

CHAPTER 397

No. 245, S.]

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CHAPTER 397

AN ACT to repeal 76.33, 200.03 (6), 203.07 (2), 203.54, 206.41 (2) (a) and (b), 206.55 and 209.15; to amend 201.62 (2); to repeal and recreate 201.63; and to create 201.42, 206.41 (11) (aa) and 209.04 (6) (aa) of the statutes, all for the purpose of and incident to the enactment of an unauthorized insurance code and a surplus lines insurance code relating to persons and insurers not authorized to do insurance business in this state; providing for actions and proceedings in this state against and for service of process upon such persons and insurers; prescribing how a defense may be made by such persons and insurers; providing for the investigation and reporting of unauthorized insurance and the enforcement of premium tax statutes; providing penalties for doing an unauthorized insurance business in this state; and providing for the orderly placing of surplus lines insurance with insurers not otherwise authorized to transact the business of insurance in this state.

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

SECTION 1. 76.33 of the statutes is repealed.

SECTION 2. 200.03 (6) of the statutes is repealed.

SECTION 3. 201.42 of the statutes is created to read:

201.42 UNAUTHORIZED INSURANCE. (1) PURPOSE. The purpose of this section is to subject certain persons and insurers to the jurisdiction of the commissioner, of proceedings before the commissioner, and of the courts of this state in suits by or on behalf of the state and insureds or beneficiaries under insurance contracts. The legislature declares that it is a subject of concern that many residents of this state hold policies of insurance issued by persons and insurers not authorized to do insurance business in this state, thus presenting to such residents the often insuperable obstacle of asserting their legal rights under such policies in forums foreign to them under laws and rules of practice with which they are not familiar. The legislature declares that it is also concerned with the protection of residents of this state against acts by persons and insurers not authorized to do an insurance business in this state by the maintenance of fair and honest insurance markets, by protecting the premium tax revenues of this state, by protecting authorized persons and insurers, which are subject to strict regulation, from unfair competition by unauthorized persons and insurers and by protecting against the evasion of the insurance regulatory laws of this state. In furtherance of such state interest, the legislature herein provides methods for substituted service of process upon such persons or insurers in any proceeding, suit or action in any court and substitute service of any notice, order, pleading or process upon such persons or insurers in any proceeding before the commissioner to enforce or effect full compliance with the insurance and tax statutes of this state, and declares in so doing it exercises its power to protect residents of this state and to define what constitutes doing an insurance business in this state, and also exercises powers and privileges available to this state by virtue of P.L. 79-15, (Chapter 20, 1st Sess., S. 340) as amended, which declares that the business of insurance and every person engaged therein shall be subject to the laws of the several states.

(2) INSURANCE BUSINESS DEFINED. (a) Any of the following acts in this state effected by mail or otherwise is defined to be doing an insurance

business in this state. The venue of an act committed by mail is at the point where the matter transmitted by mail is delivered and takes effect. Unless otherwise indicated, the term "insurer" as used in this section includes all corporations, associations, partnerships and individuals engaged as principals in the business of insurance and also includes interinsurance exchanges and mutual benefit societies.

1. The making of or proposing to make, as an insurer, an insurance contract.

2. The making of or proposing to make, as guarantor or surety, any contract of guaranty or suretyship as a vocation and not merely incidental to any other legitimate business or activity of the guarantor or surety.

3. The taking or receiving of any application for insurance.

4. The receiving or collection of any premium, commission, membership fees, assessments, dues or other consideration for any insurance or any part thereof.

5. The issuance or delivery of contracts of insurance to residents of this state or to persons authorized to do business in this state.

6. Directly or indirectly acting as an agent for or otherwise representing or aiding on behalf of another person or insurer in the solicitation, negotiation, procurement or effectuation of insurance or renewals thereof or in the dissemination of information as to coverage or rates, or forwarding of applications, or delivery of policies or contracts, or inspection of risks, a fixing of rates or investigation or adjustment of claims or losses or in the transaction of matters subsequent to effectuation of the contract and arising out of it, or in any other manner representing or assisting a person or insurer in the transaction of insurance with respect to subjects of insurance resident, located or to be performed in this state. The provisions of this subdivision shall not operate to prohibit full-time salaried employes of a corporate insured from acting in the capacity of an insurance manager or buyer in placing insurance in behalf of such employer.

7. The doing of any kind of insurance business specifically recognized as constituting the doing of an insurance business within the meaning of the statutes relating to insurance.

8. The doing or proposing to do any insurance business in substance equivalent to any of the foregoing in a manner designed to evade the provisions of the statutes.

9. Any other transactions of business in this state by an insurer.

(b) The provisions of this subsection do not apply to:

1. The lawful transaction of surplus lines insurance,

2. The lawful transaction of reinsurance by insurers,

3. Transactions in this state involving a policy lawfully solicited, written, and delivered outside of this state covering only subjects of insurance not resident, located, or expressly to be performed in this state at the time of issuance, and which transactions are subsequent to the issuance of such policy.

