previous year. Such a failure or refusal is a continued failure to comply with the statute. Unpaid license fees bear interest from the time when they should have been paid. Travelers' Ins. Co. v. Fricke, 99 W 367, 74 NW 372, 78 NW 407.

601.32 History: 1967 c. 43; 1967 c. 291 s. 14; Stats. 1967 s. 200.12; 1969 c. 276 s. 597 (1); 1969 c. 337 ss. 19, 88; Stats. 1969 s. 601.32.

601.41 History: 1969 c. 337; Stats. 1969 s. 601.41.

See notes to sec. 1, art. IV, on legislative power generally and on delegation of power, citing State ex rel. United States F. & G. Co. v. Smith, 184 W 309, 199 NW 954.

See note to sec. 1, art. IV, on delegation of power, citing State ex rel. Wis. Inspection Bureau v. Whitman, 196 W 472, 505, 220 NW 929, 941.

The question of whether a reduction in premium of a fire policy based on the deductible clause in the policy constitutes such a deviation that it is required to be filed with the insurance rating bureau was a subject within the jurisdiction of the insurance commissioner, and was not a proper matter for consideration in an action to enjoin the rating bureau from revoking the insurer's license and enforcing the fire insurance rating act against the insurer. Northwestern Nat. Ins. Co. v. Mortenson, 230 W 377, 284 NW 13.

Under 200.03 (2) and 204.31 (3), Stats. 1959, the commissioner of insurance may adopt rules prohibiting the issuance or renewal of accident and sickness policies containing restrictive provisions. 50 Atty. Gen. 1.

The commissioner of insurance, under 200.03 (2) and 204.31 (3), Stats. 1959, may adopt a specific rule prohibiting use of the word "compensation" in an advertisement and solicitation for policies if it would be misleading or would encourage misrepresentation. 50 Atty. Gen. 8.

The enforcement of insurance laws. Pfennigstorf, 1969 WLR 1026.

601.42 History: 1969 c. 337; Stats. 1969 s. 601. 42.

601.43 History: 1969 c. 337; Stats. 1969 s. 601.43.

The commissioner of insurance is entitled to a reasonable time in which to make the investigation before granting or revoking a license and is called upon to exercise his judgment and discretion. State ex rel. Court of Honor of Illinois v. Giljohann, 111 W 377, 87 NW 245; In re Court of Honor of Illinois, 109 W 625, 85 NW 497; Travelers' Ins. Co. v. Fricke, 99 W 367, 74 NW 372, 78 NW 407.

601.44 History: 1969 c. 337; Stats. 1969 s. 601.44.

601.45 History: 1969 c. 337; Stats. 1969 s. 601.45.

Under 200.04 (4), Stats. 1947, the amount chargeable to an insurance company for examination is limited to the traveling, maintenance and necessary incidental expenses paid to departmental employes under 14.71, except in the case of a per diem charge against a foreign company under the retaliatory provision in the last sentence. 37 Atty. Gen. 318.

601.46 History: 1969 c. 337; Stats. 1969 s. 601.46.

601.47 History: 1969 c. 337; Stats. 1969 s. 601.47.

601.48 History: 1969 c. 337; Stats. 1969 s. 601.48.

601.49 History: 1969 c. 337; Stats. 1969 s. 601.49.

601.61 History: 1969 c. 337; Stats. 1969 s. 601.61.

601.62 History: 1969 c. 337; Stats. 1969 s. 601.62.

601.63 History: 1969 c. 337; Stats. 1969 s. 601.63.

601.64 History: 1969 c. 337; Stats. 1969 s. 601.64.

Editor's Note: The penalty provision of sec. 1954, R. S. 1878, in respect to the failure to file reports, was construed in State v. United States M. A. Asso. 69 W 76, 33 NW 90; and the similar provision of sec. 1954, Stats. 1898, was construed in State v. Columbia Nat. Life Ins. Co. 141 W 557, 124 NW 502.

601.71 History: 1969 c. 337; Stats. 1969 s. 601.71.

601.72 History: 1969 c. 337; Stats. 1969 s. 601.72.

201.38 (2), Stats. 1927, requiring a foreign insurance company desiring to do business in Wisconsin to constitute the insurance commissioner its attorney to accept service on its behalf, clearly puts foreign insurance corporations outside of the general foreign insurance corporation statute (262.09, Stats. 1927). A foreign insurance corporation by its acceptance of a license to do business in Wisconsin is bound to hold itself amenable to the jurisdiction of the state courts. State ex rel. Aetna Ins. Co. v. Fowler, 196 W 451, 220 NW 534.

601.73 History: 1969 c. 337; Stats. 1969 s. 601.73.

CHAPTER 617.

Regulation of Insurance Holding Companies and Intercorporate Transactions Relating to Insurers.

