to town mutuals.

SECTION 35. 613.02 (1) (b) of the statutes is amended to read:

613.02 (1) (b) Except as otherwise specifically provided, service insurance corporations organized or operating under this chapter are subject to ~~ss. 209.04~~ 610.11, 610.21 and 610.46 and ~~chs. 207, 600, 601, 617, 620, 623, 625, 628, 631, 632, 636~~ and 645 and to no other insurance laws.

NOTE: Some of the changes in cross references in this section are necessary because of the repeal of the remainder of chs. 200 to 212 by this bill and some to bring the cross references up to date as a result of the enactment of various chapters in the 1975 legislative session.

SECTION 36. Chapter 616 (title) of the statutes is created to read:

CHAPTER 616

MISCELLANEOUS INSURERS

SECTION 37. 618.11 (7) of the statutes is amended to read:

618.11 (7) A description of its present business operations, including the coverages written and the territories in which it does business, and including a statement that it is in compliance with s. 620.05, with such documentary evidence of compliance as the commissioner requires;

NOTE: This amendment to s. 618.11 (7) and the creation of s. 620.05 replace s. 206.22.

SECTION 38. 618.36 (1) of the statutes is amended to read:

618.36 (1) CONTINUANCE OF REGULATION. A nondomestic insurer authorized under this chapter is subject to regulation under the applicable provisions of ~~chs. 200 to 212 and 600~~ to 649 until released from regulation under this section.

SECTION 39. 620.05 of the statutes is created to read:

620.05 Protection against currency fluctuations. Any insurer doing business that requires it to make payment in different currencies shall have investments in securities in

each of such currencies in an amount that independently of all other investments meets the requirements of the insurance code of this state as applied separately to the insurer's obligations in each currency. The commissioner may by order exempt an insurer, or by rule a class of insurers, from this requirement if the obligations in other currencies are small enough that no significant problem for solidity would be created by substantial fluctuations in relative currency values.

NOTE: This and the amendment to s. 618.11 (7) replace s. 206.22, broadened, as is appropriate, to apply to all insurers.

SECTION 40. 641.02 of the statutes is created to read:

641.02 Scope. This chapter applies to every employee welfare fund covering any person employed in this state, except:

- (1) To the extent that applicable federal law excludes the operation of state law.
- (2) Funds and plans with no benefits involving risks like those in insurance, as determined by the commissioner by rule.

NOTE: The federal employee retirement income security act of 1974 (ERISA), Pub. L. No. 93-406, 88 Stat. 820, preempted state laws dealing with employee welfare funds (sec. 514). The preemptive intent was sweeping but not altogether without limit. Moreover, the preemption section may not have been successful in achieving as much as was intended. Congress also created a task force (sec. 3021) to make a full study and review of "... (4) the effects and desirability of the Federal preemption of State and local law with respect to matters relating to pension and similar plans...". Finally, ERISA authorizes the secretary of labor to "... utilize, on a reimbursable or other basis, the facilities or services of any department, agency, or establishment of the United States or of any State or political subdivision of a State including the services of any of its employees, with the lawful consent of such department, agency, or establishment..." (sec. 506).

Viewing the matter realistically, it seems unlikely that effective state regulation of pension and other welfare plans for employees is likely to be possible within the near future. The nearly total preemption contemplated by sec. 514 may have been a mistake in policy, however, for at least in Wisconsin and New York, the state insurance departments have made some contribution to the protection of employees entitled to benefits under such plans, of quite a different kind than is the focus of ERISA. Given any possibility, even if slight, that the states may be permitted to play some meaningful role at some future time, it would be unfortunate to repeal ch. 211 now, leaving nothing at the state level to fill up the area opened up by federal action. It is better to preserve ch. 211 in existence in the event that a meaningful role for the state should emerge. If that should happen, the state's role should then be reexamined and the chapter carefully revised. Now, however, it does not seem worthwhile to pursue the revision of the employee welfare fund law through all of the necessary stages. It seems sufficient merely to keep the state's commitment in being, though latent, through the preservation of ch. 211, renumbered as ch. 641. Later, if it needs to be revised, the early drafts of chs. 641 and 642 will be available to provide a point of departure, at least.

For an exhaustive discussion of the federal-state interaction on this subject, see W. Pfennigstorf and S. Kimball, *Employee Legal Service Plans: Conflicts Between Federal and State Regulation*, 1976 A.B.F. Res. J. 787-853.

Section 641.02 (2) makes it possible to avoid administratively imposing unnecessary burdens on funds and plans.

SECTION 41. 814.05 of the statutes is created to read:

814.05 Bond premium as costs. Any party entitled to recover costs or disbursements in an action or special proceeding may include in such disbursements the lawful premium paid to an authorized insurer for a suretyship obligation.

NOTE: This provision is currently the 2nd sentence of s. 204.11. It has nothing to do with the law of insurance but deals solely with the proper taxing of costs in legal proceedings. As such it belongs in ch. 814 and is transferred there without change of meaning. The language is very slightly edited.

SECTION 42. **Program responsibilities.** (1) In the list of program responsibilities specified for the office of the state treasurer in section 14.561 of the statutes, reference to section "212.03" is deleted.

(2) In the list of program responsibilities specified for the office of the commissioner of insurance in section 15.731 of the statutes, reference to chapters "200 to 212" is deleted.

(3) In the list of program responsibilities specified for the department of justice in section 15.251 (intro.) of the statutes, reference to section "76.37 (1)" is inserted.

SECTION 43. **Term change.** Wherever in the following sections of the statutes the term "insurance law" or "insurance laws" is found, the term "insurance code" is substituted: 66.416 (2), 424.209 (1) and (4) (c), 424.401, chapter 601 (title), 601.01 (2) and (3) (intro.), (d) and (k), 601.12 (2), 601.13 (4), 601.41 (1), 601.42 (1) (intro.) and (4), 601.43 (1) (a), 601.46 (3) (m), 601.48 (1), 601.62 (2), 601.64 (5), 636.04 (3) as renumbered, 645.41 (7) and 801.11 (5) (d).

SECTION 44. **Cross reference changes.** In the sections of the statutes listed in Column A, the cross references shown in Column B are changed to the cross references shown in Column C:

A	B	C
Statute Sections	Old Cross References	New Cross References
15.221 (intro.)	203.24 (5)	636.04 (5)
616.71.(intro.), as renumbered	ss. 201.71 to 201.82	this chapter
616.72, as renumbered	ss. 201.71 to 201.82	this chapter
616.79, as renumbered	ss. 201.71 to 201.82	this chapter
616.81, as renumbered	ss. 201.71 to 201.82	this chapter
616.82, as renumbered	ss. 201.71 to 201.82	this chapter
623.04	206.201	623.06
623.06 (2)(intro.), as renumbered	206.181 (9)	632.43 (9)
623.06 (2)(a), as renumbered	206.181 (6)(b)	632.43 (6)(b)
623.06 (2)(b), as renumbered	206.181 (6)(c)	632.43 (6)(c)
623.06 (8), as renumbered	206.181	632.43
631.11 (5)	208.01	614.01 (1)
632.45 (1)	206.181	632.43
632.94 (3)(e)	206.181	632.43
641.17, as renumbered	211.03	641.08
641.20 (2), as renumbered	211.12	641.17