4. Transactions involving contracts of insurance independently procured through negotiations occurring entirely outside of this state which are reported and on which premium tax is paid in accordance with sub. (13).

5. Attorneys acting in the ordinary relation of attorney and client in the adjustment of claims or losses.

(3) UNAUTHORIZED INSURANCE PROHIBITED. No person or insurer shall directly or indirectly do any of the acts of an insurance business set forth in sub. (2) except as provided by and in accordance with the specific authorization of statute. In respect to the insurance of subjects resident, located or to be performed within this state this subsection shall not prohibit the collection of premium or other acts performed outside of this state by persons or insurers authorized to do business in this state provided such transactions and insurance contracts otherwise comply with statute.

(4) SERVICE OF PROCESS ON COMMISSIONER. (a) Any act of doing an insurance business as set forth in sub. (2) by any unauthorized person or insurer is equivalent to and shall constitute an irrevocable appointment by such person or insurer, binding upon him, his executor, administrator or personal representative, or successor in interest if a corporation, of the commissioner, his successor or successors in office to be the true and lawful attorney of such person or insurer upon whom may be served all legal process in any action, suit or proceeding in any court arising out of doing an insurance business in this state by such person or insurer, except in an action, suit or proceeding by the commissioner or by the state. Any act of doing an insurance business as set forth in sub. (2) by any unauthorized person or insurer shall be signification of its agreement that any such legal process so served shall be of the same legal force and validity as personal service of process in this state upon such person or insurer, or upon his executor, administrator or personal representative, or its successor in interest if a corporation.

(b) Such service of process shall be made by leaving 2 copies thereof in the hands or office of the commissioner and paying to him for the use of the state a fee of \$2 for each person or insurer. A certificate by the commissioner showing such service and attached to the original or third copy of such process presented to him for that purpose shall be sufficient evidence thereof. Service upon the commissioner as such attorney shall be service upon the principal.

(c) The commissioner shall forthwith mail one copy of such process to the defendant at its last known principal place of business and shall keep a record of all process so served upon him which shall show the day and hour of service. Such service of process is sufficient, provided notice of such service and a copy of the process are sent within 10 days thereafter by registered mail by plaintiff or plaintiff's attorney to the defendant at the last known principal place of business of the defendant and the defendant's receipt, or receipt issued by the post office with which the letter is registered, showing the name of the sender of the letter and the name and address of the person or insurer to whom the letter is addressed, and the affidavit of the plaintiff or plaintiff's attorney showing compliance herewith are filed with the clerk of the court in which such action is pending on or before the date the defendant is required to appear, or within such further time as the court may allow.

(d) Service of process in any such action, suit or proceeding shall, in addition to the manner provided in pars. (b) and (c), be valid if served upon any person within this state who on behalf of such unauthorized person or insurer is doing any act of an insurance business as set forth in sub. (2) and if a copy of such process is sent within 10 days thereafter by registered mail by plaintiff or plaintiff's attorney to the defendant at the last known principal place of business of the defendant and the defendant's receipt, or receipt issued by the post office with which the letter is registered, showing the name of the sender of the letter and the name and address of the person or insurer to whom the letter is addressed and the affidavit of the plaintiff or plaintiff's attorney showing compliance herewith are filed with the clerk of the court in which such action is pending on or before the date the defendant is required to appear, or within such further time as the court may allow.

(e) No plaintiff or complainant shall be entitled to a judgment by default in any action, suit or proceeding in which the process is served under this subsection until the expiration of 45 days from the date of filing of the affidavit of compliance.

(f) Nothing contained in this subsection shall limit or abridge the right to serve any process, notice or demand upon any person or insurer in any other manner now or hereafter permitted by law.

(5) SERVICE OF PROCESS ON SECRETARY OF STATE. (a) Any act of doing an insurance business as set forth in sub. (2) by any unauthorized person or insurer is equivalent to and shall constitute an irrevocable appointment by such person or insurer, binding upon him, his executor, administrator or personal representative, or successor in interest if a corporation, of the secretary of state, his successor or successors in office to be the true and lawful attorney of such person or insurers upon whom may be served all legal process in any action, suit or proceeding in any court by the commissioner or by the state and upon whom may be served any notice, order, pleading or process in any proceeding before the commissioner and which arises out of doing an insurance business in this state by such person or insurer. Any act of doing an insurance business as set forth in sub. (2) by any unauthorized person or insurer shall be signification of its agreement that any such legal process in such court action, suit or proceeding and any such notice, order, pleading or process in such administrative proceeding before the commissioner so served shall be of the same legal force and validity as personal service of process in this state upon such person or insurer, or upon his executor, administrator or personal representative, or its successor in interest if a corporation.

(b) Such service of process in such action, suit or proceeding in any court or such notice, order, pleading or process in such administrative proceeding authorized by par. (a) shall be made by leaving 2 copies thereof in the hands or office of the secretary of state. A certificate by the secretary of state showing such service and attached to the original or third copy of such process presented to him for that purpose shall be sufficient evidence thereof. Service upon the secretary of state as such attorney shall be service upon the principal.

