

No. 575, A.]

[Published July 28, 1919.

CHAPTER 654.

AN ACT to amend subsection (4) of section 29.18 of the statutes, relating to close seasons for beavers and otters.

The people of the state of Wisconsin, represented in Senate and Assembly, do enact as follows:

SECTION 1. Subsection (4) of section 29.18 of the statutes is amended to read: (29.18)

(4) Beaver, otter (a) Beaver in Price, Rusk and Sawyer counties as stipu- lated in subsec- tion (5) of sec- tion 29.59	None * * * Feb. 1 to Mar. 31, 1919, and * * * 1920	No limit
--	--	----------

SECTION 2. This act shall take effect upon passage and publication.

Approved July 25, 1919.

No. 655, A.]

[Published July 28, 1919.

CHAPTER 655.

AN ACT to create sections 1966—33a to 1966—33n, inclusive, of the statutes, relating to the incorporation and licensing of insurance companies doing a surety business and the discharge of sureties, and to repeal section 4281b, relating to the discharge of sureties.

The people of the state of Wisconsin, represented in Senate and Assembly, do enact as follows:

SECTION 1. Fourteen new sections are added to the statutes to read: Section 1966—33a. A corporation authorized by law and by its charter so to do may transact the business of guaranteeing the fidelity of or becoming surety for (a) persons holding positions of public or private trust, (b) the performance of any act, duty or obligation or the refraining from any act, (c) the performance of any contract other than one of insurance, (d) insurance companies on bonds required by states or municipalities as a condition of transacting business therein, (e) indemnifying banks, bankers, brokers, financial or moneyed associations, or financial or moneyed corporations, against the loss of any bills of exchange, notes, drafts, acceptances of drafts, bonds, securi-

ties, evidence of debt, credits, deeds, mortgages, documents, currency and money, except as against loss caused by marine risk or risks of transportation or navigation, (f) guaranteeing any federal land bank against loss by reason of defective title to or encumbrances on real property on which any such federal land bank may make a loan secured by a mortgage; and may execute bonds, undertakings and indemnities required or permitted or by law allowed. Such a corporation may also reinsure against loss arising out of such obligations. Such obligations shall be known and treated as suretyship obligations, and such business shall be known as the surety business.

Section 1966—33b. Whenever a suretyship obligation is required or permitted or by law allowed, such obligation may be executed by a corporation authorized by the laws of this state and by its charter to execute such obligation; and such corporations are authorized and empowered to execute all such obligations, which, however, need not be under the seal of such corporations unless by law specially required; and the execution by any such corporation of such obligation by an officer, attorney-in-fact or other representative authorized to execute the same shall be sufficient and shall be accepted as and be a full compliance with every requirement that such obligation be executed by a surety or sureties, or that such surety or sureties be residents, householders or freeholders, or possess any other qualification; and the certificate of the commissioner of insurance authorizing such corporation to transact the surety business in this state, while in force and unrevoked, shall be conclusive evidence of the solvency of such corporation and of its sufficiency as surety and of the propriety of accepting it and approving it as such, and be in lieu of any justification by such corporation.

Section 1966—33c. No domestic corporation hereafter organized shall be authorized to commence the transaction of the surety business in this state unless it has a capital stock of at least two hundred and fifty thousand dollars and a surplus of at least one hundred and twenty-five thousand dollars, both fully paid in cash. No domestic insurance corporation authorized in this state to transact other classes of insurance shall hereafter be authorized to transact the surety business unless in addition to the capital stock and surplus requirements for the classes of insurance being transacted by such corporation, it shall also have a capital of at least two hundred and fifty thousand dollars and a surplus of at least one hundred and twenty-five thousand dollars.

Section 1966—33d. 1. No corporation organized under the

laws of any other state, district, territory or possession of the United States shall hereafter be authorized to transact the surety business in this state unless at the time of its organization it had the capital and surplus required of a similar domestic corporation, or, subsequent to its organization and prior to its application to transact the surety business in this state, it had acquired a capital and surplus equal to that required of a similar domestic corporation, and unless at the time of its application for admission in this state it has an unimpaired capital at least equal to that required of a similar domestic corporation. No corporation organized under the laws of a country other than the United States shall hereafter be authorized to transact the surety business in this state unless it shall satisfy the commissioner of insurance of this state that it has on deposit with American trustees, or with the proper officer or officers of a state or states of the United States, or both, satisfactory securities equal in value to the total of the capital and surplus required of a similar domestic corporation at the time of its first authorization in this state, and that such securities are held in trust for the fulfillment by such company of all its obligations within the United States.

