not maintain an action to determine whether a license shall be issued. Wisconsin Independent Order of Foresters v. Insurance Commissioner, 98 W 94, 73 NW 326.

Under secs. 1955e and 1955f, Stats. 1898, the commissioner of insurance is to be satisfied that the applicant is entitled to a license and should be given a necessary or reasonable time to examine and investigate into the affairs and condition of the company. Mandamus will not issue to compel him to grant a license where he is investigating in good faith. State ex rel. Court of Honor of Illinois v. Giljohann, 111 W 377, 87 NW 245.

208.27 History: 1945 c. 517; Stats. 1945 s. 208.27; 1953 c. 56.

208.28 History: Stats. 1931 s. 208.04 (22); 1933 c. 344 s. 28; Stats. 1933 s. 208.28; 1943 c. 146; 1963 c. 266.

208.29 History: Stats. 1931 s. 208.04 (22m); 1933 c. 344 s. 29; Stats. 1933 s. 208.29.

208.34 History: Stats. 1931 s. 208.04 (29); 1933 c. 344 s. 34; Stats. 1933 s. 208.34; 1969 c. 276 s. 585 (1).

208.35 History: Stats. 1931 s. 208.04 (30); 1933 c. 344 s. 35; Stats. 1933 s. 208.35; 1949 c. 634; 1961 c. 562; 1969 c. 337 s. 88.

An act of congress separating fraternal and insurance activities of a lodge fraternity and authorizing insurance to be carried on under different corporate entity and in conjunction with legal reserve life insurance does not change the character of fraternal insurance. The tax being upon a business, a corporation may be licensed without payment of such tax upon payments made upon old fraternal certificates. 20 Atty. Gen. 1095.

208.38 History: 1895 c. 175 s. 12; Stats. 1898 s. 4575e; 1925 c. 4; Stats. 1925 s. 348.475; 1955 c. 696 s. 277; Stats. 1955 s. 208.38; 1969 c. 337, 424.

208.39 History: 1965 c. 501; Stats. 1965 s. 208.39.

208.40 History: 1965 c. 501; Stats. 1965 s. 208.40.

CHAPTER 209.

Insurance—Miscellaneous Provisions.

209.03 History: 1870 c. 56 s. 37; 1870 c. 59 s. 26; R. S. 1878 s. 1974; 1889 c. 480; Ann. Stats. 1889 s. 1949a, 1974; 1895 c. 175 s. 10; Stats. 1898 s. 1974; 1905 c. 167 s. 1; Supl. 1906 s. 1974; 1923 c. 291 s. 3; Stats. 1923 s. 209.03; 1933 c. 487 s. 249; 1969 c. 337.

209.04 History: 1870 c. 56 s. 28; 1870 c. 59 s. 23; 1871 c. 13 s. 3, 5; 1878 c. 214; R. S. 1878 s. 1976; 1880 c. 240 s. 4; Ann Stats. 1889 s. 1976; Stats. 1898 s. 1976; 1905 c. 38 s. 1; Supl. 1906 s. 1976; 1907 c. 501; 1909 c. 116, 290; 1911 c. 27; 1917 c. 107, 213; 1923 c. 291 s. 3; Stats. 1923 s. 209.04; 1933 c. 144; 1933 c. 487 s. 239, 250; 1933 c. 489 s. 31; 1939 c. 468; 1943 c. 436; 1947 c. 75; 1951 c. 574; 1955 c. 366, 600; 1957 c. 74, 448; 1959 c. 352, 575, 602; 1961 c. 397, 562, 624; 1963 c. 299, 314, 344; 1963 c. 459 s. 52; 1965 c. 461; 1967 c. 73; 1967 c. 92 s. 22; 1967 c. 254; 1969 c. 144; 1969 c. 336 s. 176; 1969 c.337 ss. 82, 88.

1. Agent defined.
2. Regulations.
3. Authority of agent.
4. Corporations excluded.
5. Penalty.
6. Exchange business.

1. Agent Defined.

Retail dealers of an automobile sales corporation which arranged insurance upon cars, to be effective on retail sale at a price which included a premium of insurance, were agents of the insurance company, within 209.04, Stats. 1925, and were required to hold certificates of authority. Chrysler S. Corp. v. Smith, 9 F (2d) 666.