(c) The secretary of state shall forthwith mail one copy of such court process or such notice, order, pleading or process in proceedings before the commissioner to the defendant in such court proceeding or to whom the notice, order, pleading or process in such administrative proceeding is addressed or directed at its last known principal place of business and shall keep a record of all process so served on him which shall show the day and hour of service. Such service is sufficient, provided notice of such service and a copy of the court process or the notice, order, pleading or process in such administrative proceeding are sent within 10 days thereafter by registered mail by the plaintiff or the plaintiff's attorney in the court proceeding or by the commissioner in the administrative proceeding to the defendant in the court proceeding or to whom the notice, order, pleading or process in such administrative proceeding is addressed or directed at its last known principal place of business of the defendant in the court or administrative proceeding, and the defendant's receipt, or receipt issued by the post office with which the letter is registered, showing the name of the sender of the letter and the name and address of the person or insurer to whom the letter is addressed, and the affidavit of the plaintiff or plaintiff's attorney in court proceeding or of the commissioner in administrative proceeding, showing compliance herewith are filed with the clerk of the court in which such action, suit or proceeding is pending or with the commissioner in administrative proceedings, on or before the date the defendant in the court or administrative proceeding is required to appear or respond thereto, or within such further time as the court or commissioner may allow.

(d) No plaintiff or complainant shall be entitled to a judgment or determination by default in any court or administrative proceeding in which court process or notice, order, pleading or process in proceedings before the commissioner is served under this subsection until the expiration of 45 days from the date of filing of the affidavit of compliance.

(e) Nothing contained in this subsection shall limit or abridge the right to serve any process, notice, order, pleading or demand upon any person or insurer in any other manner now or hereafter permitted by law.

(f) The attorney general upon request of the commissioner is authorized to proceed in the courts of this or any other state or in any federal court or agency to enforce an order or decision in any court proceeding or in any administrative proceeding before the commissioner.

(6) UNAUTHORIZED PERSON OR INSURER DEFENSE OF ACTION. (a) Before any unauthorized person or insurer files or causes to be filed any pleading in any court action, suit or proceeding or in any notice, order, pleading or process in such administrative proceeding before the commissioner instituted against such person or insurer, by service made as provided in subs. (4) and (5), such person or insurer shall either:

1. Deposit with the clerk of the court in which such action, suit or proceeding is pending, or with the commissioner in administrative proceedings before the commissioner, cash or securities or bond with good and sufficient sureties to be approved by the court or the commissioner, in an amount to be fixed by the court or the commissioner sufficient to secure the payment of any final judgment which may be rendered in such court proceeding or in such administrative proceeding before the commissioner, provided that the court or the commissioner in administrative proceedings before the commissioner may in its or his discretion make an order dispensing with such deposit or bond where the insurer makes a showing satisfactory to such court or the commissioner that it maintains in a state of the United States funds or securities, in trust or otherwise, sufficient and available to satisfy any final judgment which may be entered in such court action, suit or proceeding or in such administrative proceeding before the commissioner; or

2. Procure proper authorization to do an insurance business in this state.

(b) The court in any action, suit or proceeding in which service is made as provided in sub. (4) or the commissioner in any administrative proceeding before the commissioner in which service is made as provided in sub. (5), may, in his discretion, order such postponement as may be necessary to afford the defendant reasonable opportunity to comply with par. (a) and to defend such court action or administrative proceeding.

(c) Nothing in par. (a) is to be construed to prevent an unauthorized person or insurer from filing a motion to quash a writ or to set aside service thereof made as provided in sub. (4) or (5) on the ground that such unauthorized person or insurer has not done any of the acts enumerated in sub. (2) or that the person on whom service was made pursuant to sub. (4) (d) was not doing any of the acts therein enumerated.

(7) ATTORNEY FEES. In an action against an unauthorized person or insurer upon a contract of insurance issued or delivered in this state to a resident thereof or to a corporation authorized to do business therein, if the person or insurer has failed for 30 days after demand prior to the commencement of the action to make payment in accordance with the terms of the contract, and it appears to the court that such refusal was vexatious and without reasonable cause, the court may allow to the plaintiff a reasonable attorney fee and include such fee in any judgment that may be rendered in such action. Failure of the person or insurer to defend any such action shall be deemed prima facie evidence that its failure to make payment was vexatious and without reasonable cause.

(8) VALIDITY OF INSURANCE CONTRACTS. Except for lawfully procured surplus lines insurance and contracts of insurance independently procured through negotiations occurring entirely outside of this state which are reported and on which premium tax is paid in accordance with sub. (13), any contract of insurance effective in this state and entered into by an unauthorized insurer is unenforceable by such insurer. In

event of failure of any such unauthorized insurer to pay any claim or loss within the provisions of such insurance contract, any person who assisted or in any manner aided directly or indirectly in the procurement of such insurance contract shall be liable to the insured for the full amount thereof pursuant to the provisions of such insurance contract.