2. Each such foreign corporation, when applying for admission to transact the surety business in this state, shall file with the commissioner of insurance (a) a copy of its charter or deed of trust or settlement, (b) a verified detailed statement of all the items, matter and other information in regard to its affairs required by law to be stated in the annual report of a similar domestic corporation made as the commissioner may require, (c) an agreement, signed by the proper officers of the corporation, that it will not, while authorized to do business in this state, transact any business therein which a similar domestic corporation is prohibited from transacting, (d) a written appointment of the commissioner of insurance to be the true and lawful attorney of such corporation in and for this state, upon whom all lawful process in any action or proceeding against the corporation may be served to the same effect as if it were a domestic corporation. It shall be the duty of the commissioner of insurance to transmit forthwith to such corporation at its home office or its principal office in the United States a true copy of any process so served.

3. No such foreign corporation shall begin the transaction of its business until the commissioner of insurance shall issue to such corporation a certificate of authority specified in section 1966—33f of this act.

Section 1966—33e. 1. No domestic corporation shall hereafter be authorized to transact the surety business in this state unless it shall deposit and keep on deposit with the commissioner of insurance satisfactory securities worth, at their market value, not less than one hundred thousand dollars, and, in case such corporation transacts such business in one or more other states, it shall deposit other securities, so that its total deposit shall be worth, at their market value, at least two hundred and fifty thousand dollars. No corporation incorporated under the laws of any other state, district, territory or possession of the United States shall be authorized to transact the surety business in this state unless such corporation shall satisfy the commissioner of insurance that it has on deposit with the proper officer or officers of a state or states, district, territory or possession of the United States, satisfactory securities worth, at their market value, at least two hundred and fifty thousand dollars. The securities so deposited in this state or elsewhere shall be held in trust for the fulfillment by the depositing corporation of all of its obligations within the United States. No deposit shall be required of any such corporation organized under the laws of any other country, other than the deposit required by section 1966—33d hereof.

2. No additional or different deposit shall be required of an insurance company transacting the surety business and other classes of insurance as a condition of its engaging in the surety business, provided that the sureties deposited in this state or elsewhere shall be worth, at their market value, the sum herein specified—dependent on the doing of business in this or one or more other states, and such securities are held in trust for the fulfillment by the depositing corporation of all of its contracts, whether of insurance or of suretyship, within the United States.

3. The securities deposited pursuant to this section shall, except as herein otherwise provided, be held, exchanged, withdrawn, disposed of and the interest therefrom be paid to the corporation making the deposit, provided the securities substituted for those exchanged or disposed of shall not decrease the total market value of the securities on deposit below the sum of one hundred thousand dollars, or below the sum of two hundred and fifty thousand dollars, as the case may be.

4. Sections 1966—33a to 1966—33n, inclusive, shall not apply to mutual companies and associations organized in this state.

Section 1966—33f. 1. When the commissioner of insurance shall be satisfied, either by the papers filed or by such examination as he shall make, that any corporation having the

power to transact the surety business has fully complied with and that it has the capital and surplus, earned or paid in, specified in the preceding sections of this act, he shall issue to it a certificate under his hand and official seal authorizing it to transact in this state the business of corporate suretyship as defined in section 1966—33a hereof, and certifying that it is qualified to become and be accepted as surety or guarantor on all bonds, undertakings or other obligations specified in section 1966—33a of this act; provided, however, that if such corporation is also authorized to exercise insurance powers, authority to exercise such powers and suretyship powers may be included in one certificate.

2. The certificate issued to such a corporation not organized under the laws of this state shall not remain in force for a longer period than one year and all such certificates shall expire on the 30th day of April next following the date of issue.

3. The statements required by subdivision two of section 1966—33d of this act to be filed in the office of the commissioner of insurance before a certificate of authority is granted to such a corporation. Such certificate may be renewed from year to year in such manner as the commissioner of insurance may require; and the commissioner of insurance shall have the same power to refuse to issue any renewal certificate that he has as to an original certificate.

4. Whenever, in the judgment of the commissioner of insurance, it will best promote the interests of the people of this state, he may, after a hearing on not less than thirty days' notice, revoke a certificate issued to such a domestic or foreign corporation prior to its expiration under this section; provided that the action of the commissioner of insurance in revoking such certificate shall not take effect until thirty days after the service of notice of such revocation at its home office or principal office in the United States. The action of the commissioner of insurance in refusing to issue or renew, or in revoking, a certificate of authority, as provided in this section, shall be subject to review by the courts; with, if so ordered, a suspension of the effect of such refusal or revocation pending decision on such review.