Legislative Council Note, 1969: New holding company legislation is urgently needed in view of recent economic developments that pose a serious threat to the proper regulation of the insurance industry. In 1968 dozens of holding company formations involving insurance companies occurred or were in process. Many of the larger property — liability and life insurers had already formed holding companies even before 1968.

The holding company development has already had a profound impact not only on the insurance business, but on all American industry. It is attracting attention by many regulatory agencies at both the federal and state level. It poses problems and issues relating to insurance regulation, as well as broader considerations involving such ques-

tions as the degree of concentration of and pyramiding of economic power to be tolerated and the adequacy and rationale of antitrust laws.

Not all of these broader issues can be resolved within the scope of this revision. Even many matters of insurance regulation which have been raised by this new development cannot be fully taken care of at this time by any emergency proposal. It is clear, however, that some new regulatory authority is needed immediately to protect Wisconsin policyholders from the potential abuse of the holding company development. It is also clear that it would be unwise to make emergency legislation await either the resolution of broader policy issues or a more elaborate analysis of the insurance implications of the holding company movement.

Both the potential abuse and the need for emergency action was demonstrated on January 14, 1969, by an incident involving a New York insurer which has achieved national notoriety.

After being acquired by a noninsurance holding company, the Great American Insurance Company, which is admitted to do business in Wisconsin, and which had a surplus of over $300 million at year-end 1968, voted a dividend of over $171 million payable to its parent holding company.

Immediately after declaration of the dividend, the New York insurance department launched an investigation to determine what effect so large a dividend would have on the financial condition of the company and on the amounts of insurance it would safely be able to write in the future. The New York Department noted that it did not have authority to disapprove even such a large dividend. Although the dividend may not have endangered the solidity of the particular company at all, the fact that such a payment can be made in the way it was made raises issues far transcending the individual case and its individual merits. Wisconsin would find itself in the same position even as to a domestic insurer, not to speak of an authorized foreign one. A separate bill (S. B. 391) has already been introduced to deal with this particular problem. If that bill becomes law, section 617.22 of this act may be dropped.

There are other potential abuses, beside excessive dividends, in the holding company development. They include all of the devices for 'milking' that have been ingeniously exploited in other contexts. They encompass the full range of less than arm's-length transactions that benefit affiliates at the expense of the insurer. They permit evasions of insurance laws and regulations by a parent holding company through payments to insurance agents and employes, for example, that could not be done by an insurance company alone.

The statutory provisions proposed here are designed to give the commissioner power to prevent such abuses.

First, it requires all insurers doing business in Wisconsin controlled by holding companies or otherwise having affiliates to report to the commissioner, as fully as he may wish, the details about the intercorporate relationships of the insurers and their affiliates.

Second, it gives the commissioner the power to examine any person affiliated with an authorized insurer and to exercise some regulatory power over him, to the extent necessary to complete the supervision of the authorized insurer.

Third, it authorizes the commissioner to require reports on transactions between an insurer and any affiliate and in some cases to disapprove or prohibit them.

Fourth, it subjects controlling persons to a residual liability for the obligations of the controlled insurer.

The position of the holding company problem in the framework of the general revision of the insurance laws is a complex one. While the core of the proposed new legislation will be in ch. 617, to be created by this bill, there are also amendments to existing statutes. It touches the corporate structure and procedures of both domestic and foreign companies, and it affects the general administration of the insurance laws as well as the special delinquency proceedings of ch 645. For this reason, ch. 645 is also amended to permit application of that machinery to insurers endangered by intercorporate machinations.

Finally, some duplication with other pending proposals must be taken into account. Both ch. 601 which is already before the legislature and ch. 611 which hopefully will be ready this session will, if enacted, include provisions serving the general purposes of holding company control, to which parts of the contents of this special act can be assimilated. (Bill 600-S)

617.01 History: 1969 c. 398; Stats. 1969 s. 617.01.

617.02 History: 1969 c. 398; Stats. 1969 s. 617.02.

Legislative Council Note, 1969: What constitutes control of an insurer cannot be defined in precise terms for all situations. Sub. (1) adopts 10% of the voting stock as the point beyond which there is a presumption of control. The presumption of control is rebuttable, and any party is free to prove either control or lack of control, at any level of stock ownership. The definition is adapted from the regulations under the Securities Act of 1933, 17 C.F.R. s. 230.405 (f) (1964).