(9) INVESTIGATION AND DISCLOSURE OF INSURANCE CONTRACTS. (a) Whenever the commissioner has reason to believe that insurance has been effectuated by or for any person in this state with an unauthorized insurer the commissioner shall in writing order such person to produce for examination all insurance contracts and other documents evidencing insurance with both authorized and unauthorized insurers and to disclose to the commissioner the amount of insurance, name and address of each insurer, gross amount of premium paid or to be paid and the name and address of the person or persons assisting or aiding in the solicitation, negotiation or effectuation of such insurance.

(b) Every person who, for 30 days after such written order pursuant to par. (a), neglects to comply with the requirements of such order or who wilfully makes a disclosure that is untrue, deceptive or misleading shall forfeit \$50 and an additional \$50 for each day of neglect after expiration of said 30 days.

(10) REPORTING OF UNAUTHORIZED INSURANCE. (a) Every person investigating or adjusting any loss or claim on a subject of insurance in this state shall immediately report to the commissioner every insurance policy or contract which has been entered into by any insurer not authorized to transact such insurance in this state.

(b) Every person acting in the capacity of insurance adviser, counselor or analyst in accordance with s. 209.045, shall report to the commissioner every insurance policy or contract covering a subject of insurance in this state which has been entered into by an insurer not authorized to transact such insurance in this state.

(c) This subsection does not apply to transactions in this state involving a policy lawfully solicited, written, and delivered outside of this state covering only subjects of insurance not resident, located or expressly to be performed in this state at the time of issuance, and which transactions are subsequent to the issuance of such policy.

(11) UNAUTHORIZED INSURANCE PREMIUM TAX. (a) Except as to premiums on lawfully procured surplus lines insurance and premiums on independently procured insurance on which a tax has been paid pursuant to sub. (13), every unauthorized insurer shall pay to the commissioner before March 1 next succeeding the calendar year in which the insurance was so effectuated, continued or renewed a premium receipts tax of 3 per cent of gross premiums charged for such insurance other than marine insurance and a premium receipts tax of one-half of one per cent of gross premiums charged for such marine insurance on subjects resident, located or to be performed in this state. Such insurance on subjects resident, located or to be performed in this state procured through negotiations or an application, in whole or in part occurring or made within or from within or outside of this state, or for which premiums in whole or in part are remitted directly or indirectly from within or outside of this state, shall be deemed to be insurance procured, or continued or renewed in this state. The term "premium" includes all premiums, membership fees, assessments, dues and any other consideration for insurance. Such tax shall be in lieu of all taxes and fire department dues. On default of any such unauthorized insurer in the payment of such tax the insured shall pay the tax. If the tax prescribed by this subsection is not paid within the time stated, the tax shall be increased by a penalty of 25 per cent and by the amount of an additional penalty computed at the rate of one per cent per month or any part thereof from the date such payment was due to the date paid.

(b) If a policy covers risks or exposures only partially in this state, the tax payable shall be computed on the portions of the premium which are properly allocable to the risks or exposures located in this state. In determining the amount of premiums taxable in this state, all premiums written, procured, or received in this state and all premiums on policies negotiated in this state shall be deemed written on property or risks located or resident in this state, except such premiums as are properly allocated or apportioned and reported as taxable premiums of any other state or states.

(12) INDEPENDENTLY PROCURED INSURANCE. (a) Every insured who procures or causes to be procured or continues or renews insurance with any unauthorized insurer, or any insured or self-insurer who so procures or continues excess loss, catastrophe or other insurance, upon a subject of insurance resident, located or to be performed within this state, other than insurance procured through a surplus lines agent pursuant to the surplus lines law of this state shall within 60 days after the date such insurance was so procured, continued, or renewed, file a report of the same with the commissioner in writing and upon forms designated by the commissioner and furnished to such an insured upon request. The report shall show the name and address of the insured or insureds, name and address of the insurer, the subject of the insurance, a general description of the coverage, the amount of premium currently charged therefor, and such additional pertinent information as is reasonably requested by the commissioner.

(b) Any insurance in an unauthorized insurer of a subject of insurance resident, located or to be performed within this state procured through negotiations or an application, in whole or in part occurring or made within or from within or outside of this state, or for which premiums in whole or in part are remitted directly or indirectly from within or outside of this state, shall be deemed to be insurance procured, or continued or renewed in this state within the intent of par. (a).

(c) There is hereby levied upon the obligation, chose in action, or right represented by the premium charged for such insurance, a premium receipts tax of 3 per cent of gross premiums charged for such insurance other than marine insurance and a premium receipts tax of one-half of one per cent of gross premiums charged for such marine insurance. The term "premium" shall include all premiums, membership fees, assessments, dues and any other consideration for insurance. Such tax shall be in lieu of all taxes and fire department dues. The insured shall, before March 1 next succeeding the calendar year in which the insurance was so procured, continued or renewed, pay the amount of the tax to the commissioner. In event of cancellation and rewriting of any such insurance contract the additional premium for premium receipts tax purposes shall be the premium in excess of the unearned premium of the canceled insurance contract.

