# CHAPTER 611

# DOMESTIC STOCK AND MUTUAL INSURANCE CORPORATIONS

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**Cross−reference:** See definitions in ss. 600.03, 610.01 and 628.02.

**NOTE: Chapter 260, laws of 1971, which created this chapter, contains explanatory notes.**

## SUBCHAPTER I

## GENERAL PROVISIONS

**611.01 Definitions.** In this chapter, unless the context requires otherwise, all of the following apply:

**(1)** STOCK CORPORATIONS. The definitions in s. 180.0103 (2), (3), (14), (15), and (17) apply to stock corporations.

**(2)** MUTUAL CORPORATIONS. The definitions in s. 181.0103 (3) and (18) apply to mutuals.

**(3)** APPLICABILITY OF OTHER DEFINITIONS. The definitions of ss. 600.03 and 610.01 apply to corporations under this chapter.

**History:** 1971 c. 260; 1979 c. 102; 1983 a. 189 s. 329 (22); 1985 a. 195 s. 34; 1989 a. 303; 1997 a. 79; 2001 a. 103.

**611.02 Scope and purposes. (1)** SCOPE. (a) *Domestic insurers*. This chapter applies to all insurance corporations organized under the laws of this state, except those expressly governed by other chapters.

(b) *Nondomestic insurers*. Except as expressly provided, this chapter does not apply to nondomestic insurers.

**(2)** PURPOSES. The purposes of this chapter are:

(a) To provide a complete, self−contained procedure for the formation of insurance corporations;

(b) To assure the solidity of insurance corporations by providing an organizational framework to facilitate sound management, sound operation and sound regulation; and

(c) To strengthen internal corporate democracy through as much stockholder and policyholder participation as is practicable.

**History:** 1971 c. 260.

**611.03 Orders imposing and relaxing restrictions. (1)** ORDERS IMPOSING RESTRICTIONS. The commissioner may subject an individual corporation not otherwise subject thereto to some or all of the restrictions of ss. 611.28, 611.29 (2), 611.32 (5), 611.33 (1) (a) and (2) (a) 1. and 2., 611.34, 611.54 (1) (b) and 617.22 (2), on a finding that its financial condition, management or other circumstance requires such additional regulation for the protection of the interests of insureds or the public.

**(2)** ORDERS ELIMINATING RESTRICTIONS. The commissioner may free a new corporation from any of the restrictions generally applicable only to new corporations under ss. 611.28, 611.29 (2), 611.32 (5), 611.33 (1) (a) and (2) (a) 1. and 2., 611.34, 611.54 (1) (b) and 617.22 (2), if the commissioner is satisfied that its financial condition, management and other circumstances assure that the interests of insureds and the public will not be endangered thereby.

**History:** 1971 c. 260, 307; 1977 c. 203; 1979 c. 102.

**611.07 General corporate powers and procedures. (1)** POWERS. Subject to s. 611.63, s. 180.0302 applies to stock corporations and s. 181.0302 (intro.), (1) to (15), (18) and (19) applies to mutuals.

**(2)** EFFECT OF UNAUTHORIZED CORPORATE ACTS. Section 180.0304 applies to stock corporations and s. 181.0304 applies to mutuals, except that references to "attorney general" shall be read as "commissioner".

**(4)** WAIVER OF NOTICE AND INFORMAL ACTION BY SHAREHOLDERS, POLICYHOLDERS OR DIRECTORS. Sections 180.0704, 180.0706, 180.0821, and 180.0823 apply to stock corporations and ss.

181.0704, 181.0706, 181.0821, and 181.0823 apply to mutuals. Section 180.0821 also applies to a committee of the board of a stock corporation and s. 181.0821 also applies to a committee of the board of a mutual, except that, in both cases, references to "board" shall be read as "committee" and "directors" shall mean members of the board appointed to serve on the committee.

**(6)** POWER TO HOLD ASSETS AS TRUSTEE. A life insurance corporation may hold assets under s. 632.42 (1) as trustee or as general corporate assets.

**(7)** CORRECTING FILED DOCUMENT. Section 180.0124 applies to stock corporations.

**History:** 1971 c. 260; 1973 c. 128 ss. 25, 30; 1973 c. 184, 336; 1975 c. 373 s. 40; 1975 c. 375 s. 44; 1975 c. 422; 1979 c. 110; 1987 a. 13; 1989 a. 303; 1997 a. 79, 252; 2015 a. 90.

SUBCHAPTER II

ORGANIZATION OF CORPORATIONS

**611.10 Reservation of corporate name.** Sections 180.0402 and 180.0403 (2), (3) and (3m) apply to stock corporations and ss. 181.0402 and 181.0403 (2), (3) and (3m) apply to mutuals.

**History:** 1971 c. 260; 1973 c. 128; 1981 c. 390 s. 252; 1989 a. 303; 1993 a. 331; 1997 a. 79.

**611.11 Incorporators. (1)** GENERAL. Any number of corporate or adult natural persons may organize a corporation under this chapter.

**(2)** CLOSELY HELD, SUBSIDIARY AND AFFILIATED CORPORATIONS. One to 15 corporate or adult natural persons may organize a corporation under s. 611.22.

**(3)** MUTUAL REINSURANCE CORPORATIONS. A mutual reinsurance corporation having the exclusive purpose of providing reinsurance for its member corporations may be organized by 15 or more mutuals under this chapter and town mutuals under ch. 612. The commissioner may exempt the corporation from any of the requirements of ss. 611.12 to 611.20 if the commissioner considers them unnecessary for the protection of the members.

**(4)** MUNICIPALITIES. (a) In this subsection, "municipality" has the meaning given in s. 345.05 (1) (c).

(b) Any number of municipalities or associations of municipalities or both may organize a municipal insurance mutual under s. 611.13, subject to s. 611.23, to provide any of the following for its members:

1. Worker's compensation insurance.
2. Liability insurance.
3. Risk management services.
4. Property insurance.

**History:** 1971 c. 260; 1973 c. 243; 1977 c. 346; 1979 c. 102 ss. 236 (6), 237; 1981 c. 390 s. 252; 1995 a. 197; 2003 a. 78; 2009 a. 28; 2011 a. 32.

**611.12 Articles and bylaws. (1)** STOCK CORPORATIONS. Section 180.0202 applies to the articles of a stock corporation, except that:

(a) The name of the corporation shall include the word "insurance" or a term of equivalent meaning, and shall comply with s. 180.0401 (2) to (4);

(am) The articles shall include a statement that the corporation is organized under this chapter;

(b) Authorized shares shall conform to s. 611.33 (1); and

(c) The purposes of the corporation shall be limited to those permitted by s. 610.21.

**(2)** MUTUALS. Section 181.0202 applies to the articles of a mutual, except that:

(a) The name of the corporation shall include the words "mutual" and "insurance" or terms of equivalent meaning and shall comply with s. 181.0401 (2) to (4);

(am) The articles shall include a statement that the corporation is organized under this chapter;

(b) The articles shall include provision for mutual bonds if any are to be authorized, which shall conform to s. 611.33 (2) (a);

(c) The purposes of the corporation shall be limited to those permitted in s. 610.21;

(d) If assessable policies are permitted, the articles shall contain general provisions respecting assessment liabilities and procedures, including a provision specifying the classes of business on which assessment may be separately levied; and

(e) The articles may specify those classes of persons who may be policyholders, or prescribe the procedure for establishing or removing restrictions on the classes of persons who may be policyholders, and the articles shall state that each policyholder is a member of the corporation.

**(3)** PRINCIPAL OFFICERS. Sections 180.0840 and 180.0841 apply to stock corporations and ss. 181.0840 and 181.0841 apply to mutuals. Notwithstanding s. 180.0840 (1) or 181.0840 (1), the articles or bylaws shall specifically designate 3 or more offices, the holders of which shall be the principal officers of the corporation. Notwithstanding s. 180.0840 (3) or 181.0840 (3), the principal offices shall be held by at least 3 separate individuals.

**(4)** BYLAWS. The bylaws of a domestic corporation shall comply with this chapter, and a copy of the bylaws and any amendments thereto shall be filed with the commissioner within 60 days after adoption. Subject to this subsection, to ss. 611.13 (2) (d) and (5) and 611.22 (4), ss. 180.0206 and 180.1020 to 180.1022 apply to stock corporations and ss. 181.0206, 181.0207 and 181.1021 apply to mutuals.

**History:** 1971 c. 260; 1989 a. 303; 1997 a. 79; 1999 a. 85.

**611.13 Organization permit and certificate of incorporation. (1)** PERMIT REQUIRED. No person may, in the case of a stock corporation, solicit subscriptions for its securities, or in the case of a mutual, solicit applications for qualifying insurance policies or subscriptions for mutual bonds or contribution notes, until the commissioner has issued an organization permit.

**(2)** APPLICATION FOR PERMIT. The application for an organization permit shall be signed and acknowledged by or on behalf of each incorporator, and shall include or have attached:

(a) The names, and for the preceding 10 years all addresses and all occupations of all incorporators and proposed directors and officers;

(b) For all corporate incorporators, their articles and bylaws, a list of the names, addresses and occupations of all directors and principal officers, and for the 3 most recent years their annual financial statements and reports;

(c) The proposed articles which shall be signed and acknowledged by or on behalf of each incorporator, and the proposed bylaws;

(d) All agreements relating to the corporation to which any incorporator or proposed director or officer is a party;

(e) The amount and sources of the funds available for organization expenses and the proposed arrangements for reimbursement and compensation of incorporators or other persons;

(f) The proposed compensation of directors and officers;

(g) The plan for solicitation of applications for qualifying insurance policies and for the corporation's securities;

(h) The forms to be used for stock subscriptions, certificates for shares, applications for qualifying insurance policies, subscriptions for mutual bonds and contribution notes, and the forms for bonds and notes;

(i) The proposed capital, or the proposed minimum permanent surplus, and the proposed initial surplus;

(j) The plan for conducting the insurance business, including:

1. The geographical area in which business is intended to be done in the first 5 years;

2. The types of insurance intended to be written in the first 5 years;

3. The proposed marketing methods;

4. To the extent requested by the commissioner, the proposed method for the establishment of premium rates;

(k) A projection of the anticipated operating results of the corporation at the end of each of the first 5 years of operation, based on reasonable assumptions of loss experience, premium and other income, operating expenses and acquisition costs; and

(L) Such other relevant documents or information as the commissioner reasonably requires.

**(3)** ISSUANCE OF ORGANIZATION PERMIT AND OF CERTIFICATE OF INCORPORATION. The commissioner shall issue an organization permit and a certificate of incorporation if:

(a) The commissioner finds that all requirements of law have been met;

(b) The commissioner is satisfied that all natural persons who are incorporators, the directors and principal officers of corporate incorporators, and the proposed directors and officers of the corporation being formed are trustworthy and competent and collectively have the competence and experience to engage in the particular insurance business proposed; and

(c) The commissioner is satisfied that the business plan is consistent with the interests of the corporation's potential insureds and of the public.

**(4)** CONTENTS OF PERMIT. The organization permit shall specify the minimum capital or minimum permanent surplus required under s. 611.19, and may contain such other information as the commissioner deems necessary.

**(5)** LEGAL EXISTENCE. Upon the issuance of the certificate of incorporation the legal existence of the corporation shall begin, the articles and bylaws shall become effective and the proposed directors and officers shall take office. The certificate shall be conclusive evidence of compliance with this section, except in a proceeding by the state against the corporation.

**History:** 1971 c. 260; 1991 a. 316.

**Cross−reference:** See also s. Ins 6.52, Wis. adm. code.

**611.14 Powers under organization permit. (1)** STOCK CORPORATIONS. While its organization permit is in effect a stock corporation may:

(a) Register stock under s. 611.31, solicit subscriptions subject to s. 180.0620 (1) (a) and receive payment therefor in cash or, with the approval of the commissioner, in other property constituting a permitted investment under ch. 620, and issue receipts for such payment at values approved by the commissioner, but no shares may be issued until a certificate of authority is issued; and

(b) Transact all other business necessary and appropriate for the organization of the planned insurance enterprise.

**(2)** MUTUALS. While its organization permit is in effect a mutual may:

(a) Register mutual bonds under s. 611.31, solicit applications for qualifying insurance policies under s. 611.19 (4) (c) and subscriptions for mutual bonds and contribution notes and receive payment therefor in cash or, with the approval of the commissioner, in property constituting a permitted investment under ch. 620, and issue receipts for such payment at values approved by the commissioner, but no policies or bonds may be issued until a certificate of authority is issued; and

(b) Transact all other business necessary and appropriate in the organization of the planned insurance enterprise.

**History:** 1971 c. 260, 307; 1989 a. 303.

**611.15 Deposit of proceeds of subscriptions.** All funds, and the securities and documents representing interests in property, received by a stock corporation for stock subscriptions or by a mutual for applications for insurance policies or for mutual bond or contribution note subscriptions shall be deposited in the name of the corporation with a depository approved by the commissioner, subject to an escrow agreement approved by the commissioner under which withdrawals may be made only with the commissioner's approval.

**History:** 1971 c. 260; 1979 c. 102 s. 236 (14).

**611.16 Termination of organization permit and payment of organization expenses. (1)** TERMINATION. The organization permit shall terminate upon:

(a) Issuance of a certificate of authority under s. 611.20;

(b) Revocation under sub. (2); or

(c) Expiration of one year after issuance unless a good faith application for a certificate of authority has been filed with the commissioner. The commissioner may grant a reasonable extension if the commissioner reasonably expects that the corporation will be able to satisfy the requirements for a certificate of authority within the extended period.

**(2)** REVOCATION. The commissioner may revoke an organization permit if:

(a) The commissioner finds, after a hearing, that because of changes in circumstances, or because the facts were not as represented in the application, the conditions for issuance of a permit are no longer satisfied; or

(b) The commissioner denies an application for a certificate of authority and finds that the corporation cannot reasonably be expected to satisfy the requirements for a certificate of authority within the remaining term of the organization permit or any extension thereof under sub. (1) (c).

**(3)** REIMBURSEMENTS AND REFUNDS. (a) *General.* Except in cases under pars. (b) and (c), if the organization permit is revoked or expires before a certificate of authority is granted, incorporators who have advanced money for the reasonable and authorized expenses of organization, including underwriting expenses, may be reimbursed in cash from the proceeds of shares or mutual bond or contribution note subscriptions under the organization permit, on itemized receipts audited by the commissioner. The total reimbursement shall not exceed 5 percent of the amount received from such sources. The remainder in the escrow account shall thereupon be distributed among such subscribers in proportion to their contributions, valued as of the time the contributions were made.