An insurance agent who does not have a certificate of authority in the form prescribed by the commissioner of insurance is subject to the penalty provided. The fact that the insurance corporation has given him a certificate in a different form is no protection. 2 Atty. Gen. 427.

An examining physician is not an agent within secs. 1976 and 1977, Stats. 1915. 5 Atty. Gen. 442.

2. Regulations.

209.04 (3) (d) empowers the commissioner to issue regulations with respect to fidelity insurance. Sims v. Manson, 25 W (2d) 110, 130 NW (2d) 200.

3. Authority of Agent.

An oral agreement for present insurance, made by the agent of an accident association, is binding upon it, notwithstanding the insured's application contained, but without his knowing it, a clause to the effect that no liability should exist for any injury which might be sustained prior to the acceptance by the insurer's general manager of the application and fee, and the policy, issued subsequent to the receipt of the application and fee, was dated 2 days after the oral agreement between the agent and the insured. Mathers v. Union M. A. Asso. 78 W 588, 47 NW 1130.

If the insured accepts a policy which prohibits a local agent from waiving any of its provisions he is bound by it, and any attempted waiver by such agent after such acceptance merely by virtue of his agency is a nullity. Hankins v. Rockford Ins. Co. 70 W 1, 35 NW 34; Stevens v. Queen's Ins. Co. 81 W 335, 51 NW 555.

A company which issues a policy upon an application taken by one of its agents cannot disclaim his agency in the doing of anything necessarily implied in its taking and in the forwarding of it. If, however, the agent's authority is limited, and the insured has knowledge, actual or constructive, of the fact, a waiver as to a matter not within the agent's authority is ineffectual. Bourgeois v. Mutual Fire Ins. Co. 86 W 402, 57 NW 38.

By issuing a policy with knowledge of facts which by its terms would avoid it an agent who takes risks thereby waives such provisions, whether or not such is his intention.

Schultz v. Caledonian Ins. Co. 94 W 42, 68 NW 414.

The rule respecting the relations of principal and agent is that a broker in procuring a policy may not bind his principal in matters relating thereto, though he is at the same time the insurer's agent. John R. Davis L. Co. v. Hartford Fire Ins. Co. 95 W 226, 70 NW 84.

An oral agreement by an agent with the insured that he would not allow the insurance to lapse, but would give timely notice, and would renew the insurance, is not binding on the company unless the agent was acting within his real or apparent authority, and it was so understood by insured, or the agreement was ratified by the company. It is the agreement of the agent in his personal capacity. Wood v. Prussian N. Ins. Co. 99 W 497, 75 NW 173.

The evidence was insufficient to establish that the agent (a soliciting agent) was authorized to extend credit for the payment of the initial premium or to agree that the insurance would be in force in the meantime. Sachs v. North Am. Life Ins. Co. 201 W 537, 230 NW 612.

That an application for an automobile liability policy contained false answers to questions as to cancellation of former policies and payment of losses thereunder to insured did not void the policy where the insurer's representative and one who brokered insurance to him knowingly inserted such false answers in the application which insured did not sign. Suschnick v. Underwriters Cas. Co. 211 W 474, 248 NW 477.

One who was not an authorized agent of the insurer, but who secured a burglary policy for the insured and collected the premium therefor, was the agent of the insurer. McKinnon v. Massachusetts B. & I. Co. 213 W 145, 250 NW 503.

Where an insured signed no application for insurance and had no knowledge of limitations on the authority of a soliciting agent, a contract of fire insurance on a truck and feed mill executed by the agent to take effect immediately was binding upon the insurer. Anderson v. Indiana L. M. I. Co. 214 W 384, 253 NW 405.

A lay person, engaged in the business of insurance, may communicate to an insurance company employing him an opinion obtained from an attorney, and may communicate to a claimant an opinion, or its truthful substance, rendered by counsel for the insurance company or by a local attorney employed by the insurance company, but he may not communicate an opinion of an attorney as his own without thereby engaging in the "practice of law." State ex rel. Junior Asso. of Milwaukee Bar v. Rice, 236 W 38, 294 NW 550.

