

No. 492, A.]

[Published August 21, 1957.

CHAPTER 552

AN ACT to amend 20.005 (2) (a) (lines 238 to 242), as repealed and recreated by chapter 259, laws of 1957 (Bill No. 77, A.); and to create chapter 211 of the statutes, relating to the registration, examination and supervision of employe welfare funds, making appropriations and providing penalties.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 20.005 (2) (a) (lines 238 to 242) of the statutes, as repealed and recreated by chapter 259, laws of 1957 (Bill No. 77, A.), are amended to read:

1957-58 1958-59 1957-58 1958-59
238. Insurance commissioner 20.460

| | | | | | |
|------|----------------------------|-------|---------|-----------|-----------|
| 239. | General administration (1) | * * * | * * * | (327,840) | (324,126) |
| 240. | Personal services, bonus S | * * * | S * * * | 52,883 | 52,692 |
| 241. | Personal services, basic | * * * | * * * | 286,443 | 297,087 |
| 242. | Materials and expense | * * * | * * * | 106,766 | 106,053 |

SECTION 2. Chapter 211 of the statutes is created to read:

CHAPTER 211

EMPLOYE WELFARE FUNDS.

211.01 DECLARATION OF POLICY. It is declared to be the policy of this state that employe welfare funds are of great benefit to employes and their families and that their growth should be encouraged; that the establishment and management of such funds vitally affect the well-being of millions of people and are in the public interest; and that such funds should be supervised by the state to the extent necessary to protect the rights of employes and their families, without imposing burdens upon such funds which might discourage their orderly growth and without duplicating the supervisory responsibilities presently vested in any state agencies.

211.02 DEFINITIONS. As used in this chapter, unless the context requires otherwise:

(1) "Employe welfare fund" means any trust fund or other fund established or maintained jointly by one or more employers together with one or more labor organizations, solely by any employer or labor organization or jointly by employers or jointly by labor organizations, whether directly or through trustees, to provide employe benefits, by the purchase of insurance or annuity contracts or otherwise, and to which is paid or contracted to be paid anything, other than income from investments of such fund, by or on behalf of any employer doing business in this state or for the benefit of any persons employed in this state.

(2) "Employe benefits" means one or more benefits or services for employes or their families or dependents, or for both, including, but not limited to, medical, surgical or hospital care or benefits, benefits in the event of sickness, accident, disability or death, benefits in the event of unemployment, or retirement benefits.

(3) "Trustee" means any person, firm, association, organization, joint stock company or corporation, whether acting individually or jointly and whether designated by that name or any other, who or which is charged with or has the over-all management of any employe welfare fund.

(4) "Commissioner" means the state insurance commissioner.

211.03 REGISTRATION. The trustees of every employe welfare fund which shall receive any payments in amounts equivalent to an annual rate of more than \$2,000, other than income from investments, from any employer in this state, or which, together with any related fund, may be called upon to provide for the payment of benefits under an employe welfare plan to 25 or more persons employed in this state, shall register such fund with the commissioner within 3 months after the effective date of this chapter, or within 3 months after the fund is commenced if the fund is established after the effective date of this chapter, or within 3 months after such employer commences doing business in the state if the employer commences to do business in this state after the effective date of this chapter, or within 3 months after the fund is called upon to provide for the payment of benefits under an employe welfare plan to 25 or more persons employed in this state if the number of such persons employed in this state becomes 25 or more after the effective date of this chapter. Such registration shall be in such form and shall

contain such information relating to the organization, operations and affairs of such fund as may be prescribed by the commissioner.

211.04 EXAMINATIONS; AUTHORIZATION AND REQUIREMENT. (1) The commissioner may examine into the affairs of any employe welfare fund as often as he deems it necessary, and he shall do so at least once in every 5 years.

(2) The trustees of every employe welfare fund shall be responsible for the maintenance of accurate records of its books and accounts in conformance with generally accepted accounting principles.

211.05 EXAMINATIONS; CONDUCT. (1) Whenever, pursuant to this chapter, the commissioner shall determine to examine the affairs of any employe welfare fund he shall make an order indicating the scope of the examination and may, without regard to the classified service, appoint as examiners one or more competent persons not employed by the trustees of such fund or interested in such fund. A copy of such order shall, upon demand and before the examination begins, be exhibited to at least one of the trustees of the employe welfare fund whose affairs are to be examined. Any examiner authorized by the commissioner shall have convenient access at all reasonable hours to the books, records, files, assets, securities, and other documents of such employe welfare fund, including those of any affiliated or subsidiary fund thereof, which are relevant to the examination, and shall have power to administer oaths and to examine under oath the trustees of such fund and their officers, agents and employes and any other persons having custody or control of such books, records, files, assets, securities or other documents, regarding any matter relevant to the examination.