(d) If a policy covers risks or exposures only partially in this state, the tax payable shall be computed on the portions of the premium which are properly allocable to the risks or exposures located in this state. In determining the amount of premiums taxable in this state, all premiums written, procured or received in this state and all premiums on policies negotiated in this state shall be deemed written on property or risks located or resident in this state, except such premiums as are properly allocated or apportioned and reported as taxable premiums of any other state or states.

(e) If the insured fails to withhold from the premium the amount of tax herein levied, the insured shall be liable for the amount thereof and shall pay the same to the commissioner within the time stated in par. (c). If the tax prescribed by this subsection is not paid within the time stated in par. (c), the tax shall be increased by a penalty of 25 per cent and by

the amount of an additional penalty computed at the rate of one per cent per month or any part thereof from the date such payment was due to the date paid.

(f) The attorney general, upon request of the commissioner, shall proceed in the courts of this or any other state or in any federal court or agency to recover such tax not paid within the time prescribed in this section.

(g) This subsection shall not be construed or deemed to abrogate or modify any provision of this section. This subsection does not apply as to individual life or individual disability insurance.

(13) PENALTY FOR UNAUTHORIZED INSURANCE. (a) Any unauthorized insurer who does any unauthorized act of an insurance business as set forth in sub. (2) shall be fined not more than \$5,000.

(b) In addition to any other penalty provided for herein or otherwise provided by law, any person or insurer violating this section shall forfeit to the people of this state the sum of \$500 for the first offense and an additional sum of \$500 for each month during which any such person or insurer continues such violation.

(15) NONAPPLICATION OF SECTION. This section shall not apply to any life insurance company organized and operated, without profit to any private shareholder or individual, exclusively for the purpose of aiding educational or scientific institutions organized and operated without profit to any private shareholder or individual by issuing insurance and annuity contracts direct from the home office of the company and without agents or representatives in this state only to or for the benefit of such institutions and to individuals engaged in the services of such institutions; nor shall this section apply to any life, disability or annuity contracts issued by such life insurance company, provided such contracts otherwise comply with the statutes.

SECTION 4. 201.62 (2) of the statutes is amended to read:

201.62 (2) If such insurance has been effected in any company not authorized to do business in this state, the provisions of s. \* \* \* 201.42 shall apply to such insurance but if such owner carried his own insurance, the commissioner shall collect from such property owner an amount equal to 2 per cent of the annual premium which authorized insurance companies would have charged for insuring such property and may maintain a civil action therefor in the name of the state, and when recovered it shall be payable as fire department dues as provided in s. 201.59 to the respective cities, villages and towns entitled to the same.

SECTION 5. 201.63 of the statutes is repealed and recreated to read:

201.63 SURPLUS LINES INSURANCE. (1) PURPOSE. Insurance transactions which are entered into by citizens of this state with unauthorized insurers through a surplus lines agent as a result of difficulty in obtaining coverage from licensed insurers are a matter of public interest. The legislature declares that such transaction of surplus lines insurance is a subject of concern and that it is necessary to provide for the regulation, taxation, supervision and control of such transactions and the practices and matters related thereto by requiring appropriate standards and reports concerning the placement of such insurance; by imposing requirements necessary to make such regulation and control reasonably complete and effective; by providing orderly access to insurers that are not authorized to transact the business of insurance in this state; by insuring the maintenance of fair and honest markets; by protecting the revenues of this state; and by protecting authorized insurers, which under the laws of this state must meet strict standards as to the regulation of the business of insurance and the taxation thereof, from unfair competition by unauthor-

ized insurers. In order to properly regulate and tax such unauthorized insurance within the meaning and intent of P.L. 79-15 the legislature herein provides an orderly method for the insuring public of this state to effect insurance with unauthorized insurers through qualified, licensed and supervised surplus line agents in this state and under reasonable and practical safeguards so that such insurance coverage may be obtained by residents of this state to the extent that the coverage is not procurable from duly licensed, regulated insurers conducting business in this state.

(2) DEFINITIONS. (a) "Surplus lines agent" means a resident agent authorized under s. 209.04 who is granted a surplus lines license in accordance with this section.

(b) "Surplus lines insurer" means an unauthorized insurer in which an insurance coverage is placed or may be placed under this section.

(3) SURPLUS LINES INSURANCE AUTHORIZED. (a) If the insurance coverages specified in s. 201.04 (1) to (7), (9) to (15), (17) and (18) of subjects resident, located or to be performed in this state cannot be procured from licensed insurers, such coverages, hereinafter designated as surplus line insurance, may be procured from unauthorized insurers subject to the following conditions:

1. The insurance must be eligible for surplus lines under sub. (5).
2. The insurer must be an eligible surplus lines insurer under sub. (8).
3. The insurance must be placed through a licensed Wisconsin surplus lines agent resident in this state.
4. The other applicable provisions of this section must be complied with.