An independent insurance salesman who does business with an authorized insurance agency, accepts a portion of the insurance premium, and pays a portion thereof to the agency, is an agent of the company. Pouwels v. Cheese Makers Mut. Cas. Co. 255 W 101, 37 NW (2d) 869.

Where a bank cashier was requested by a client of the bank to obtain workmen's compensation insurance for the client, the cashier wrote to an insurance agency requesting such insurance, which agency in turn made application to the local agent of a company which wrote such insurance, and the insurance company rejected the application, the cashier was not the agent of the insurance company. Bohnke v. Standard A. I. Co. 41 F (2d) 696.

4. Corporations Excluded.

Since a corporation cannot be an agent, an attempted assignment of an agency contract is invalid. Duel v. Nat. Society Corp. 64 F Supp. 961.

A bankers' savings deposit agreement, under which regular deposits are made in a savings account from which the bank pays the premium on a life insurance policy, is legal. 17 Atty. Gen. 512.

A building and loan association may not act as agent of a life insurance company in collection of premiums. 26 Atty. Gen. 561.

See note to 201.44, citing 43 Atty. Gen. 181.

5. Penalty.

Defendant, a member of a firm of insurance brokers of Chicago, represented in this state to M, a citizen hereof who owned property herein, that he was such a broker, but not an agent, and produced a list of companies and agreed to place insurance upon M's property in responsible companies at a stipulated rate. M subsequently paid the premium and received policies from 18 companies named on said list. Defendant acted as agent for each of the companies which issued a policy, and the solicitation in behalf of each was a separate offense. State v. Farmer, 49 W 459, 5 NW 892.

A company which is not restricted as to the manner in which it may make contracts of insurance is bound by the act of its agent in making a parol contract therefor. Sec. 1977, R. S. 1878, applies to the agents of mutual companies as well as to others. Zell v. Herman F. M. Ins. Co. 75 W 521, 44 NW 828.

Violation of sec. 1919a, Stats. 1911, by an insurance agent does not invalidate the policy. That takes effect by virtue of 201.44 (4), but leaves the agent subject to the penalties prescribed by this section. Ocean A. & G. Corp. v. Combined L. P. Co. 162 W 255, 156 NW 156.

Foreign unlicensed companies doing business by mail are liable to prosecution. 1910 Atty. Gen. 485.

6. Exchange Business.

Where an insurance agent is applied to for insurance and is unable to place it but endeavors to secure it through other agents with an understanding that the commissions are to be divided, such agent is the agent of both parties. When the insurance company notified its original agent to cancel the policy and the first agent was then notified and the insured requested to return the policy, but such policy was not returned until after loss, the policy was still in force. Wicks Brothers v. Scottish U. & N. Ins. Co. 107 W 606, 83 NW 781.

Where an agent takes insurance through other agents, such other agents are the agents of the companies issuing the insurance and not of the insured. The agency of a party who

procures a policy for another through a representative of an insurer terminates on delivery and acceptance of the policy; hence a subsequent surrender of the policy to such party by the holder is not a surrender of it to the insurer so as to amount to a cancellation. Wisconsin C. R. Co. v. Phoenix Ins. Co. 123 W 313, 101 NW 703.

The "proper exchange of business" permitted by 209.04 (5), Stats. 1957, does not include solicitation by an insurance agent of insurance in a company for which he is not licensed, but only the negotiation and effecting of such insurance in the occasional situation where insurance desired by a prospect is not placeable with a company for which he is licensed. 47 Atty. Gen. 193.

209.045 History: 1945 c. 360; Stats. 1945 s. 209.045; 1969 c. 337.

209.047 History: 1963 c. 344 s. 7; 1963 c. 459 s. 53; Stats. 1963 s. 209.047.

Once an insurance company accepts the insurance application from an independent agency, it is not permitted to deny that the insurance agency was acting as its agent in taking the application. Trible v. Tower Ins. Co. 43 W (2d) 172, 168 NW (2d) 148.

209.05 History: 1963 c. 196; 1963 c. 459 s. 54; Stats. 1963 s. 209.05.

209.06 History: 1909 c. 288; Stats. 1911 s. 4202m; 1917 c. 67; 1919 c. 703 s. 26; Stats. 1919 s. 1977—1; 1923 c. 291 s. 3; Stats. 1923 s. 209.06; 1933 c. 487 s. 252.