Section 1966—33g. 1. Every corporation, association or bureau which now exists or hereafter may be formed, and every person who maintains or hereafter may maintain a bureau or office, for the purpose of suggesting, approving or making rates on suretyship obligations to be effective in this state and to be used by more than one corporation, shall file with the commissioner of insurance a copy of the articles of agreement, associa-

tion or incorporation, and the by-laws and all amendments thereto under which such person, corporation, association or bureau operates or proposes to operate, together with his or its business address and a list of members represented by him or it, as well as such other information concerning such rating organization and its operations as may be required by the commissioner.

2. Every such person, corporation, association or bureau, whether before or after the filing of the information specified in the last preceding paragraph, shall be subject to the visitation, supervision and examination of the commissioner of insurance, who shall cause to be made an examination thereof as often as he deems it expedient, and at least once in three years.

3. Every such person, corporation, association, bureau or any corporation authorized to transact surety business in this state, shall file with the commissioner of insurance, whenever he may call therefor, any and every schedule of rates or such other information concerning such rates as may be suggested, approved or made by such rating organization or surety corporation.

4. Any two or more corporations transacting the surety business in this state, may jointly employ for the computing or making of schedules of rates and the amendments thereto, the services of such expert or experts as they may deem advisable for such purpose.

5. No such person, corporation, association or bureau, or any corporation authorized to transact the surety business in this state, shall fix or make any rate or schedule of rates, or charge a rate on suretyship obligations which discriminates unfairly between risks within this state of essentially the same hazard. Whenever it is made to appear to the satisfaction of the commissioner of insurance that such discrimination exists, he may, after a full hearing either before himself or before a salaried employe of the insurance department whose report he may adopt, order such discrimination removed; and all such persons, corporations, associations or bureaus affected thereby shall immediately comply therewith; nor shall such persons, corporations, associations or bureaus remove such discrimination by increasing the rate on any risk or class of risks affected by such order unless it is made to appear to the satisfaction of the commissioner of insurance that such increase is justifiable.

6. No officer, agent or other representative of such a corporation, authorized to transact the surety business in this state, and no surety broker, shall, as to any such suretyship obligation effective or to be effective in this state and as an inducement to

securing the same, or after such an obligation has been executed, whether with or without the knowledge of such corporation, pay, allow or give, or offer to pay, allow or give, directly or indirectly, any rebate, discount or reduction from the premium rate fixed in compliance with the next preceding paragraph, nor any special favor or advantage in the terms, credits or allowances therein contained; nor shall any such person or corporation promise or give, directly or indirectly, as an inducement to such suretyship obligation or in connection therewith, anything of value whatsoever, other than stated or indicated in the written evidence of such obligation; nor shall any surety broker, his agent or representative, or any other person, directly or indirectly, either by sharing commissions or in any manner whatsoever, pay, allow or give, or offer to pay, allow or give to the principal in such suretyship obligation, or to any employe of such principal as inducement to such suretyship obligation, or after the same shall have been effected, any rebate from the premium, or anything of value whatsoever not stated in the written evidence of such obligation; this section shall not prevent any such corporation or other insurer, or his agent or its agents, from paying commissions to a broker, who shall have negotiated for the suretyship obligation, nor shall this section prevent any broker from sharing or dividing commissions earned or received by him with any other broker or brokers who shall have aided him in respect to the suretyship obligation for the negotiation of which such commission shall have been earned or paid.

7. Any person, partnership, association or corporation violating any of the provisions of this section shall, upon conviction thereof, in addition to any other penalty by law provided, be punished by a fine of not less than five hundred dollars or more than one thousand dollars, or by imprisonment for not more than three months, or by both such penalties in the discretion of the court.

Section 1966—33h. Any corporation transacting the surety business may contract for security for any suretyship obligation, and any receiver, assignee, guardian, conservator, trustee, executor, administrator or other fiduciary or party from whom a suretyship obligation is required or permitted or by law allowed may deposit for safekeeping any or all moneys, assets and other property for which he or it is or may be responsible with a bank, savings bank, safe deposit or trust company authorized by law to do business as such, and in such manner as to prevent the withdrawal or alienation thereof without the written consent of such corporation or an order of a court or judge thereof having juris-

diction of such fiduciary, made on such notice to such corporation as such court or judge may direct; and, generally, it shall be lawful for such a corporation to enter into any contract for its indemnity or security with any person, partnership, association or corporation, provided that such contract is not prohibited by law or against public policy.