Sub. (2) defines "affiliate" as any other corporation that is part of the same system of jointly or mutually controlled enterprises. Since in such a system the potentially dangerous transactions can take place among corporations under common control as well as between a controlled corporation and its directly controlling person, this draft deals consistently with all affiliates, which include the top of the hierarchy, if there is any. Affiliates may be either insurers or noninsurers, corporations of natural persons. Although abuses are perhaps more likely in the case of noninsurer control over an insurer, the same possibilities do exist when an insurer controls another insurer. (Bill 600-S)

617.03 History: 1969 c. 398; Stats. 1969 s. 617.03.

Legislative Council Note, 1969: The power

to make exemptions is a necessary correlative to the broadly stated requirements of this chapter. The usual procedure for establishing an exemption would be a rule under s. 227.014. An individual insurer or group of insurers could be exempted by an order. The exemption could be terminated in the same way it was created. (Bill 600-S)

617.11 History: 1969 c. 398; Stats. 1969 s. 617.11.

617.12 History: 1969 c. 398; Stats. 1969 s. 617.12.

Legislative Council Note, 1969: This section has been drafted broadly to impose a duty on persons not otherwise subject to the jurisdiction of this state, to provide information to the commissioner. It reflects the view that there are sufficient contacts with the state to give Wisconsin legislative jurisdiction over persons attempting to acquire control of domestic insurers even though all affected transactions may be carried on entirely outside the state by persons having no other connection with the state. This conclusion is based on the notion that the combination of powers of the state and federal government flowing from enactment of the McCarran-Ferguson Act, 15 USC s. 1012 (b) (1964) extends the reach of the state significantly. (Bill 600-S)

617.21 History: 1969 c. 398; Stats. 1969 s. 617.21.

Legislative Council Note, 1969: Every transaction between affiliates has the potential for abuse. This section therefore not only provides standards by which such transactions shall be judged but also gives the commissioner a broad continuum of power that can be tailored for the differing needs of different classes of cases.

Some transactions require only disclosure to the commissioner, others require an opportunity for disapproval. Details are to be specified by rule. The power of the commissioner with respect to nondomestic insurers is limited to a requirement of post facto reporting, though the information thus gained may enable him to act on the basis of other powers, such as those in ch. 645. (Bill 600-S)

617.22 History: 1969 c. 398; Stats. 1969 s. 617.22.

617.23 History: 1969 c. 398; Stats. 1969 s. 617.23.

Legislative Council Note, 1969: One of the dangers inherent in the holding company relationship is that the parent may drain from the subsidiary insurer so much surplus that the insurer is no longer solid. This section would, in effect, make the holding company and other affiliates a guarantor of the insurer's obligation to the extent that they have recently withdrawn assets from the insurer. This is not fully consistent with the notion of limited liability that is characteristic of the modern corporation. But limited liability is not inherent in "corporateness". Historically it was not "of the essence". Rather, corporate organization was often used in an early time as a device for compulsory mobilization of capital from subscribers. It had a purpose quite inconsistent with the limitation of liability to money actually invested. Moreover, as the owners of bank shares have had occasion to know in the recent past, liability limited to investment has not always been the rule in even the modern corporation. Here, the amount recovered is limited to recoupment; this is a kind of statutory remedy against unjust enrichment.

A question has been raised about the fairness of making two different affiliates liable under sub. (2) (a) and (b) for the same dividends. But they are together only liable to repay the dividends once. It should be left to the courts to determine, on the basis of all the facts, which of the two is primarily liable, if they wish to litigate that question (which would occur only rarely). For the purposes of this protective device, it is desirable to make it as easy as possible for the receiver to collect, whatever corporate manipulations have taken place since the dividend was declared.

Sub. (3) distinguishes between domestic and foreign insurers. For the former, recoupment should result in complete payment of legitimate claims; for the latter, Wisconsin should only be concerned to the extent necessary to protect Wisconsin policyholders. This is a significant change from earlier drafts.

Sub. (4) attempts to reach another of the dangers of the holding company arrangement by restricting the parent's ability to use intercorporate transfers and manipulations to impose economic loss on those who should not be asked to bear it. In the unusual but possible case where dishonest manipulations have produced an insolvent insurer, other manipulations might also produce insolvency in the dividend recipient made liable for repayment to the delinquent insurer under s. 9. And the manipulations would almost certainly be such as to make the funds untraceable under any general equitable doctrines. Sub. (4) would force solvent affiliates to assume the liability for making dividend repayments which fall on insolvent affiliates. It is limited to "upstream" affiliates only. (Bill 600-S)

Editor's Note: Sec. 617.23 of 600-S was amended by inserting a new subsection (2) and renumbering the following subsections.

CHAPTER 619.

Risk Sharing Plans.

Editor's Note, 1969: Ch. 144, Laws 1969, which created this chapter, contains extensive explanatory notes; these notes are printed in full in the bound volume containing the session laws, Laws of Wisconsin, 1969.

619.01 History: 1969 c. 144; Stats. 1969 s. 619.01.

619.02 History: 1969 c. 144; Stats. 1969 s. 619.02.

619.03 History: 1969 c. 144; Stats. 1969 s. 619.03.

CHAPTER 625.

Rate Regulation.

Editor's Note: Ch. 144, Laws 1969, which