(b) *Violation of law.* Reimbursement may be refused to any incorporator under par. (a) if the commissioner finds that in connection with the organization of the corporation the incorporator has willfully or negligently violated in a material way any provision of this chapter.

(c) *Assessable mutuals.* No reimbursement may be made to any incorporator of a mutual under par. (a) until all advanced premiums collected under s. 611.19 (4) (c) have been repaid in full.

**(4)** END OF LEGAL EXISTENCE. The legal existence of the corporation shall terminate upon completion of the payments under sub. (3).

**History:** 1971 c. 260, 307; 1991 a. 316.

**611.18 Incorporators' liability and organization expenses. (1)** LIABILITY. The incorporators shall be jointly and severally liable for all organizational and promotional expenses and liabilities incurred prior to the issuance of the certificate of authority.

**(2)** REIMBURSEMENT AND COMPENSATION. (a) *Stock corporations.* 1. 'Expenses.' After issuance of the certificate of authority, incorporators of a stock corporation who have advanced money or incurred obligations for the reasonable and authorized expenses of organization including underwriting may be reimbursed in cash from the proceeds of shares subscribed to under the organization permit, on itemized receipts audited by the commissioner. Their total reimbursement may not exceed 10 percent of the amount received from subscribers.

2. 'Personal services.' Incorporators may be compensated for the reasonable value of personal services actually performed by the issuance to them of shares not exceeding in value in the aggregate 10 percent of the amount received from the subscription for shares under the organization permit.

3. 'Aggregate expenses and remuneration.' The aggregate payment under subds. 1. and 2. may not exceed 15 percent of the amount received for shares subscribed to under the organization permit, including the shares purchased under s. 611.32 (1) or (2), and shall conform to the statement made under s. 611.13 (2) (e).

(b) *Mutuals.* After issuance of the certificate of authority, incorporators of a mutual who have advanced money or incurred obligations for the reasonable and authorized expenses of organization may be reimbursed in cash from the proceeds of subscriptions for mutual bonds and contribution notes, on itemized receipts audited by the commissioner. The total reimbursement may not exceed 15 percent of the amount received for the bonds and notes.

**History:** 1971 c. 260.

**611.19 Initial capital and surplus requirements.** **(1)** MINIMUM CAPITAL AND PERMANENT SURPLUS. The commissioner may by rule establish the minimum capital for a stock corporation or the minimum permanent surplus for a nonassessable mutual organized under this chapter. In the absence of such a rule, the minimum capital or minimum permanent surplus shall be $2,000,000 or such greater amount as the commissioner specifies by order.

**(2)** INITIAL EXPENDABLE SURPLUS. A corporation organized under this chapter shall have an initial expendable surplus, after payment of all organizational expenses, of at least 50 percent of the minimum capital or minimum permanent surplus specified under sub. (1), or such other percentage as the commissioner specifies by order.

**(4)** ASSESSABLE MUTUALS. (a) *Reduced permanent surplus.* An assessable mutual organized under this chapter need not have a permanent surplus if the assessment liability of its policyholders is unlimited. If assessments are limited to a specified amount or a specified multiple of annual advance premiums, the minimum permanent surplus shall be the amount that would be required under sub. (1) if the corporation were not assessable, reduced by an amount that reasonably reflects the value of the policyholders' assessment liability in satisfying the financial needs of the corporation.

(b) *Initial expendable surplus.* An assessable mutual organized under this chapter shall have an initial expendable surplus of at least $100,000, after payment of all organizational expenses.

(c) *Initial applications; general.* Except under pars. (d) and (e), no certificate of authority shall be issued to an assessable mutual until it has at least 400 bona fide applications for insurance from not less than 400 separate applicants on separate risks located in this state in each of the classes of business upon which assessments may be separately levied. A full year's premium shall be paid with each application and the aggregate premium shall be at least $50,000 for each such class. If at any time while the corporation is an assessable mutual, the business plan is amended to include an additional class of business on which assessments may be separately levied, identical requirements shall be applicable to each additional class.

(d) *Same; worker's compensation.* Five employers or more may join in the formation of an assessable mutual to write only worker's compensation insurance if, instead of the requirements of par. (c), policies are simultaneously put into effect that cover at least 1,500 employees, counting no more than 300 for any employer. A full year's premium shall be paid by each employer, aggregating at least $100,000.

(e) *Initial surplus in lieu of initial applications.* In place of initial applications and premium payments for any class of business, the corporation may provide the minimum permanent surplus and initial expendable surplus that the commissioner would require for a nonassessable mutual organizing to do that class of business under like conditions. The class of business shall nevertheless be assessable until conversion under s. 611.77 (1).

**(5)** MUTUALS WITH OPEN CONTRACTS. A mutual organized under this chapter need not have a permanent surplus if it issues only contracts the benefits of which may be reduced by action of the board if assets are not sufficient to provide the protection specified in the contracts. The terms and format of any such open contract provision must be approved by the commissioner before the mutual is given a certificate of incorporation.

**(6)** PROVIDERS' CONTRACTS. Any corporation under this chapter which promises in its policies to supply services in lieu of or in addition to indemnity, on a basis giving the insurer no option whether it will supply services or pay indemnity, shall maintain such contracts with providers that it can be reasonably expected that services will be provided as promised in its contracts.

**(7)** REDUCTION OF MINIMUM SURPLUS. The commissioner may by order reduce the minimum amounts of surplus required under subs. (1) and (2) if in the commissioner's opinion the extent and nature of providers' contracts under sub. (6), financial guarantees and other support by financially sound private or public corporations, a pressing social need in a particular community for the formation of a mutual insurance corporation to provide needed insurance coverage, or other special circumstances, justify the proposed reduction in the required surplus. A person who will directly compete with the proposed insurer is aggrieved within the meaning of s. 601.62 (3) (a).

**(8)** HEALTH MAINTENANCE ORGANIZATION INSURER. This section does not apply to a health maintenance organization insurer that is subject to s. 609.96.

**History:** 1971 c. 260; 1975 c. 147 s. 54; 1979 c. 261; 1985 a. 335; 1989 a. 23, 303.

**611.20 Certificate of authority.** **(1)** APPLICATION. The corporation may apply for a certificate of authority at any time prior to the expiration of its organization permit. The application shall include a statement by a principal officer of any material changes that have already taken place or are likely to take place in the facts on which the issuance of the organization permit was based, and if any material changes are proposed in the business plan, the additional information about such changes that would be required if an organization permit were then being applied for.

**(2)** ISSUANCE. (a) The commissioner shall issue a certificate of authority, if he or she finds:

1. That cash or property authorized under s. 611.14 (1) (a) has been received sufficient to satisfy the requirements of s. 611.19;

2. That there is no basis for revoking the organization permit under s. 611.16 (2); and

3. That all other applicable requirements of the law have been met.

(b) The certificate of authority shall specify any limits placed on the insurance business that may be carried on by the corporation and may, within the powers given the commissioner by law, specify limits on its methods of operation.

**(3)** EFFECT. Upon the issuance of the certificate:

(a) The board shall authorize and direct the issuance of shares, bonds or notes subscribed to under the organization permit, and of insurance policies upon qualifying applications made under the organization permit; and

(b) The commissioner shall authorize the release to the corporation of all funds held in escrow under s. 611.15.

**(4)** ALTERATION OF CERTIFICATE OF AUTHORITY. (a) *Upon application.* A corporation may at any time apply to the commissioner for a new or amended certificate of authority, removing, altering or adding limits on its business or methods of operation. The application shall contain or be accompanied by so much of the information in s. 611.13 (2) as the commissioner reasonably requires. The commissioner shall issue the new certificate as requested if he or she finds:

1. That the corporation's capital and surplus are adequate to support the proposed operations under the new certificate; and

2. That the proposed business would not be contrary to the law or to the interests of insureds or the public.

(b) *By commissioner.* If the commissioner issues a summary order under s. 645.21 against a corporation, he or she may also revoke the corporation's certificate and issue a new one with the limits the commissioner deems necessary.

**History:** 1971 c. 260; 1979 c. 102 ss. 96, 236 (5); 1989 a. 303.

**611.22 Accelerated organization procedure.** **(1)** GENERAL REQUIREMENTS. The incorporators may apply for determina-

tion of the minimum capital or minimum permanent surplus under s. 611.19 and for a certificate of authority without first obtaining an organization permit if:

(a) Their number is not more than 15; and

(b) They purchase for their own accounts all the shares proposed to be issued in the case of a stock corporation, or in the case of a mutual they supply all the minimum permanent surplus and initial expendable surplus by contribution notes or otherwise.

**(2)** CONTENTS OF APPLICATION. The application for a certificate of authority shall be accompanied by proof that the purchase price for the shares or the proceeds of contribution notes have been deposited on behalf of the proposed corporation or if other than money are held in trust for the proposed corporation and by so much of the information in s. 611.13 (2) as the commissioner reasonably requires.

**(3)** ISSUANCE OF CERTIFICATES OF INCORPORATION AND AUTHORITY. The commissioner shall issue both a certificate of incorporation and a certificate of authority if:

(a) The commissioner finds that all requirements of law have been met;

(b) The commissioner is satisfied that all natural persons who are incorporators, the directors and principal officers of corporate incorporators, and the proposed directors and officers of the corporation being formed are trustworthy and competent and collectively have the competence and experience to engage in the particular insurance business proposed; and

(c) The commissioner is satisfied that the business plan is consistent with the interests of the corporation's potential insureds and of the public.

**(4)** LEGAL EXISTENCE. Upon the issuance of the certificate of incorporation the legal existence of the corporation shall begin, the articles and bylaws shall become effective and the proposed directors and officers shall take office. The certificate shall be conclusive evidence of compliance with this section, except in a proceeding by the state against the corporation.

**History:** 1971 c. 260; 1991 a. 316.

**611.223 Transfer of an insurer's place of domicile.** **(1)** FOREIGN INSURER BECOMES A DOMESTIC INSURER. (a) A foreign insurer which desires to become a domestic insurer may submit to the commissioner an application for a certificate of incorporation and a certificate of authority. The application shall comply with par. (b) and shall include or have attached any other relevant documents or information that the commissioner reasonably requires. Upon review of the application, the commissioner may issue a certificate of incorporation and certificate of authority if the commissioner determines that all of the following are satisfied:

1. The applicant is in compliance with the provisions of chs. 600 to 655 that apply to domestic insurers.

2. The directors and officers of the applicant are trustworthy and competent and collectively have the competence and experience to engage in the particular insurance business proposed.

3. The proposed business is consistent with the interests of insureds and the public.

(b) The commissioner shall by rule specify the required contents and form of an application submitted under par. (a). In determining the required contents, the commissioner shall consider the information and documents which will permit the commissioner to determine whether the requirements of par. (a) 1. to 3. are satisfied.

(c) The commissioner may by order relax one or more of the requirements of this subsection for a foreign insurer which desires to become a domestic insurer if, after a hearing conducted in accordance with ch. 227, the commissioner determines that the requirements are unnecessary to protect policyholders and the public because of the developed status of the foreign insurer.

**(2)** DOMESTIC INSURER BECOMES A FOREIGN INSURER. Upon approval by the commissioner, a domestic insurer may transfer its place of domicile to any other state in which it is admitted. As a condition of approving the transfer of domicile, the commissioner may require a special deposit, reinsurance or other protective measures by the insurer. After or simultaneous with the transfer of domicile, the insurer may apply under ch. 618 for authority to do business in this state as a foreign insurer.

**(3)** EFFECT ON EXISTING CONTRACTS. The transfer of an insurer's place of domicile under sub. (1) or (2) does not affect the obligations of the insurer under its existing insurance contracts or any other existing contracts.

**History:** 1987 a. 247.

**Cross−reference:** See also s. Ins 6.03, Wis. adm. code.

**611.23 Municipal insurance mutuals.** **(1)** APPLICABLE RULES. On application by the organizers of a municipal insurance mutual under s. 611.11 (4), the commissioner may by order, after a hearing, relax any requirements of this chapter to facilitate the formation, financing and governance of the mutual. In the same order, the commissioner shall impose substitute requirements designed to implement the purposes of s. 611.02 (2) as elaborated in this chapter.

**(2)** REGULATION. Except as provided in sub. (3), the provisions of chs. 600 to 646 that apply to other mutuals organized or operating under this chapter apply also to municipal insurance mutuals.

**(3)** INAPPLICABLE PROVISIONS. Chapters 604 to 607, 612 to 619, 625 and 646 do not apply to such mutuals. The commissioner may by order, after a hearing, exempt such a mutual from any other provisions on a finding that they are unnecessary for the protection of the interests of the municipalities and their citizens.

**History:** 1977 c. 346; 1979 c. 89; 1981 c. 20 s. 2202 (26) (c); 1995 a. 197.

**NOTE: Chapter 346, laws of 1977, which created this section, has an extensive note explaining the section.**

**611.24 Segregated accounts in general.** **(1)** MANDATORY SEGREGATED ACCOUNTS. A corporation shall establish segregated accounts for the following classes of insurance business, if it also does other classes of insurance business:

(a) Mortgage guaranty insurance;

(am) Unless the corporation is exempted by the commissioner by rule or order, financial guaranty insurance, if the corporation commences this class of insurance business on or after March 25, 1988, or if the corporation engages in this class of business on or after November 1, 1988; and

(b) Life insurance including fixed and variable annuities. Disability insurance may be included in a life insurance account.

**(2)** OPTIONAL SEGREGATED ACCOUNTS. With the approval of the commissioner, a corporation may establish a segregated account for any part of its business. The commissioner shall approve unless he or she finds that the segregated account would be contrary to the law or to the interests of any class of insureds.

**(3)** SPECIAL PROVISIONS FOR SEGREGATED ACCOUNTS. (a) *Capital and surplus.* The commissioner shall specify in the certificate of authority of a newly organized corporation the minimum capital or the minimum permanent surplus and the initial expendable surplus to be provided for each segregated account. If a segregated account is established after a certificate of authority has been issued, the commissioner shall require the corporation to have and maintain an adequate amount of capital and surplus in the segregated account.