(2) The examiner or examiners in charge of such examination shall make a true report of every examination made by him, verified under oath, which shall comprise only facts appearing upon the books, records or other documents of the trustees of such fund or as ascertained from the sworn testimony of its trustees, or their officers, agents or employes, or other persons examined concerning its affairs, and such conclusions and recommendations as may reasonably be warranted from such facts.

(3) In connection with any such examination, the commissioner may, without regard to the classified service, appoint one or more competent persons as appraisers with authority to appraise any real property or any interest therein which, as security or otherwise, may constitute a part of the assets of any employe welfare fund. The report of such appraiser shall be a supplement to the report of the examiner or examiners in charge.

211.06 EXAMINATIONS; PUBLICATION. (1) Pending or after an examination the commissioner shall not make public nor shall he permit to become public any financial statement, report or finding affecting the status, standing or rights of any such employe welfare fund, until a copy thereof has been served upon such employe welfare fund, nor until such employe welfare fund has been afforded a reasonable opportunity to answer any such financial statement, report or finding and to make such showing in connection therewith as it may desire.

(2) In any action or proceeding against the trustees of any employe welfare fund, required to register under this chapter, or against their officers, agents or employes, such report, or any part thereof, if published by the commissioner, shall be admissible in evidence.

(3) The commissioner may assemble and file for public inspection such information covering forms of trust indentures in use, commission and fee schedules adopted by insurers and compensation paid to trustees of employe welfare funds and such other matters affecting the establishment and administration of such funds as, in his opinion, are in the public interest.

211.07 EXAMINATIONS; EXPENSES. The expenses of every examination of the affairs of any employe welfare fund required to register under this chapter, including any appraisal of real property, shall be borne and paid by the employe welfare fund so examined but the commissioner may in his discretion remit in whole or in part such charges upon showing of extreme financial hardship. For any such examination by the commissioner or a deputy commissioner personally, the charge made shall be only for necessary traveling expenses and other actual expenses. In all other cases the expenses of examination shall also include reimbursement for the compensation paid for the services of persons employed by the commissioner or by his authority to make such examination or appraisal. All charges incurred by the commissioner or in his behalf, including necessary traveling and other actual expenses, as duly audited and paid to the person or persons making the examination or appraisal, shall be presented to the trustees of the employe welfare fund so examined in the form of a copy of the itemized bill therefor as certified and approved by the commissioner or a deputy commissioner. Upon receiving such certified copy such trustees shall pay the amount thereof to the commissioner to be paid by him into the state treasury.

211.08 ANNUAL STATEMENT TO COMMISSIONER. The trustees of every employe welfare fund shall file in the office of the commissioner, annually on or before June 1 a statement, to be known as the annual statement of such fund, executed in duplicate, verified by the oath of its trustee or, if there is more than one trustee, then by the oaths of at least 2 of such trustees, showing its condition and affairs during such fiscal year. Such statement shall be in such form and contain such substantiation by vouchers and otherwise and such other information as the commissioner shall from time to time prescribe and shall include the names and addresses of the trustees and their connections as an official or employe of an employer or employe organization; the number of persons covered or expected to be covered by the plan; the type of plan and a description of its method of operation including the benefits to be provided; the method of determining eligibility for benefits; whether the plan was established through collective bargaining; copies of the plan, program or bargaining agreement, trust agreement, contract, or other instrument, if any, under which the plan was established and is operated; copy of the booklet, announcement or statement describing benefits furnished to the employes to advise them of their rights and benefits; the source of the financing of the plan and the identity of any organization through which benefits are provided; the fiscal year basis; and the procedure established to make certain that all payments due to the fund are received by it. The commissioner shall cause to be prepared and furnished to the trustees of every employe welfare fund required by law to report to him printed forms of the statements and schedules required by him.