(b) Any insurance of subjects resident, located or to be performed in this state, procured through negotiations or an application, in whole or in part occurring or made within or from within this state, or for which premiums in whole or in part are remitted directly or indirectly from within this state, shall be deemed to be insurance procured, or continued or renewed in this state within the intent of par. (a).

(4) SURPLUS LINES AGENT'S LICENSE. (a) The commissioner may issue a surplus lines license to any authorized agent which shall grant such agent authority to procure the kinds of insurance provided for in this section from companies not licensed in this state under the conditions prescribed in this section. Every license issued pursuant to this subsection shall be for a term expiring on the last day of February next following the date of issuance and may be renewed for ensuing periods of 12 months. Before any such license shall be issued and before each renewal thereof a written application shall be filed by the applicant in such form as the commissioner prescribes and the fee provided therefor by this section shall be paid.

(b) The fee for issuance of a surplus lines license shall be \$100.

(5) ELIGIBILITY FOR SURPLUS LINES INSURANCE. (a) No insurance coverage shall be eligible for surplus lines unless the full amount of insurance required is not procurable, after a diligent effort has been made to do so, from among the insurers licensed to transact and actually writing that kind and class of insurance in this state, and the amount of insurance eligible for surplus lines shall be only the amount in excess of the amount so procurable from licensed insurers.

(b) Policy or contract forms shall not be eligible unless the use is reasonably necessary for the principal purposes of the coverage or unless the use would not be contrary to the purposes of the coverage or unless the use would not be contrary to the purposes of this section with respect to the reasonable protection of authorized insurers from unwarranted competition by unauthorized insurers.

(6) PROCEDURE FOR EFFECTING SURPLUS LINES CONTRACTS. (a) Before any new or renewal insurance shall be procured in an unlicensed company the agent shall make an affidavit, which shall be promptly filed with the

commissioner, that he is after diligent effort unable to procure from any licensed insurer or insurers the full amount of insurance required to protect the interest of the insured.

(b) Upon placing a new or renewal surplus line coverage, the surplus lines agent shall promptly issue and deliver to the insured evidence of the insurance consisting either of the policy as issued by the insurer or, if such policy is not then available, a certificate, cover note or other confirmation of insurance.

(c) Within 60 days after the effectuation of any new or renewal surplus lines insurance the surplus lines agent shall file with the commissioner an exact copy of the policy issued. If a policy has not been issued, the surplus lines agent shall so file an exact copy of his certificate, cover note or other confirmation of insurance as delivered to the insured. The surplus lines agent shall likewise promptly file with the commissioner an exact copy of any substitute certificate, cover note or other confirmation of insurance, and of every endorsement of an original policy, certificate, cover note or other confirmation of insurance, delivered to an insured, together with such surplus lines agent's memorandum informing the commissioner as to the substance of any change represented by such substitute certificate, cover note or other confirmation, or of any such endorsement, as compared with the coverage as originally placed or issued.

(d) No surplus lines agent shall deliver any such document, or purport to insure or represent that insurance will be or has been granted by any unauthorized insurer unless he has prior written authority from the insurer for the insurance, or has received information from the insurer in the regular course of business that such insurance has been granted, or an insurance policy providing the insurance actually has been issued by the insurer and delivered to the insured.

(e) If after the delivery of any such document there is any change as to the identity of the insurers, or the proportion of the direct risk assumed by the insurer as stated in the original certificate, cover note or confirmation, or in any other material respect as to the insurance coverage evidenced by such a document, the surplus lines agent shall promptly deliver to the insured a substitute certificate, cover note, confirmation or endorsement for the original such document, accurately showing the current status of the coverage and the insurers responsible thereunder. No such change shall result in a coverage or insurance contract which would be in violation of this section if originally issued on such basis.

(f) If a policy issued by the insurer is not available upon placement of the insurance and the surplus lines agent has delivered a certificate, cover note or confirmation, as hereinabove provided, upon request therefor by the insured the surplus lines agent shall as soon as reasonably possible procure from the insurer its policy evidencing the insurance and deliver the policy to the insured in replacement of the certificate, cover note or confirmation theretofore issued.

(7) REQUIREMENTS FOR SURPLUS LINES CONTRACTS. (a) Every new or renewal insurance contract certificate, cover note or other confirmation of insurance procured and delivered as a surplus line coverage pursuant to this section shall bear the name and address of the insurance agent who procured it and, except for marine insurance, shall have stamped or affixed upon it the following:

This insurance contract is with an insurer not licensed to transact insurance in this state and is issued and delivered as a surplus line coverage pursuant to the Wisconsin insurance statutes. Section 201.63 (12), Wisconsin statutes, requires payment of 3 per cent tax on gross premium. Every marine insurance contract shall have stamped or affixed upon it the above statement except that such statement shall be amended to state that

s. 201.63 (12) requires payment of one-half of one per cent tax on gross premium.