(b) *Identification.* The income and assets attributable to a segregated account shall always remain identifiable with the particular account but unless the commissioner so orders, the assets need not be kept physically separate from other assets of the corporation. The income, gains and losses, whether or not realized, from assets attributable to a segregated account shall be credited to or charged against the account without regard to other income, gains or losses of the corporation.

(c) *Charges.* Except under par. (e), assets attributable to a segregated account shall not be chargeable with any liabilities arising out of any other business of the corporation, nor shall any assets

not attributable to the account be chargeable with any liabilities arising out of it, except under par. (i).

(d) *Incidental business.* Incidental business done by a corporation under s. 610.21 may be done under the general account or under any segregated account approved by the commissioner. Expenses and income for such business shall be allocated among the general account and all segregated accounts in accordance with generally accepted accounting principles.

(e) *Delinquency proceedings.* Each segregated account shall be deemed an insurer within the meaning of s. 645.03 (1) (f). A liquidation order under s. 645.42 for the general account or for any segregated account shall have effect as a rehabilitation order under s. 645.32 for all other accounts of the corporation. Claims remaining unpaid after completion of the liquidation under ch. 645 shall have liens on the interests of shareholders, if any, in all of the corporation's assets that are not liquidated, and the rehabilitator may transform the liens into ownership interests under s. 645.33 (5).

(f) *Ownership.* Assets allocated to segregated accounts are the property of the corporation, which is not and shall not hold itself out to be a trustee of the assets.

(g) *Common assets.* A corporation may own a particular asset in determinate proportions for segregated accounts, for its general account or as a trustee when acting as such within its legal powers.

(h) *Transfer.* The corporation may by an identifiable act transfer assets for fair consideration among the segregated accounts, the general account and any trust accounts of the corporation.

(i) *Expenses, loans, and services.* The general account of the corporation, or any segregated account, may for a fair consideration provide loans or guarantees in connection with, perform services for, or reinsure other accounts, subject to rules promulgated by the commissioner. Generally accepted accounting principles and realistic actuarial tables may be considered to ascertain what is a fair consideration. Notwithstanding s. 645.68, the commissioner may assign a general or segregated account obligation to a segregated account an order of distribution higher in priority than provided for under s. 645.68 (5).

**History:** 1971 c. 260; 1979 c. 102 s. 236 (5); 1979 c. 109; 1981 c. 314 s. 146; 1987 a. 167; 2009 a. 342.

**611.25 Special provisions for separate accounts for variable contracts. (1)** TERMINOLOGY. Separate accounts under this section form a special category of segregated accounts and may be designated by any appropriate name the corporation wishes to use.

**(2)** FORMATION. With the approval of the commissioner, any corporation may establish one or more separate accounts and allocate to them any amounts paid or remitted to or held by the corporation under designated contracts or classes of contracts which amounts are to be applied to provide benefits payable partly or wholly in variable dollar amounts. Such amounts may also be applied to provide benefits in fixed and guaranteed dollar amounts and other incidental benefits.

**(3)** SPECIAL RIGHTS AND PROCEDURES. To the extent necessary to comply with the federal investment company act of 1940, as now or later amended, or any rules issued thereunder, the corporation may adopt special procedures for the conduct of the business and affairs of a separate account, and may, for persons having beneficial interests therein, provide special voting and other rights, including special rights and procedures relating to investment policy, investment advisory services, selection of certified public accountants, and selection of a committee, the members of which need not be otherwise affiliated with the corporation, to manage the business and affairs of the account.

**(4)** APPLICABLE GENERAL PROVISIONS. Separate accounts under this section are subject to s. 611.24 (3).

**History:** 1971 c. 260.

**611.26 Subsidiaries. (1)** INSURANCE SUBSIDIARIES. An insurance corporation may form or acquire subsidiaries to do any lawful insurance business. There is no limit on the amount of investment in such subsidiaries except that the commissioner may by order or rule establish a limit and, for purposes of ss. 623.11 and 623.12, the total value of the outstanding shares of such a subsidiary shall be deemed to equal the amount of surplus possessed by the subsidiary in excess of its security surplus, as determined by the commissioner under s. 623.12.

**(2)** INVESTMENT SUBSIDIARIES. An insurance corporation may form or acquire subsidiaries to hold or manage any assets that it might hold or manage directly. There is no limit on investment in such subsidiaries except that imposed by s. 620.23 (3).

**(3)** ANCILLARY SUBSIDIARIES. (a) *Authorization.* An insurance corporation may form or acquire subsidiaries to perform functions or provide services that are ancillary to its insurance operations. It may have up to 10 percent of its assets invested in such subsidiaries, unless the commissioner by order or rule provides otherwise.

(b) *Purposes.* Subsidiaries are ancillary subsidiaries if they are engaged principally in one or more of the following:

1. Acting as an insurance agent.

2. Investing, reinvesting or trading in securities, or acting as a securities broker, dealer or marketing representative, for its own account or for the account of any affiliate.

3. Managing of investment companies registered under the federal investment company act of 1940, as amended, including related sales and services.

4. Providing investment advice and services.

5. Acting as administrative agent for a government instrumentality performing an insurance, public assistance or related function.

6. Providing services related to insurance operations, including accounting, actuarial, appraisal, auditing, claims adjusting, collection, data processing, loss prevention, premium financing, safety engineering and underwriting services.

7. Holding or managing property used by the corporation alone or with its affiliates for the convenient transaction of its business.

8. Providing such other services or performing such other activities as the commissioner may declare ancillary by rule.

9. Owning corporations which would be authorized as subsidiaries under subds. 1. to 8. and under subs. (1) and (2).

**(4)** OTHER SUBSIDIARIES. An insurance corporation may form or acquire other subsidiaries than those under subs. (1) to (3). The investment in such subsidiaries may be counted toward satisfaction of the compulsory surplus requirement of s. 623.11 and the security surplus standard of s. 623.12 to the extent that the investment is a part of the leeway investments of s. 620.22 (9) for the first $200,000,000 of assets or to the extent that the investment is within the limitations under s. 620.23 (2) (a) and (b) for other assets. The commissioner may limit investment in subsidiaries under this subsection by rule or order. Unless approved by the commissioner, an insurance corporation may not do any of the following:

(a) Invest in one or more subsidiaries more than 10 percent of its assets or 50 percent of its capital and surplus, whichever is less.

(b) Invest in one or more subsidiaries to the extent that the insurer's capital and surplus with regard to policyholders will not be reasonable in relation to the insurer's outstanding liabilities or adequate to meet the insurer's financial needs.

**(5)** NOTICE TO COMMISSIONER. An insurance corporation shall notify the commissioner promptly of the formation or acquisition of any subsidiary under this section.

**History:** 1971 c. 260; 1979 c. 279 s. 9; 1981 c. 307; 1999 a. 30; 2003 a. 261; 2007 a. 170.

**611.28 Changes in business plan. (1)** DEVELOPMENT STAGE. Within 5 years after the initial issuance of a certificate of authority no substantial change, alteration or amendment may be made in the business plan and the insurer may not substantially deviate from it unless notice of the proposed change is filed with

the commissioner 30 days in advance of the proposed effective date. The commissioner may defer the effective date for an additional period not exceeding 30 days by written notice to the corporation before expiration of the initial 30−day period. The commissioner may, within the 30−day period or its extension, prohibit the proposed action if it is contrary to law or to the interests of insureds, creditors or the public in this state.

**(2)** CONTINUING CONTROL. The commissioner may by rule or order specify portions of the business plan to which the requirement of sub. (1) shall apply even after the initial 5−year period, if he or she finds after a hearing that it is required to protect the interests of insureds, creditors or the public in this state.

**History:** 1971 c. 260; 1979 c. 102 s. 236 (5); 1991 a. 316.

**611.29 Amendment of articles. (1)** RIGHT TO AMEND ARTICLES. A stock corporation may amend its articles under ss. 180.0726, 180.1001 to 180.1007, 180.1706, 180.1707 and 180.1708 (4) and a mutual may amend its articles under ss. 181.1001, 181.1002 (1), 181.1003, 181.1005 and 181.1006, except that papers required by those sections to be filed with the department of financial institutions shall instead be filed with the commissioner. Subject to sub. (3), the stock corporation or mutual may amend its articles in any desired respect including substantial changes of its original purposes. No amendment may be made contrary to s. 611.12 (1) to (3).

**(2)** FILING. For 5 years after the initial issuance of a certificate of authority, proposed amendments of the articles which are not changes in the business plan shall be filed with the commissioner at least 30 days before the amendment is submitted to the shareholders or policyholders for approval, or if such approval is not required, at least 30 days before the effective date.

**(3)** ARTICLES OF AMENDMENT; MUTUALS. In addition to the requirements of s. 181.1005, the articles of amendment of a mutual shall, if mail voting is used, state the number of policyholders voting by mail and the number of such policyholders voting for and against the amendment.

**(4)** FILING OF ARTICLES OF AMENDMENT. No amendment may become effective until the articles of amendment have been filed with the commissioner.

**(5)** EFFECT OF AMENDMENT OF ARTICLES. Section 180.1009 applies to stock corporations and s. 181.1008 applies to mutuals.

**History:** 1971 c. 260; 1989 a. 303; 1997 a. 79.

## SUBCHAPTER III

## SECURITIES OF DOMESTIC INSURANCE CORPORATIONS

**611.31 Securities regulation. (1)** REGISTRATION. No securities issued by a domestic insurance corporation may be sold by or for the corporation unless they are registered or exempt from registration under ch. 551.

**(2)** APPROVAL BY COMMISSIONER. Securities of a domestic insurance corporation may not be registered under ch. 551 without prior approval of the commissioner of insurance. Issuance of an organization permit under s. 611.13 constitutes such approval for the securities described in the permit.

**(3)** HOLDING COMPANIES. No issuer of securities which is being organized in this state or elsewhere solely or partly for the purpose of organizing a corporation under this chapter may register or sell its securities in this state unless it obtains an organization permit under s. 611.13. No security may be registered or sold in this state if there is any representation that an insurer will be organized or purchased in this state with the proceeds of the sale, unless the issuer obtains an organization permit under s. 611.13.

**(4)** INSIDER TRADING OF SECURITIES. (a) Every person who is directly or indirectly the beneficial owner of more than 10 percent of any class of any equity security of a domestic stock insurance corporation, or who is a director or officer thereof, shall file in the office of the commissioner within 10 days after becoming a beneficial owner or a director or officer, and within 10 days after the close of any calendar month thereafter in which there has been a change in his or her ownership or office, a statement in the form prescribed by the commissioner, of the office and of all equity securities of the company of which the person is the beneficial owner, and of all changes in either.

(b) For the purpose of preventing the unfair use of information which may have been obtained by such a beneficial owner or by a director or officer because of his or her relationship to the corporation, any profit realized by him or her from any purchase and sale or sale and purchase of any equity security of the corporation within any period of less than 6 months, unless the security was acquired in good faith in connection with a debt previously contracted, shall be recoverable by the corporation, irrespective of any intention by the beneficial owner, director or officer in entering into the transaction to hold the security purchased or not to repurchase the security sold for a period exceeding 6 months. Suit to recover the profit may be instituted in any court of competent jurisdiction by the corporation, or if the corporation fails to bring suit within 60 days after request or fails to prosecute it diligently thereafter by the owner of any security thereof, in the name and in behalf of the corporation; but no such suit may be brought more than 2 years after the date the profit was realized. This paragraph does not cover any transaction where the beneficial owner was not such both at the time of the purchase and sale, or the sale and purchase, of the security involved, nor does it cover any transaction which the commissioner by rule exempts as not comprehended within the purpose of this paragraph.

(c) It is unlawful for any director or officer, or any beneficial owner subject to par. (a), to sell any equity security of the corporation, directly or indirectly, unless the director, officer or beneficial owner or the director's, officer's or beneficial owner's principal owns the security sold and either delivers it within 20 days after the sale or deposits it within 5 days after the sale in the mails or other usual channels of transportation. A person has not violated this paragraph if the person proves that despite the exercise of good faith the person was unable to deliver or deposit the securities within the specified times, or could only have done so with unreasonable inconvenience or expense.

(d) Paragraph (b) does not apply to a purchase and sale or sale and purchase and par. (c) does not apply to a sale of any equity security of a domestic stock insurance corporation not then or earlier held by him or her in an investment account, by a dealer in the ordinary course of his or her business and incident to his or her establishment or maintenance of a primary or secondary market (otherwise than on an exchange as defined in the federal securities exchange act of 1934) for the security. The commissioner may by rule define and prescribe terms and conditions with respect to securities held in an investment account and transactions made in the ordinary course of business and incident to the establishment or maintenance of a primary or secondary market.

(e) Paragraphs (a) to (c) do not apply to foreign or domestic arbitrage transactions unless made in contravention of rules the commissioner adopts in order to carry out this subsection.

(f) Paragraphs (a) to (c) do not apply to equity securities of a corporation if:

1. The securities are registered, or are required to be registered, pursuant to s. 12 of the federal securities exchange act of 1934, as amended; or

2. The corporation did not have any class of its equity securities held of record by 100 or more persons on the last business day of the year preceding the year in which equity securities of the corporation would otherwise be subject to pars. (a) to (c).

(g) In this subsection "equity security" means any stock or similar security; or any security convertible, with or without consideration, into such a security, or carrying any warrant or right to subscribe to or purchase such a security; or any such warrant or right; or any other security which the commissioner deems to be

of similar nature and designates as an equity security by rules promulgated in the public interest or for the protection of investors.

**(5)** PROXY SOLICITATION. No person may, in contravention of rules the commissioner promulgates for the protection of investors or the public, solicit or permit the use of his or her name to solicit any proxy or consent or authorization in respect of any equity security of a domestic stock corporation having 100 or more shareholders of record.

**(6)** EFFECT OF RELIANCE ON COMMISSIONER'S RULE. No provision of sub. (4) imposing any liability applies to any act done or omitted in good faith in conformity with any rule of the commissioner, even if the rule is, after the act or omission, amended or rescinded or determined by judicial or other authority to be invalid.

**(7)** EFFECT OF VIOLATION. A contract for subscription to or the purchase of shares in any corporation made in violation of this chapter or of ch. 551 is valid and enforceable against but not in favor of the corporation or the insider, except that the contract is valid and enforceable in favor of the corporation against an insider.