Section 1966—33i 1. No corporation transacting the surety business shall execute any suretyship obligation or expose itself to any loss on any one risk or hazard in an amount in excess of one-tenth of its capital and surplus, unless it shall be protected in excess of that amount by:

(a) Reinsurance in a corporation authorized to transact the surety business in the state where the risk is located, provided that such reinsurance is in such form as to enable the obligee in or beneficiary of such suretyship obligation to maintain an action thereon against the company reinsured jointly with such reinsurer and, upon recovering judgment against such reinsured, to have recovery against such reinsurer for payment to the extent in which it may be liable under such reinsurance and in discharge thereof; or

(b) The co-suretyship of such a corporation similarly authorized; or

(c) By deposit with it in pledge or conveyance to it in trust for its protection of property; or

(d) By conveyance or mortgage for its protection; or

(e) In case such suretyship obligation was made on behalf or on account of a fiduciary holding property in a trust capacity, by deposit or other disposition of a portion of the property so held in trust that no future sale, mortgage, pledge or other disposition can be made thereof without the consent of such corporation, except by decree or order of a court of competent jurisdiction;

Provided: (1) That such a corporation may execute what are known as transportation or warehousing bonds for United States internal revenue taxes to an amount equal to fifty per cent of its capital and surplus; (2) that, when the penalty of the suretyship obligation exceeds the amount of a judgment described therein as appealed from and thereby secured, or exceeds the amount of the subject matter in controversy or of the estate in the hands of the fiduciary for the performance of whose duties it is conditioned, the bond may be executed if the actual amount of the judgment or the subject matter in controversy or estate not subject to supervision or control of the surety is not in excess of such limitation; and (3) that, when the penalty of the

suretyship obligation executed for the performance of a contract exceeds the contract price, the latter shall be taken as the basis for estimating the limit of risk within the meaning of this section.

2. No such corporation shall, anything to the contrary in this section notwithstanding, execute suretyship obligations guaranteeing the deposits of any single financial institution in an aggregate amount in excess of one-tenth of the capital and surplus of such corporate surety, unless it shall be protected in excess of that amount by credits in accordance with subdivisions (a), (b), (c) and (d) of this section.

Section 1966—3j. It shall be lawful for any receiver, assignee, guardian, conservator, trustee, executor, administrator or other fiduciary required to give a contract of suretyship obligation, to include as a part of the lawful expense of executing his or its trust the lawful premium paid a corporation transacting the surety business for executing such obligation; for any party entitled to recover costs or disbursements in an action or proceeding at law or in equity to include in such costs or disbursements such lawful premium as may have been paid to such corporation for executing any contract of suretyship obligation therein; and for any public officer, board or commission, as such, required by law to give a suretyship obligation, to pay to such a corporation the lawful premium for the execution of such obligation out of any moneys available for the payment of expenses of his office or department, unless such payment is otherwise provided for or is prohibited by law.

Section 1966—33k. 1. A corporation transacting the surety business shall at all times keep and maintain adequate reserves on its suretyship obligations as follows: (a) an unearned premium reserve of fifty per cent of the current annual premiums upon all outstanding suretyship obligations, provided that the commissioner of insurance, in estimating the condition of such a corporation, may charge it with a premium reserve equal to the unearned portions of the gross premiums charged, computed on each risk, from the date of the issuance of such suretyship obligation; and (b) a loss reserve at least equal to the aggregate estimated amounts due or to become due on account of all losses and claims of which the corporation has received notice, provided that such loss reserve shall also include the estimated liability on any notices received by the corporation of the occurrence of any event which may result in a loss, and the estimated liability for all losses which have occurred but on which no notice has been received.

2. For the purpose of such reserve, the corporation shall keep a complete and itemized record showing all losses and claims on which it has received notice, including all notices received by it of the occurrence of any event which may result in a loss; and, in its annual statement to the commissioner of insurance, shall include a schedule showing all losses and claims of which the corporation has received notice during the year for which the statement is made and which remain unpaid and undisposed of on December thirty-first of such year, and shall also include a schedule showing all the losses and claims of the corporation unpaid on December thirty-first of the year next preceding, specifying whether the claims have been settled or remain unadjusted, and setting opposite each claim the amount of the reserve carried or maintained against it.

3. Whenever, in the judgment of the commissioner of insurance, the loss reserves on the suretyship obligations of any corporation, calculated in accordance with the provisions of this section, are inadequate, he may, in his discretion, require such corporation to maintain additional reserves.

Section 1966—33l. A corporation transacting a surety business in this state which has paid the fees and taxes chargeable to it by general law, as well as the agents of such a corporation, shall be exempt from any license, premium, privilege or occupation taxes levied or imposed by any political or municipal division of this state.