211.09 SPECIAL STATEMENTS TO COMMISSIONER. In addition to any other statements or reports required by this chapter, the commissioner may also address to the trustees of any employe welfare fund or to their officers, agents or employes any inquiry in relation to the transactions or condition of the fund or any matter connected therewith. Every person so addressed shall reply in writing to such inquiry promptly and truthfully, and such reply shall be verified, if required by the commissioner, by such individual or individuals as he shall designate.

211.10 ANNUAL REPORTS TO EMPLOYERS AND EMPLOYES. The trustees of every employe welfare fund shall, annually, on or before March 1, file a report with the commissioner to be known as the annual report of such fund, verified by the oath of its trustee, or if there is more than one trustee, then by the oaths of at least 2 of such trustees, showing its condition on December 31 then next preceding or on such other date

in the year next preceding as the commissioner may approve. Such report shall be in such form and contain such matters as the commissioner shall from time to time prescribe. Such annual report shall be kept on file with the commissioner and at the principal office of the trustees and such report, or such portion thereof as the commissioner shall deem appropriate and relevant, shall be made available by the commissioner or by the trustees, or both, for inspection by any employer contributing to such fund, by any labor organization which is a party to an agreement establishing such fund, or by any employe covered by such fund. In addition and to such extent that he deems it to be in the public interest, the commissioner may require the trustees to mail such report, or such portions thereof as the commissioner shall deem appropriate and relevant, to employes covered by the fund, to contributing employers or to any labor organization which is a party to an agreement establishing such fund, or to any or all of such parties.

211.11 ANNUAL STATEMENTS BY INSURANCE COMPANIES, SERVICE PLANS AND CORPORATE TRUSTEES AND AGENTS. Any insurance company, hospital, surgical or medical service plan providing benefits under an employe welfare fund as defined in this chapter, and any corporate trustee or agent holding or administering all or any part of an employe welfare fund as so defined shall, within 4 months after the end of each policy or fiscal year, furnish to the trustees of the fund a statement of account setting forth such information as the trustees of the fund may need from it in order to comply with the requirements of this chapter.

211.12 EMPLOYER PAYMENTS TO EMPLOYE WELFARE FUNDS. Every employer doing business in the state and making payments to trustees of any employe welfare fund required to register under this chapter shall make a report respecting such payments within 3 months after making the first payment after the effective date of this chapter, and at least once every 12 months thereafter, to the commissioner on a form to be prescribed by the commissioner unless the commissioner in writing shall waive such requirement. If the trustees of any such employe welfare fund have failed to register the fund in accordance with s. 211.03 or are otherwise failing to comply with any of the provisions of this chapter, the commissioner shall so notify the employer and the employer shall make no further payments to the trustees after receipt of such notification unless and until the employer receives further notification from the commissioner stating that the trustees have complied with the provisions of this chapter.

211.13 REGULATION UNDER OTHER LAWS. The commissioner may waive examination of any welfare fund which is not located in this state but which is required to register under this chapter, upon being furnished with a certified copy of a report of examination made under the jurisdiction of the proper supervisory official of another state or the federal government which indicates adequate compliance with all of the requirements of this state that would otherwise be determined by an examination directed by the commissioner. Application for such waiver shall be made in writing to the commissioner on such form as he may require and any waiver issued by him shall be in writing and shall be of record in his office. No waiver shall bar the commissioner from investigating any matter not included within the scope of the examination or which is not reported upon to his satisfaction to accomplish the purposes of this chapter in respect to the interests of the employes and employers in this state. The action of the commissioner pursuant to this section shall be subject to judicial review.

211.14 COMPLIANCE, ENFORCEMENT AND PENALTIES. (1) The trustees of every employe welfare fund required to register under

this chapter shall be responsible in a fiduciary capacity for all money, property, or other assets received, managed or disbursed by them, or under their authority, on behalf of such fund. All payments due to or from every welfare fund subject to the provisions of this chapter shall be by check, bank draft, postal money order or other recognized written method of transmitting money or its equivalent.