**History:** 1971 c. 260; 1979 c. 102 ss. 97, 236 (13).

**Cross−reference:** See also ss. Ins 6.41, 6.42, and 6.43, Wis. adm. code.

**611.32 Promoter stock. (1)** MANDATORY PURCHASE. During the period of effectiveness of the organization permit the incorporators, directors, and principal officers of a stock corporation shall among themselves subscribe and pay, at the public offering price, at least $100,000 in cash or in property of equivalent value approved by the commissioner, for shares offered by the corporation under the organization permit.

**(2)** RESTRICTIONS ON ISSUANCE. (a) No person may subscribe for promoter stock on terms more favorable than those on which subscriptions are being solicited from the general public.

(b) Except under this section and s. 611.18 (2) (a) 2., and except for stock dividends, no promoter stock may be issued for 5 years following the initial issuance of the certificate of authority, without the approval of the commissioner which may be granted by the commissioner only if he or she finds that:

1. The corporation is in need of additional capital; and

2. The value proposed to be given for the stock is fair to existing shareholders and has a reasonable relation to the current value of the outstanding shares.

(c) This subsection shall not affect the exercise of preemptive rights.

**(3)** RESTRICTIONS ON TRANSFER. (a) *Deposit in escrow.* Shares of promoter stock and any stock received thereon as the result of a stock dividend, stock split or exercise of preemptive rights shall be deposited in escrow with a depository satisfactory to the commissioner under an agreement providing that the shares may not be transferred without the approval of the commissioner.

(b) *Release from escrow.* If the corporation issues any life insurance policies, any shares subject to this section shall be released from escrow 5 years after issuance of the certificate of authority. In other cases, the shares shall be released from escrow 3 years after issuance of the certificate of authority.

**(4)** APPROVAL. (a) *Definition.* In this subsection, "earned surplus" means the balance of the net profits, income, gains and losses of a corporation from the date of incorporation.

(b) *Conditions.* Approval of the transfer of promoter stock under sub. (3) (a):

1. Shall be granted upon request if the corporation has made an addition to earned surplus in each of the 2 immediately preceding years of at least 6 percent of the capital raised by the sale of shares under the organization permit; and

2. May be granted upon a showing of hardship by the shareholder or the shareholder's estate or legatee, if the release from escrow of the shares or a portion thereof would not, in the commissioner's opinion, endanger the interests of insureds or the public.

**(5)** OPTIONS TO PURCHASE STOCK. For 3 years after the issuance of the certificate of authority, an option to purchase stock may be issued only pursuant to a plan approved by the commissioner.

**History:** 1971 c. 260; 1979 c. 102 s. 236 (5); 1989 a. 303; 1991 a. 316.

**611.33 Authorized securities. (1)** STOCK CORPORATIONS. (a) *Classes of shares.* The articles of a stock corporation shall authorize the kinds of shares required by s. 180.0601 (3) and may authorize any kind of shares permitted by ss. 180.0601 (1), (2) and (4), 180.0602 and 180.0603, or of stock rights, and options permitted by s. 180.0624, except that:

1. Until one year after the initial issuance of a certificate of authority, the corporation may issue no shares and no other securities convertible into shares except for a single class of common stock that satisfies s. 180.0601 (3) and, with the approval of the commissioner, on terms that he or she considers fair, a single class of preferred stock for sale to no more than 15 shareholders;

2. After the first year and within 5 years after the initial issuance of a certificate of authority, no additional classes of shares may be issued, except after approval of the commissioner, who may approve only if he or she finds that existing shareholders will not be prejudiced.

(b) *Fractional shares or scrip.* No fractional shares may be issued. Subject thereto, s. 180.0604 applies.

(c) *Consideration for shares, certificates and transfer restrictions.* Sections 180.0621 and 180.0625 to 180.0627 apply.

(d) *Liability of shareholders, transferees and others.* Section 180.0622 applies.

(e) *Shareholders' preemptive rights.* Sections 180.0630 and 180.1705 apply.

**(2)** MUTUALS. (a) *Mutual bonds.* The articles of a nonassessable mutual may authorize mutual bonds of one or more classes and shall specify the amount of each class of bonds the corporation is authorized to issue, their designations, preferences, limitations, rates of interest, relative rights and other terms, subject to the following provisions:

1. During the first year after the initial issuance of a certificate of authority, the corporation may issue only a single class of bonds with identical rights;

2. After the first year but within 5 years after the initial issuance of a certificate of authority, additional classes of bonds may be authorized after approval of the commissioner, who shall approve if he or she finds that policyholders and prior bondholders will not be prejudiced;

3. The rate of interest shall be fair and reasonable; and

4. The bonds shall bear a maturity date not later than 10 years from the date of issuance, when principal and accrued interest shall be due and payable, subject to par. (d).

(b) *Contribution notes.* Any mutual may issue contribution notes if the commissioner approves. The commissioner may approve only if he or she finds that:

3. The notes will not be the subject of a public offering;

4. Their terms are not prejudicial to policyholders, holders of mutual bonds or of prior contribution notes; and

5. The mutual's articles or bylaws do not forbid their issuance.

(c) *Prohibited transactions.* No mutual may:

1. If it has any outstanding obligations on mutual bonds or contribution notes, borrow on contribution notes from, or sell bonds to, any other insurer without approval of the commissioner; or

2. Make any loan to another insurer except a fully secured loan at usual market rates of interest.

(d) *Repayment.* Payment of the principal or interest on mutual bonds or contribution notes may be made in whole or in part only after approval of the commissioner. Approval shall be given if all financial requirements of the issuer to do the insurance business it is then doing will continue to be satisfied after payment and if the interests of its insureds and the public are not endangered. In the event of liquidation under ch. 645 unpaid amounts of principal and interest on contribution notes shall be subordinated to the pay-

ment of principal and interest on any mutual bonds issued by the corporation at any time.

(e) *Other obligations.* Nothing in this section prevents a mutual from borrowing money on notes which are its general obligations, nor from pledging any part of its disposable assets therefor.

**History:** 1971 c. 260; 1973 c. 184; 1979 c. 102 ss. 98, 236 (5); 1989 a. 303; 2009 a. 342.

**611.34 Corporate repurchase of shares.** No stock corporation may repurchase any of its own shares within 5 years after initial issuance of the certificate of authority, except pursuant to a plan for the repurchase which has been approved by the commissioner. After 5 years a stock corporation may repurchase its own shares under ss. 180.0631, 180.0640, and 180.1708 (2), but within 10 days after the end of any month in which it purchases more than one percent of any class of its outstanding shares the corporation shall report the price and the names of the registered shareholders from whom the shares are acquired and of any other persons beneficially interested, so far as the latter are known to the corporation. The corporation shall make a like report within 10 days after the end of any 3−month period in which it purchases more than 2 percent of any class of its outstanding shares or within 10 days after the end of any 12−month period in which it purchases more than 5 percent of any class of its outstanding shares.

**History:** 1971 c. 260; 1989 a. 303; 2009 a. 177.

**611.36 Number of shareholders.** Section 180.0142 applies to stock corporations for purposes of this chapter.

**History:** 1989 a. 303.

## SUBCHAPTER IV

## MANAGEMENT OF INSURANCE CORPORATIONS

**611.40 Shareholders' meetings. (1)** MEETINGS, NOTICES, QUORUMS AND VOTING. Sections 180.0701 to 180.0703, 180.0705, 180.0721 to 180.0727 and 180.1708 (3) apply to stock corporations. Each director of a stock corporation shall be elected by a plurality of the votes cast by the shares entitled to vote in the election at a meeting at which a quorum is present.

**(2)** RECORD DATE AND VOTING LISTS. Sections 180.0707 and 180.0720 apply to stock corporations.

**(3)** VOTING TRUST. Sections 180.0730 and 180.0731 apply to stock corporations.

**History:** 1971 c. 260, 307; 1973 c. 184; 1989 a. 303; 1997 a. 35.

**611.41 Communications to shareholders or policyholders and commissioner's attendance at meetings. (1)** COPIES OF COMMUNICATIONS. The commissioner may by rule prescribe that copies of specified classes of communications circulated generally by a corporation to shareholders or policyholders shall be communicated to the commissioner at the same time.

**(2)** ATTENDANCE AT MEETINGS. The commissioner has the right to attend any shareholders' or policyholders' meeting.

**(3)** EXCEPTION. Subsection (2) and, so far as it relates to communications to shareholders, sub. (1) do not apply to stock corporations all of whose voting shares are owned by a single person, or all of whose shareholders are either members of the board or are represented on it.

**History:** 1971 c. 260; 1979 c. 102 s. 236 (21).

**611.42 Mutual policyholders' voting rights. (1)** GENERAL. Subject to this section and s. 611.53, ss. 181.0701, 181.0702, 181.0705 (1) to (4), 181.0722 (1) to (3), 181.0723, and 181.0727 apply to mutuals.

**(1e)** COURT−ORDERED MEETINGS. (a) The circuit court for the county where a mutual's principal office is located, or, if the mutual does not have its principal office in this state, where its registered office is located, may, after notice and an opportunity to be heard, order a meeting to be held on petition of a policyholder of the mutual who meets any of the following conditions:

1. The policyholder is entitled to participate in an annual meeting and the annual meeting has not been held within 15 months after the mutual's last annual meeting.

2. The policyholder has signed a demand for a special meeting that meets the requirements of s. 181.0702 and the mutual has failed to do any of the following:

a. Give notice of the special meeting within 30 days after the date that the demand was delivered to the mutual.

b. Hold the special meeting in accordance with the notice.

(b) The court may fix the time and place of the meeting. The court shall require that the meeting be called and conducted in accordance with the mutual's articles of incorporation and bylaws, in so far as possible, except that the court may do all of the following:

1. Fix the quorum required for specific matters to be considered at the meeting or direct that the votes represented at the meeting constitute a quorum for action on those matters.

2. Enter any other orders necessary to accomplish the purpose of the meeting.

**(1m)** RECORD DATE. Section 181.0707 applies to mutuals.

**(2)** VOTING RIGHTS. (a) *Mandatory voting rights.* Policyholders in all mutuals have the right to vote on conversion, voluntary dissolution, amendment of the articles, and the election of all directors except public directors appointed under s. 611.53 (1). Voting may be conducted by mail, by electronic means, or by any other method or combination of methods prescribed by the articles or bylaws. Directors may be divided into classes, and in that case one class shall be elected at least every 4 years for terms not exceeding 6 years.

(b) *Optional voting rights.* The articles of any mutual may give the policyholders additional voting rights.

**(3)** VOTING PROCEDURES. The articles or bylaws shall contain rules governing voting eligibility consistent with sub. (2) and voting procedures. No amendment to the rules may be effective until at least 30 days after it has been filed with the commissioner.

**(4)** MEETINGS AND ELECTIONS. (a) The articles may provide for regular or special meetings of the policyholders, or elections in lieu of meetings.

(b) Notice of the time and place of regular meetings or elections shall be given to each policyholder by printing it conspicuously on each policy or in such other reasonable manner as the commissioner approves or requires.

**(5)** REPRESENTATIVE ASSEMBLY. The articles may provide that representatives or delegates be selected by the policyholders to represent specific geographical districts, or otherwise to represent defined classes of policyholders, determined on a reasonable basis. After the representative assembly has been selected by the policyholders, the assembly may choose replacements for members unable to complete their terms, if the articles so provide. The vote of a representative shall be treated as the vote of the policyholders he or she represents.

**History:** 1971 c. 260; 1979 c. 102 s. 236 (5); 1997 a. 79; 2013 a. 279.

**611.425 Mutual policyholders' proxy voting. (1)** DEFINITION. In this section, "electronic transmission" means transmission by the Internet, telephone, electronic mail, telegram, cablegram, datagram, or any other form or process of communication that does not directly involve the physical transfer of paper and that is capable of retention, retrieval, and reproduction of information by the recipient.

**(2)** GENERALLY. (a) Unless the articles of incorporation or bylaws prohibit or limit proxy voting, a policyholder may appoint another person as proxy to vote or otherwise act for the policyholder at a meeting of policyholders or to express consent or dissent in writing to any corporate action without a meeting of policyholders.

(b) A policyholder or the policyholder's authorized officer, director, employee, agent, or attorney−in−fact may validly appoint a proxy by signing or causing the policyholder's signature

to be affixed to an appointment form by any reasonable means, including by facsimile signature.

(c) To the extent authorized by the mutual's bylaws, a policyholder or the policyholder's authorized officer, director, employee, agent, or attorney−in−fact may validly appoint a proxy by transmitting or authorizing the transmission of an electronic transmission of the appointment to the person who will be appointed as proxy or to a proxy solicitation firm, proxy support service organization, or like agent authorized to receive the transmission by the person who will be appointed as proxy. Every electronic transmission shall contain, or be accompanied by, information that can be used to reasonably determine that the policyholder transmitted or authorized the transmission of the electronic transmission. Any person charged with determining whether a policyholder transmitted or authorized the transmission of the electronic transmission shall specify the information upon which the determination is made.

(d) Any copy, facsimile telecommunication, or other reliable reproduction of the information in the appointment form under par. (b) or the electronic transmission under par. (c) may be substituted or used in lieu of the original appointment form or electronic transmission for any purpose for which the original appointment form or electronic transmission may be used, but only if the copy, facsimile telecommunication, or other reliable reproduction is a complete reproduction of the information in the original appointment form or electronic transmission.

**(3)** WHEN EFFECTIVE. An appointment of a proxy is effective when a signed appointment form or, if authorized, an electronic transmission of the appointment is received by the inspector of election or the officer or agent of the mutual authorized to tabulate votes. An appointment is valid for 11 months unless a different period is expressly provided in the appointment.

**(4)** REVOCABILITY. (a) An appointment of a proxy is revocable unless the appointment form or, if authorized, electronic transmission states that it is irrevocable.

(b) The appointment of a proxy is revoked if the policyholder appointing the proxy does any of the following:

1. Attends any meeting and votes in person.

2. Signs and delivers to the secretary or other officer or agent authorized to tabulate proxy votes either a written statement that the appointment of the proxy is revoked or a subsequent appointment form.

**(5)** EFFECT OF DEATH OR INCAPACITY. The death or incapacity of the policyholder appointing a proxy does not affect the right of the mutual to accept the proxy's authority unless the secretary or other officer or agent of the mutual authorized to tabulate votes receives notice of the death or incapacity before the proxy exercises his or her authority under the appointment.