(b) Such document shall show the description and location of the subject of the insurance, coverage, conditions and term of the insurance, the premium and rate charged and premium taxes to be collected from the insured, and the name and address of the insured and insurer. If the direct risk is assumed by more than one insurer, the document shall state the name and address and proportion of the entire direct risk assumed by each insurer.

(8) ELIGIBILITY OF SURPLUS LINES INSURERS. (a) A surplus lines agent shall not knowingly place surplus lines insurance with financially unsound insurers. The agent shall make a reasonable effort to ascertain the financial condition of the unauthorized insurer before placing insurance therewith. An insurer shall not be eligible unless it has capital and surplus or its equivalent that is adequate in relation to its premium writings and the exposure it assumes.

(b) The unauthorized insurer must be of good repute and provide reasonably prompt service to its policyholders in the payment of just losses and claims.

(c) No unauthorized insurer shall be eligible if the management is incompetent or untrustworthy, or so lacking in insurance company managerial experience as to make its proposed operation hazardous to the insurance-buying public; or if the commissioner has good reason to believe that it is affiliated directly or indirectly through ownership, control, reinsurance transactions or other insurance or business relations, with any person whose business operations are or have been detrimental to policyholders, stockholders, investors, creditors or to the public.

(d) No unauthorized insurer shall be eligible if the insurer or its agents have failed to submit to any fine or penalty levied pursuant to statute. The commissioner may order revocation of insurance contracts issued by insurers that do not conform with the eligibility requirements of this section.

(e) No new or renewal surplus lines insurance shall be placed with any surplus lines insurer which requires as a condition precedent to writing such new or renewal insurance that the prospective insured or the insured place other insurance not eligible as surplus lines insurance with such surplus lines insurer.

(f) This section shall not be deemed to cast upon the commissioner any duty or responsibility to determine the actual financial condition or claims practice of any unauthorized insurer.

(9) VALIDITY OF CONTRACTS. (a) Insurance contracts procured as surplus line coverage from unauthorized insurers in accordance with this section shall be fully valid and enforceable as to all parties, and shall be given recognition in all matters and respects to the same effect and extent as like contracts issued by authorized insurers.

(b) A contract of insurance placed in effect by an unauthorized insurer in violation of this section is unenforceable by the insurer. The insured shall not be precluded from enforcing his rights in accordance with the terms and provisions of such contract.

(10) LIABILITY OF SURPLUS LINES INSURER FOR LOSSES AND UNEARNED PREMIUMS. If the surplus lines insurer has assumed the risk in accordance with this section and if the premium therefor has been received by the surplus lines agent who placed such insurance, then in all questions thereafter arising under the coverage as between the insurer and the insured the insurer shall be deemed to have received the premium due to it for such coverage; and the insurer shall be liable to the insured as to losses covered by such insurance, and for unearned premiums which may become payable

to the insured upon cancellation of such insurance, whether or not in fact the surplus lines agent is indebted to the insurer with respect to such insurance or for any other cause. Each surplus lines insurer assuming a surplus lines risk under this section shall be deemed thereby to have subjected itself to the terms of this subsection.

(11) **ACTIONS AGAINST INSURER; SERVICE OF PROCESS.** A surplus lines insurer may be sued upon any cause of action arising in this state under any surplus lines insurance contract issued by it or certificate, cover note or other confirmation of such insurance issued by the surplus lines agent, pursuant to the same procedure as is provided for unauthorized insurers in s. 201.42. Any such policy issued by the insurer, or any certificate of insurance issued by the surplus lines agent, shall contain a provision stating the substance of this subsection and designating the person to whom the commissioner shall mail process. Each surplus lines insurer assuming a surplus lines risk pursuant to this section shall be deemed thereby to have subjected itself to the terms of this subsection. This subsection shall be cumulative to any other methods which may be provided by law for service of process upon the insurer.

(12) **SURPLUS LINES INSURANCE PREMIUM TAX.** (a) The premiums charged for surplus lines insurance other than marine insurance are subject to a premium receipts tax of 3 per cent of gross premiums charged for such insurance. The premiums charged for marine insurance are subject to a premium receipts tax of one-half of one per cent of gross premiums charged for such insurance. The term premium includes all premiums, membership fees, assessments, dues or any other consideration for insurance. Such tax shall be in lieu of all taxes and fire department dues. The surplus lines agent shall collect from the insured the amount of the tax at the time of delivery of the cover note, certificate of insurance, policy or other initial confirmation of insurance, in addition to the full amount of the gross premium charged by the insurer for the insurance. No agent shall absorb such tax nor shall any agent, as an inducement for insurance or for any other reason, rebate all or any part of such tax or his commission. The surplus lines agent shall, before March 1 in each year, forward to the commissioner together with his annual report the amount of the premium receipts tax due for the preceding calendar year. If a surplus lines policy covers risks or exposures only partially in this state, the tax payable shall be computed on the portions of the premium which are properly allocable to the risks or exposures located in this state. In determining the amount of premiums taxable in this state, all premiums written, procured, or received in this state and all premiums on policies negotiated in this state shall be deemed written on property or risks located or resident in this state, except such premiums as are properly allocated or apportioned and reported as taxable premiums of any other state or states. In event of cancellation and rewriting of any surplus lines insurance contract the additional premium for premium receipts tax purposes shall be the premium in excess of the unearned premium of the canceled insurance contract.

