

TITLE XLI.

Insurance Code.

CHAPTER 600

GENERAL PROVISIONS

600.01 Scope of application of code
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600.01 Scope of application of code. (1)

GENERAL. (a) The insurance code restricts otherwise legitimate business activity and what the code does not prohibit is authorized unless contrary to other provisions of the law of this state.

(b) Unless otherwise expressly provided, this code does not apply to:

1. Reinsurance.
2. Death and disability benefits provided by an organization the principal purpose of which is not to provide such benefits but charitable, educational, social or religious objectives not related thereto, if the organization does not incur a legal obligation to pay a specified amount.
3. Group or blanket insurance covering risks in this state if:
 - a. The policyholder exists primarily for purposes other than to procure insurance;
 - b. The policyholder is not a Wisconsin corporation or other resident and does not have its principal office in Wisconsin;
 - c. No more than 25% of the certificate holders or insureds are resident in this state;
 - d. On request of the commissioner, the insurer files with the commissioner a copy of the policy and a copy of each form of certificate; and
 - e. The insurer agrees to pay taxes on the Wisconsin portion of the business on the same basis it would do if authorized to do business in this state, and provides the commissioner with

such security as the commissioner deems necessary for the payment of such taxes.

4. Group or blanket insurance covering risks mainly outside this state if:

- a. The policyholder exists primarily for purposes other than to procure insurance;
- b. The policyholder is not a Wisconsin corporation or other resident and does not have its principal office in Wisconsin; and
- c. Any Wisconsin residents insured under the policy are covered because their principal place of employment is outside the state.

5. Other business specified in rules promulgated by the commissioner if the transaction of such business in this state does not require regulation for the protection of the interests of Wisconsin insureds or public or for which it would be impracticable to require compliance with this code, when necessary expenses and efforts are compared with the possible benefits.

6. Transactions independently procured through negotiations under s. 618.42, except as they are subject to taxation under s. 618.43.

(2) EXCEPTIONS. After a hearing, the commissioner may order an insurer to transfer the Wisconsin portion of the business under sub. (1) (b) 3 or 4 to an authorized insurer if it is written by an unauthorized one, or may subject any insurance under sub. (1) (b) to this code, on a finding that the foregoing conditions are not satisfied or that any circumstances require that the insurer be authorized to do business in this state or that the transactions be subject to

this code in order to provide adequate protection to Wisconsin insureds and public. Coverage of a resident of this state is the doing of an insurance business in this state and subjects the insurer to the jurisdiction of the commissioner and of the courts of this state.

History: 1971 c. 260; 1975 c. 375, 421; 1975 c. 422 s. 163; 1977 c. 203.

Note: Chap. 260, laws of 1971, which created this chapter of the statutes, contained notes explaining the revision. See the 1971 session law volume.

Legislative Council Note to (1) (a), 1975: There is a widespread but entirely erroneous notion that the provisions of the insurance code constitute, in general, an enabling act. On the contrary, insurance is an area of free contractual activity except as restricted by the insurance code. It is well to have that point of departure clearly established by the statutes. [Bill 642-S]

Where policy provided that insured shall do nothing after loss to prejudice insurer's subrogation rights and insured waived insurer's rights prior to loss, the equities and insurance law mandate coverage. *Ins. Co. of North America v. Univ. Mtg. Corp.* 82 W (2d) 170, 262 NW (2d) 92.

600.02 Interpretive rules. In this code, unless the context indicates otherwise:

(1) "Includes" means "including but not limited to".

(2) Statements that a term "includes" or "excludes" something else are not definitions.

(3) References in s. 600.03 to particular sections only indicate where a term is especially relevant, and do not limit its application to such sections.

History: 1971 c. 260

600.03 Definitions, usages and synonyms. In this code, unless the context indicates otherwise:

(1) "Affiliate" of a person means any other person who controls, is controlled by, or is under common control with, the first person. A corporation is an affiliate of another corporation, regardless of ownership, if substantially the same group of persons manage the 2 corporations.

(2) "Alien insurer" means an insurer domiciled outside the United States. See also "nondomestic insurer". Compare "foreign insurer".

(3) "Articles" is synonymous with "articles of incorporation", which includes the original articles or special law or charter corresponding thereto, and all amendments, and includes restated articles. See also "bylaws". See s. 611.12.

(5) "Board" is synonymous with "board of trustees" and "board of directors", and means the group of persons vested with the management of a corporation, by whatever name designated.

(6) "Business plan" means the aggregate of the information that must be supplied to the

commissioner under s. 611.13 (2) (j) and (k) or 613.13 (1) (i) and (j).