(2) No trustee, employer or labor organization representing any employes eligible for benefits under an employe welfare plan provided by an employe welfare fund required to register under this chapter, and no officer, agent or employe of any such trustee, employer or labor organization shall receive, directly or indirectly, any payment, commission, loan, service or any other thing of value from any insurance company, insurance agent, insurance broker or any hospital, surgical or medical service plan, in connection with the solicitation, sale, service or administration of a contract providing employe benefits for such fund, or receive any payment, commission, loan, service or any other thing of value from such employe welfare fund, or which is charged against such fund or would otherwise be payable to such fund either directly or indirectly, except that any such person may receive any benefits under an employe welfare plan to which he is otherwise entitled, and any such trustee, or his officer, agent or employe, may receive from such employe welfare fund reasonable compensation for necessary services and expenses rendered or incurred by him in connection with his official duties as such; provided that nothing in this section shall affect the payment of any dividend or rate credit or other adjustment due under the terms of any insurance or annuity contract to the policyholder or contract holder.

(3) No political contributions shall be made directly or indirectly by or from any employe welfare fund.

(4) (a) Any person who wilfully violates or fails to comply with any provision of this chapter or the rules or regulations promulgated thereunder or who makes a false statement or representation of a material fact, knowing it to be false, or who knowingly fails to disclose a material fact in any registration, examination, statement or report required under this chapter or the rules or regulations promulgated thereunder, shall be fined not more than \$5,000, or imprisoned not more than 5 years, or both.

(b) Any person who embezzles, steals, or unlawfully and wilfully abstracts or converts to his own use or to the use of another, any of the moneys, funds, securities, premiums, credits, property, or other assets of any employe welfare fund, or of any fund connected therewith, shall be fined not more than \$10,000 or imprisoned not more than 5 years, or both.

(5) In any case where, after notice and a hearing, the commissioner finds that any employe welfare fund has been depleted by reason of any wrongful or negligent act or omission of a trustee or of any other person, he may transmit a copy of his findings to the attorney general, who may bring an action in the name of the people of the state, or intervene in an action brought by or on behalf of an employe, for the recovery of such fund for the benefit of the employes and such other persons as may have an interest in the fund.

211.15 INJUNCTIONS. (1) The commissioner may maintain and prosecute an action against any trustee or any other person or persons subject to any provisions of this chapter, for the purpose of obtaining an injunction restraining such persons from doing any acts in violation of this chapter. If the court finds that a defendant is threatening or is likely to do any act in violation of this chapter, and that such violation will cause irreparable injury to the interests of the people of this state or the beneficiaries of the employe welfare fund involved or any employer contributing to such fund, the court may grant an injunction restraining

such violation. The court may, on motion and affidavits, grant a preliminary injunction ex parte and an interlocutory injunction, upon such terms as may be just; but the commissioner shall not be required to give security before the issuance of any such injunction.

(2) In any case where an employer doing business in the state continues to make payments to trustees of an employe welfare fund after receipt of notification from the commissioner pursuant to s. 211.12 that the trustees have failed to register the fund or are otherwise failing to comply with the provisions of this chapter, the commissioner shall forthwith apply for an injunction, as provided in sub. (1), to restrain the employer from making any further payments to the trustee or trustees pending further order of the court; and if the court finds that the trustees have failed to register the fund or are otherwise failing to comply with any of the provisions of this chapter, the court may permanently enjoin such payments and make such further orders as may be necessary to protect the interests of the employes or the employers in this state with respect to any further payments to the fund from the employer.

(3) Either the commissioner or the employer or the trustees or any trustee may apply to the court at any time to have an injunction issued under this chapter vacated.

211.16 of the statutes is created to read:

211.16 ADVISORY COUNCIL. (1) The commissioner shall appoint an advisory council on employe welfare plans which shall consist of 7 members, 2 to be representatives of management, 2 to be representatives of employes, and 3 to be representatives of the general public from the fields of banking, economics and insurance.

(2) It shall be the duty of the council to advise the commissioner with respect to the carrying out of his functions under this chapter, to review the administration of this chapter and to make such reports and recommendations to the commissioner with respect to amendments thereto as it deems necessary in the public interest. The council shall meet at least once each year and at such other times as it deems necessary or the commissioner requests. Members of the council shall receive no salary, or compensation for service on the council but shall be entitled to reimbursement for necessary expenses.

211.17 CONSTRUCTION. (1) Nothing in this chapter shall be construed to relieve the trustees of any employe welfare fund from compliance with any other provision of this chapter or any other applicable laws of this state.

(2) In order to carry out the objectives of this chapter to protect the interests of the employes or the employers in this state from fraud and mismanagement of employe welfare funds and to assure the faithful discharge of the responsibilities of the trustees and fiduciaries of such funds, the provisions of this chapter are to be liberally construed.

Approved August 7, 1957.