(b) All surplus lines premium receipt taxes collected by a surplus lines agent are trust funds in his hands and the property of this state. Such funds shall be maintained by the surplus lines agent in a separate account and shall not be mingled with any other funds, either business or private. Any surplus lines agent who fails or refuses to pay over to the state the surplus lines premium receipts tax at the time required in this section, or who fraudulently withholds or appropriates or otherwise uses such money or any portions thereof belonging to the state is guilty of theft and shall be punished as provided by law for the crime of theft, irrespective of whether any such surplus lines agent has or claims to have any interest in such money so received by him.

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(c) If the property of any surplus lines agent is seized upon any mesne or final process in any court in this state, or when the business of any surplus lines agent is suspended by the action of creditors or put into the hands of any assignee, receiver or trustee, all surplus lines premium receipts tax money and penalties due the state from such surplus lines agent shall be considered preferred claims and the state shall be a preferred creditor and shall be paid in full.

(d) The attorney general, upon request of the commissioner, shall proceed in the courts of this or any other state or in any federal court or agency to recover such license fees or tax not paid within the time prescribed in this section.

(13) SURPLUS LINES AGENTS MAY ADVERTISE. Any agent who is granted a surplus lines license in accordance with this section may bring announcements or statements before the public in respect to his ability to place such surplus lines insurance as may be permitted by this section.

(14) SURPLUS LINES AGENTS' COMMISSIONS. Agents licensed in accordance with this section may not pay the whole or any part of the commission on surplus lines insurance to any person, except that such commissions may be shared or divided with any other licensed agent.

(15) RECORDS OF SURPLUS LINES AGENT. (a) Each surplus lines agent shall keep in his office in this state a full and true record of each surplus lines contract procured by him, including a copy of the daily report, if any, and showing such of the following items as may be applicable:

1. Amount of the insurance and perils insured against;
2. Brief general description of property insured and where located;
3. Gross premium charged;
4. Return premium paid, if any;
5. Rate of premium charged upon the several items of property;
6. Effective date of the contract, and the terms thereof;
7. Name and post-office address of the insured;
8. Name and home office address of the insurer;
9. Amount collected from the insured; and
10. Other information as may be required by the commissioner.

(b) The record shall at all times be open to examination by the commissioner without notice, and shall be so kept available and open to the commissioner for 3 years next following expiration or cancellation of the contract.

(16) ANNUAL REPORT OF SURPLUS LINES AGENT. Each surplus lines agent shall, before March 1 in each year, make a report to the commissioner for the preceding calendar year, on the form prescribed by him, of such facts as he requires and including a showing that the amount of insurance procured from such unauthorized insurer or insurers is only the amount in excess of the amount procurable from licensed insurers.

(17) PENALTY. Any violation of this section shall subject the agent to suspension of his agent's license for a period of not less than 90 days and a fine of not more than \$500.

(18) OTHER STATUTES. This section shall not be construed or deemed to abrogate or modify any other provision of statute.

SECTION 6. 203.07 (2) of the statutes is repealed.

SECTION 7. 203.54 of the statutes is repealed.

SECTION 8. 206.41 (2) (a) and (b) of the statutes is repealed.

SECTION 9. 206.41 (11) (aa) of the statutes is created to read:

206.41 (11) (aa) The license of any agent who does any unauthorized act of an insurance business as set forth in s. 201.42 (2) shall be suspended for a period of not less than 90 days and such agent shall not be

permitted to do business until all liability for such violation is discharged. Whenever the commissioner receives notice of an unauthorized act of an insurance business he shall forthwith make an inspection of the books and records of such agent and upon his refusal to permit such inspection the commissioner shall revoke his license.

SECTION 10. 206.55 of the statutes is repealed.

SECTION 11. 209.04 (6) (aa) of the statutes is created to read:

209.04 (6) (aa) *Suspension for unauthorized act.* The license of any agent who does any unauthorized act of an insurance business as set forth in s. 201.42 (2) shall be suspended for a period of not less than 90 days and such agent shall not be permitted to do business until all liability for such violation is discharged. Whenever the commissioner receives notice of an unauthorized act of an insurance business he shall forthwith make an inspection of the books and records of such agent and upon his refusal to permit such inspection the commissioner shall revoke his license.

SECTION 12. 209.15 of the statutes is repealed.

Approved August 9, 1961.

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