A bond to indemnify an employer for loss through the dishonesty of an employe or agent is a "contract of insurance" within the meaning of sec. 4202m, Stats. 1913, and must be construed accordingly. An untrue statement by the employer in his application will not invalidate the bond, even though denominated a warranty, where other language showed that an honest statement to the best of his ability was what he was required to make, and the evidence showed that the surety company did not rely upon the statement but relied upon the report of his own agent who specially examined the matter at the time. Whinfield v. Massachusetts B. & Ins. Co. 162 W 1, 154 NW 632.

209.06 (1), Stats. 1921, forms part of the insurance contract. Where an involved application, hurriedly made but in good faith and incomplete when signed, was filled out at another place by the insurance agent; and a policy was issued without the insured having a chance to read his application, the fact that one of 2 mortgages on the premises was unintentionally omitted from the application did not defeat a recovery on the contract. Olson v. Herman F. M. Ins. Co. 187 W 15, 203 NW 743.

It is not sufficient that statements made by an applicant for insurance be merely false, as to constitute a defense to an action on the policy it must appear that the statements were made with actual intent to deceive. But where the applicant, who was a school teacher of at least ordinary intelligence, had been advised by a reputable physician that she was ailing or threatened with appendicitis or a similar disease, and answered falsely questions relative to her state of health she is deemed as a matter of law to have intended to deceive the insurer. Monahan v. Mutual L. Ins. Co. 192 W 102, 212 NW 269.

The provision in the former standard fire policy that, in the absence of a written agreement added thereto, the insurer shall not be liable while the insured has any other insurance on the property covered, is not a "warranty" within 209.06 (2), Stats. 1921, providing that no warranty relating to a fact prior to a loss shall avoid the policy unless the breach exists at the time of the loss, since a warranty is a statement by the insured susceptible of no construction except that the parties mutually intended that the policy should not be binding unless the statement is literally true. Struebing v. American Ins. Co. 197 W 487, 222 NW 831.

Where an insured made false answers, with intent to deceive the insurer, to questions in an application for life insurance to the effect that he had not consulted a physician or been in a hospital, etc., the beneficiary could not recover. Conklin v. New York Life Ins. Co. 200 W 94, 227 NW 251.

Ulcers of the stomach increased the insured's risk as a matter of law, and false representations thereon voided his policy. Demirjian v. New York Life Ins. Co. 205 W 71, 236 NW 566.

An insurer whose examiner reports an applicant as a fit subject for life insurance is estopped to assert the contrary, in the absence of fraud. Frozena v. Metropolitan Life Ins. Co. 211 W 373, 247 NW 333.

An insurer was not relieved from liability under a burglary policy because of a false warranty that the insured had not been burglarized within 5 years prior to the date of the application, where at the date of the application the insurer had knowledge of a prior burglary, since in such situation the false warranty did not increase the risk. McKinnon v. Massachusetts B. & I. Co. 213 W 145, 250 NW 503.

An insurer's soliciting agent's knowledge of an insured's previous illness and falsity of statement, written by an agent in application for accident and sickness policy that the insured had not been disabled by accident or illness during the last 10 years, must be considered insurer's knowledge, so as to defeat its right to claim that the policy was void because of such statement. An insured's deliberate false swearing in proof of claim under accident and sickness policy that he had never before been afflicted by any illness or disease invalidates his claim, regardless of whether he derived any advantage to insurer's actual prejudice in consequence thereof. Kline v. Washington Nat. Ins. Co. 217 W 21, 258 NW 370.

A provision in a life policy, which required no medical examination, that the policy should not take effect if on the date of its issuance the insured was not in sound health and that in such event premiums paid should be returned, is valid. Compliance with such provision in a policy constituted a condition precedent to liability, and hence the insurer was not liable where the insured died of a heart disease which existed when the policy

was issued. Clark v. Prudential Ins. Co. 219 W 422, 263 NW 364.

The failure of the insured to state, in his application for an accident insurance certificate, that he was a wholesaler of beer in addition to being the owner and manager of a restaurant and tavern, did not preclude the insured from recovering for a disability sustained in an automobile accident while on a pleasure trip, where the misrepresentation was innocently made, the society's agent and local counsel knew that the insured was engaged in such business, and the fact that he was engaged therein did not increase the risk or contribute to the loss. Spray v. Order of U. C. T. 221 W 329, 267 NW 50.

The provision in 209.06 (1), that no statement, representation or warranty made by the insured shall defeat or avoid the policy, unless false and made with intent to deceive, or unless the matter misrepresented or made a warranty increased the risk or contributed to the loss, was enacted to prevent an insured's losing the benefit of a policy when without fraud or misrepresentation on his part, and acting in good faith, he answers all questions asked of him by the insurer's agent. Granzow v. Oakland Mut. Fire Ins. Co. 244 W 300, 12 NW (2d) 57.

The defense that an insured's representation, under a life insurance policy, that he never had had any ailment or disease of the lungs, was a representation which increased the risk and was false and operated to avoid the policy under 209.06, Stats. 1941, the burden was on the insurer to show that the insured had had tuberculosis or some other disease of the lungs, and the plaintiff beneficiaries needed only to raise a legitimate doubt to make an issue of fact for the jury. Jespersen v. Metropolitan Life Ins. Co. 251 W 1, 27 NW (2d) 775.

If the purported signature of the insured to the application was not genuine, the defendant insurer could not be held liable on the policy, since its contract was predicated on the insured's having signed that part of the application containing the answers to the medical examiner. If by false statements in the medical-examination portion of an application for a life insurance policy an insurance company is induced to insured someone whom it would be barred from insuring under its rules, and such false statements have increased the risk, the insurer should be permitted to raise such facts as a defense regardless of whether the insured who made the false statements is the purchaser or owner of the policy, or whether such owner is his wife, partner, corporate employer, or other third person. Bradach v. New York Life Ins. Co. 260 W 451, 51 NW (2d) 13.

Where an agent of an insurance company writes a statement of fact into either an application for a policy, or into the policy itself, without making inquiry of the insured or relying on any information supplied by the insured, the company is precluded on the theory of either waiver or estoppel from showing that the fact as to incumbrances on the insured property was other than such statement of fact so written in by the agent, in order to avoid liability on the policy. The failure of the insured to read his policy, and to discover that a false answer had been inserted by the insurer's agent in the blank space in respect to incumbrances, did not constitute such lack of diligence or negligence as to bar the insured from invoking the principle of estoppel against the insurer to avoid liability on the policy because of such false answer. (Collum v. National Fire Ins. Co. 181 W 425, and Taluc v. Fall Creek Farmers Mut. Fire Ins. Co. 203 W 319, applied; Bradach v. New York Life Ins. Co. 260 W 451, explained and distinguished; Moe v. Allemannia Fire Ins. Co. 209 W 526, distinguished.) The fact that the insured called the insurer's agent and told him to "transfer" the insurance from an old, unincumbered car to a new car did not make it the insured's duty first to read the fine-print exclusion clause in the existing policy and, because of so reading it, to inform the agent that the new car was mortgaged, since, whether the agent effects insurance coverage on a new car by a rider to the old policy or, as in the instant case, by writing a new policy, the car owner is entitled to depend on the agent to ask for whatever information is required by the insurer for filing in blanks, and the insured should not be held to presume that the agent will fill in the answers without first making inquiry to ascertain the true facts. Emmco Ins. Co. v. Palatine Ins. Co. 263 W 558, 58 NW (2d) 525.

In an application for reinstatement which represented that the insured had not since the policy was issued been "sick or afflicted with any disease," a cold will not be included and, in the absence of proof that the cold produced disease or sickness, the words cannot be construed as meaning absolute freedom from bodily ills, but rather freedom from such ills as would ordinarily be called "disease" or "sickness," which do not include a trifling illness nor a temporary illness which readily yields to professional treatment and leaves no permanent physical injury or disorder calculated or having a tendency to shorten life. Schneider v. Wisconsin Life Ins. Co. 273 W 105, 76 NW (2d) 586.