(7) "Bylaws" means the rules, other than articles, adopted for the regulation or management of a corporation's affairs, by whatever name designated. See also "articles". See s. 611.12.

(8) "Minimum capital" is the capital that a stock insurance corporation is required by statute or administrative determination to have and constantly to maintain. See s. 611.19.

(9) "Certificate of authority" is synonymous with "license".

(10) "This code" or "the insurance code" means chs. 600 to 649.

(11) "Commissioner" means the "commissioner of insurance" of this state, or the equivalent supervisory official of another jurisdiction.

(12) "Consultant" means a person who gives advice about insurance without acting either as agent or broker, who does not sell or place insurance and who does not get any direct or indirect compensation from an insurer, insurance agent or broker for advice given to a 3rd person.

(13) "Control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, by common management or otherwise. A person having a contract or arrangement giving him control is deemed to be in control despite any limitations placed by law on the validity of the contract or arrangement. There is a rebuttable presumption of control if a person directly or indirectly owns, holds with the power to vote or holds proxies to vote more than 10% of the voting securities of another person, except that no person shall be presumed to control another person solely by reason of holding an official position with that person. "Control" has the same meaning in the terms "controlling", "controlled by" and "under common control with". See also "affiliate".

(14) (a) "Corporation" means "insurance corporation".

(b) "Stock corporation" means "stock insurance corporation".

(c) "Mutual" means "mutual insurance corporation".

(15) "Creditor" means a person having any claim, whether matured or unmatured, liquidated or unliquidated, secured or unsecured, absolute, fixed or contingent.

(16) "Director" is synonymous with "trustee".

(17) "Domestic insurer" means an insurer organized under the laws of this state.

(18) "Domiciliary state". See under "state".

(19) "Foreign country" means territory not in any state.

(20) "Foreign insurer" means an insurer domiciled in another state. See also "nondomestic insurer". Compare "alien insurer".

(21) "Form" means a policy or application prepared for general use and does not include one specially prepared for use in an individual case. See also "policy".

(23) "Independently procured insurance" means insurance procured under s. 618.42.

(24) "Insolvency" means:

(a) For an insurer organized or operating under ch. 612, the inability to pay any loss within 30 days after the due date specified in the first assessment notice issued under s. 612.54 (4) after the date of the loss, or any other uncontested debt as it becomes due, or the inability to replenish by timely assessment any required surplus.

(b) For any other insurer, that it is unable to pay its debts or meet its obligations as they mature or that its assets do not exceed its liabilities plus the greater of: 1) any capital and surplus required by law to be constantly maintained; or 2) its authorized and issued capital stock. For purposes of this paragraph "assets" includes one-half of the maximum total assessment liability of the policyholders of the insurer, and "liabilities" includes reserves required by law. For policies issued on the basis of unlimited assessment liability, the maximum total liability, for purposes of determining solvency only, is the amount that could be obtained if there were 100% collection of an assessment at the rate of 10 mills.

(25) "Insurance" includes:

(a) Risk distributing arrangements providing for compensation of damages or loss through the provision of services or benefits in kind rather than indemnity in money;

(b) Contracts of guaranty or suretyship entered into by the guarantor or surety as a business and not as merely incidental to a business transaction.

(26) "Insured" means any person to whom or for whose benefit an insurer makes a promise in an insurance policy. The term includes policyholders, subscribers, members and beneficiaries. This definition applies only to chs. 600 to 649 and does not apply to the use of the word in insurance policies.

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

(b) "Alien insurer" means an insurer domiciled outside the United States.

(c) "Domestic insurer" means an insurer organized under the laws of this state.

(d) "Foreign insurer" means an insurer domiciled in another state.

(e) "Nondomestic insurer" means a foreign or alien insurer.

(f) "Unauthorized insurer" means any insurer not holding a valid certificate of authority to do an insurance business in this state, and any insurer holding a valid certificate, with respect to business not authorized by the certificate. "Unauthorized insurer" includes a surplus lines insurer.

(28) "Interest of the insured" when used in an insurance policy includes the interest of the named insured and of any other person with whom the named insured holds the insured property in joint tenancy.

(28a) "Intermediary" means an insurance marketing intermediary as defined in s. 628.02.

(29) "Member" means a person having membership rights in a corporation. Any person may be a member of a corporation unless the law specifically provides otherwise. See also "insured".

(30) "Minimum capital" is the capital that a stock insurance corporation is required by statute or administrative determination to have and constantly to maintain. See s. 611.19.

(31) "Mutual" means "mutual insurance corporation".

(32) "Nondomestic insurer" means a foreign or alien insurer. Compare "domestic insurer".

(34) "Office" means "office of the insurance commissioner" of this state.