**(6)** ACCEPTANCE BY MUTUAL. Subject to s. 181.0727 and to any express limitation on the proxy's authority stated in the appointment form or, if authorized, electronic transmission, a mutual may accept the proxy's vote or other action as that of the policyholder making the appointment.

**History:** 2013 a. 279.

**611.43 Annual report to mutual policyholders.** Every domestic mutual shall send to each policyholder requesting it an annual report which shall contain basic financial and operating data, information about important business and corporate developments, and such other information as the corporation wishes to include or as the commissioner by rule requires to be included in order to keep policyholders properly informed.

**History:** 1971 c. 260.

**611.51 Board of directors. (1)** GENERAL. Subject to this section, ss. 180.0801 and 180.0802 apply to stock corporations and ss. 181.0801 (1) and (2) and 181.0802 apply to mutuals.

**(2)** NUMBER OF DIRECTORS. (a) *General.* Except under pars. (b) and (c), a corporation shall have at least 5 directors if no more than one director is an employee or representative of the corporation, and shall have at least 9 directors in other cases.

(b) *New corporations.* During the first 5 years after initial issuance of a certificate of authority, a corporation shall have at least 5 directors.

(c) *Exception.* The commissioner may by order reduce the number of directors required under this subsection, if he or she finds that it would be an unreasonable burden on the corporation to comply with the requirement and that the interests of policyholders and shareholders can be otherwise protected.

**(3)** INSIDE DIRECTORS. Employees and representatives of a corporation may not constitute a majority of its board.

**(4)** SUBSIDIARIES AND CLOSELY HELD CORPORATIONS. Subsections (2) (a) and (3) do not apply to an insurance subsidiary authorized under s. 611.26 (1) nor to a stock insurance corporation more than 95 percent of whose outstanding shares entitled to vote are owned by a single person or all of whose voting shareholders are either members of or are individually represented on the board.

**(5)** CLASSIFICATION OF DIRECTORS. If directors are divided into classes by the articles or the bylaws, no class may contain fewer than 3 members. Subject thereto, s. 180.0806 applies to stock corporations.

**(6)** UNLAWFUL DELEGATION. The board shall manage the business and affairs of the corporation and may not delegate its power or responsibility to do so, except to the extent authorized by ss. 180.0841, 181.0841, 611.56 and 611.67.

**(7)** QUORUM AND VOTING. Section 180.0824 applies to the board of a stock corporation and s. 181.0824 applies to the board of a mutual except as modified by s. 611.60.

**(8)** PLACE AND NOTICE OF DIRECTORS' MEETINGS. Sections 180.0820, 180.0822 and 180.0823 apply to stock corporations. Sections 181.0820, 181.0822 and 181.0823 apply to mutuals.

**(9)** BOOKS AND RECORDS. (a) *Stock corporations.* Sections 180.1601 to 180.1620 apply to stock corporations.

(am) *Mutuals.* 1. Each mutual shall keep correct and complete books and records of account and shall also keep minutes of the proceedings of its policyholders, board of directors and committees having any authority of the board of directors. Each mutual shall keep at its principal office or at the office of its secretary a record giving the names and addresses of policyholders entitled to vote, or records showing where such information can be obtained.

2. Except for the records of the names and addresses of policyholders entitled to vote, all relevant books and records of a mutual may be inspected by any policyholder or the policyholder's agent or attorney for any proper purpose at any reasonable time. Inspection of the records of the names and addresses of policyholders of mutuals entitled to vote shall be permitted only for the purpose of communicating with other policyholders with regard to the nomination and election of candidates for the board or other corporate matters which may be submitted to a vote of the policyholders. No person may, directly or indirectly, use any information so obtained for any other purpose.

3. In any pending action or proceeding, or upon petition, a court of record in this state may, upon notice fixed by the court, hearing and a showing of proper cause, and upon suitable terms, order any books and records of account, minutes and records of policyholders of a mutual and any other pertinent documents in the mutual's possession, or transcripts from or duly authenticated copies thereof, to be brought within this state and kept at such place and for such time and for such purposes as may be designated in the order. A mutual failing to comply with an order under this subdivision is subject to involuntary dissolution under this chapter and all of its directors and officers may be punished for contempt of court for disobedience of the order.

(b) *Form of books, records or minutes.* Any books, records or minutes may be in written form or in any other form capable of being converted into written form within a reasonable time.

(c) *Records of policyholders entitled to vote.* Any provision of this chapter or of any articles or bylaws of a mutual, which requires the keeping of records concerning the names and addresses of policyholders entitled to vote shall be deemed to be complied with by the keeping of a record of the names of policyholders and the names and addresses of insureds or persons paying premiums. Any such provision which requires the mailing or sending of notices, reports, proposals, ballots or other materials to policyholders shall be deemed to be complied with if mailing thereof is made to the insured or the person paying premiums on the policy for delivery to the policyholder.

**History:** 1971 c. 260; 1975 c. 373; 1979 c. 102 ss. 99, 236 (5); 1983 a. 321 s. 5; 1989 a. 303, 308, 359; 1991 a. 16; 1997 a. 35, 79.

**Legislative Council Note to (2) (a), 1975:** This amendment accommodates the needs of small corporations while continuing to satisfy the purposes for having large boards, as explained in the note to s. 611.51 (2) (a) in chapter 260, laws of 1971. [Bill 643−S]

**611.52 Election and removal of directors and officers of stock corporations. (1)** RESIGNATION AND REMOVAL OF OFFICERS. Sections 180.0843 and 180.0844 apply to stock corporations.

**(2)** ELECTION. At each annual meeting of shareholders, the shareholders shall elect directors to hold office until the next succeeding annual election except as provided in sub. (3) or under s. 180.0806. Each director shall hold office for the term for which he or she is elected and until his or her successor is elected and qualified if qualification is required. Section 180.0804 applies to a stock corporation.

**(3)** RESIGNATION AND REMOVAL OF DIRECTORS. Sections 180.0807 to 180.0810 apply to stock corporations.

**History:** 1971 c. 260; 1973 c. 184; 1979 c. 102; 1989 a. 303.

**611.53 Selection and removal of directors and officers of mutuals. (1)** PUBLIC SELECTION OF DIRECTORS. The articles of a mutual may provide that any number of the directors shall be public directors chosen under a plan proposed by the corporation and approved by the commissioner. The plan shall be designed to assure true public representation on the board. The persons to be nominated as directors shall be persons whose insurance business or general experience qualifies them to serve responsibly and impartially.

**(2)** ELECTION OF DIRECTORS. Directors not to be chosen under sub. (1) shall be elected by the policyholders.

**(3)** RESIGNATION, VACANCIES AND REMOVAL OF DIRECTORS. Subject to subs. (1) and (2), ss. 181.0807 and 181.0811 apply to a mutual. A director may be removed from office for cause by an affirmative vote of a majority of the full board at a meeting of the board called for that purpose.

**(4)** RESIGNATION, VACANCIES AND REMOVAL OF OFFICERS. Sections 181.0843 and 181.0844 apply to a mutual.

**History:** 1971 c. 260; 1997 a. 79.

**611.54 Supervision of management changes. (1)** REPORT OF SELECTION. (a) *General.* The name of any person selected as a director or principal officer of a corporation, together with such pertinent biographical and other data as the commissioner requires by rule, shall be reported to the commissioner immediately after the selection.

(b) *New corporations.* For 5 years after the initial issuance of a certificate of authority to a corporation, the commissioner may within 30 days after receipt of a report under par. (a) disapprove any person selected who fails to satisfy the commissioner that the person is trustworthy and has the competence, experience and freedom from conflict of interest necessary to discharge his or her responsibilities.

**(2)** REPORT OF REMOVAL. Whenever a director or principal officer of a corporation is removed under s. 180.0843 (2), 181.0843 (2) or 611.53 (3), the removal shall be reported to the commissioner immediately together with a statement of the reasons for the removal.

**(3)** REMOVAL BY COMMISSIONER. If the commissioner finds, after a hearing, that a director or officer has a conflict of interest, is incompetent, untrustworthy or has willfully violated chs. 600 to 646, a rule promulgated under s. 601.41 (3) or an order issued under s. 601.41 (4), and that the conflict of interest, incompetence or the violation endangers the interests of insureds or of the public, the commissioner may order that the director or officer be removed.

**History:** 1971 c. 260; 1979 c. 89, 102; 1989 a. 303; 1997 a. 79.

**Cross−reference:** See also s. Ins 6.52, Wis. adm. code.

**611.55 Continuity of management in emergencies. (1)** PURPOSE. The legislature declares it to be desirable for the general welfare and in particular for the welfare of insurance beneficiaries, policyholders, claimants and others that the business of domestic insurance corporations be continued even in a national emergency. The specific purpose of this section is to facilitate the continued operation of such corporations if a national emergency is caused by an attack on the United States or by a nuclear, atomic or other disaster which makes it impossible or impracticable for a corporation to conduct its business in strict accord with applicable provisions of law, its articles, bylaws or its charter.

**(2)** EMERGENCY BYLAWS. The board of any corporation may at any time adopt emergency bylaws, subject to repeal or change by action of those having power to adopt regular bylaws, which shall be operative during such a national emergency and which may, notwithstanding any different provisions of the regular bylaws, or of the applicable statutes or of the corporation's articles or charter, make any provision that may be reasonably necessary for operation during the emergency.

**(3)** EMERGENCY AUTHORIZATIONS. If the board of a corporation has not adopted emergency bylaws, the following provisions shall become effective upon the occurrence of a national emergency:

(a) Three directors shall constitute a quorum for the transaction of business at all meetings of the board.

(b) Any vacancy on the board may be filled by a majority of the remaining directors, though less than a quorum, or by a sole remaining director.

(c) If there are no surviving directors, but at least 3 officers of the corporation survive, the 3 officers with the longest term of service shall be the directors and shall possess all of the powers of the previous board and such powers as are granted herein or by subsequently enacted legislation. By majority vote such emergency board may elect other directors. If there are not at least 3 surviving officers, the commissioner shall appoint 3 persons as directors who shall possess all of the powers of the previous board and such powers as are granted herein or by subsequently enacted legislation, and these persons by majority vote may elect other directors.

**(4)** SUCCESSION LIST. At any time the board of a corporation may, by resolution, provide that in the event of such a national emergency and in the event of the death or incapacity of specified officers of the corporation, such officers shall be succeeded by the persons named or described in a succession list adopted by the board. The list may be on the basis of named persons or position titles, shall establish the order of priority and may prescribe the conditions under which the powers of the office shall be exercised.

**(5)** HOME OFFICE. At any time the board of a corporation may, by resolution, provide that in the event of such a national emergency the home office or principal place of business shall be at a location named or described in the resolution. The resolution may provide for alternate locations and establish an order of preference.

**History:** 1971 c. 260.

**611.56 Committees of directors. (1)** APPOINTMENT. If the articles or bylaws of a corporation so provide, the board by resolution adopted by a majority of the full board may designate one or more committees, each consisting of at least 3 directors serving at the pleasure of the board. The board may designate one or more directors as alternate members of any committee to substitute for

any absent member at any meeting of the committee. Any committee under this section may include one or more nonvoting members who are not directors. The designation of a committee and delegation of authority to it shall not relieve the board or any director of any responsibility imposed by law.

**(2)** DELEGATION; MAJOR COMMITTEES. When the board is not in session, a committee satisfying all of the requirements for the composition of a board under s. 611.51 (2) to (4) may exercise any of the powers of the board in the management of the business and affairs of the corporation, including action under ss. 611.60 and 611.61, to the extent authorized in the resolution or in the articles or bylaws; except that any such committee may include 7 or more directors if the corporation has 9 or more directors.

**(3)** DELEGATION; ORDINARY COMMITTEES. When the board is not in session, a committee not satisfying the requirements of sub. (2) may exercise the powers of the board in the management of the business and affairs of the corporation to the extent authorized in the resolution or in the articles or bylaws, except action in respect to:

(a) Compensation or indemnification of any person who is a director, principal officer or one of the 3 most highly paid employees, and any benefits or payments requiring shareholder or policyholder approval;

(b) Approval of any contract required to be approved by the board under s. 611.60 or 611.61, or of any other transaction in which a director has a material interest adverse to the corporation;

(c) Amendment of the articles or bylaws;

(d) Merger under s. 611.72 or 611.73, stock exchanges under s. 611.71, conversion under s. 611.75 or 611.76, voluntary dissolution under s. 611.74 or transfer of business or assets under s. 611.78;

(e) Any other decision requiring shareholder or policyholder approval;

(f) Amendment or repeal of any action previously taken by the full board which by its terms is not subject to amendment or repeal by a committee;

(g) Dividends or other distributions to shareholders or policyholders, other than in the routine implementation of policy determinations of the full board;

(h) Selection of principal officers; and

(i) Filling of vacancies on the board or any committee created under sub. (1) except that the articles or bylaws may provide for temporary appointments to fill vacancies on the board or any committee, the appointments to last no longer than the end of the next board meeting.

**(4)** SUBSEQUENT REVIEW. The full board or a major committee of the board authorized to do so under sub. (2) shall specifically review any transaction in which an officer has a material financial interest adverse to the corporation, at the next meeting following action by any ordinary committee.

**(5)** MEETINGS, QUORUM, AND VOTING. Sections 180.0820, 180.0821, and 180.0824 apply to a committee of the board of a stock corporation, except that references in s. 180.0824 to a committee "created under s. 180.0825" shall be read as a committee "created under this section". Sections 181.0820, 181.0821, and 181.0824 apply to a committee of the board of a mutual, except that references to "board" shall be read as "committee", "majority" in s. 181.0824 (1) shall mean a majority of the members of the board appointed to serve on the committee, and "majority" in s. 181.0824 (2) shall mean a majority of the members of the board appointed to serve on the committee who are present at the meeting.

**History:** 1971 c. 260; 1973 c. 31; 1979 c. 102; 1989 a. 303; 1997 a. 79; 2003 a. 261; 2015 a. 90.

**611.57 Interlocking directorates and other relationships.** No person may simultaneously be a director or officer in one insurance corporation and a director, officer, employee or agent for another insurer if the effect is to lessen competition substantially or if the 2 insurers have materially adverse interests.

**History:** 1971 c. 260; 1973 c. 128.

**Cross−reference:** See also s. Ins 6.52, Wis. adm. code.

**611.60 Transactions in which directors and others are interested. (1)** VOIDABLE TRANSACTIONS. Any material transaction between an insurance corporation and one or more of its directors or officers, or between an insurance corporation and any other person in which one or more of its directors or officers or any person controlling the corporation has a material interest, is voidable by the corporation unless:

(a) The transaction at the time it is entered into is reasonable and fair to the interests of the corporation; and

(b) The transaction has, with full knowledge of its terms and of the interests involved, been approved in advance by the board or by the shareholders; and

(c) The transaction has been reported to the commissioner immediately after such approval.

**(2)** QUORUM AND VOTING. Directors whose interest or status make the transaction subject to this section may be counted in determining a quorum for a board meeting approving a transaction under sub. (1) (b), but may not vote. Approval requires an affirmative vote of a majority of those present.

**(3)** RESTRICTED TRANSACTIONS. The commissioner may by rule require that for any classes of transactions subject to sub. (1) which by their nature tend to be unreasonable or unfair to the interests of the corporation the report under sub. (1) (c) shall be submitted to the commissioner in advance of the proposed effective date. Such a transaction shall not be carried out even though approved under sub. (1) (b), until the commissioner approves the transaction, or does not disapprove it for failure to comply with sub. (1) (a) within 30 days after receiving the report under sub. (1) (c).

**(4)** EXCEPTED TRANSACTIONS. This section does not apply to transactions subject to s. 611.61, nor to transactions made between an insurance corporation and its wholly owned subsidiary, nor to policies of insurance, other than reinsurance, issued in the normal course of business. Nothing in this section deprives any person of any rights accruing under a policy of insurance written at usual terms, other than reinsurance. The commissioner may by rule exempt other classes of transactions from the reporting requirement of sub. (1) (c), to the extent that the purposes of this section can be achieved without the report.

**History:** 1971 c. 260; 1979 c. 102 s. 236 (21).

**611.61 Transactions of insurers with affiliates. (1)** RESTRICTED TRANSACTIONS. No transaction may be entered into between an insurer authorized to do business in this state and any affiliate unless:

(a) The transaction at the time it is entered into is reasonable and fair to the interests of the insurer;

(b) The books, accounts and records of each party to the transaction are kept in a manner that clearly and accurately discloses the nature and details of the transaction and in accordance with generally accepted accounting principles permits ascertainment of charges relating to the transaction; and

(c) If the transaction is a reinsurance transaction, it is reported to the commissioner immediately if the insurer is a domestic corporation.

**(2)** VOIDABILITY. Transactions entered into by domestic corporations in violation of sub. (1) are voidable by the corporation.

**History:** 1971 c. 260; 1979 c. 102.

**611.62 Directors' and officers' liability and indemnification. (1)** LIABILITY. Sections 180.0826 to 180.0828, 180.0832 and 180.0833 apply to stock corporations and ss. 181.0850 to 181.0855, except s. 181.0855 (2) (c), apply to mutuals.

**(2)** INDEMNIFICATION. Sections 180.0850 to 180.0856, 180.0858 and 180.0859 apply to stock corporations and ss. 181.0871 to 181.0881 and 181.0889 apply to mutuals but no indemnification may be made until at least 30 days after notice to the commissioner, containing full details about the proposed indemnification.

**(3)** INSURANCE. Section 180.0857 applies to stock corporations and s. 181.0883 applies to mutuals.

**(4)** DERIVATIVE ACTIONS. Sections 180.0740 to 180.0747 and 180.1708 (3m) apply to stock corporations and ss. 181.0740 to 181.0747 apply to mutuals.

**History:** 1971 c. 260, 307; 1973 c. 128; 1979 c. 102; 1987 a. 13; 1989 a. 303; 1997 a. 79.

**611.63 Executive compensation. (1)** GENERAL POWER. Subject to this section, ss. 180.0302 (11), (12) and (16) and 180.0811 apply to stock corporations and s. 181.0302 (11) to (14) applies to mutuals.

**(2)** APPROVAL OF BOARD ACTION BY SHAREHOLDERS. Any benefits or payments to any director or officer on account of services rendered to a stock corporation more than 90 days before the agreement or decision to give the benefit or make the payment, and any new pension plan, profit−sharing plan, stock option plan or any amendment to an existing plan which so far as it pertains to any director or officer substantially increases the financial burden on the corporation shall be approved by a vote of the shareholders.

**(3)** NOTICE TO COMMISSIONER. Any action taken by the board of a mutual insurance corporation on any of the subjects specified in sub. (1) shall be reported to the commissioner within 30 days.

**(4)** ANNUAL REPORT TO COMMISSIONER. The amount of all direct and indirect remuneration for services, including retirement and other deferred compensation benefits and stock options, paid or accrued each year for the benefit of each director and each officer and member of executive management, as defined by the commissioner, whose remuneration exceeds an amount established by the commissioner, and for all directors and officers as a group shall be included in the annual report made to the commissioner.

**(5)** PROHIBITED CRITERIA. No arrangement for compensation or other employment benefits for any director, officer or employee with decision−making power may be made if it would:

(a) Measure the compensation or other benefits in whole or in part by any criteria that would create a financial inducement for him or her to act contrary to the best interests of the corporation; or

(b) Have a tendency to make the corporation depend for continuance or soundness of operation upon continuation in his or her position of any director, officer or employee.

**(6)** EFFECT OF REHABILITATION AND LIQUIDATION PROCEEDINGS. If an order of rehabilitation or liquidation is issued under s. 645.32 or 645.42, the contractual obligations of the insurer for unperformed services of any director, principal officer or person in fact performing similar functions or having similar powers is thereupon terminated.

**History:** 1971 c. 260; 1973 c. 128; 1979 c. 102 s. 236 (13), (20); 1989 a. 303; 1997 a. 79; 2015 a. 90.

**611.66 Exclusive agency contracts. (1)** GENERAL. Except under sub. (2), no corporation may enter into any contract whereby any person is granted or obtains directly or indirectly the exclusive right or privilege of soliciting, producing or receiving a fee or commission on all or substantially all of the insurance business of the corporation or on all or substantially all of the insurance business of the corporation in this state.

**(2)** SUBSIDIARIES. Subsection (1) does not apply to contracts in which a corporation is the exclusive agent of its insurance subsidiary authorized under s. 611.26 (1) or in which the subsidiary is the exclusive agent of the corporation.

**History:** 1971 c. 260.

**611.67 Management contract services. (1)** In this section:

(a) "Health maintenance organization" has the meaning given under s. 609.01 (2).

(b) "Limited service health organization" has the meaning given under s. 609.01 (3).

(c) "Management authority" means the authority to exercise any management control of the corporation or of its underwriting, loss adjustment, investment, general servicing or production function or other major corporate function.

(d) "Preferred provider plan" has the meaning given under s. 609.01 (4).

**(2)** Except as provided in sub. (3), a corporation may not be a party to a contract which has the effect of delegating management authority to a person to the substantial exclusion of the board.

**(3)** An insurer that offers a health maintenance organization, limited service health organization or preferred provider plan may delegate management authority with regard to the health maintenance organization, limited service health organization or preferred provider plan to a person other than an officer, director or employee of the insurer if the person exercises the management authority according to the terms of a written contract between the insurer and the person and if the contract is filed with the commissioner and not disapproved by the commissioner under sub. (4).

**(4)** (a) The commissioner may disapprove a contract under sub. (3) within a 30−day period after the date of filing or within a reasonable extension period following the 30−day period if the extension period is specified by notice to the health care plan within the 30−day period.

(b) The commissioner may disapprove a contract under sub. (3) only if the commissioner makes one of the findings specified in s. 618.22 (2).

**History:** 1985 a. 29.

**Cross−reference:** See also s. Ins 42.07, Wis. adm. code.

**611.69 Dividends and other distributions. (1)** DISTRIBUTIONS. Subject to the requirements of ss. 617.22 and 617.225, a stock corporation may make distributions under ss. 180.0623, 180.0640 and 180.1708 (2).

**(2)** UNCLAIMED DIVIDENDS AND DISTRIBUTIONS. Chapter 177 applies to stock corporations.

**History:** 1971 c. 260; 1989 a. 303.

## SUBCHAPTER V

## CORPORATE REORGANIZATION

**611.71 Acquisition of all of the shares or of a class of shares of an insurance corporation. (1)** EXCHANGE OF SHARES PERMITTED. A domestic stock insurance corporation may acquire, in the manner provided by this section, in exchange for its shares, all the shares, or all the shares of any class, of any other domestic stock insurance corporation, provided no law is violated by the acquisition.

**(2)** OFFER. The acquiring corporation shall submit by 1st class mail to all holders of the shares to be acquired a written offer which shall:

(a) Specify the shares to which the offer relates;

(b) Prescribe the terms and conditions of the proposed exchange, including the method of acceptance and the manner of exchanging the shares;

(c) Provide such information respecting both corporations as the commissioner prescribes by rule;

(d) Contain a statement summarizing the rights of the shareholders under sub. (5) (b); and

(e) Provide for the payment of cash or scrip in lieu of the issuance of fractional shares of the acquiring corporation.

**(3)** COPY OF OFFER. One copy of the offer shall be filed with the commissioner immediately.

**(4)** ACCEPTANCE. The exchange shall be consummated if, within 120 days after the date of the mailing, the offer is accepted by the holders of not less than 90 percent of the shares of each class to which it relates. In ascertaining what percentage have accepted, shares may not be counted if at the date of mailing of the offer they were already held by, or by a nominee for, the acquiring corporation or any affiliate.

**(5)** IMPLEMENTATION. If there is acceptance satisfying sub. (4), the acquiring corporation shall, within 60 days:

(a) Execute and file with the commissioner a certificate setting forth the acceptances; and

(b) Give written notice of the satisfaction of the requirement, by registered or certified mail return receipt requested, to each holder of shares to which the offer relates who has not yet accepted the offer. The notice, the form of which must be approved by the commissioner, shall include, or be accompanied by, a statement that such shareholders may dissent from the offer by notification to the offeror within 120 days after the date of the mailing and be paid the fair value of their shares as determined under ss. 180.1325 and 180.1328 to 180.1331, and that failure so to notify the offeror shall be deemed acceptance of the offer. For purposes of s. 180.1325, notification to the offeror in accordance with this paragraph constitutes a demand for payment under s. 180.1323.

**(6)** ISSUANCE OF CERTIFICATES OR INFORMATION STATEMENTS. Upon the filing of the certificate under sub. (5) (a):

(a) All shares in exchange for which shares of the acquiring corporation are issued shall become the property of the acquiring corporation, whether or not any certificates representing the shares have been surrendered for exchange;

(am) If the articles of incorporation or bylaws of the acquired corporation require shares to be issued with certificates, the acquiring corporation shall be entitled to have new certificates for the shares under par. (a) registered in its name as the holder;

(b) The acquiring corporation shall do all of the following:

1. Cause certificates for its shares to be issued and delivered to the holders of shares who have already accepted, and thereafter immediately upon acceptance to those who accept or are deemed to have accepted.

2. If the shares are issued without certificates, cause information statements that comply with s. 180.0626 (2) to be issued and delivered to the persons described in subd. 1.

3. Promptly make the cash payments provided in sub. (2) (e) or (5) (b); and

(c) The acquiring corporation or a corporate fiduciary designated by it and acceptable to the commissioner, shall hold in trust, for delivery or payment to the persons entitled thereto but not at once located, the certificates or information statements for its shares and cash payable under sub. (2) (e) or (5) (b).

**(7)** OTHER EXCHANGE OFFERS. This section does not prevent a person from making an offer to purchase the shares of an insurance corporation conditioned upon acceptance by holders of less than 90 percent of the shares to which the offer relates. Such an offer may be joined as an alternate offer with an offer made under this section; but the acquiring corporation shall have the right to avail itself of this section only if the requirements of subs. (1) to (6) are satisfied.

**(8)** ACQUISITION OF A SMALL MINORITY OF SHARES. If at least 90 percent of any class of shares of any domestic stock insurance corporation are held by any other domestic insurance corporation or its nominee, the owning corporation may proceed under subs. (2) and (5), even if the offer is accepted by less than the required number of shareholders.

**History:** 1971 c. 260; 1973 c. 184; 1989 a. 303.

**611.72 Merger or other acquisition of control of a stock insurance corporation. (1)** GENERAL. Subject to this section, ss. 180.1101, 180.1103 to 180.1106, 180.1706, 180.1707, and 180.1708 (5) apply to the merger of a domestic stock insurance corporation or its parent insurance holding corporation, except that papers required by those sections to be filed with the department of financial institutions shall instead be filed with the commissioner.

**(2)** APPROVAL REQUIRED. No proposed plan of merger under s. 180.1101 or 180.1104 or other plan for acquisition of control of any domestic stock insurance corporation or its parent insurance holding corporation participating in the transaction may be executed unless it has been approved by the commissioner.

**(3)** GROUNDS FOR DISAPPROVAL. (am) The commissioner shall approve the plan if the commissioner finds, after a hearing, unless a hearing is not required under sub. (3m), that it would not violate the law or be contrary to the interests of the insureds of any participating domestic corporation or of the Wisconsin insureds of any participating nondomestic corporation and that:

1. After the change of control, the domestic stock insurance corporation or any domestic stock insurance corporation controlled by the insurance holding corporation would be able to satisfy the requirements for the issuance of a license to write the line or lines of insurance for which it is presently licensed;

2. The effect of the merger or other acquisition of control would not be to create a monopoly or substantially to lessen competition in insurance in this state;

3. The financial condition of any acquiring party is not likely to jeopardize the financial stability of the domestic stock insurance corporation or its parent insurance holding corporation, or prejudice the interests of its Wisconsin policyholders;

4. The plans or proposals which the acquiring party has to liquidate the domestic stock insurance corporation or its parent insurance holding corporation, sell its assets, merge it with any person or make any other material change in its business or corporate structure or management, are fair and reasonable to policyholders of the domestic stock insurance corporation or in the public interest; and

5. The competence and integrity of those persons who would control the operation of the domestic stock insurance corporation or its parent insurance holding corporation are such that it would be in the interest of the policyholders of the corporation and of the public to permit the merger or acquisition of control.

(bm) 1. If the proposed merger or other acquisition of control will require the approval of more than one commissioner, the hearing under par. (am) may be held on a consolidated basis upon the request of a person filing a statement with the commissioner of insurance of this state under s. Ins 40.02 (2), Wis. Adm. Code, which request must be made when the statement is filed. That person shall file a copy of the statement under s. Ins 40.02 (2), Wis. Adm. Code, with the National Association of Insurance Commissioners within 5 days after making the request for a consolidated hearing. A hearing conducted on a consolidated basis shall be public and held within the United States before the commissioners of the states in which the insurers involved in the merger or other acquisition of control are domiciled. The commissioners may hear and receive evidence. A commissioner may attend the hearing in person or by telecommunication.

2. The commissioner of insurance of this state may opt out of a consolidated hearing, and shall provide notice to the person requesting the consolidated hearing of the opt out within 10 days after the commissioner receives the statement under s. Ins 40.02 (2), Wis. Adm. Code.

**(3m)** HEARING NOT REQUIRED. A hearing is not required under sub. (3) before approval of a proposed plan of merger or other plan for acquisition of control if the proposed merger is with, or the proposed acquirer is, an affiliate of the insurer and the proposed merger or other acquisition of control does not change the controlling person of the insurer.

**(4)** PLANS OF EXCHANGE. Any domestic stock insurance corporation may adopt a plan of exchange of all the outstanding shares of its shareholders under which another stock insurance

corporation, which acquires the shares, shall as consideration transfer its own shares or other securities issued by it or pay cash or other consideration, or pay or provide any combination of the foregoing types of consideration. The procedure for the adoption and approval of a plan of exchange and the rights of shareholders of the participating corporations shall be the same as for a merger under subs. (2) and (3).

**History:** 1971 c. 260; 1973 c. 184; 1979 c. 94; 1989 a. 303; 1995 a. 27; 1999 a. 30; 2001 a. 44; 2003 a. 321; 2007 a. 170; 2013 a. 279.

**611.73 Merger of mutuals. (1)** AUTHORIZATION, DOMESTIC CORPORATIONS. (a) *In general.* Any 2 or more domestic mutuals may merge under the procedures of this section and ss. 181.1105 and 181.1106, except that papers required by those sections to be filed with the department of financial institutions shall instead be filed with the commissioner.

(b) *Plan of merger and board resolution.* The board of directors of each mutual shall, by resolution adopted by each such board, approve a plan of merger that includes all of the following:

1. The names of the mutuals proposing to merge and the name of the surviving mutual into which they propose to merge.

2. The terms and conditions of the proposed merger.

3. The respective interests and rights of the members of the merging mutuals in the surviving mutual.

4. Any change in the articles of incorporation of the surviving mutual to be effected by the merger.

5. Other provisions with respect to the proposed merger that are considered necessary and desirable.

(c) *Approval of merger.* A plan of merger may be adopted only in the following manner:

1. If the articles of incorporation or bylaws of a merging mutual give members the right to vote on the merger, the board of directors of the mutual shall adopt a resolution approving the proposed plan and directing that it be submitted to a vote at a meeting of members, which may be either an annual or a special meeting. Written notice setting forth the proposed plan or summary of the plan shall be given to each member entitled to vote at the meeting within the time and in the manner provided in this chapter for the giving of notice of meetings of members. The proposed plan shall be adopted by at least two−thirds of the votes entitled to be cast by the members present or represented by proxy at the meeting.

2. If the articles of incorporation or bylaws of any merging mutual do not give the members the right to vote on the merger, a plan of merger shall be adopted at a meeting of the board of directors of each mutual by at least a majority of the directors in office.

(d) *Abandonment of merger.* After approval under par. (c) and prior to the filing of the articles of merger, the merger may be abandoned pursuant to the provisions for abandonment, if any, set forth in the plan of merger.

**(2)** AUTHORIZATION, DOMESTIC AND FOREIGN CORPORATIONS. (a) *In general.* Any 2 or more domestic and foreign mutuals may merge if the merger is permitted by the laws of the state in which the foreign mutuals are organized. Each domestic mutual shall comply with the provisions of this section with respect to the merger of domestic corporations and each foreign mutual shall comply with the applicable provisions of the laws of the state under which it is organized.

(b) *Effect of merger.* The effect of a merger under this subsection is the same as in the case of the merger of domestic mutuals, if the surviving mutual is to be governed by the laws of this state. If the surviving mutual is to be governed by the laws of a state other than this state, the effect of the merger is the same as in the case of the merger of domestic mutuals except as provided by the laws of that other state.

**(3)** APPROVAL BY THE COMMISSIONER. (a) The plan of merger shall be submitted to the commissioner for his or her approval after any necessary action by the boards and before any necessary action by the policyholders. The commissioner shall approve the plan unless he or she finds, after a hearing, that the proposed merger would be contrary to the law or to the interests of the insureds of any participating domestic corporation or the Wisconsin insureds of any participating nondomestic corporation.

(b) 1. If the proposed merger of 2 or more domestic and foreign mutuals will require the approval of more than one commissioner, the hearing under par. (a) may be held on a consolidated basis upon the request of a person filing with the commissioner of insurance of this state the plan of merger under par. (a) and the statement under s. Ins 40.02 (2), Wis. Adm. Code. The person must request a consolidated hearing when the plan of merger and statement are filed. That person shall file copies of the plan of merger and the statement under s. Ins 40.02 (2), Wis. Adm. Code, with the National Association of Insurance Commissioners within 5 days after making the request for a consolidated hearing. A hearing conducted on a consolidated basis shall be public and held within the United States before the commissioners of the states in which the insurers involved in the merger are domiciled. The commissioners may hear and receive evidence. A commissioner may attend the hearing in person or by telecommunication.

2. The commissioner of insurance of this state may opt out of a consolidated hearing, and shall provide notice to the person requesting the consolidated hearing of the opt out within 10 days after the commissioner receives the plan of merger under par. (a) and the statement under s. Ins 40.02 (2), Wis. Adm. Code.

**(4)** VOTING BY POLICYHOLDERS. The commissioner may order that the plan submitted to him or her under sub. (3) (a) be amended to provide for voting by policyholders of any mutual involved.

**History:** 1971 c. 260; 1973 c. 184; 1979 c. 102 ss. 105, 236 (20); 1995 a. 27; 1997 a. 79; 2013 a. 279.

**611.74 Voluntary dissolution of domestic insurance corporations. (1)** PLAN OF DISSOLUTION. At least 60 days prior to the submission to shareholders or policyholders of any proposed voluntary dissolution of an insurance corporation under s. 180.1402 or 181.1401 the plan shall be filed with the commissioner. The commissioner may require the submission of additional information to establish the financial condition of the corporation or other facts relevant to the proposed dissolution. If the shareholders or policyholders adopt the resolution to dissolve, the commissioner shall, within 30 days after the adoption of the resolution, begin to examine the corporation. The commissioner shall approve the dissolution unless, after a hearing, the commissioner finds that it is insolvent or may become insolvent in the process of dissolution. Subject to chs. 600 to 645, upon approval, the corporation may dissolve under ss. 180.1402 to 180.1408 and 180.1706, or ss. 181.1401 to 181.1407, except that papers required by those sections to be filed with the department of financial institutions shall instead be filed with the commissioner. Upon disapproval, the commissioner shall petition the court for liquidation or for rehabilitation under ch. 645.

**(2)** CONVERSION TO INVOLUNTARY LIQUIDATION. The corporation may at any time during the liquidation under ss. 180.1402 to 180.1408 or under ss. 181.1401 to 181.1407 apply to the commissioner to have the liquidation continued under the commissioner's supervision; thereupon the commissioner shall apply to the court for liquidation under s. 645.41 (10).

**(3)** REVOCATION OF VOLUNTARY DISSOLUTION. If the corporation revokes the voluntary dissolution proceedings under ss. 180.1404 and 180.1706 or under s. 181.1404, a copy of the articles of revocation of dissolution prepared under s. 180.1404 or 181.1404 shall be filed with the commissioner.

**(4)** DISTRIBUTION OF ASSETS OF A MUTUAL. No distribution may be made to policyholders in excess of the amounts to which they are entitled under s. 645.72 (4). Any excess over such amounts shall be paid into the state treasury to the credit of the common school fund.

**History:** 1971 c. 260; 1973 c. 184; 1977 c. 203; 1979 c. 102; 1979 c. 109 s. 16; 1989 a. 303; 1991 a. 32; 1995 a. 27; 1997 a. 79.

**611.75 Conversion of a domestic stock corporation into a mutual.** A domestic stock corporation may be converted into a domestic mutual as follows:

**(1)** ACTION BY BOARD. The board shall adopt a plan of conversion. Thereafter no additional shares of capital stock shall be issued except that stock options to purchase capital stock may continue to be issued under existing contracts and outstanding options may continue to be exercised until the conversion is executed under sub. (6).

**(2)** PLAN OF CONVERSION. (a) The plan of conversion shall provide for the purchase by the corporation of all of its outstanding capital stock, at a price either specified in the plan or to be determined under a formula specified in the plan, for cash, specified debt securities to be issued by the corporation, or both. All holders of capital stock of the same class shall have the same rights under the plan. Shareholders may be given an election to take all or a portion of the price in the specified debt securities. Debt securities may be of any class authorized for mutual corporations under s. 611.33 (2).

(b) The plan shall provide a fair procedure subject to the commissioner's supervision to value contractual obligations of the corporation, such as those relating to stock options, that must be terminated on the date of conversion and are compensable under sub. (6) (b).

**(3)** APPROVAL REQUIREMENT. No conversion may be effected unless the plan of conversion is approved by the commissioner. The corporation shall file with the plan so much of the information under s. 611.13 (2) for the new mutual as the commissioner reasonably requires.

**(4)** CONDITION FOR APPROVAL. The commissioner shall approve the conversion unless he or she finds, after a hearing, that:

(a) The conversion would violate the law; or

(b) Its terms are not fair to the shareholders or the policyholders; or

(c) The resulting mutual would not meet the requirements for a certificate of authority under s. 611.20.

**(5)** APPROVAL BY SHAREHOLDERS. After the commissioner approves the plan of conversion, it shall be submitted to the shareholders for approval by the affirmative vote of a majority of each class of shares entitled to vote. Only shareholders of record on the date of the adoption under sub. (1) may vote.

**(6)** CONVERSION. (a) *Continuation of corporation.* If the shareholders approve the plan of conversion under sub. (5), the commissioner shall issue a new certificate of authority. The issuance of the certificate is the act of conversion, the corporation at once becomes a mutual and is no longer a stock corporation. The mutual shall be deemed to have been organized at the time the converted stock corporation was organized. The board shall thereupon implement the plan of conversion.

(b) *Termination of contract rights.* Any contractual obligation inconsistent with the nature of a mutual, including any obligation to issue or to redeem stock options, shall terminate upon the act of conversion under par. (a), without compensation unless the obligation was legally binding before April 30, 1972.

**(7)** EXPENSES. The corporation may not pay compensation of any kind to any person other than regular salaries to existing personnel, in connection with the proposed conversion, other than for clerical and mailing expenses, except that with the commissioner's approval payment may be made at reasonable rates for printing costs and for legal and other professional fees for services actually rendered. All expenses of the conversion, including the expenses incurred by the commissioner and the prorated salaries of any insurance office staff members involved, shall be borne by the corporation being converted.

**History:** 1971 c. 260; 1979 c. 102 s. 236 (5).

**611.76 Conversion of a domestic mutual into a stock corporation. (1)** CONVERSION PERMITTED. (a) *General.* Except under par. (b), a domestic mutual may be converted into a domestic stock corporation under subs. (2) to (11).

(b) *Conversion of related insurers.* No domestic mutual that is affiliated with other mutuals may be converted into a stock corporation, unless all such affiliated mutuals are also converted at the same time, or the commissioner finds that the interests of the policyholders of the remaining mutuals can be permanently protected by limitations on the corporate powers of the new stock corporation or on its authority to do business, or otherwise.

(c) *Conversion and merger.* A domestic mutual may adopt a plan of acquisition or merger as part of a plan of conversion under this section. The commissioner shall approve the plan of acquisition or merger as part of the plan of conversion unless grounds for disapproval exist under s. 611.72 (3) (am).

**(2)** RESOLUTION BY THE BOARD. The board shall pass a resolution to the effect that such conversion is in the best interests of the policyholders. The resolution shall specify the reasons for and the purposes of the proposed conversion, and the manner in which the conversion is expected to benefit policyholders.

**(3)** INVESTIGATION BY COMMISSIONER. (a) *Application.* The board shall file with the commissioner the resolution and any additional documents and information he or she reasonably requires, whereupon the commissioner shall order examination and appraisal of the corporation, unless he or she finds that:

1. The resolution is defective upon its face; or

2. The reason for or the purposes of the proposed conversion are contrary to law or to the interests of the policyholders or the public.

(b) *Examination.* The commissioner shall cause to be made an examination of the company under s. 601.43 to determine its financial condition and whether it is operated in accordance with the law.

(c) *Appraisal.* The commissioner shall appoint an appraisal committee, consisting of at least 3 qualified and disinterested persons with differing kinds of training, to determine the value of the corporation as of the date of the resolution in sub. (2) or, if sub. (4m) applies, as of the date of conversion. Members of the committee shall receive reasonable compensation and shall be reimbursed for reasonable expenses in discharging their duties. They may, as reasonably necessary, employ consultants to advise them on technical problems of the appraisal. The appraisal committee shall consider the assets and liabilities of the corporation, adjusting liabilities to take account of the amounts of any reserves in excess of or below realistic estimates, the value of the marketing organization, the value of goodwill, the going−concern value and any other factor having an influence on the value of the corporation, including, in the case of a mutual life insurance company, the estimated amount needed to continue to maintain dividend scales on policies under s. 632.62 (4) (b) at the same level after conversion as before conversion.

(d) *Presumption.* In a proceeding under this section, any report adopted by an appraisal committee under par. (c) or examination report concerning the domestic mutual or its affiliate is admissible as evidence and the facts asserted in the reports are presumed to be true.