An examining physician's confidential report to a life insurance company, relating to an applicant for a life insurance policy, and stating that the applicant's condition of hydrocele "should not affect insurable risk" and that "in his opinion the risk was not questionable because of any factor, such as the presence or history of physical defect, etc.," amounted to a declaration that the applicant was a fit subject for insurance, within the purview of 209.07. When it appears that such report was based on material false representations, made with intent to defraud or to deceive, and that the medical examiner and the insurer relied on the the same, the insurer was entitled, under 209.06, to avoid liability on the policy. Gibson v. Prudential Ins. Co. 274 W 277, 80 NW (2d) 233.

Where there was some question as to ownership of a truck, but the representation of ownership by the insured was not made with intent to deceive and did not increase the risk of loss, the policy defense will fail. Kietlinski v. Interstate Transport Lines, 3 W (2d) 451, 88 NW (2d) 739.

209.06 (1), Stats. 1955, does away with the prior distinction between representations and

warranties, and the legal effect of each on the rights of the parties is thereby made identical. The question of materiality is a question of fact to be determined by the trier of the fact. The test of materiality is not that the insurer was influenced, but that the fact, if truthfully stated, might reasonably have influenced the insurer in deciding whether it should reject or accept the risk. If a question material to the risk is answered falsely, the risk is necessarily increased. So far as the insured's misrepresentation that no company had ever canceled a policy of insurance issued to him was concerned, the doctrine of waiver applied against the insurer, in that the insurer itself had canceled a policy written for him and had in its possession its prior file concerning the matter. The fact that an insurer had notice of the falsity of one answer in an application for insurance does not estop the insurer to set up the falsity of other answers. Haas v. Integrity Mut. Ins. Co. 4 W (2d) 198, 90 NW (2d) 146.

Where a corporation by its president signed an application for fire insurance on property of the corporation, a negative answer to a question in the application asking whether the "applicant" had ever had a fire loss, was not inaccurate or erroneous by reason of the fact that the signatory president had sustained fire losses as an individual. Polar Mfg. Co. v. Integrity Mut. Ins. Co. 7 W (2d) 443, 96 NW (2d) 822.

Where the trial court has determined that there is an inaccurate or erroneous statement in the application for insurance, the special verdict should inquire as to whether such statement was false and made with intent to deceive, and as to whether the inaccurate statement increased the risk to the defendant insurer or contributed to the loss. Polar Mfg. Co. v. Integrity Mut. Ins. Co. 7 W (2d) 443, 96 NW (2d) 822.

In an action to recover on a fire insurance policy, wherein the insurer grounded its defense on an inaccurate answer in the insurance application as to whether any company had ever refused to write or had canceled insurance on the property, it was not error for the trial court to instruct the jury to consider the facts and circumstances surrounding cancellations by another company in determining whether those circumstances, if known to the insurer, might reasonably have influenced it to reject the application. Polar Mfg. Co. v. Integrity Mut. Ins. Co. 11 W (2d) 105, 104 NW (2d) 164.

Incorrect statements in an application for automobile insurance were considered in Martell v. Klingman, 11 W (2d) 296, 105 NW (2d) 446.

Where an application for a collision policy, filled out by the agent, stated that no male under 25 would drive the car, and the applicant looked over the application before he signed it and the policy when he received it, there could be no recovery for damages resulting when the car was driven by applicant's 19 year old son. Stockinger v. Central Nat. Ins. Co. 24 W (2d) 245, 128 NW (2d) 433.

Applicant's failure to list 12 of 14 hospitalizations constituted an increase of the risk as a matter of law, particularly where defense testimony was to the effect that the policy would not have been issued if all had been listed. Delaney v. Prudential Ins. Co. 29 W (2d) 345, 139 NW (2d) 48.

Where an applicant, who was unable to obtain a driver's license, represented that he was his deceased brother and showed the brother's license, the statement was material to the risk. Bade v. Badger Mut. Ins. Co. 31 W (2d) 38, 142 NW (2d) 218.

See note to 204.34, citing Zepczyk v. Nelson, 35 W (2d) 140, 150 NW (2d) 413.

209.06 (1), Stats. 1963, which sets forth the 3 grounds for avoiding a policy by reason of misstatements of an applicant negotiating a contract of insurance, specifically applies to statements made in the application and not to conditions subsequent; hence alleged misrepresentations as of a later date cannot be held to relate back to the date of the application. Kreklow v. Miller, 37 W (2d) 12, 154 NW (2d) 243.