Section 1966—33m. Any domestic corporation heretofore incorporated or extended under the provisions of any general or special law of this state and having at the time of the passage of this act power to transact a surety business is hereby brought under all of the provisions of this act, except that such a corporation shall be entitled to the certificate of authority specified in section 1966—33f of this act if its capital, surplus and deposit at the time of the application for such certificate are not less than the amount of the capital, surplus, and deposit respectively required of such a corporation prior to the passage of this act.

Section 1966—33n. Any surety corporation which, or any individual who, has executed or may hereafter execute, as surety, the bond of any trustee, committee, guardian, assignee, receiver, executor, administrator, or other fiduciary, shall be discharged from liability thereon as hereinafter provided. Such surety may, on notice to the principal named in such bond, apply to the court that accepted such bond, or to any judge thereof, praying to be discharged from liability as such surety for any act or omission of such principal occurring after the date of an order

discharging such surety as hereinafter provided, and that such principal be required to give new suretyship and to account. Notice of application for such discharge may be served on such principal within or without the state not less than five days prior to the date on which such application is to be made, unless it satisfactorily appears to the court, or a judge thereof, that personal notice cannot be given with due diligence within the state, in which case the notice may be given in such manner as the court or a judge thereof shall direct. Pending such application, the court or judge may restrain such principal from acting, except to preserve the trust estate, until further order. If upon the return of such application such principal shall fail to file new suretyship to the satisfaction of the court or judge, the court or judge must thereupon make an order requiring the principal to file new suretyship within a period not exceeding five days. If such new suretyship shall be filed upon the return of such application, or within the time fixed by such order, the court or judge must thereupon make a decree or order requiring the principal to account for all his acts and proceedings to and including the date of such decree or order, and to file such account within a time fixed, not exceeding twenty days, and discharge the surety making such application from liability for any act or default of the principal subsequent to the date of such decree or order. If the principal shall fail to so file such new suretyship within the time specified, a decree or order must be made revoking the appointment of such principal or removing him and requiring him to so account and file such account within not more than twenty days. If the principal shall fail to file his account as herein provided, such surety may make and file such account with like force and effect as though filed by such principal, and upon settlement thereof and upon the trust fund or estate being found or made good and paid over or properly secured, credit shall be given for all commissions, costs, disbursements, and allowances to which the principal would be entitled were he accounting, and allowance shall be made to such surety for the expense incurred in so filing such account and procuring the settlement thereof. After the filing of an account as herein required or permitted, the court or judge must upon the petition of the principal or surety issue an order requiring all persons interested in the estate or trust to attend a settlement of such account at a time and place therein specified, and upon the trust fund or estate being found or made good and paid over or properly secured, such surety shall be discharged from any and all liability; upon demand made in writing by the principal, such surety shall return any compensa-

tion that has been paid, for the unexpired period of such suretyship. Any such trustee, committee, guardian, assignee, receiver, executor, administrator, or other fiduciary, shall be entitled to have any such surety corporation that is surety on his bond discharged from liability thereon, and such fiduciary may file new suretyship as hereinafter provided. Such fiduciary may, on written notice to the surety on such bonds, and to all persons that are or may be interested therein, apply to the court that accepted such bond, or to a judge thereof, praying that such surety be discharged from liability thereon, and that such principal be allowed to file new suretyship and to account. Notice of such application shall be served on such surety and on each of the persons interested, within the state, not less than ten days prior to the date on which such application is to be made, unless it satisfactorily appears to such court or judge that such notice cannot with due diligence be served within the state, in which case notice may be given in such manner as such court or judge shall direct. Upon the return of such application, such principal may file new suretyship satisfactory to such court or judge, and therewith file an account of all his proceedings, whereupon the court or judge shall proceed, upon due notice to all persons interested, to judicially settle such account and duly credit and charge such principal; and upon the trust fund or estate being found or made good and paid over or properly secured, such surety shall be discharged from any and all liability.

SECTION 2. Section 4281b of the statutes is repealed.

SECTION 3. This act shall take effect upon passage and publication.

Approved July 25, 1919.

No. 463, A.]

[Published July 28, 1919.

CHAPTER 656.

AN ACT to create sections 1636—225 and 20.575 of the statutes, to create the Wisconsin real estate brokers board, to provide for the licensing of real estate brokers and salesmen, to amend subsection (1) of section 20.73 of the statutes, relating to the powers of officers, departments and boards, and to provide a penalty, and making an appropriation.

The people of the state of Wisconsin, represented in Senate and Assembly, do enact as follows:

SECTION 1. Two new sections are added to the statutes to read: Section 1636—225. Terms as used in this section are defined as follows: