CHAPTER 204.

INSURANCE—SURETY, CREDIT, CASUALTY.

204.01 Definitions. The fidelity insurance specified in subsection (7) of section 201.04 shall be known as surety business, and the obligations connected therewith as suretyship obligations; and corporations organized or authorized to do surety business are designated surety corporations or companies. [*1933 c. 487 s. 131*]

Revisor's Note, 1933: Chapter 655, Laws 1919, created fourteen sections numbered 1966—33a to 1966—33n, which dealt with fidelity insurance. At that time there were in existence statutory provisions created by chapter 277, Laws 1897, and covering this same subject, which provisions had been revised and made 1966—33 to 1966—39, Stats. 1898. See Revisers' note to 1966—25, Stats. 1898. The fourteen sections created in 1919 were forced in between 1966—33 and 1966—34. Nothing was done to reconcile or harmonize the conflicting provisions in these two enactments. Although there was no express repeal, there certainly was some implied repeal; so far as there is conflict the act of 1919 is the law. There is conflict between 204.01 and 204.02; 204.09 and 204.19; 204.07 and 204.16; 204.11 and 204.18 and 204.20. Furthermore, the provisions of chapter 204 are not logically arranged and contain many repetitions of provisions elsewhere found in the statutes. These facts necessitate a thorough rearrangement, revision and renumbering of the provisions of the chapter. Section 204.01 is chiefly from the last sentence of old 204.02; 204.02 (1) is from 204.07 (1); subsection (2) is from the last sentence of old 204.02; 204.02 (1) is from 204.07 (1); (2) is from 204.14, created by chapter 655, Laws 1919 (1966—33m), which was approved on July 25, 1919; (3) is from (2) and (3) of 204.07; (4) is from 204.16; 204.03 and 204.04 are from 204.16. Subsection (4) of 204.07 deals with revocation of licenses and court reviews. Provisions for revocation of licenses are contained in 200.04, 200.14 and 201.40 (new 201.34). Rehearings and court review of the orders of the commission are covered by 200.11. (Bill No. 50 S, s. 131)

204.02 Surety companies. (1) LICENSE. When the commissioner shall be satisfied by the papers filed or by such examination as he shall make, that any surety company applying for a license has fully complied with and has the capital and surplus required by the statutes, he shall issue a certificate under his hand and official seal authorizing it to transact surety business. The certificate may also cover any other kinds of insurance which the company has power to transact.

(2) OLD COMPANIES. Any domestic corporation which on July 25, 1919, had power to transact surety business shall be entitled to such certificate if its capital, surplus and deposit at the time of the application for the certificate are not less than the sums respectively required of such corporation immediately prior to said date.

(3) LICENSE, DURATION, RENEWAL. The certificate shall expire on the thirtieth day of April next following its effective date and may be renewed from year to year; the commissioner shall have the same power to refuse to renew a certificate that he has to deny an original certificate.

(4) EVIDENCE, SOLVENCY. Such certificate and certified copies thereof shall be evidence of the qualification of the company named therein to do surety business and to be

accepted as surety on all instruments as provided in this chapter, and of the solvency of such company and shall be equivalent to the justification required of sureties. [*1933 c. 487 s. 131*]

204.03 Failure to file license. No instrument executed by a licensed surety company shall be held invalid or ineffective because such certificate or a certified copy thereof has not been filed; but the officer with whom any instrument so executed has been filed or any person who might claim the benefit thereof may require the person filing such instrument to file with such officer a certified copy of the surety's certificate of authority by giving him written notice so to do, and if he shall fail to file the same within eight days thereafter said instrument shall be of no effect for the purposes of the person filing the same unless he shall, before the expiration of such time, file such other bond, undertaking or instrument as was originaly required. [*1933 c. 487 s. 131*]

204.04 Licenses. (1) MAILING, FILING COPY. Upon the request of any surety company that a certified copy of its certificate of authority be furnished to any designated officer in this state and upon the payment of the fee required by law, the commissioner shall mail such copy to the designated officer who shall file the same. In case of revocation of the certificate of authority the commissioner shall immediately give notice thereof to each officer to whom a certified copy shall have been forwarded.

(2) EFFECT OF FILING COPY. Whenever a certified copy shall have been furnished to any public officer it shall be unnecessary, during the life of such certificate, to attach a copy thereof to any bond, undertaking or other instrument of suretyship filed with him.

(3) NOTICE OF INSOLVENCY TO COURTS. Whenever the commissioner shall learn that any licensed surety company has become financially embarrassed or unreasonably fails to carry out its contracts, or has filed a petition in bankruptcy, or is in the hands of a receiver, he shall immediately notify every county judge and the clerks of all courts of record in this state of said facts; and upon the receipt of such notice it shall be the duty of county judges and clerks of courts of record to notify and require every executor, administrator, guardian, trustee or other fiduciary that has filed a bond on which such company is surety, to forthwith file a new bond with new sureties. [*1933 c. 487 s. 131*]

204.041 Domestic corporations, capital and surplus required. 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, if a stock corporation 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, or a surplus, if a mutual corporation, of at least three hundred and seventy-five thousand dollars. 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 fifty thousand dollars and a surplus of at least one hundred and twenty-five thousand dollars, if a stock corporation, or a surplus of three hundred and seventy-five thousand dollars, if a mutual corporation. [*1933 c. 487 s. 132a*]

Note: See note to 201.11, citing 30 Atty. Gen. 65.

204.05 Foreign surety corporations, capital surplus. (1) No foreign corporation shall be authorized to transact surety business in this state unless at the time of its application for authority it has an unimpaired capital and surplus if a stock corporation, and a surplus, if a mutual corporation equal to that required of a similar domestic corporation. No corporation organized under the laws of a foreign country shall be authorized to transact surety business unless it shall satisfy the commissioner that it has on deposit with American trustees, or with the proper officers of states of the United States, or both, satisfactory securities equal in value to the total of the initial capital and surplus required of a similar domestic corporation, and that such securities are held in trust for the fulfillment by such company of all its obligations within the United States.

(2) A foreign corporation, applying for admission to transact surety business, shall before admission file with the commissioner, in addition to what is required by section 201.32, an agreement, properly signed, that it will not transact in this state any business which a similar domestic corporation is prohibited from transacting. [*1933 c. 487 s. 133*]

Revisor's Note, 1933: The duty of the commissioner upon service of process is covered by new 201.43. His appointment as attorney to admit service of process and summons and his duty are covered by 201.38, renumbered 201.32. See 204.06. (Bill No. 50 S, s. 133)

204.06 Corporations deposit securities. (1) No domestic corporation shall transact surety business unless it shall deposit and keep on deposit with the state treasurer securities specified in section 209.01 (3) worth, at their market value, not less than $100,000, and, in case such corporation transacts such business in other states, its total deposits shall be at least $250,000.

(2) No corporation incorporated under the laws of any other state or possession of the United States shall be authorized to transact surety business unless it shall satisfy the commissioner that it has on deposit with the proper officers of states or possessions 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 depositor of all of its obligations in the United States. No deposit shall be required of a surety corporation organized under the laws of a foreign country, other than the deposit required by section 204.05.

(3) No additional deposit shall be required of an insurance company, transacting other classes of insurance, as a condition of its engaging in the surety business; provided, that the securities it has on deposit in this state or elsewhere satisfy the requirements of subsection (1), and are held in trust for the fulfillment by the depositor of its contracts, whether of insurance or of suretyship, within the United States.

(4) The securities deposited pursuant to this section shall be held, exchanged, withdrawn, disposed of and the interest therefrom be paid to the corporation making the deposit as provided in section 209.01; provided, the total market value of the securities on deposit shall not fall below the minimum required by this section. [*1933 c. 487 s. 134; 1947 c. 100*]

204.07 Suretyship obligations. A licensed surety corporation may guarantee the conditions of or execute any bond, undertaking or obligation which is required or permitted by law to be given for the security of any person, association, corporation, state, county, municipality or other organization, or conditioned for the doing or not doing of anything specified in any such instrument; and all public officers, boards and committees, and all courts, judges and magistrates may accept and approve such instruments when executed or the conditions thereof are guaranteed by a licensed surety corporation. Such execution or guarantee shall be a full and complete compliance with all requirements as to how and by whom such instruments shall be executed or guaranteed. Such corporation may execute or guarantee any such instrument given under the laws of the United States or of any other state or country. Suretyship obligations need not be under seal unless the law specifically requires a seal and may be executed by any officer, attorney in fact or other authorized representative. [*Stats. 1931 s. 204.01; 1933 c. 487 s. 135*]

204.08 Fidelity obligations specified. A surety corporation licensed to write the fidelity insurance specified in subsection (7) of section 201.04 may guarantee the fidelity of or become 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, (d) bonds of insurance companies required by law as a condition of transacting business, (e) indemnifying banks, brokers and other financial or moneyed associations or corporations, against the loss of documents and money, except against loss caused by marine risks or risks of transportation or navigation, (f) indemnifying any federal land bank againt loss by reason of defective title to or incumbrances on real property on which such bank may have a mortgage. [*Stats. 1931 s. 204.02; 1933 c. 487 s. 136; 1935 c. 203*]

Revisor's Note, 1933: The law is not changed. The attempt to enumerate all the kinds of documents which financial institutions may handle is sure to fail and if it were successful new kinds of documents would come into use or new names would be used, thus making the statute incomplete or somewhat obsolete. Reinsurance is authorize by 204.10. The definition of terms is transferred to new 204.01. (Bill No. 50 S, s. 136)

The rule of strict construction against the insurer cannot be invoked to modify the terms of the policy. A provision in an indemnity policy that the insurer shall not be liable "for loss sustained during the term of the policy and not discovered within eighteen months after the occurrence of loss" relates wholly to liability, and not to the time in which liability may be enforced. City Bank of Portage v. Bankers L. M. C. Co., 206 W 1, 238 NW 819.

Where employe embezzles funds of his employer during term of one surety bond and later replaces same by further misappropriations during term of subsequent bond, liability for loss rests on sureties on bond during term of which first misappropriation occurred. 28 Atty. Gen. 100.

204.09 Guarantee's protection of guarantor. Any surety corporation may contract for indemnity or security for any suretyship obligation incurred by it; and any fiduciary from whom a suretyship obligation is required or permitted by law may deposit any moneys and other property for which he is responsible with a bank, safe deposit or trust company, in such manner as to prevent the withdrawal or alienation thereof without the written consent of the surety or an order of a court or judge thereof having jurisdiction of such fiduciary, made on such notice to the surety as the court or judge may direct. [*1933 c. 487 s. 137*]

204.10 Limitation of risks; reinsurance. (1) No corporation shall execute any suretyship obligation or expose itself to any loss on any one risk in an amount in excess of one-tenth of its capital and surplus, unless it shall be protected in the excess of that amount: (a) By reinsurance in a corporation authorized to transact surety business

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 jointly against the company reinsured and such reinsurer and to have recovery against such reinsurer for payment to the extent in which it may be liable under such reinsurance; or (b) by the cosuretyship of a surety corporation likewise 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 by deposit of a portion of the trust property under the conditions specified in section 204.09.

(2) But a surety corporation may execute transportation or warehousing bonds for United States internal revenue taxes to an amount equal to fifty per cent of its capital and surplus.

(3) 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 suretyship obligation 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 the one-tenth limitation; and 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.

(4) No such corporation shall guarantee the deposits of any single financial institution in an aggregate amount in excess of one-tenth of its capital and surplus unless it shall be protected in excess of that amount by credits in accordance with subsection (1). [*1933 c. 487 s. 138*]

204.11 Premium on bond allowed as expense. (1) 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 such obligation. Any party entitled to recover costs or disbursements in an action or special proceeding may include in such disbursements the lawful premium paid to such corporation for a suretyship obligation. Any public officer, required by law to give a suretyship obligation, may pay 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. [*Stats. 1931 s. 204.20; 1933 c. 487 s. 139, 140; 1935 c. 275*]

204.12 Surety company reserves. (1) Every surety corporation shall at all times keep and maintain: (a) An unearned premium reserve of fifty per cent of the current annual premiums upon all outstanding suretyship obligations; provided, that the commissioner, in estimating its condition, 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 amount of all losses and claims of which the corporation has received notice, and the estimated liability on any known 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) The corporation shall keep an itemized record showing all losses and claims, and all notices received of any event which may result in a loss. Its annual statement to the commissioner shall show all losses and claims of which the corporation has received notice during the year which remain unpaid and undisposed of, and shall schedule 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 against it.

(3) Whenever, in the judgment of the commissioner, the loss reserves on the suretyship obligations of any corporation, calculated in accordance with this section, are inadequate he may require such corporation to maintain additional reserves. [*1933 c. 487 s. 141*]

[*204.13 Stats. 1945 repealed by 1947 c. 521*]

204.14 Estoppel. Any corporation which shall execute any bond, recognizance, obligation, stipulation or undertaking as surety shall be estopped, in any proceeding to enforce the liability which it shall have assumed to incur, to deny its power to execute the same or assume such liability. [*Stats. 1931 s. 204.21; 1933 c. 487 s. 144*]

204.15 [*Renumbered section 331.38 by 1933 c. 487 s. 145*]

204.16 [*Renumbered sections 204.02, 204.03 and 204.04 by 1933 c. 487 s. 131*]

204.17 to 204.19 [*Repealed by 1933 c. 487*]

204.20 [*Renumbered section 204.11 sub. (2) by 1933 c. 487 s. 140*]

204.21 [*Renumbered section 204.14 by 1933 c. 487 s. 144*]

204.22 Credit guarantee company. Any corporation licensed to do a credit guarantee business in this state may agree to pay to persons engaged in business and giving credit in the same, the debts owing to them, and indemnify them from credit losses, and may charge any consideration for such contract of indemnity which shall be agreed upon, buy and take an assignment of any claims, accounts and demands so guaranteed and enforce the collection thereof the same as the original owner could do; and may insure the payment of compensation for personal services under contracts of hiring. Any such corporation may use its capital or other funds to purchase any claim or demand the payment of which it has guaranteed. [*1933 c. 487 s. 149*]

Revisor's Note, 1933: "Capital stock" evidently means the capital or property or assets of the company; see section 16, chapter 277, Laws 1897. Insurance of wages is not mentioned in 201.04. (Bill No. 50 S, s. 149)

204.23 Employer's liability policy. No casualty corporation issuing employer's liability policies shall condition the same upon compliance by the assured with "any law or ordinance respecting the safety of persons," but shall clearly and distinctly state what conditions and requirements are to be complied with by him. [*1933 c. 487 s. 150*]

204.24 Casualty and surety companies, dividends, reduction of capital, surplus. Domestic casualty and surety corporations shall declare dividends only out of their net surplus; and dividends in any fiscal year shall not exceed ten per cent of the capital unless and until the net surplus remaining thereafter shall equal fifty per cent of the capital stock. In estimating the net surplus there shall be deducted a sum equal to the unearned premiums; all sums due the corporation on bonds, mortgages, stocks and book accounts of which no part of the principal or the interest thereon had been paid during the last year, and for the collection of which no action has been commenced and on judgments more than two years old, and on which interest shall not have been paid; and all interest due to and all deposits for the special protection of policyholders of other states or of foreign countries. Any dividend made contrary to the provisions of this section shall be cause for the forfeiture of the charter of the corporation and each stockholder receiving such dividend shall be liable to its creditors to the extent of the dividend received. Any dividend declared or paid in violation of this section shall render the directors (except directors who were absent or whose dissent was entered in the minutes of the meeting which authorized the act) jointly and severally liable to the corporation and its creditors to the full amount paid out. [*1933 c. 487 s. 151*]

Revisor's Note, 1933: "Any such" in line 1 means and includes all the kinds of insurance mentioned in (4) to (11), (13) and (15), 201.04. See 1966—25 to 1966—44, Stats. 1898. See section 19, chapter 277, Laws 1897. Dividends can only be paid out of profits, 182.19. Surety companies are required to maintain a surplus of one hundred twenty-five thousand dollars by 204.04 and other insurance stock corporations of twenty-five per cent of the capital by 201.11 (2). This section seems practically worthless in view of other provisions which control corporations, and which were enacted later. Section 204.24 (1966—44) was created by chapter 277, Laws 1897, and never expressly amended. 204.04 was created by chapter 655, Laws 1919, and 201.11 was created by chapter 460, Laws 1909, and amended in 1911, 1915 and 1917. (Bill No. 50 S, s. 151)

204.25 Casualty and surety companies' stock dividend. Any domestic casualty insurance or surety corporation which shall have a surplus fund, in addition to the amount of its capital stock and all liabilities, including reinsurance reserve in excess of one-half of the amount of all premiums on outstanding risks, may increase its capital stock from such fund and distribute the shares pro rata to its stockholders; provided, that such increase shall be equal to at least twenty-five per cent of the original capital stock and shall have been authorized by at least three-fourths of the directors and approved by the commissioner. [*1933 c. 487 s. 152*]

Revisor's Note, 1933: The "preceding section" speaks for itself and the reference is mistaken. It originated in section 2, chapter 166, Laws 1899, and there referred to section 1 of that act which section became 1906a, Supl. of 1906, and was repealed in 1913. Increase of authorized capital is provided for by 180.07, 180.10, 201.02, 201.28, 201.29. This provision for increase of capital is a duplicate of 201.29, created by chapter 166, Laws 1899, and never amended, and superseded 204.25, created by chapter 277, Laws 1897. At any rate, 201.29 is the most complete as to procedure, and is sufficient. (Bill No. 50 S, s. 152)

204.26 Impairment of capital, how made good. (1) If in the opinion of the commissioner the reduction of capital authorized by section 200.06 will not be to the interest of the policyholders, or in the event of the refusal of the stockholders to consent thereto, he shall determine the amount of the impairment of the capital of the corporation and issue a requisition to the corporation to restore the capital within such period as he may designate, not less than thirty nor more than ninety days from the service of the requisition. Upon receipt of such requisition the directors shall forthwith call upon the stockholders ratably for such amounts as will make up such impairment.

(2) If any stockholder refuse or neglect to pay the amount called for after notice, given personally or by advertisement, in the time limited by the order of the commis-

sioner, the directors may, by resolution, declare the stock of such person canceled; but such failure to pay shall not release the stockholder from any liability. The directors may issue new certificates of stock in lieu of the stock forfeited and dispose of the same at not less than par.

(3) For any losses accruing upon risks taken after the expiration of the period limited by the commissioner in such order and before such impairment shall be made up, the director shall be jointly and severally liable; and any transfer of stock, made during the pendency of any examination by the commissioner or after any such order shall have been made and before any impairment specified therein shall be made good, shall not release the transferor from his liability for loss accruing previous thereto.

(4) Every domestic corporation and every foreign corporation which shall purchase, own or in any manner control the voting of any stock in a domestic life, fire or casualty insurance company shall be liable for any assessment made against the stockholders of such insurance company as determined by the commissioner of insurance in the same manner as is provided for individual stockholders. In case the assessment against such corporation made as provided herein shall not be fully paid by such corporation, then the stockholders of such corporation shall be liable for an assessment sufficient to cover the full amount of the assessment against such corporation. [*1933 c. 487 s. 153; 1935 c. 324*]

Revisor's Note, 1933: Subsection (1) is a duplicate of 200.07, except that one says twenty-five per cent and the other twenty per cent, and (5) is a repetition of part of 200.08. In fact, the whole subject of 204.26 is covered by 200.06 to 200.08. There are minor differences in details. It would seem that 204.26 should be repealed, and the other sections amended to preserve anything which is not duplicated. (Bill No. 50 S, s. 153)

204.27 Reserve liability. In computing the reserve liability of casualty insurance and surety corporations the commissioner shall make such calculations as in his judgment are equitable and just to both policyholders and the company; provided, that such liability so determined shall not be less than fifty per cent of the premiums written in the company's policies. [*1933 c. 487 s. 154*]

Note: As to splitting the premium, see note to 201.18, citing Duel v. State Farm Mut. Auto Ins. Co., 240 W 161, 1 NW (2d) 887, 2 NW (2d) 871.

204.28 Employers' liability reserves, computation, allocation, definitions. (1) The reserve for outstanding losses under insurance against loss or damage from accident or injuries to any person and for which the insured is liable shall be computed as follows as of the date of computation:

(a) For all liability suits being defended under policies written more than ten years prior to that date, one thousand five hundred dollars for each suit; and for more than five and less than ten years prior thereto, one thousand dollars for each suit; and for more than three and less than five years prior thereto, eight hundred and fifty dollars for each suit.

(b) For all liability policies written during the three years immediately preceding such date, such reserve shall be sixty per centum of the earned liability premiums of each of such three years less all loss and loss expense payments made under liability policies written in said years; but in any event, such reserve shall, for the first of such three years, be not less than seven hundred and fifty dollars for each pending suit on said year's policies.

(c) For all compensation claims under policies written more than three years prior to such date, the present values at four per centum interest of the determined and the estimated future payments.

(d) For all compensation claims under policies written in the three years immediately preceding said date, such reserve shall be sixty-five per centum of the earned premiums of each of such three years, less all loss and loss expense payments made in connection with such claims under policies written in the corresponding years; but in any event, for the first year of such three-year period such reserve shall be not less than the present value at four per centum interest of the determined and the estimated claims under policies written during such year.

(2) (a) As used in this section, the term "earned premiums" shall include gross premiums charged on all policies, including all determined excess and additional premiums, less return premiums other than premiums returned to policyholders as dividends and less reinsurance premiums and premiums on policies canceled and less unearned premiums on policies in force. But any participating company which has charged in its premium a loading in excess of its average expense requirements shall not be required to include such loading in its earned premiums; provided, the amount of such loading is approved by the commissioner.

(b) The term "compensation" relates to all insurance providing compensation to employes for personal injuries, irrespective of fault of the employer. The term "liability" relates to all insurance except compensation insurance against loss or damage from acci-

dent to or injuries suffered by an employe or other person and for which the insured is liable.

(c) The terms "loss payment" and "loss expense payments" include all payments to claimants, payments for medical and surgical attendance, legal expenses, salaries and expenses of investigators, adjusters and fieldmen, rents, stationery, telegraph and telephone charges, postage, salaries and expenses of office employes, home office expenses, and all other payments made on account of claims, whether such payments shall be allocated to specific claims or unallocated.

(3) All unallocated liability loss expense payments made in a given calendar year subsequent to the first four years in which an insurer has been issuing liability policies shall be distributed as follows: Thirty-five per centum shall be charged to the policies written in that year; forty per centum to the policies written in the preceding year; ten per centum to the policies written in the second year preceding; ten per centum to the policies written in the third year preceding; and five per centum to the policies written in the fourth year preceding, and such payments made in each of the first four calendar years in which an insurer issues liability policies shall be distributed as follows: In the first calendar year one hundred per centum shall be charged to the policies written in that year, in the second calendar year fifty per centum shall be charged to the policies written in that year and fifty per centum to the policies written in the preceding year, in the third calendar year forty per centum shall be charged to the policies written in that year, forty per centum to the policies written in the preceding year, and twenty per centum to the policies written in the second year preceding, and in the fourth calendar year thirty-five per centum shall be charged to the policies written in that year, forty per centum to the policies written in the preceding year, fifteen per centum to the policies written in the second year preceding, and ten per centum to the policies written in the third year preceding, and a schedule showing such distribution shall be included in the annual statement.

(3a) All unallocated compensation loss expense payments made in a given calendar year subsequent to the first three years in which an insurer has been issuing compensation policies shall be distributed as follows: Forty per centum shall be charged to the policies written in that year, forty-five per centum to the policies written in the preceding year, ten per centum to the policies written in the second year preceding and five per centum to the policies written in the third year preceding, and such payments made in each of the first three calendar years in which an insurer issues compensation policies shall be distributed as follows: In the first calendar year one hundred per centum shall be charged to the policies written in that year, in the second calendar year fifty per centum shall be charged to the policies written in that year and fifty per centum to the policies written in the preceding year, in the third calendar year forty-five per centum shall be charged to the policies written in that year, forty-five per centum to the policies written in the preceding year, and ten per centum to the policies written in the second year preceding and a schedule showing such distribution shall be included in the annual statement.

(4) Whenever in the judgment of the commissioner the liability or compensation loss reserves of any insurer, calculated in accordance with the foregoing provisions, are either inadequate or excessive, he may, in his discretion require or permit such insurer to set up reserves based upon estimated individual claims or such other basis as he may approve.

(5) Each insurer that writes liability or compensation policies shall include in the annual statement required by law a schedule of its experience thereunder in such form as the commissioner may prescribe. [*1933 c. 487 s. 155; 1937 c. 219*]

204.29 Notice of injury; time printed on policy; service. (1) No licensed accident or casualty insurance company in Wisconsin shall limit the time for the service of any notice of injury to less than twenty days, except as provided in section 204.31.

(2) The time allowed for serving a notice of injury as provided in this section, shall appear clearly and conspicuously upon the face of every accident or casualty insurance policy or certificate.

(3) The deposit in any post office by or for the insured of a registered, postage prepaid envelope, containing the proper notice of injury within twenty days after the injury addressed to the company, issuing the policy or certificate, shall be a sufficient service of notice of injury. [*1933 c. 487 s. 156*]

Revisor's Note, 1933: Section 204.29 extends to liability insurance. Corwin v. Salter, 194 W 333, 216 NW 653. It does not apply to policies issued under 204.31 which is a later enactment. In fact, a careful reading of 204.29 will lead to the conclusion that it was intended to cover only accident policies and was superseded by 204.31. (Bill No. 50 S, s. 156)

Where the indemnity policy requires the insured to give written notice as soon as practicable after an accident, he is not required to give notice within twenty days after the accident, because of the statutory provision. But after the expiration of that twenty-day period the insured is required to give the notice as soon as practicable and failure to give the notice raises the presumption that the insurer was prejudiced by such failure. Parrish v. Phillips, 229 W 439, 282 NW 551.

204.30 Accident insurance, highway traffic, policy provisions. (1) No policy of insurance against loss or damage resulting from accident or injury to a person, and for which the insured is liable, or against loss or damage to property caused by animals or by any motor vehicle, and for which the insured is liable, shall be issued or delivered in this state unless it shall contain a provision that the insolvency or bankruptcy of the insured shall not release the insurer from the payment of damages for injury sustained or loss occasioned, and that in case execution, in an action brought upon the policy against the insured, is returned unsatisfied, then an action may be maintained against such insurer for the amount due on the judgment not exceeding the amount of the policy.

(2) No such policy shall be issued or delivered in this state on or after September 1, 1925, by any company, unless there shall be contained within such policy a provision that notice given by or on behalf of the insured to any authorized agent of the insurer within this state, with particulars sufficient to identify the insured, shall be deemed to be notice to the insurer, and also a provision that failure to give any notice required to be given by such policy within the time specified therein shall not invalidate any claim made by the insured if it shall be shown not to have been reasonably possible to give such notice within the prescribed time and that notice was given as soon as reasonably possible.

(3) No such policy shall be issued or delivered in this state to the owner of a motor vehicle, unless it contains a provision reading substantially as follows: The indemnity provided by this policy is extended to apply, in the same manner and under the same provisions as it is applicable to the named assured, to any person or persons while riding in or operating any automobile described in this policy when such automobile is being used for purposes and in the manner described in said policy. Such indemnity shall also extend to any person, firm or corporation legally responsible for the operation of such automobile. The insurance hereby afforded shall not apply unless the riding, use or operation above referred to be with the permission of the assured named in this policy, or if such assured is an individual, with the permission of an adult member of such assured's household other than a chauffeur or domestic servant; provided, however, that no insurance afforded by this paragraph shall apply to a public automobile garage or an automobile repair shop, sales agency, service station and/or the agents or employes thereof. In the event an automobile covered by this policy is sold or transferred the purchaser or transferee shall not be an additional insured without consent of the company, indorsed hereon. [*1933 c. 487 s. 157; 1943 c. 275 s. 52*]

Note: In view of (3) it was error to permit the plaintiff to show or insinuate that a greater premium than necessary was paid for the policy in order to protect the car owner for injuries while others were driving the car. Christiansen v. Aetna C. & S. Co., 204 W 323, 236 NW 109.

The law imputes to an automobile liability policy the provision extending coverage to others than the named insured. The words of such provision limiting coverage to the insured or persons operating the automobile with "permission of the named assured" are construed as intended to cover persons using the insured automobile with the insured's consent in the first instance, regardless of use thereafter. The coverage afforded by the statute and the equivalent policy provision, existing only when the use is for purposes described in the policy, is not greater when the automobile is used with the insured's permission than when used by the insured himself. Drewek v. Milwaukee A. Ins. Co., 207 W 445, 240 NW 881.

Automobile indemnity policy insuring B (a trucker) "and/or" S as the "named assured," and excluding from coverage accidents to employes of "assured" arising out of and in usual course of business of "assured," is held to indemnify B for injury to employe of S from operation of truck while same was being operated by B in his own business, as against contention that word "assured" in exclusion clause referred to both parties named in coverage clause and to employes of both, and that exclusion clause excluded accidents causing injury to employes of both or either regardless of which of parties named in coverage clause was operating truck. Employers M. L. Ins. Co. v. Tollefsen, 219 W 434, 263 NW 376.

Under an automobile owner's liability policy containing a provision that the policy should apply to any person legally responsible for the operation of the automobile except an automobile garage or repair shop or the agents or employes thereof, a garage employe, who was operating the automobile when it struck a pedestrian, was not an additional insured so as to entitle the garage's insurer, which was liable to the pedestrian, to recover a proportionate part of its liability from the automobile owner's insurer. Paine v. Finkler Motor Car Co., 220 W 9, 264 NW 477.

An automobile owner's liability policy, containing the extended insurance coverage provision required by the statute, does not cover a situation where a garageman, after servicing the automobile, injured a pedestrian while returning the automobile to the insured customer. Ederer v. Milwaukee A. Ins. Co., 220 W 635, 265 NW 694.

In actions arising out of a collision of automobiles, one of which, covered by a liability policy, was being driven at the time of the accident by a friend of a son of the insured owner, evidence that to the knowledge of the insured her son and his friend had at times exchanged places as driver of the car, that on two other occasions the insured had given express permission to the friend to drive the car, and that on the night of the accident the insured had returned home early so that her son and his friend could use the car and had cautioned them to be careful, is held to support the jury's finding that the car was being driven by the friend with the permission of the insured, so as to render the insurer liable on the policy. Bushman v. Tomek, 222 W 562, 269 NW 289.

In order to render an insurer liable under an automobile liability policy containing an omnibus clause covering anyone using the automobile with the permission of the insured or an adult member of his household, express permission need not be proved; it being sufficient if the facts adduced reasonably tend to show that the automobile was

being used with the implied permission of the insured; but in order to support an inference that one has the implied permission to use an automobile belonging to another for his own pleasure and purposes, there must be evidence tending to show a course of conduct or practice known to the owner and acquiesced in by him, or by someone having authority to give permission. Evidence that the insured's chauffeur, who was also handy man at the insured's summer home and had charge of the insured's several automobiles and in the performance of his duties made frequent trips to a near-by village for oil, gasoline, groceries, and supplies, was often seen in the village in the evening driving one of the insured's automobiles, and was several times late at night seen in a tavern and on such occasions was driving one of the insured's automobiles, is held, standing alone and in the absence of proof of other circumstances tending to show knowledge on the part of the insured that the chauffeur was using the automobiles for his own pleasure and purposes, insufficient to support a finding that the chauffeur was using the insured's automobile with the implied permission of the insured at the time of the collision, which occurred between one and two o'clock in the morning while the chauffeur was out on a trip of his own. Brochu v. Taylor, 223 W 90, 269 NW 711.

A public liability policy protecting the insured against liability for accidental injuries caused by employes of the insured in the line of their employment was "other insurance" within a provision in a policy excluding from the coverage of the policy the operation of loading and unloading trucks during the period covered by "other insurance" insuring against loss arising from such operation. Such excluding provisions are not prohibited by the standard policy regulations. Fitzgerald v. Milwaukee Automobile Ins. Co., 226 W 520, 277 NW 183.

A driver to whom an automobile had been intrusted by one who had permission to use it directly from the assured is not an "additional assured" under the omnibus coverage clause of an automobile liability policy. Locke v. General A. F. & L. Assur. Corp., 227 W 489, 279 NW 55.

Under an automobile liability policy excluding from coverage an employe of an insured in an action brought against him because of injury or death of another employe injured in an accident arising out of the use of the automobile in the insured's business, the insurer was not liable for the death of an employe of an additional insured resulting from the negligence of another employe with whom deceased employe was riding on the business of the insured. Brandt v. Employers' Liability Assur. Corporation, 228 W 328, 280 NW 403.

While the extended insurance clause under 204.34 excludes the insured from recovery for the death of a minor son killed by the wrongful act of another minor son while driving the automobile, still the wife of the insured was entitled to recover from the insurer one-half the sum allowed as pecuniary loss resulting from the death of the child and one-half of the compensation allowed, for loss of society and companionship. Munsert v. Farmers Mut. Automobile Ins. Co., 229 W 581, 281 NW 671.

The wrongful taking possession of personal property either by force or fraud generally amounts to a conversion. Under an automobile liability policy issued to a company engaged in the business of a public automobile garage and sales agency, extending coverage to any "customer" of the company against liability for injury to third persons, an unknown person who obtained a car from the company by false pretenses and who while making off with the car collided with another car, then immediately disappeared and could not be found, was not a "customer" of the company, hence the insurer was not subject to liability under the policy for injuries sustained by the driver of the other car in the collision. Potts v. Farmers M. A. Ins. Co., 233 W 313, 289 NW 606.

The coverage afforded by an automobile liability policy when a claim for damages is against a party who, although not the named insured, is one to whom the insurer's obligation to indemnify is extended by virtue of (3), is no greater than nor different from the coverage thereunder when the claim is against the named insured. A provision in an automobile liability policy that the extended indemnity did not apply "to any employee of an insured with respect to any action brought against said employee because of bodily injury to or death of another employee of the same insured injured in the course of such employment in an accident arising out of the maintenance or use of the automobile in the business of such insured," was void as in violation of the extended coverage requirements prescribed by (3). Narloch v. Church, 234 W 155, 290 NW 595.

With respect to personal injury sustained by him, an unemancipated minor may not bring an action against his parent's automobile liability insurer grounded on the parent's negligence, since the fact that the parent is insured does not give rise to a cause of action based on the parent's negligence where no cause of action exists against the parent if not insured. Lasecki v. Kabara, 235 W 645, 294 NW 33.

An employe of a corporation engaged in selling replacement parts to dealers in automobiles who was sent to a dealer's for the purpose of adjusting a complaint of a purchaser of a defective car, and who injured a third person while driving the car on a test run, was not an employe of the dealer at the time and he was not an agent or employe of any person engaged in operating an automobile repair shop, public garage, or automobile sales agency so as to be excluded from the coverage otherwise afforded by a liability policy on the car. Tolsma v. Miller, 243 W 19, 9 NW (2d) 111.

Where a garage policy assumed to insure the named insured against liability arising out of the operation of any of his cars for pleasure, the policy, to the extent of such obligation, was in the nature of a privately owned car policy, required by operation of (3), to furnish omnibus coverage, so that a person involved in a collision, while permissively driving a car of the named insured on a trip unrelated to the garage business, was entitled to the coverage of the policy as an additional insured. Culver v. Webb, 244 W 478, 12 NW (2d) 731.

Except as otherwise permitted by (3), the extension of the insurer's obligation for indemnity to a person driving the automobile with the permission of the named insured must be as great as the insurer's obligation for indemnity to the named insured. Schenke v. State Farm Mut. Automobile Ins. Co. 246 W 301, 16 NW (2d) 817.

A provision in an automobile liability policy, that "the insurance with respect to any person other than the named insured does not apply to injury to or death of any person who is a named insured," is void as in violation of (3), and, specifically, is inoperative to relieve the insurer of obligation for indemnity to a person driving the automobile with the permission of the named insured and operating the automobile in such negligent manner as to result in injury to the named insured, riding therein. Schenke v. State Farm Mut. Automobile Ins. Co. 246 W 301, 16 NW (2d) 817.

Indorsement on an automobile insurance policy for liability and property damage to effect that it is "named driver policy," thereby limiting protection to cases when car is being driven by person named in policy and excluding protection when it is driven by some person other than one named in policy, is in violation of (3). 19 Atty. Gen. 309.

Neither an indorsement on a garage liability policy, nor statutes relating to operation of automobile by consent of insured, which in effect added an omnibus clause, could extend the policy coverage to automobiles not therein included. Hardware Mut. Casualty Co. v. Wendlinger, 146 F (2d) 984.

204.31 Standard accident and health policy. (1) FORMS, RATES, APPROVAL, USE. (a) No policy of insurance against loss or expense from sickness or from bodily injury or death by accident of the insured shall be issued or delivered to any person in this state nor shall any application, rider or indorsement be used in connection therewith until a copy of the form thereof and of the classification of risks and the premium rates or, in the case of co-operatives or assessment companies, the estimated cost pertaining thereto, has been filed with the commissioner of insurance.

(b) No such policy shall be issued, nor shall any application, rider or indorsement be used in connection therewith until the expiration of 30 days after it has been so filed unless the commissioner shall sooner give his written approval thereto.

(c) The commissioner may within 30 days after the filing of any such form disapprove such form (1) if the benefits provided therein are unreasonable in relation to the premium charged, or (2) if it contains a provision which is unjust, unfair, inequitable, misleading, deceptive or encourages misrepresentation of such policy. If the commissioner shall notify the insurer that the form does not comply with this section, it shall be unlawful thereafter for such insurer to issue or use such form. In such notice the commissioner shall specify the reason for his disapproval and state that a hearing will be granted within 20 days after request in writing by the insurer.

(d) The commissioner may at any time, after a hearing on not less than 20 days' written notice to the insurer, withdraw his approval of any such form on any of such grounds. It shall be unlawful for the insurer to issue such form or use it after the effective date of such withdrawal of approval.

(e) Notice of all hearings shall specify the matters to be considered, and each decision affirming disapproval or directing withdrawal of approval shall be in writing and shall specify the reasons.

(f) Any order or decision of the commissioner under this subsection shall be subject to judicial review in the manner provided in chapter 227.

(g) This subsection shall not apply to group accident and health insurance within the provisions of subsection (13) (a) and (b).

(2) CONDITIONS PRECEDENT TO ISSUE. No such policy shall be issued unless the entire money and other considerations therefor are expressed in the policy; nor unless the time at which the insurance thereunder takes effect and terminates is stated therein; nor which insures more than one person; nor unless every portion thereof and any indorsements or attached papers shall be plainly printed in type not smaller than ten-point; nor unless a brief description thereof be printed on its first page and on its filing back in type not smaller than fourteen-point; nor unless the exceptions of the policy be printed with the same prominence as the benefits to which they apply; nor unless any portion of such policy which (by reason of the circumstances under which a loss is incurred) reduces the indemnity below that provided for the same loss occurring under ordinary circumstances, shall be printed in bold-face type and with greater prominence than any other portion of the text of the policy.

(3) STANDARD PROVISIONS. Every such policy shall contain the following provisions, which shall be in the words and in the order hereinafter set forth and be preceded by the caption "Standard Provisions." For the word "insurer" where it occurs in said standard provisions, there may be substituted the word "company" or "corporation" or "association" or "society" or such other word as will designate the insurer:

STANDARD PROVISIONS.

1. This policy includes the indorsements and attached papers, if any, and contains the entire contract of insurance. No reduction shall be made in any indemnity herein provided by reason of change in the occupation of the insured or by reason of his doing any act or thing pertaining to any other occupation.

1. This policy includes the indorsements and attached papers, if any, and contains the entire contract of insurance except as it may be modified by the insurer's classification of risks and premium rates in the event that the insured is injured after having changed his occupation to one classified by the insurer as more hazardous than that stated in the policy, or while he is doing any act or thing pertaining to any occupation so classified, except ordinary duties about his residence or while engaged in recreation, in which event the insurer will pay only such portion of the indemnities provided in the policy as the premium paid would have purchased at the rate but within the limits so fixed by the insurer for such more hazardous occupation. If the law of the state in which the insured resides at the time this policy is issued requires that prior to its issue a statement of the premium rates and classification of risks pertaining to it shall be filed with the state official having supervision of insurance in such state then the premium rates and classification of risks

mentioned in this policy shall mean only such as have been last filed by the insurer in accordance with such law, but if such filing is not required by such law then they shall mean the insurer's premium rates and classification of risks last made effective by it in such state prior to the occurrence of the loss for which the insurer is liable.

(Explanation: Provisions numbered 1 are alternatives. If the second of them is used and the policy provides indemnity against loss from sickness, the words "or contracts sickness" may be inserted.)

2. No statement made by the applicant for insurance not included herein shall avoid the policy or be used in any legal proceeding hereunder. No agent has authority to change this policy or to waive any of its provisions. No change in this policy shall be valid unless approved by an executive officer of the insurer and such approval is indorsed hereon.

3. If default be made in the payment of the agreed premium for this policy, the subsequent acceptance of a premium by the insurer or by any of its duly authorized agents shall reinstate the policy, but only to cover (insert loss resulting from accidental injury thereafter sustained; or such sickness as may begin more than ten days after the date of such acceptance; or accidental injury thereafter sustained and such sickness as may begin more than ten days after the date of such acceptance, according to the indemnity provided).

4. Written notice of injury (or of sickness) on which claim may be based must be given to the insurer (insert within twenty days after the date of the accident causing such injury; or within ten days after the commencement of the disability from such sickness; or insert both depending on the indemnity provided).

(Explanation: The following language may be added to provision 4 at the option of the insurer: "In event of accidental death immediate notice thereof must be given to the insurer.")

5. Such notice given by or in behalf of the insured or beneficiary, as the case may be, to the insurer at (insert such office and its location) or to any authorized agent of the insurer, with particulars sufficient to identify the insured, shall be deemed to be notice to the insurer. Failure to give notice within the time provided in this policy shall not invalidate any claim if it shall be shown not to have been reasonably possible to give such notice and that notice was given as soon as was reasonably possible.

(Explanation: Provision 5 may be changed by inserting in lieu of the words "any authorized agent of the insurer," the following ".... ...., agent of the insurer at ....," and by filling the blank before the word "agent" with a designation or name of an agent, and by filling the blank after word "at" with a post-office address, both to be sufficient to assure the delivery of mail to such agent.)

6. The insurer upon receipt of such notice, will furnish to the claimant such forms as are usually furnished by it for filing proofs of loss. If such forms are not so furnished within fifteen days after the receipt of such notice the claimant shall be deemed to have complied with the requirements of this policy as to proof of loss upon submitting within the time fixed in the policy for filing proofs of loss, written proof covering the occurrence, character and extent of the loss for which claim is made.

7. Affirmative proof of loss must be furnished to the insurer at its said office within ninety days after the date of the loss for which claim is made.

7. Affirmative proof of loss must be furnished to the insurer at its said office within ninety days after the termination of the period of disability for which the company is liable.

7. Affirmative proof of loss must be furnished to the insurer at its said office in case of claim for loss of time from disability within ninety days after the termination of the period for which the insurer is liable, and in case of claim for any other loss, within ninety days after the date of such loss.

(Explanation: Provisions numbered 7 are alternative forms and the one which is appropriate to the indemnity provided shall be used.)

8. The insurer shall have the right and opportunity to examine the person of the insured when and so often as it may reasonably require during the pendency of claim hereunder, and also the right and opportunity to make an autopsy in case of death where it is not forbidden by law.

9. All indemnities provided in this policy will be paid .... after receipt of due proof.

9. All indemnities provided in this policy for loss other than that of time on account of disability will be paid after receipt of proof.

(Explanation: Provisions number 9 are alternatives and which may be omitted from any policy providing indemnity for loss of time on account of disability. The insurer shall insert in the blank space the word "immediately" or a period of time not over sixty days.)

10. Upon request of the insured and subject to due proof of loss (insert the proportion of the accrued indemnity which is to be paid which part shall not be less than one-

half) accrued indemnity for loss of time on account of disability will be paid at the expiration of each (insert the period of time not exceeding sixty days) during the continuance of the period for which the insurer is liable, and any balance remaining unpaid at the termination of such period will be paid immediately upon receipt of due proof. (This provision may be omitted from a policy not providing for such indemnity.)

11. Indemnity for loss of life of the insured is payable to the beneficiary if surviving the insured, and otherwise to the estate of the insured. All other indemnities of this policy are payable to the insured.

11. All the indemnities of this policy are payable to the insured.

(Explanation: Provisions numbered 11 are alternatives.)

12. If the insured shall at any time change his occupation to one classified by the insurer as less hazardous than that stated in the policy, the insurer, upon written request of the insured, and surrender of the policy, will cancel the same and will return to the insured the unearned premium.

13. Consent of the beneficiary shall not be requisite to surrender or assignment of this policy, or to change of beneficiary, or to any other changes in the policy. (Provision 13 may be omitted from policies which do not name a beneficiary.)

14. No action at law or in equity shall be brought to recover on this policy prior to the expiration of sixty days after proof of loss has been filed in accordance with the requirements of this policy, nor shall such action be brought at all unless brought within two years from the expiration of the time within which proof of loss is required by the policy.

15. If any time limitation of this policy with respect to giving notice of claim or furnishing proof of loss is less than that permitted by the law of the state in which the insured resides at the time this policy is issued, such limitation is hereby extended to agree with the minimum period permitted by such law.

(4) OPTIONAL STANDARD PROVISIONS. No such policy shall contain any provisions relative to cancellation at the instance of the insurer; or limiting the amount of indemnity to a sum less than the amount stated in the policy and for which the premium has been paid; or providing for the deduction of any premium from the amount paid in settlement of claim; or relative to other insurance by the same insurer; or relative to the age limits of the policy, unless such provisions (which are hereby designated as optional standard provisions) shall be in the words and in order in which they are hereinafter set forth, and are inserted in the policy immediately following the standard provisions provided in subsection (3).

16. The insurer may cancel this policy at any time by written notice delivered to the insured or mailed to his last address as shown by the records of the insurer together with cash or the insurer's check for the unearned portion of the premiums actually paid by the insured, and such cancellation shall be without prejudice to any claim originating prior thereto.

17. If the insured shall carry with another company, corporation, association or society other insurance covering the same loss without giving written notice to the insurer, then in that case the insurer shall be liable only for such portion of the indemnity promised as the said indemnity bears to the total amount of like indemnity in all policies covering such loss, and for the return of such part of the premium paid as shall exceed the pro rata for the indemnity thus determined.

18. Upon the payment of claim hereunder any premium then due and unpaid or covered by any note or written order may be deducted therefrom.

19. If a like policy or policies, previously issued by the insurer to the insured be in force concurrently herewith, making the aggregate indemnity in excess of $...., the excess insurance shall be void and all premiums paid for such excess shall be returned to the insured.

19. If a like policy or policies, previously issued by the insurer to the insured be in force concurrently herewith, making the aggregate indemnity for loss of time on account of disability in excess of $...., weekly, the excess insurance shall be void and all premiums paid for such excess shall be returned to the insured.

19. If a like policy or policies, previously issued by the insurer to the insured be in force concurrently herewith, making the aggregate indemnity for loss other than that of time on account of disability in excess of $...., or the aggregate indemnity for loss of time on account of disability in excess of $.... weekly (or substitute the word "monthly") the excess insurance of either kind shall be void and all premiums paid for such excess shall be returned to the insured.

(Explanation: Provisions numbered 19 are alternatives. The one which is appropriate to the indemnity provided may be used, and the insurer shall insert in the blank spaces its upward limits of indemnity as specified by its classification of risks.)

20. The insurance under this policy shall not cover any person under the age of (insert number) years nor over the age of (insert number) years. Any premium paid to the insurer for any period not covered by this policy will be returned upon request.

(5) CONTRARY PROVISIONS PROHIBITED. No policy nor any indorsements or attached papers shall vary, alter, extend, be used as a substitute for, or in any way conflict with any of said standard or said optional standard provisions; nor shall such policy purport to make any portion of the charter, constitution or by-laws of the insurer a part of the policy unless such portion shall be set forth in the policy, but this prohibition shall not apply to any statement of rates or classification of risks filed with the commissioner in accordance with law.

(6) WAIVER OF DEFENSES. The acknowledgment by any insurer of the receipt of notice given under any policy covered by this section, or the furnishing of forms for filing proofs of loss, or the acceptance of such proofs, or the investigation of any claim thereunder, shall not operate as a waiver of any defense to any claim arising under such policy.

(7) ALTERATIONS. No alteration of any application for insurance shall be made by any person other than the applicant without his written consent, and the making of any such alteration without the consent of the applicant shall be a misdemeanor. If such alteration shall be made by any officer of the insurer, or by any employe of the insurer with the insurer's knowledge or consent, such act shall be deemed to have been performed by the insurer.

(8) IRREGULAR POLICIES. A policy issued in violation of this section shall be valid but shall be construed as though it did comply with it and the rights, duties and obligations of the insurer, the policyholder and the beneficiary shall be governed by the provisions of this section.

(9) DEVIATION PERMITTED. The policies of insurance against accidental bodily injury or sickness issued by a foreign insurer may contain any provision which is authorized by the law of the state of the United States under which it is organized, and such policies issued by a domestic insurer may contain, when issued or delivered without this state, any provision required by the laws of the state or country in which the same are issued.

(10) EXCEPTIONS. (a) This section shall not apply to liability or workmen's compensation insurance or any general or blanket policy of insurance, as defined in subsection (13) of this section.

(b) This section shall not apply to contracts of life or endowment insurance or contracts supplemental thereto, which contain no provisions relating to accident or health insurance except accidental death benefits and except such as operate to safeguard such insurance against lapse, or to give a special surrender value or an annuity providing for payments not exceeding one per cent per month of the face amount of the policy during the lifetime of the insured, with or without reduction of the sum insured, in the event that the insured shall be totally and permanently disabled from any cause; provided, that no such supplemental contract shall be issued in this state until the form thereof has been submitted to and approved by the commissioner, under such reasonable rules and regulations as he shall make concerning the provisions in such contracts and their submission and approval.

(c) The provision of subsection (2) which reads "nor unless a brief description thereof be printed on its first page and on its filing back in type not smaller than fourteen-point" and standard provisions 2, 3, 8 and 12 may be omitted from railroad ticket policies sold only at railroad stations or at railroad ticket offices by railroad employes, and from airplane ticket policies sold only at airports or at airplane ticket offices by the employes for passage on air lines licensed to carry passengers, and from motor bus ticket policies sold only at motor bus stations or ticket offices by the employes for passage on licensed bus lines.

(11) PENALTIES. Any insurer or any officer or agent thereof, who issues or delivers in this state any policy in wilful violation of the provisions of this section shall be fined not more than one hundred dollars, and the commissioner may revoke the license of any foreign insurer, or of the agent thereof, who wilfully violates any provisions of this section.

(12) INTERPRETATION. This revision of section 204.31 made in 1933 does not change the law. It permits the printing and use of policy forms which were in use at the time of said revision.

(13) GROUP ACCIDENT AND HEALTH INSURANCE. (a) Group accident and health insurance is declared to be that form of accident and health insurance covering not less than 10 employes or members, including employes of members, and which may include the employe's or member's dependents, written under a master policy issued to any governmental corporation, unit, agency or department thereof, or to any corporation, copartnership, individual employer, or to any association, including a labor union, upon appli-

cation of an executive officer or trustee of such association or labor union having a constitution or by-laws, and formed in good faith for purposes other than that of obtaining insurance, where the officers, members, employes or classes or department thereof, may be insured for their individual benefit and which may include the individual's dependents. If the master policy is issued to an employer, it may provide that the term "employes" shall include the officers, managers and employes of the policyholder and of subsidiary or affiliated corporations, and the individual proprietors, partners and employes of affiliated individuals and firms, when the business of the policyholder and of such subsidiary or affiliated corporations, firms or individuals is under common control through stock ownership, contract or otherwise. Any insurance company authorized to write accident and health insurance in this state shall have power to issue group accident and health policies.

(b) No policy of group accident and health insurance may be issued or delivered in this state until a copy of the form thereof shall have been filed with the commissioner, nor until 30 days thereafter unless he approves the form sooner. If he notifies the company that the form does not comply with the requirements of law, specifying the defect, it is unlawful to issue any policy in such form. No such policy shall be issued or delivered in this state unless a schedule of the premium rates pertaining to such form also has been filed with the commissioner. No such policy shall be issued unless it contains in substance those provisions contained in subsection (3) of this section which may be applicable to group accident and health insurance, nor unless the policy contains these provisions:

1. The application of the employer, or executive officer or trustee of any association, and the individual applications, if any, of the employes or members insured shall constitute the entire contract between the parties, and all statements made by the employer, or the executive officer or trustee, or by the individual employes or members shall in the absence of fraud, be deemed representations and not warranties, and no such statement shall be used in defense to a claim under the policy, unless it is contained in the written application.

2. The insurer will issue to the employer, or to the executive officer or trustee of the association, for delivery to the employe or member, who is insured under such policy, an individual certificate setting forth a statement as to the insurance protection to which he is entitled, and to whom payable.

3. The group or class thereof originally insured may be added to from time to time so as to include all new employes of the employer or members of the association eligible to and applying for insurance in such group or class.

(c) Family expense accident and health insurance is declared to be that form of accident and health insurance covering the members of any one family including husband, wife and children, written under a master policy issued to the head of such family. Any insurance company authorized to write accident and health insurance in this state shall have the power to issue family expense accident and health insurance. No policy of family expense accident and health insurance may be issued or delivered in this state until a copy of the form thereof shall have been filed with the commissioner, nor until 30 days thereafter unless he approves the form sooner. If he notifies the company that the form does not comply with the requirements of law, specifying the defect, it is unlawful to issue any policy in such form. No such policy shall be issued or delivered in this state unless a schedule of the premium rates pertaining to such form also has been filed with the commissioner.

(d) No policy of family expense accident and health insurance shall be issued unless it contains in substance those provisions contained in subsection (3) of this section which may be applicable to family expense accident and health insurance, nor unless the policy contains these provisions:

1. The policy and the application of the head of the family shall constitute the entire contract between the parties, and all statements made by the head of the family shall in the absence of fraud, be deemed representations and not warranties, and no statement shall be used in defense to a claim under the policy, unless it is contained in the written application.

2. The family group originally insured may be added to from time to time so as to include all new members of the family eligible for insurance in such family group.

(14) FRANCHISE GROUP ACCIDENT AND HEALTH INSURANCE. Franchise group accident and health insurance is declared to be that form of accident and health insurance covering 3 or more employes or members of any governmental corporation, unit, agency or department thereof, or of any corporation, co-partnership or individual employer, or of any association, including a labor union, having a constitution or by-laws, and formed in good faith for purposes other than that of obtaining insurance, where such employes or members and their dependents are covered under individual policies of insurance, under an arrangement whereby the premiums on such policies are to be paid to the insurer

periodically by the employer, with or without pay roll deductions, or by the association, as the case may be, or by some designated person acting on behalf of such employer or association or of such employes or members. Any insurance company authorized to write accident and health insurance in this state shall have power to issue franchise group accident and health policies. Notwithstanding any provision contained in the statutes of this state, insurers may be permitted to file, for use in connection with franchise group health and accident insurance, rate schedules which reflect a differential from the rates charged for identical policies issued on the individual basis, provided the rates charged under such rate schedules do not discriminate between franchise groups. [*1933 c. 487 s. 158; 1937 c. 77; 1939 c. 44; 1941 c. 176; 1943 c. 119; 1945 c. 346, 351, 356, 586; 1947 c. 339, 422*]

Note: Within an accident policy insuring against injuries sustained while engaged in "operating" an automobile, the insured who drove his car onto an obstruction in a street and was injured when the car skidded while he was pushing it to assist a wrecker in removing it from the obstruction, sustained his injuries while "operating" the car. Merklein v. Indemnity Ins. Co. of N. A., 214 W 23, 252 NW 280.

An injury to a theatre patron from an assault by an employe of the operator of the theatre, for which such operator was held liable under the rule of respondeat superior, was "accidentally sustained" within a public liability policy indemnifying such operator against loss by reason of liability imposed upon it by law for damages because of bodily injuries "accidentally sustained" by persons other than its employes, under facts showing that the injury to the patron came to him through force not of his own provocation. Fox Wisconsin Corp. v. Century Ind. Co., 219 W 549, 263 NW 567.

Physical exertion in pulling a boat from a lake and up into a yard, causing a strain on the insured's heart, as a result of which the insured died of heart failure, did not constitute the sole cause of the heart injury that resulted in his death, within an accident policy, where the insured would not have suffered any considerable injury had he not been afflicted at the time with a diseased condition of the heart. Herthel v. Time Ins. Co., 221 W 208, 265 NW 575.

Under a policy which required, to set a premium-waiver clause in operation, that the insured furnish proof of disability where the discharge of the insured's duty to comply with such condition was rendered impossible by his mental incompetency and furnishing proof was no material part of the consideration to be paid in exchange for the insurer's promised performance, and the discharge of the insurer would operate in effect as a forfeiture, the impossibility of compliance by the insured with such condition excused his compliance therewith. Schlintz v. Equitable Life Assur. Soc., 226 W 255, 276 NW 336.

The standard provisions required in an accident policy by subsection (3) are obligatory on the insured as well as on the insurer. A provision of an accident policy requiring payment of the renewal premium in advance, which was not one of the standard provisions required, may be changed or waived by the parties. Jones v. Preferred Accident Ins. Co., 226 W 423, 275 NW 897.

Under an accident policy providing indemnity for loss of life from bodily injuries effected by the wrecking or disablement of any automobile or truck "in which the insured is riding or driving," the death of the insured from the explosion of a tire, while the insured was outside the truck removing a wheel at a garage in order to repair a flat tire on the inner rear wheel, was not within the coverage of the policy, although the tire about to be repaired had become deflated while the insured was driving the truck, and such deflation, necessitating repairs in order to place the truck in as good condition as before, could be considered a "wrecking or disablement" of the truck within a definition clause of the policy. Miller v. Washington Nat. Ins. Co., 237 W 475, 297 NW 359.

Exceptions which were evasively designated as conditions and were printed in type smaller than the text of the policy constituted a violation of this section, notwithstanding the form of the policy had been approved by the insurance department. Where the insured died as a result of taking a violent poison which caused vomiting, swelling of the lips and tongue, general paleness and paralysis and rigidity of the body it was held that these manifestations constituted wounds. Mutual L. Ins. Co. v. Schenkat, 62 F (2d) 236.

[*204.32 Stats. 1945 repealed by 1947 c. 521*]

204.33 [*Repealed by 1939 c. 513 s. 43*]

204.34 Provisions of auto liability policies. (1) No policy of insurance, agreement of indemnity or bond covering liability or loss arising by reason of the ownership, maintenance or use of a motor vehicle issued in this state shall exclude from the coverage afforded or provisions as to benefits therein any of the following:

(a) Persons while driving or manipulating a motor vehicle, who shall be of an age authorized by law so to do;

(b) The operation, manipulation or use of such motor vehicle for unlawful purposes;

(c) The operation, manipulation or use of such motor vehicle while the driver is under the influence of intoxicating liquors or narcotics; while such motor vehicle is engaged in the transportation of liquor in violation of law, or while such motor vehicle is operated in a reckless manner.

(2) No policy of insurance, agreement of indemnity or bond referred to in subsection (1) shall exclude from the coverage afforded or the provisions as to the benefits therein provided persons related by blood or marriage to the assured.

(3) No policy of insurance, agreement of indemnity or bond as provided in subsection (1) shall limit the time for the giving of notice of any accident or casualty covered thereby to a period less than that provided in subsection (1) of section 204.29. Failure to give such notice shall not bar liability under such policy of insurance, agreement of indemnity or bond as provided in subsection (1) if the insurer was not prejudiced or dam-

aged by such failure, but the burden of proof to so show shall be upon the person claiming such liability. [*1931 c. 477; Stats. 1931 s. 204.33; 1933 c. 487 s. 160a*]

Note: Wife is entitled to recover from insurer on judgment against her husband for injuries sustained in automobile accident, although policy was issued in name of both parties. Archer v. General C. Co., 219 W 100, 261 NW 9, 262 NW 257.

Under an automobile liability policy issued to the owner of a truck, which extended the coverage to persons operating the truck with the permission of the insured, the insurer was liable for the negligence of a driver operating the truck with the permission of the insured, although the doctrine of respondeat superior was inapplicable to the insured because he was a minor. Hoefer v. Last, 221 W 102, 266 NW 196.

Statute providing that no policy of insurance or agreement of indemnity shall exclude from coverage afforded or provisions as to benefits therein provided persons related by blood or marriage to assured held not to amplify liability policy so as to entitle unemancipated minors, in action against insurer of their father, to recover damages for injuries sustained because of negligence of father in operation of automobile. Sections 204.33 and 204.34 are so similar in wording and purpose that the construction applicable to one may suffice for the other. Segall v. Ohio Casualty Co., 224 W 379, 272 NW 665.

In action on automobile indemnity policy for injuries received at night in collision with insured automobile driven by minor licensed under statute to drive in the daytime but too young to secure permit to drive at night, provision of policy excluding coverage if automobile was driven in violation of law as to age was operative. Witzko v. Koenig, 224 W 674, 272 NW 864.

Failure of the insured to give timely notice of an accident creates a presumption that the insurer was thereby prejudiced or damaged. Parrish v. Phillips, 229 W 439, 282 NW 551.

The extended insurance clause making a policy inure to one driving the automobile with the insured's consent but excluding any obligation to the insured did not authorize the insured to recover for the killing of his minor son by the use of the automobile by another son. Munsert v. Farmers Mut. Automobile Ins. Co., 229 W 581, 281 NW 671.

204.35 Deposits by accident societies. (1) In case of an accident association before license is issued it shall deposit and maintain with the state treasurer for the payment of claims against it, securities specified in section 209.01 (3) of not less than $1,000.

(2) When any foreign mutual benefit society doing an accident or health business is required by the laws of its home state to keep on deposit with an officer of its home state securities for the protection of policyholders generally, and such society shall furnish to the commissioner of this state the certificate of said officer of such other state, showing the securities so deposited with him, and it shall appear therefrom that the said securities are equal in market value to one thousand dollars, and that said securities would be legal investments for a domestic mutual benefit society and the securities so deposited are available to satisfy judgments of policyholders in any manner corresponding to that provided by the laws of this state, the commissioner may issue to such society a license to transact accident and health insurance in this state, without depositing securities with the treasurer of this state.

(3) No casualty or accident insurance company or mutual benefit society shall assume a greater risk on any one person payable in case of death of the assured, than one-tenth of its assets reported to the commissioner and in existence at the time of the last annual report. [*Stats. 1931 s. 208.03 (4) to (6); 1933 c. 344 s. 22; 1947 c. 100*]

Revisor's Note, 1933: Transferred to chapter 204 for better arrangement. The law which specifies the legal investments for domestic fraternal benefit societies is extended to foreign societies seeking a license. This makes the rule more certain and simple. The change probably adds to the kinds of investments which such foreign societies may make. Subsection (6) was 1955a—1, renumbered by chapter 639, Laws 1913, (7) was 1955b—5 created by chapter 158, Laws 1909; (8) was created by chapter 639, Laws 1913. The limitation on insurance companies (other than fraternal benefit societies) is in 201.16. (Bill No. 51 S, s. 22)

204.36 Auto insurance on autos purchased on finance plan. Any insurance company or its agent writing a policy of insurance for the benefit of the seller, finance company, or any person retaining an interest in any automobile purchased on a finance plan, or on a conditional sales contract or under any other plan which requires the purchaser of such automobile to maintain insurance, whether premiums for such insurance are paid directly to the insurance company by such purchaser or deducted from the payments made under such contract or plan or howsoever such premiums are paid, shall deliver to such purchaser a substantial copy of each and every policy written; and if any such policy is cancelled before the purchaser has fully paid for such automobile and is rewritten in the same insurance company or an affiliate thereof or any other insurance company because the original finance or purchasing plan is altered or a new plan or agreement of payment entered into, the unearned premium of any such policy shall be returned to or applied to the credit of the purchaser on a pro rata basis. Any insurance company or individual violating this section shall, for any offense, forfeit $500. [*1941 c. 240*]

204.37 Insurance rates and practices; regulation; purpose of sections. The purpose of sections 204.37 to 204.55 is to promote the public welfare by regulating insurance rates made by rating organizations and by insurers to the end that they shall not be excessive, inadequate or unfairly discriminatory, and to authorize and regulate co-oper-

ative action among insurers in rate making and in other matters within the scope of said sections. Nothing in said sections is intended (1) to prohibit or discourage reasonable competition, or (2) to prohibit, or encourage except to the extent necessary to accomplish the aforementioned purpose, uniformity in insurance rates, rating systems, rating plans or practices. Said sections shall be liberally interpreted to carry into effect the provisions of this section. [*1947 c. 521*]

204.38 Scope of sections. (1) Sections 204.37 to 204.55 apply to the kinds of insurance authorized by section 201.04 (5), (6), (7), (8), (9), (10), (11), (13), (14), (15) and (17) on risks or operations in this state, except:

(a) Reinsurance, other than joint reinsurance to the extent stated in section 204.47;

(b) Insurance against loss of or damage to aircraft or against liability, arising out of the ownership, maintenance or use of aircraft;

(c) Insurance covering any part of the liability of an employer exempted from insuring his liability for compensation as provided in section 102.28.

(2) "Insurer" as used in sections 204.37 to 204.55 shall be deemed to include every company as defined in section 201.01, every surety corporation or company within the provisions of section 204.01, and every stock or mutual company, reciprocal, interinsurance exchange, and Lloyd's association, which is authorized under any provision of the laws of this state to transact any of the kinds of insurance to which sections 204.37 to 204.55 apply.

(3) If any kind of insurance, subdivision or combination thereof, or type of coverage, subject to sections 204.37 to 204.55 is also subject to regulation by another rate regulatory act of this state, an insurer to which both acts are otherwise applicable shall file with the commissioner of insurance, hereinafter referred to as commissioner, a designation as to which rate regulatory act shall be applicable to it with respect to such kind of insurance, subdivision or combination thereof, or type of coverage. [*1947 c. 521*]

204.39 Rate making. (1) All rates shall be made in accordance with the following provisions:

(a) Due consideration shall be given to past and prospective loss experience within and outside this state, to catastrophe hazards, if any, to a reasonable margin for underwriting profit and contingencies, to dividends, savings or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members or subscribers, to past and prospective expenses both countrywide and those specially applicable to this state, and to all other relevant factors within and outside this state;

(b) The systems of expense provisions included in the rates for use by any insurer or group of insurers may differ from those of other insurers or groups of insurers to reflect the requirements of the operating methods of any such insurer or group with respect to any kind of insurance, or with respect to any subdivision or combination thereof for which subdivision or combination separate expense provisions are applicable;

(c) Risks may be grouped by classifications for the establishment of rates and minimum premiums. Classification rates may be modified to produce rates for individual risks in accordance with rating plans which establish standards for measuring variations in hazards or expense provisions, or both. Such standards may measure any differences among risks that can be demonstrated to have a probable effect upon losses or expenses;

(d) Rates shall not be excessive, inadequate or unfairly discriminatory.

(2) Except to the extent necessary to meet the provisions of subsection (1) (d), uniformity among insurers in any matters within the scope of this section is neither required nor prohibited. [*1947 c. 521*]

204.40 Rate filings. (1) Every insurer shall file with the commissioner every manual of classifications, rules and rates, every rating plan and every modification of any of the foregoing which it proposes to use. Every such filing shall state the proposed effective date thereof, and shall indicate the character and extent of the coverage contemplated. When a filing is not accompanied by the information upon which the insurer supports such filing, and the commissioner does not have sufficient information to determine whether such filing meets the requirements of sections 204.37 to 204.55, he shall require such insurer to furnish the information upon which it supports such filing, and in such event the waiting period as to a filing made by a rating organization shall commence as of the date such information is furnished. Such requirement to furnish information shall not extend the effective date as to a filing made by an insurer for a kind of insurance or subdivision thereof as to which such insurer is not a member of or subscriber to a rating organization. The information furnished in support of a filing may include (a) the experience or judgment of the insurer or rating organization making the filing, (b) its interpretation of any statistical data it relies upon, (c) the experience of other

insurers or rating organizations, or (d) any other relevant factors. A filing and any supporting information shall be open to public inspection after the filing becomes effective.

(2) An insurer may satisfy its obligation to make such filings by becoming a member of, or a subscriber to, a licensed rating organization which makes such filings, and by authorizing the commissioner to accept such filings on its behalf. Nothing contained in sections 204.37 to 204.55 shall be construed as requiring any insurer to become a member of or a subscriber to any rating organization.

(3) The commissioner shall review filings as soon as reasonably possible after they have been made in order to determine whether they meet the requirements of sections 204.37 to 204.55.

(4) Subject to the exception specified in subsection (5), each filing shall be on file for a waiting period of 15 days before it becomes effective, which period may be extended by the commissioner for an additional period not to exceed 15 days if he gives written notice within such waiting period to the insurer or rating organization which made the filing that he needs such additional time for the consideration of such filing. Upon written application by such insurer or rating organization, the commissioner may authorize a filing which he has reviewed to become effective before the expiration of the waiting period or any extension thereof. A filing made by a rating organization shall be deemed to meet the requirements of sections 204.37 to 204.55 unless disapproved by the commissioner within the waiting period or any extension thereof. A filing made by an insurer for a kind of insurance or subdivision thereof as to which such insurer is not a member of or subscriber to a rating organization shall be deemed to meet the requirements of said sections unless disapproved by the commissioner after notice and hearing and findings made in accordance with the requirements of section 204.41 (1) (b).

(5) Any special filing with respect to a surety or guaranty bond required by law or by court or executive order or by order, rule or regulation of a public body, not covered by a previous filing, shall become effective when filed and shall be deemed to meet the requirements of sections 204.37 to 204.55 until such time as the commissioner reviews the filing and so long thereafter as the filing remains in effect.

(6) Under such rules and regulations as he shall adopt the commissioner may, by written order, suspend or modify the requirement of filing as to any kind of insurance, subdivision or combination thereof, or as to classes of risks, the rates for which cannot practicably be filed before they are used. Such orders, rules and regulations shall be made known to insurers and rating organizations affected thereby. The commissioner may make such examination as he may deem advisable to ascertain whether any rates affected by such order meet the standards set forth in section 204.39 (1) (d).

(7) Upon the written application of the insured, stating his reasons therefor filed with and approved by the commissioner, a rate in excess of that provided by a filing otherwise applicable may be used on any specific risk.

(8) On and after January 1, 1948, no insurer shall make or issue a contract or policy except in accordance with filings which are in effect for said insurer as provided in sections 204.37 to 204.55 or in accordance with subsection (6) or (7). [*1947 c. 521, 614*]

204.41 Disapproval of filings. (1) (a) If within the waiting period or any extension thereof as provided in section 204.40 (4) the commissioner finds that a filing made by a rating organization does not meet the requirements of sections 204.37 to 204.55 he shall send to the insurer or rating organization which made such filing written notice of disapproval of such filing specifying therein in what respect he finds such filing fails to meet the requirements of said sections and stating that such filing shall not become effective.

(b) The commissioner may, in the case of a filing by an insurer for a kind of insurance or subdivision thereof as to which such insurer is not a member of or subscriber to a rating organization, disapprove such filing during the waiting period or any extension thereof, only after notice and hearing in accordance with the requirements of subsection (3) and only by order specifying in what respects he finds that such filing fails to meet the requirements of sections 204.37 to 204.55.

(2) If within 30 days after a special surety or guaranty filing subject to section 204.40 (5) has become effective the commissioner finds that such filing does not meet the requirements of sections 204.37 to 204.55 he shall send to the insurer or rating organization which made such filing written notice of disapproval of such filing specifying therein in what respects he finds that such filing fails to meet the requirements of said sections and stating when, within a reasonable period thereafter, such filing shall be deemed no longer effective. Said disapproval shall not affect any contract made or issued prior to the expiration of the period set forth in said notice.

(3) At any time subsequent to the applicable review period provided for in subsection (1) or (2), the commissioner may, as to any filing whether by a rating organization or by an insurer disapprove a filing on the ground that such filing does not meet the

requirements of sections 204.37 to 204.55, but only after a hearing held upon not less than 10 days' written notice specifying the matters to be considered at such hearing to every insurer and rating organization which made such filing, and only by an order specifying in what respect he finds that such filing fails to meet the requirements of said sections, and stating when within a reasonable period thereafter such filing shall be deemed no longer effective. Copies of said order shall be sent to every such insurer and rating organization. Said order shall not affect any contract or policy made or issued prior to the expiration of the period set forth in said order.

(4) (a) Any person or organization aggrieved with respect to any filing which is in effect may make written application to the commissioner for a hearing thereon, provided, however, that the insurer or rating organization that made the filing shall not be authorized to proceed under this subsection. Such application shall specify the grounds to be relied upon by the applicant. If the commissioner shall find that the application is made in good faith, that the applicant would be so aggrieved if his grounds are established, and that such grounds otherwise justify holding such a hearing, he shall, within 30 days after receipt of such application, hold a hearing upon not less than 10 days' written notice to the applicant and to every insurer and rating organization which made such filing.

(b) If after such hearing the commissioner finds that the filing does not meet the requirements of sections 204.37 to 204.55, he shall issue an order specifying in what respects he finds that such filing fails to meet the requirements of said sections and stating when, within a reasonable period thereafter, such filing shall be deemed no longer effective. Copies of said order shall be sent to the applicant and to every such insurer and rating organization. Said order shall not affect any contract or policy made or issued prior to the expiration of the period set forth in said order.

(5) No manual of classifications, rules, rating plans, or any modifications of any of the foregoing which establish standards for measuring variations in hazards or expense provisions, or both, and which has been filed pursuant to the requirements of section 204.40 shall be disapproved if the rates thereby produced meet the requirements of sections 204.37 to 204.55. [*1947 c. 521*]

204.42 Rating organizations. (1) A corporation, an unincorporated association, a partnership or an individual, whether located within or outside this state, may make application to the commissioner for license as a rating organization for such kinds of insurance or subdivisions thereof as are specified in its application and shall file therewith (a) a copy of its articles of agreement or association or its certificates of incorporation, and of its by-laws, rules and regulations governing the conduct of its business, (b) a list of its members and subscribers, (c) the name and address of a resident of this state upon whom notices or orders of the commissioner or process affecting such rating organization may be served and (d) a statement of its qualifications as a rating organization. If the commissioner finds that the applicant is competent, trustworthy and otherwise qualified to act as a rating organization and that its constitution, articles of agreement or association or certificate of incorporation, and its by-laws, rules and regulations governing the conduct of its business conform to the requirements of law, he shall issue a license specifying the kinds of insurance or subdivisions thereof for which the applicant is authorized to act as a rating organization. Every such application shall be granted or denied in whole or in part by the commissioner within 60 days of the date of its filing with him. Licenses issued pursuant to this section shall remain in effect for 3 years unless sooner suspended or revoked by the commissioner. The fee for said license shall be $25. Licenses issued pursuant to this section may be suspended or revoked by the commissioner, after hearing upon notice, in the event the rating organization ceases to meet the requirements of this subsection. Every rating organization shall notify the commissioner promptly of every change in (a) its constitution, its articles of agreement or association or its certificate of incorporation, and its by-laws, rules and regulations governing the conduct of its business, (b) its list of members and subscribers and (c) the name and address of the resident of this state designated by it upon whom notices or orders of the commissioner or process affecting such rating organization may be served.

(2) Subject to rules and regulations which have been approved by the commissioner as reasonable, each rating organization shall permit any insurer not a member to be a subscriber to its rating services for any kind of insurance or subdivision thereof for which it is authorized to act as a rating organization. Notice of proposed changes in such rules and regulations shall be given to subscribers. Each rating organization shall furnish its rating services without discrimination to its members and subscribers. The reasonableness of any rule or regulation in its application to subscribers or the refusal of any rating organization to admit an insurer as a subscriber shall, at the request of any subscriber or any such insurer, be reviewed by the commissioner at a hearing held

upon at least 10 days' written notice to such rating organization and to such subscriber or insurer. If the commissioner finds that such rule or regulation is unreasonable in its application to subscribers he shall order that such rule or regulation shall not be applicable to subscribers. If the rating organization fails to grant or reject an insurer's application for subscribership within 30 days after it was made, the insurer may request a review by the commissioner as if the application had been rejected. If the commissioner finds that the insurer has been refused admittance to the rating organization as a subscriber without justification he shall order the rating organization to admit the insurer as a subscriber. If he finds that the action of the rating organization was justified he shall make an order affirming its action.

(3) No rating organization shall adopt any rule the effect of which would be to prohibit or regulate the payment of dividends, savings or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members or subscribers.

(4) Co-operation among rating organizations or among rating organizations and insurers in rate making or in other matters within the scope of sections 204.37 to 204.55 is hereby authorized, provided the filings resulting from such co-operation are subject to all the provisions of said sections which are applicable to filings generally. The commissioner may review such co-operative activities and practices and if after a hearing he finds that any such activity or practice is unfair or unreasonable or otherwise inconsistent with the provisions of said sections, he may issue a written order specifying in what respects such activity or practice is unfair or unreasonable or otherwise inconsistent with the provisions of said sections and requiring the discontinuance of such activity or practice. [*1947 c. 521*]

204.43 Deviations from rates. Every member of or subscriber to a rating organization shall adhere to the filings made on its behalf by such organization except that any insurer may file with the commissioner and with the rating organization of which it is a member or to which it is a subscriber, a deviation from the rates or any underwriting rule filed by such rating organization. Any such deviation from a rate shall be by uniform percentage decrease or increase applied to the premiums produced by the rating system so filed for a kind of insurance, or for a class of insurance which is found by the commissioner to be a proper rating unit for the application of such uniform percentage decrease or increase, or for a subdivision of a kind of insurance (1) comprised of a group of manual classifications which is treated as a separate unit for rate making purposes, or (2) for which separate expense provisions are included in the filings of the rating organization. Any such deviation shall not be such as to result in a rate which is excessive, inadequate or unfairly discriminatory. Such deviation shall not take effect for a period of 15 days after filing which waiting period may be extended for an additional period of 15 days by the commissioner if he gives written notice to the insurer and rating organization in accordance with the provisions of section 204.40 (4). Co-operation among insurers in the preparation, filing and use of deviations is hereby authorized. The commissioner may review such co-operative activities and practices and if, after hearing, held after notice to the insurer and rating organization involved in accordance with section 204.41 (3), he finds that any such activity or practice is unfair or unreasonable or otherwise inconsistent with the provisions of sections 204.37 to 204.55, he may issue a written order specifying in what respects he finds that such filing fails to meet the requirements of said sections and requiring the discontinuance of such activity or practice within such reasonable period thereafter as shall be fixed by said order. Any such deviation shall be subject to disapproval by the commissioner if after notice to said insurer and rating organization and hearing in accordance with the provisions of section 204.41 (3) the commissioner shall find that such deviation does not meet the requirements of sections 204.37 to 204.55. Any such order of disapproval shall specify in what respects he finds that such deviation fails to meet the requirements of said sections. If such order is made after the expiration of the waiting period herein provided and any extension thereof made in accordance with this section, the order shall state when, within a reasonable period thereafter such filing shall be deemed no longer effective. Until an order of disapproval has become effective in accordance with the provisions of this section, such deviation shall be deemed to meet the requirements of sections 204.37 to 204.55. When said order of disapproval is made after the expiration of said waiting period or any extension thereof, said disapproval shall not affect any contract or policy made or issued prior to the expiration of the period set forth in said order. Such deviation shall be subject to the provisions of section 204.41 (4). In the event of an application for rehearing before the commissioner, he shall suspend his action in question pending the rehearing on such reasonable terms and conditions as he may impose. The action of the commissioner shall not become effective for a period of 10 days provided review proceedings are commenced within said period. The pendency of a review of any disapproval or other order of the

commissioner made under the provisions of this section shall suspend such disapproval or order on such reasonable terms and conditions as may be imposed by the court. The aggrieved party shall make application to the court for an order fixing such terms and conditions within 10 days after commencement of such proceedings. [*1947 c. 521*]

204.44 Appeal by minority to commissioner. (1) Any member of or subscriber to a rating organization may appeal to the commissioner from the action or decision of such rating organization in approving or rejecting any proposed change in or addition to the filings of such rating organization and the commissioner shall, after a hearing held upon not less than 10 days' written notice to the appellant and to such rating organization, issue an order approving the action or decision of such rating organization or directing it to give further consideration to such proposal, or if such appeal is from the action or decision of the rating organization in rejecting a proposed addition to its filings he may in the event he finds that such action or decision was unreasonable issue an order directing the rating organization to make an addition to its filings on behalf of its members and subscribers, in a manner consistent with his findings, within a reasonable time after the issuance of such order.

(2) If such appeal is based upon the failure of the rating organization to make a filing on behalf of such member or subscriber which is based on a system of expense provisions which differs, in accordance with the right granted in section 204.39 (1) (b) from the system of expense provisions included in a filing made by the rating organization, the commissioner shall, if he grants the appeal, order the rating organization to make the requested filing for use by the appellant. In deciding such appeal the commissioner shall apply the standards set forth in section 204.39. [*1947 c. 521*]

204.45 Information to be furnished insureds; hearings and appeals of insureds. (1) Every rating organization and every insurer which makes its own rates shall, within a reasonable time after receiving written request therefor and upon payment of such reasonable charge as it may make, furnish to any insured affected by a rate made by it, or to the authorized representative of such insured, all pertinent information as to such rate.

(2) Every rating organization and every insurer which makes its own rates shall provide within the state reasonable means whereby any person aggrieved by the application of its rating system may be heard in person or by his authorized representative on his written request to review the manner in which such rating system has been applied in connection with the insurance afforded him. If the rating organization or insurer fails to grant or reject such request within 30 days after it is made, the applicant may proceed in the same manner as if his application had been rejected. Any party affected by the action of such rating organization or such insurer on such request may, within 30 days after written notice of such action, appeal to the commissioner, who after a hearing held upon not less than 10 days' written notice to the appellant and to such rating organization or insurer may affirm or reverse such action. [*1947 c. 521*]

204.46 Advisory organizations. (1) Every group, association or other organization of insurers, whether located within or outside this state, which assists insurers which make their own filings or rating organization in rate making by the collection and furnishing of loss or expense statistics or by the submission of recommendations but which does not make filings under sections 204.37 to 204.55, shall be known as an advisory organization.

(2) Every advisory organization shall file with the commissioner (a) a copy of its constitution, its articles or agreement or association or its certificate of incorporation and of its by-laws, rules and regulations governing its activities, (b) a list of its members, (c) the name and address of a resident of this state upon whom notices or orders of the commissioner or process issued at his direction may be served, and (d) an agreement that the commissioner may examine such advisory organization in accordance with the provisions of section 204.48.

(3) If after a hearing the commissioner finds that the furnishing of such information or assistance involves any act or practice which is unfair or unreasonable or otherwise inconsistent with the provisions of sections 204.37 to 204.55 he may issue a written order specifying in what respects such act or practice is unfair or unreasonable or otherwise inconsistent with the provisions of said sections and requiring the discontinuance of such act or practice.

(4) No insurer which makes its own filings nor any rating organization shall support its filings by statistics or adopt rate making recommendations furnished to it by an advisory organization which has not complied with this section or with an order of the commissioner involving such statistics or recommendations issued under subsection (3). If the commissioner finds such insurer or rating organization to be in violation of this subsection he may issue an order requiring the discontinuance of such violation. [*1947 c. 521*]

204.47 Joint underwriting or joint reinsurance. (1) Every group, association or other organization of insurers which engages in joint underwriting or joint reinsurance shall be subject to regulation with respect thereto as herein provided, subject however with respect to joint underwriting to all other provisions of sections 204.37 to 204.55 and with respect to joint reinsurance to sections 204.48 and 204.52 to 204.55.

(2) If after a hearing the commissioner finds that any activity or practice of any such group, association or other organization is unfair or unreasonable or otherwise inconsistent with the provisions of sections 204.37 to 204.55, he may issue a written order specifying in what respects such activity or practice is unfair or unreasonable or otherwise inconsistent with the provisions of said sections and requiring the discontinuance of such activity or practice. [*1947 c. 521*]

204.48 Examination of rating organizations. The commissioner shall at least once in 5 years make or cause to be made an examination of each rating organization licensed in this state as provided in section 204.42, and he may as often as he may deem it expedient make or cause to be made an examination of each advisory organization referred to in section 204.46 and of each group, association or other organization referred to in section 204.47. The reasonable cost of any such examination shall be paid by the rating organization, advisory organization, or group, association or other organization examined upon presentation to it of a detailed account of such cost. The officers, manager, agents and employes of such rating organization, advisory organization, or group, association or other organization may be examined at any time under oath and shall exhibit all books, records, accounts, documents, or agreements governing its method of operation. The commissioner shall furnish 2 copies of the examination report to the organization, group or association examined and shall notify such organization, group or association that it may, within 20 days thereafter, request a hearing on said report or any facts or recommendations therein. Before filing any such report for public inspection the commissioner shall grant a hearing to the organization, group or association examined. The report of any such examination when filed for public inspection shall be admissible in evidence in any action or proceeding brought by the commissioner against the organization, group or association examined, or its officers or agents, and shall be prima facie evidence of the facts stated therein. The commissioner may withhold the report of any such examination from public inspection for such time as he may deem proper. In lieu of any such examination the commissioner may accept the report of an examination made by the insurance supervisory official of another state, pursuant to the laws of such state. [*1947 c. 521*]

204.49 Rate administration. (1) RECORDING AND REPORTING OF LOSS AND EXPENSE EXPERIENCE. The commissioner shall promulgate reasonable rules and statistical plans, reasonably adapted to each of the rating systems on file with him which may be modified from time to time and which shall be used thereafter by each insurer in the recording and reporting of its loss and countrywide expense experience in order that the experience of all insurers may be made available at least annually in such form and detail as may be necessary to aid him in determining whether rating systems comply with the standards set forth in section 204.39. Such rules and plans may also provide for the recording and reporting of expense experience items which are specially applicable to this state and are not susceptible of determination by a prorating countrywide expense experience. In promulgating such rules and plans, the commissioner shall give due consideration to the rating systems on file with him and in order that such rules and plans may be as uniform as is practicable among the several states to the rules and to the form of the plans used for such rating systems in other states. No insurer shall be required to record or report its loss experience on a classification basis that is inconsistent with the rating system filed by it. The commissioner may designate one or more rating organizations or other agencies to assist him in gathering such experience and making compilations thereof, and such compilations shall be made available subject to reasonable rules promulgated by the commissioner to insurers and rating organizations.

(2) INTERCHANGE OF RATING PLAN DATA. Reasonable rules and plans may be promulgated by the commissioner for the interchange of data necessary for the application of rating plans.

(3) CONSULTATION WITH OTHER STATES. In order to further uniform administration of rate regulatory laws, the commissioner and every insurer and rating organization may exchange information and experience data with insurance supervisory officials, insurers and rating organizations in other states and may consult with them with respect to rate making and the application of rating.

(4) RULES AND REGULATIONS. The commissioner may make reasonable rules and regulations in conformity with and necessary to enforce the provisions of sections 204.37 to 204.55. [*1947 c. 521*]

204.50 False or misleading information. No person or organization shall wilfully withhold information from or knowingly give false or misleading information to the commissioner, any statistical agency designated by the commissioner, any rating organization, or any insurer, which will affect the rates or premiums chargeable under sections 204.37 to 204.55. A violation of this section shall subject the one guilty of such violation to the penalties provided in section 204.53. [*1947 c. 521*]

204.51 Assigned risks. Agreements may be made among insurers with respect to the equitable apportionment among them of insurance which may be afforded applicants who are in good faith entitled to but who are unable to procure such insurance through ordinary methods and such insurers may agree among themselves on the use of reasonable rate modifications for such insurance, such agreements and rate modifications to be subject to the approval of the commissioner. [*1947 c. 521*]

204.52 Rebates prohibited. (1) No agent shall knowingly charge, demand or receive a premium for any policy of insurance except in accordance with the provisions of sections 204.37 to 204.55. No insurer or employe thereof, and no agent shall pay, allow or give, or offer to pay, allow or give, directly or indirectly, as an inducement to insurance, or after insurance has been effected, any rebate, discount, abatement, credit or reduction of the premium named in a policy of insurance, or any special favor or advantage in the dividends or other benefits to accrue thereon, or any valuable consideration or inducement whatever, not specified in the policy of insurance, except to the extent provided for in applicable filing. No insured named in a policy of insurance nor any employe of such insured shall knowingly receive or accept, directly or indirectly, any such rebate, discount, abatement, credit or reduction of premium, or any such special favor or advantage or valuable consideration or inducement. Nothing in this section shall be construed as prohibiting the payment of commissions or other compensation to duly licensed agents nor as prohibiting any insurer from allowing or returning to its participating policyholders, members or subscribers, dividends, savings or unabsorbed premium deposits.

(2) As used in this section the word "insurance" includes suretyship and the word "policy" includes bond. [*1947 c. 521*]

204.53 Penalties. (1) Any person or organization violating any provision of sections 204.37 to 204.55 shall be fined not more than $50 for each such violation, but if such violation is found to be wilful, said person or organization may be fined not more than $500 for each such violation. Such fines may be in addition to any other penalty by law.

(2) The commissioner may suspend the license of any rating organization or insurer which fails to comply with an order of the commissioner within the time limited by such order or any extension thereof which the commissioner may grant. The commissioner shall not suspend the license of any rating organization or insurer for failure to comply with an order until the time prescribed for an appeal therefrom has expired or if an appeal has been taken until such order has been affirmed. The commissioner may determine when a suspension of license shall become effective and it shall remain in effect for the period fixed by him unless he modifies or rescinds such suspension or until the order upon which such suspension is based is modified, rescinded or reversed.

(3) No license shall be suspended or revoked except upon a written order of the commissioner, stating his findings, made after hearing held upon not less than 10 days' written notice to such person or organization specifying the alleged violation. [*1947 c. 521*]

204.54 Hearing procedure and judicial review. (1) Any insurer or rating organization aggrieved by any order or decision of the commissioner under sections 204.37 to 204.55 made without a hearing, may within 30 days after notice of such order or decision to the insurer or organization make written request to the commissioner for a hearing thereon. The commissioner shall hear such party or parties within 20 days after receipt of such request and shall give not less than 10 days' written notice of the time and place of the hearing. Within 10 days after such hearing the commissioner shall affirm, reverse or modify his previous action, specifying his reasons therefor. Pending such hearing and decision thereon the commissioner may suspend or postpone the effective date of his previous action.

(2) Any approval, disapproval, order or decision of the commissioner under sections 204.37 to 204.55 made after a hearing shall be subject to review at the instance of any party in interest in the manner provided in chapter 227.

(3) The procedure in the conduct of hearings and making of approvals, disapprovals and any other orders by the commissioner under the provisions of sections 204.37 to 204.55 and the review thereof in court shall be governed by the provisions of chapter 227 of the statutes, except as far as they may be inconsistent with specific provisions of said sections. No application for rehearing or any rehearing shall be a condition precedent to

review in court of any approval, disapproval or other order of the commissioner made under the provisions of said sections. In event of an application for rehearing before the commissioner, he shall stay his action in question pending the rehearing upon such reasonable terms and conditions as he may impose. The action of the commissioner shall not become effective for a period of 10 days provided review proceedings are commenced within said period. The pendency of a review of any disapproval or other order of the commissioner made under the provisions of said sections 204.37 to 204.55 shall suspend such disapproval or order on such reasonable terms and conditions as may be imposed by the court. The aggrieved party shall make application to the court for an order fixing such terms and conditions within 10 days after the commencement of such proceedings. [*1947 c. 521*]

204.55 Separability of provisions. If any provision of sections 204.37 to 204.55 or the application of such provision to any person or circumstances, shall be held invalid, the remainder of said sections and the application of such provision to persons or circumstances other than those as to which it is held invalid shall not be affected thereby. [*1947 c. 521*]