Concealments, representations and warranties as affecting contracts of insurance. Anderson, 2 MLR 118.

False statements by applicant for policies of life insurance. Crowell, 19 MLR 228.

209.07 History: 1911 c. 507; Stats. 1911 s. 4202s; 1917 c. 67 s. 2; 1919 c. 703 s. 26; Stats. 1919 s. 1977—2; 1923 c. 291 s. 3; Stats. 1923 s. 209.07; 1933 c. 487 s. 238.

Sec. 4202s, Stats. 1913, does not preclude an insurance company from proving that an assured did, in fact, have tuberculosis when his application for insurance was made if the application was made before the enactment of the section, or if its terms made the statement therein to the effect that the assured was not affected with tuberculosis a warranty. Neither does this section apply to an insurance contract made in another state. McKnelly v. Brotherhood of American Yeomen, 160 W 514, 152 NW 169.

Sec. 4202s, Stats. 1911, does not estop a life insurance company to plead and prove the falsity of the report of its medical examiner when such report was made by connivance with the insured. McGinty v. Brotherhood of Railway Trainmen, 166 W 83, 164 NW 249.

Where insured has committed no fraud or deceit and has been accepted as a fit risk, the insurer is estopped to deny the validity of the policy. When the medical examiner for the insurer fills out the application he acts as the agent of the company if the insured answers correctly and makes no concealments. In an action on a policy it is not error to receive proof of statements made by the insured to the medical examiner, at variance with statements in a written application prepared by such examiner. Klieger v. Metropolitan Life Ins. Co. 180 W 320, 192 NW 1003.

In order to maintain the defense that applicant was not a fit subject of insurance it must establish that the certificate of health issued by the medical examiner was procured through the fraud or deceit of the insured. Monahan v. Mutual Life Ins. Co. 192 W 102, 212 NW 269.

A report of an insurer's medical examiner which, in response to questions required to be answered by the examiner, merely certified the height, weight, measurements, pulse, and

blood pressure of an applicant for life insurance, and that the examiner found no evidence of impairment of the heart, brain, stomach, lungs, etc., did not amount to a certifiçation of health or a declaration that the applicant was a fit subject for insurance, such as would, under 209.07, estop the insurer from asserting to the contrary in the absence of fraud or deceit by the insured. Jespersen v. Metropolitan Life Ins. Co. 251 W 1, 27 NW (2d) 775.

See note to 209.06, citing Gibson v. Prudential Ins. Co. 274 W 277, 80 NW (2d) 233.

In order to qualify as a certificate of health or a declaration of fitness, the report of the medical examiner need not be couched in those precise terms, and no special verbiage is required to constitute the certificate or declaration contemplated. Platke v. John Hancock Mut. Life Ins. Co. 27 W (2d) 1, 133 NW (2d) 277.

209.07, Stats. 1965, estops a life or disability insurance company from setting up a defense otherwise available under 209.06 in those cases where its medical examiner issues a certificate of health or declares the applicant a fit subject for insurance unless such certificate or the statement is procured by or through fraud or deceit of the insured. Kelly v. Madison Nat. Life Ins. Co. 37 W (2d) 152, 154 NW (2d) 334.

209.07 applies only where the evaluations are broad enough in scope and content to constitute a certificate of health or a declaration of fitness for insurance. Given a certificate of health or declaration of fitness for insurance, an insurance company can defeat recovery on its life policy only if it can establish the fraud or deceit required by 209.07. Powalka v. State Mut. Life Ass. Co. 41 W (2d) 151, 163 NW (2d) 162.

Medical certificates of health and statutory estoppel. Leifker, 49 MLR 785.

209.09 History: 1913 c. 282; Stats. 1913 s. 1977a; 1919 c. 679 s. 6; 1919 c. 703 s. 26; Stats. 1919 s. 1977—4; 1923 c. 291 s. 3; Stats. 1923 s. 209.09; 1933 c. 487 s. 253.

209.12 History: 1893 c. 293; Stats. 1898 s. 1945b; 1923 c. 291 s. 3; Stats. 1923 s. 203.27; 1933 c. 487 s. 254; Stats. 1933 s. 209.12.