**(4)** PLAN OF CONVERSION. The board may adopt a plan of conversion, which, unless sub. (4m) applies, shall specify:

(a) The number of shares proposed to be authorized for the new stock corporation, their par value and the price at which they will be offered to policyholders, which price may not exceed one−half of the median equitable share of all policyholders under par. (b);

(b) That each person who has been a policyholder and has paid premiums within 5 years prior to the resolution under sub. (2) shall be entitled without additional payment to so much common stock of the new stock corporation as his or her equitable share of the value of the converting corporation will purchase; that the equitable share shall be determined by the ratio which the net premium (gross premium less return premium and dividends paid) he or she has paid to the corporation during the 5 years immediately preceding the resolution under sub. (2) bears to the total net premiums received by the corporation during the same period; and that, if the equitable share is sufficient only for the purchase of a fraction of

a share of stock, the policyholder shall have the option either to receive the value of the fractional share in cash or to purchase a full share by paying the balance in cash;

(bm) Notwithstanding par. (b), that each person who was a policyholder of a mutual life insurance company on the date of the resolution under sub. (2) or within 5 years prior to that date shall be entitled to an equitable share based on a formula which fairly reflects the policyholder's interest in the company and the policies and contracts issued by the company to the policyholder, and which takes into account premiums paid, cash surrender values, policy loans, reserves, surplus, benefits payable and other relevant factors; and that the equitable share shall be provided to the policyholders on a uniform basis approved by the commissioner in the form of common stock, cash, increased benefits, lower premiums or a combination of those forms;

(c) The procedure for stock subscriptions which shall include a written offer to each such policyholder indicating his or her individual equitable share and the terms of subscription;

(d) That no common stock under par. (b) or (dm) may be issued to persons other than the policyholders under par. (b) or the corporation under par. (dm) until all subscriptions by the policyholders and corporation, respectively, have been filled and that thereafter any new issue of stock for 5 years after the conversion shall first be offered to the persons who have become shareholders under par. (b) or (dm) in proportion to their interests under par. (b) or (dm);

(dm) Notwithstanding par. (b), whether the shares of common stock representing the equitable shares of the policyholders of a mutual life insurance company may, with the approval of the commissioner, be issued to a corporation organized under ch. 180 with the policyholders to be stockholders of the corporation and, if so issued, that each policyholder is entitled to his or her equitable share calculated under par. (bm) in shares of common stock of the corporation;

(e) That no policyholder, other than a policyholder of a mutual life insurance company, may receive a distribution of shares valued in excess of the amount to which he or she is entitled under s. 645.72 (4). Any excess over that amount shall be distributed in shares to the state treasury for the benefit of the common school fund. After 5 years the shares may be sold by the secretary of administration at his or her discretion and the proceeds credited to the common school fund; and

(f) Except with the approval of the commissioner, that during the first 5 years after the conversion the directors and officers of a mutual life insurance company and persons acting in concert with them may not, in the aggregate, acquire control over more than 5 percent of the common stock of the converted stock life insurance company, the corporation formed under par. (dm) or any other corporation which acquires control of more than 5 percent of the common stock of either the converted stock life insurance company or the corporation formed under par. (dm).

**(4m)** INSURERS IN FINANCIALLY HAZARDOUS CONDITION; PLAN OF CONVERSION. If grounds exist under s. 645.41 (2) or (4) for rehabilitation or liquidation of a domestic mutual or are reasonably expected to exist within one year, the board may adopt a plan of conversion which shall specify all of the following:

(a) That each person who has been a policyholder and has paid premiums within 5 years prior to the date the resolution is adopted under sub. (2) is entitled to receive his or her equitable share of the value of the domestic mutual, adjusted to reflect the condition of the domestic mutual immediately prior to the date of conversion; that the equitable share shall be determined by the ratio that the net premium paid by the policyholder during the 5 years immediately preceding the date of the adoption of the resolution under sub. (2) bears to the total net premium received by the domestic mutual during that period, unless the commissioner approves another method of determining equitable shares with the net premium to be calculated as gross premium less premium returned and dividends paid to policyholders; that each policyholder's equitable share may be distributed in any form including securities of the insurer or another person, debt instruments, property or cash; and that the value of the domestic mutual will be finally determined immediately prior to the date of conversion and with the approval of the commissioner.

(b) Any person who will, under the plan of conversion, acquire control of the domestic stock corporation and the manner in which this will occur.

(c) That sufficient capital will be contributed or other measures taken to remove any grounds for liquidation under s. 645.41 (2) or (4) and to reasonably assure that those grounds will not exist within the 5 years immediately following the date of conversion.

**(5)** APPLICATION FOR APPROVAL. The plan of conversion shall be submitted to the commissioner for approval, together with:

(a) The proposed articles and bylaws of the new stock corporation which shall comply with s. 611.12;

(b) So much of the information specified in s. 611.13 (2) as the commissioner reasonably requires;

(c) A projection of the planned or anticipated financial situation of the new corporation for 5 years after the conversion.

**(6)** HEARING. (a) The commissioner shall hold a hearing after receipt of a plan of conversion, notice of which shall be mailed to the last−known address of each person who was a policyholder of the corporation on the date of the resolution under sub. (2), together with a copy of the plan of conversion or a copy of a summary of the plan, if the commissioner approves the summary, and any comment the commissioner considers necessary for the adequate information of policyholders. If the plan of conversion is submitted under sub. (4m), the hearing shall be held not less than 10 days nor more than 30 days after notice is mailed. Failure to mail notice to a policyholder does not invalidate a proceeding under this section if the commissioner determines the domestic mutual has substantially complied with this subsection and has attempted in good faith to mail notice to all policyholders entitled to notice.

(b) With regard to a mutual life insurance company, the notice, the plan or a summary of the plan, and any comments under par. (a) shall also be mailed to the commissioner of every jurisdiction in which the mutual life insurance company is authorized to do any business.

(c) Any policyholder under par. (a) and any commissioner under par. (b) may present written or oral statements at the hearing and may present written statements within a period after the hearing specified by the commissioner. The commissioner shall take statements presented under this paragraph into consideration in making the determination under sub. (7).

**(7)** APPROVAL BY COMMISSIONER. (a) The commissioner shall approve the plan of conversion unless he or she finds that the plan violates the law or is contrary to the interests of policyholders or the public.

(b) In determining the interests of the policyholders and the public, the commissioner shall consider whether the reorganization would be detrimental to the safety and soundness of the insurer or the contractual rights and reasonable expectations of the persons who are policyholders on or before the effective date of the reorganization. The commissioner shall also take into consideration any conclusions and recommendations on the subject of such reorganizations published by recognized organizations of professional life insurance actuaries. The commissioner may by rule establish standards applicable to such reorganizations.

**(8)** APPROVAL BY POLICYHOLDERS. After approval under sub. (7), the conversion plan shall be submitted to a vote of the persons who were policyholders of the mutual on the date of the resolution under sub. (2).

**(9)** CONVERSION. If the policyholders approve the conversion under sub. (8), the commissioner shall issue a new certificate of authority. The issuance of the certificate is the act of conversion, the mutual at once becomes a stock corporation and is no longer

a mutual. The stock corporation shall be deemed to have been organized at the time the converted mutual was organized. The directors, officers, agents and employees of the mutual shall continue in like capacity with the stock corporation.

**(10)** EXPENSES. The corporation may not pay compensation of any kind to any person other than regular salaries to existing personnel, in connection with the proposed conversion, other than for clerical and mailing expenses, except that with the commissioner's approval payment may be made at reasonable rates for printing costs and for legal and other professional fees for services actually rendered. All expenses of the conversion, including the expenses incurred by the commissioner and the prorated salaries of any insurance office staff members involved, shall be borne by the corporation being converted.

**(11)** SECURITY REGULATION. The filing with the division of securities of a certified copy of the plan of conversion as approved by the commissioner constitutes registration under s. 551.305 of the securities authorized to be issued thereunder.

**History:** 1971 c. 260; 1979 c. 102 ss. 107, 236 (5), (13); 1981 c. 314; 1983 a. 192, 215; 1985 a. 29, 215; 1995 a. 27; 1997 a. 79; 1999 a. 85; 2003 a. 33; 2007 a. 196; 2013 a. 279.

**611.77 Conversion of assessable to nonassessable and nonassessable to assessable mutuals. (1)** ASSESSABLE TO NONASSESSABLE. Whenever an assessable mutual accumulates enough surplus to satisfy the financial requirements for the operation of a nonassessable mutual under like conditions, it may apply for a certificate of authority authorizing it to sell nonassessable policies. The commissioner shall issue a certificate of authority designating it a nonassessable mutual if he or she finds that the applicant satisfies the requirements of the law and that the issuance of nonassessable policies will not endanger the interests of its insureds or the public. Policies issued thereafter shall be nonassessable; existing policies shall continue in effect and shall also become nonassessable.

**(2)** NONASSESSABLE TO ASSESSABLE. A nonassessable mutual may apply to the commissioner for a certificate of authority designating it an assessable mutual. The commissioner shall issue the certificate if the law permits such a corporation to issue assessable policies and if he or she finds that the conversion will not endanger the interests of present or future insureds or of the public. All policies issued after conversion shall be assessable, and all policies in effect on the date of conversion shall be assessable except to the extent that there is a contract right then existing not to be assessed.

**History:** 1971 c. 260; 1979 c. 102 s. 236 (5).

**611.78 Transfer of business or assets. (1)** SALE, LEASE, EXCHANGE OR MORTGAGE OF A STOCK CORPORATION'S ASSETS. Except as modified by subs. (2) and (3), ss. 180.1202, 180.1706 and 180.1708 (6) apply to stock corporations.

**(1m)** SALE, LEASE, EXCHANGE OR MORTGAGE OF A MUTUAL'S ASSETS. (a) Except as modified by subs. (2) and (3), a sale, lease, exchange or other disposition of less than substantially all of the property and assets of a mutual, and the mortgage or pledge of any or all property and assets of a mutual, whether or not made in the usual and regular course of its affairs, may be made upon the terms and conditions authorized by the mutual's board of directors. Unless otherwise provided by the articles of incorporation, consent of the members is not required for a sale, lease, exchange or other disposition of property, or for a mortgage or pledge of property, authorized under this paragraph.

(b) A sale, lease, exchange or other disposition of all or substantially all of the property and assets of a mutual may be made upon such terms and conditions as may be authorized in the following manner:

1. If the articles of incorporation give members the right to vote on the sale, lease, exchange or other disposition of all or substantially all of the mutual's property and assets, the board of directors shall adopt a resolution recommending the sale, lease, exchange or other disposition and directing that it be submitted to a vote at an annual or special meeting of the members. Written notice stating that the purpose, or one of the purposes, of the meeting is to consider the sale, lease, exchange or other disposition of all, or substantially all, of the property and assets of the mutual shall be given to each member entitled to vote at the meeting, within the time and in the manner provided by this chapter for providing notice of member meetings. At the meeting, the members may authorize the sale, lease, exchange or other disposition and may authorize the board of directors to fix any or all of the terms and conditions of the sale, lease, exchange or other disposition. The authorization shall be by the affirmative vote of at least two−thirds of the members present or represented by proxy at the meeting. After the authorization by a vote of the members, the board of directors, nevertheless, in its discretion, may abandon the sale, lease, exchange or other disposition, subject to the rights of 3rd parties under any contracts relating thereto, without further action or approval by the members.

2. If the articles of incorporation do not give members the right to vote on the sale, lease, exchange or other disposition of all or substantially all of a mutual's property and assets, the sale, lease, exchange or other disposition may be authorized by the vote of the majority of the directors in office.

**(2)** REPORT TO COMMISSIONER. Any action by which an insurance corporation proposes to transfer to another person or to reinsure any part of its insurance business, other than in the normal and usual course of business, or to sell, lease, exchange, mortgage, pledge or otherwise dispose of or encumber more than one−fourth of its assets, shall be reported to the commissioner not less than 30 days in advance of the proposed effective date. The commissioner may defer the effective date for an additional period not exceeding 30 days by written notice to the corporation before expiration of the initial 30−day period.

**(3)** DISAPPROVAL. The commissioner may, within the 30−day period or its extension, prohibit the proposed action if it is contrary to law or to the interests of insureds or the public or if it will make possible the circumvention of any of the requirements of ss. 611.71 to 611.77.

**History:** 1971 c. 260; 1979 c. 102; 1989 a. 303; 1997 a. 79; 1999 a. 30.

**611.785 Dissenters' rights.** Sections 180.1301 to 180.1331 apply to stock corporations, except as provided in s. 611.71 (5) (b) with respect to a shareholder's right to dissent from a share exchange consummated under s. 611.71.

**History:** 1989 a. 303.

**611.79 Conversion of a domestic mutual life insurance company into a fraternal.** A domestic mutual life insurance company may be converted into a fraternal under ch. 614, as follows:

**(1)** CONVERSION PLAN. The board of directors of the company shall adopt a plan of conversion stating:

(a) The reasons for and the purposes of the proposed action;

(b) The proposed articles and bylaws for the new fraternal; and

(c) The proposed procedure and estimated expenses for implementing the conversion.

**(2)** APPROVAL BY COMMISSIONER. The plan shall be filed with the commissioner for approval, together with so much of the information under s. 614.13 (2) as the commissioner reasonably requires. The commissioner shall approve the plan unless finding, after a hearing, that it would be contrary to the law, that the new fraternal would not satisfy the requirements for a certificate of authority under s. 611.20 as incorporated by s. 614.20, or that the plan would be contrary to the interests of policyholders or the public.

**(3)** APPROVAL BY MEMBERS. After being approved by the commissioner, the plan shall be submitted to the policyholders for their approval.

**(4)** REPORT TO COMMISSIONER. A copy of the resolution adopted by the members shall be filed with the commissioner, indicating the number of policyholders voting, the method of voting and the number of votes cast in favor of the plan.

**(5)** CERTIFICATE OF AUTHORITY. If all requirements of the law are met, the commissioner shall issue a certificate of authority for the new fraternal. Thereupon the mutual shall cease its legal existence and the corporate existence of the new fraternal shall begin, but it shall be deemed to have been incorporated as of the date the converted mutual was incorporated. The new fraternal shall have all the assets and be liable for all of the obligations of the converted mutual. The commissioner may grant a period not exceeding one year for adjustment to the requirements of ch. 614, specifying the extent to which particular provisions of ch. 614 do not apply.

**History:** 1975 c. 373, 421.

**Legislative Council Note, 1975:** This provision is not likely to be used often but it is desirable in order to enlarge the options open to legitimate organizations. If members of a mutual wish to accept the additional restrictions imposed by fraternal law in return for its benefits, they should be free to do so. [Bill 643−S]

## SUBCHAPTER VI

## MISCELLANEOUS PROVISIONS

**611.94 Trustee of proceeds.** Section 632.42 applies to insurers doing a life insurance business.

**History:** 1979 c. 102.