(34m) (a) "Policy" means any document other than a group certificate used to prescribe in writing the terms of an insurance contract, including endorsements and riders and service contracts issued by motor clubs.

(b) A "group insurance policy" is a policy covering a group of persons, and issued to a policyholder in behalf of the group for the benefit of group members who are selected under procedures defined in the policy or

agreements collateral thereto, with or without members of their families or dependents.

(c) A "blanket insurance policy" is a group policy covering unscheduled classes of persons, with the persons insured to be determined by definition of the class with or without designation of the persons covered but without any individual underwriting.

(d) "Franchise insurance" is insurance provided in individual policies through a mass marketing arrangement involving a defined class of persons related in some other way than through the purchase of insurance.

(35) "Principal officers" of a corporation means the officers designated under s. 611.12 (3) or corresponding sections of other chapters.

(37) "Policyholder" means the person who controls the policy by ownership, payment of premiums or otherwise. See also "insured".

(38) "Premium" means any consideration for an insurance policy, and includes assessments, membership fees or other required contributions or consideration, however designated.

(39) "Proceedings" includes "actions" and "special proceedings" under s. 801.01.

(40) "Principal officers" of a corporation mean the officers designated under s. 611.12 (3), or corresponding sections of other chapters.

(41) "Reciprocal" means any unincorporated association of persons, operating through an attorney in fact and exchanging insurance contracts with one another, which provide insurance coverage to each other thereunder.

(41m) "Service insurance corporation" means any corporation organized or operating under ch. 613.

(42) (a) "State" means the same as in s. 990.01 (40) and in this code also includes the Panama Canal Zone.

(b) "Domiciliary state" means, except in ch. 645, the state in which an insurer is incorporated or organized or, in the case of an alien insurer, the state through which the insurer has made its entry into the United States.

(43) "Stock corporation" means "stock insurance corporation".

(44) (a) "Subsidiary" of a person means a stock corporation more than one-half the voting shares of which are owned by the person either alone or with its affiliates.

(b) "Wholly owned subsidiary" of a person is a subsidiary all of the voting shares of which are owned by the person either alone or with its affiliates, except for the minimum number of shares required by the law of the subsidiary's domicile to be owned by directors or others.

(45) (a) "Surplus" means the excess of assets over the sum of capital and liabilities.

(b) "Compulsory surplus" is the amount of assets in excess of liabilities an insurer is required to have under s. 623.11.

(c) "Initial surplus" is the sum of minimum permanent surplus and initial expendable surplus.

(d) "Initial expendable surplus" is the amount of surplus in addition to capital or minimum permanent surplus or both that an insurer obtains in its organizational process in accordance with s. 611.19 and is not required to maintain thereafter.

(e) "Minimum permanent surplus" is the surplus that an insurance corporation is required by statute or administrative determination to have and constantly to maintain in accordance with s. 611.19.

(f) "Security surplus" is the amount of assets in excess of liabilities needed by a particular insurer to satisfy s. 623.12.

(46) "Town mutual" means a corporation organized or operating under ch. 612 and is synonymous with "town mutual insurance corporation".

(47) "Trustee" is synonymous with "director".

(48) "Unauthorized insurer". See sub. (27) (f).

History: 1971 c. 260; 1973 c. 22; Sup. Ct. Order, 67 W (2d) 776; 1975 c. 223, 371, 374, 375, 421; 1977 c. 339.

Legislative Council Note to sub. (34m), 1975: Present statutes [ss. 204.321 (1), 204.322 (1), 206.60] include "definitions" of group and blanket insurance which are less definitions than rules specifying the circumstances under which group and blanket insurance are lawful. These paragraphs seek to define these notions through their essential characteristics. Any rules restricting their use, if justified at all, belong in the chapters dealing with specific insurance contracts and with unfair trade practices. "Group" is used as a generic term that includes "blanket". [Bill 642-S]

600.12 Construction. Unless otherwise provided, chs. 600 to 649 shall be liberally construed to achieve the purposes stated therein. Unless expressly provided otherwise or clearly appearing from the context the purposes stated shall constitute an aid and guide to interpretation but not an independent source of power.

History: 1971 c. 260.

600.13 Orders relaxing restrictions. (1) ISSUANCE. After notice under sub. (2) and a hearing, the commissioner may issue an order freeing a person from any requirement of this code otherwise applicable to him if the commissioner finds that the interests of insureds, creditors and the public will not be endangered thereby.

(2) **PUBLICATION.** Unless the order is issued under specific authorization of another section of this code, the notice preceding the hearing

under sub. (1) and any such order shall be published as a class 1 notice, under ch. 985, in the official state newspaper before it is effective.

History: 1971 c. 260.