Ch. 293, Laws 1893, which provided that actions by receivers to collect "all claims due from policyholders within this state for premiums or assessments" should be brought within 6 months after it took effect, applied to claims existing or owing, whether payable at that time or not, and included claims on notes for assessments thereafter made and notified. Wyman v. Kimberly-Clark Co. 93 W 554, 67 NW 932.

A trustee appointed in another state and who exercised the functions devolved upon a receiver by the laws of this state was within ch. 293, Laws 1893. Mansfield v. William Becker L. Co. 93 W 656, 68 NW 411.

209.13 History: 1909 c. 460; Stats. 1911 s. 1941g; 1913 c. 529; 1923 c. 291 s. 3; Stats. 1923 s. 203.50; 1933 c. 487 s. 125, 255; Stats. 1933 s. 209.13; 1943 c. 275 s. 53.

An insurance corporation organized in 1869 without authority to write casualty insurance is not authorized to organize a subsidiary company to write casualty insurance and to purchase all stock of such company and control and manage it. Northwestern Nat. Ins. Co. v. Freedy, 201 W 51, 227 NW 952.

209.14 History: 1915 c. 69; Stats. 1915 s. 4438j; 1925 c. 4; Stats. 1925 s. 343.412; 1943 c. 234; 1955 c. 696 s. 109; Stats. 1955 s. 209.14.

Foreign insurance companies doing business in this state without a license cannot be prosecuted unless service can be secured on an agent here. 4 Atty. Gen. 1024.

One who knowingly subscribes to false papers with the intent to deceive the commissioner of insurance violates 343.412, Stats. 1929; the offense is committed in the county where the papers are subscribed to and put into the mail. 19 Atty. Gen. 180.

CHAPTER 210.

State Insurance.

210.01 History: 1903 c. 68 s. 1; Supl. 1906 s. 1978a; 1911 c. 663 s. 397; 1923 c. 291 s. 3; Stats. 1923 s. 210.01; 1937 c. 158; 1947 c. 524.

210.02 History: 1903 c. 68 s. 2; Supl. 1906 s. 1978b; 1911 c. 663 s. 398; 1917 c. 482; 1923 c. 291 s. 3; Stats. 1923 s. 210.02; 1929 c. 117; 1937 c. 158; 1947 c. 524; 1951 c. 237, 734; 1955 c. 285; 1959 c. 659 s. 79; 1961 c. 191; 1963 c. 39, 224; 1967 c. 209; 1967 c. 291 s. 14; 1969 c. 55.

State buildings do not become insured automatically under secs. 1978a to 1978c, Stats. 1913, but are so insured only when and only to the extent to which they are certified to the state treasurer and valued by the insurance commissioner for the purpose of insurance. State ex rel. Regents of Normal Schools v. Ekern, 159 W 319, 150 NW 506.

Binder twine owned by the state and stored outside the state is insurable in the state insurance fund, and a premium for a policy thereon in a fire insurance company may not be paid out of state treasury. 3 Atty. Gen. 430.

Military equipment loaned to the state by the U.S. government may be insured in the state insurance fund. 5 Atty. Gen. 405.

The state has an insurable interest in office equipment furnished to income tax assessors by counties and such property may be insured in the state insurance fund. 19 Atty. Gen. 249.

State property may be insured against theft; but insurance against theft may not be combined with fire or tornado insurance. 19 Atty. Gen. 284.

210.03 History: 1903 c. 68 s. 3; Supl. 1906 s. 1978c; 1909 c. 113; 1913 c. 714; 1923 c. 291 s. 3; Stats. 1923 s. 210.03; 1927 c. 162; 1931 c. 67 s. 171; 1931 c. 385 s. 1; 1937 c. 158; 1947 c. 9 s. 31; 1947 c. 524; 1959 c. 659 s. 79; 1961 c. 191; 1965 c. 247; 1967 c. 209; 1969 c. 366 s. 117 (2) (b).

Money from the general fund is available to pay losses to counties and other municipalities insured in the state fire fund. 4 Atty. Gen. 1010.

Insurance carried by the state under provisions of ch. 210 does not cover loss or destruction of personal property or effects of an