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1969 Senate Bill 504

Date published:
January 28, 1970

CHAPTER 337, LAWS OF 1969

AN ACT to repeal 15.737, 185.984, 185.994, 200.01, 200.02, 200.03 (1) and (3) to (11), 200.04, 200.05, 200.08, 200.10, 200.11, 200.14, 200.15, 200.18, 200.26 (3), (4), (5), (6) (e), (10), (11) and (12), 201.045 (2), 201.10 (7), 201.34 (2), 201.41 (2) and (3), 201.42 (4), (5), (9) (b) and (13), 201.43, 201.44 (3) and (7), 201.45 (3), 201.47 (3), 201.49, 201.50, 201.53 (10), 201.58, 201.60 (2), 201.63 (16) and (17), 201.75, 201.83, 202.19, 203.24 (11), 203.32 (13) (c) and (15), 203.52, 203.53, 204.28 (5), 204.31 (3) (g) 1 and 5, (8) and (9), 204.321 (3) (d), 204.322 (5) (d), 204.48, 204.49 (2), (3) and (4), 204.53, 205.02, 205.03 (3), 205.08 (6), (7) and (8), 205.12, 205.13, 206.38 (7), 206.41 (8) and (10) (c), 206.48, 206.49 (4), 206.51 (5), 207.05 to 207.08, 207.11, 207.12, 208.03 (3), 208.04, 208.05, 208.26, 208.31 to 208.33, 208.36, 208.37, 209.01, 209.02, 209.039, 209.04 (7) and (9) (b), 211.16 and 645.21 (3), (5) and (6); to renumber 200.03 (2), 200.12, 200.13 and 200.26 (6), (7), (8), (9) (a) and (13); to amend 15.04 (4), 15.06 (1) (b) and (3), 15.73, 15.731, 20.145 (1) (g), 76.305, 76.37 (1) 200.26 (4), as renumbered, 201.045 (3) and (4), 201.08, 201.18 (1), 201.32 (6) (a), 201.42 (6) (c), 201.46, 201.53 (9), 202.14, 203.22, 203.32 (14), 204.50, 206.14 (2), 206.19, 207.13, 208.38, 209.03, 209.045 and 601.31 (18), as renumbered; to repeal and recreate 201.39 (7) and 203.08; and to create 15.06 (1) (c), 20.145 (1) (h) and chapter 601 of the statutes, relating to a general revision of insurance law relating to administration and enforcement.

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

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Item Veto

~~Section 1. 15.04 (4) of the statutes is amended to read:~~

~~15.04 (4) Submit a report in November of each year to the governor and the legislature on the operation of his department or independent agency during the fiscal year concluded on the preceding June 30, and projecting the goals and objectives of the department or indepndnt agency as dveloped for the program budget report. Any department or independent agency may issue such additional reports on its findings and recommendations as its operations require, but the coordinating council for higher education shall so report every 6 months. The requirements of this subsection shall be satisfied, with respect to the commissioner of insurance, by the report submitted under s. 601.46 (3).~~

COMMENT: Section 601.46 (3) contains an elaborate provision for the commissioner's report, including reporting on an annual, calendar year basis. The provision was drafted to conform to insurance regulation practice in most American jurisdictions. Section 15.04 (4) would force a significant departure by providing for a report to be submitted in November and prepared on a fiscal year basis.

SECTION 2. 15.06 (1) (b) of the statutes is amended to read:

15.06 (1) (b) The commissioners of banking, ~~insurance,~~ savings and loan and securities shall each be nominated by the governor, and with the advice and consent of the senate appointed, for a 6-year term expiring on March 1 of an odd-numbered year.

SECTION 3. 15.06 (1) (c) of the statutes is created to read:

15.06 (1) (c) The governor shall appoint the commissioner of insurance, with the advice and consent of the senate, for the term of October 1, 1971, to March 1, 1975, and thereafter for a 4-year term expiring on March 1.

COMMENT on SECTIONS 2 and 3: Although a multiple-man agency would perhaps enhance the likelihood of full deliberation and careful decision, these sections continue the pattern of a single commissioner, as seems wise, on balance. Most federal regulatory commissions and some state regulatory agencies are composed of several members. E. g. Texas has a board instead of a single insurance commissioner, with a commissioner as executive of the board. Tex. Arts. 1.02, 1.09. A similar pattern exists in South Carolina ss. 37-51 to 37-58. Oklahoma divides responsibility between a commissioner and a board, as does Louisiana. Okla. ss. 331-348; La. ss. 1401-1422. At one time, the multiple-man insurance commission was much more common than now. Patterson, *The Insurance Commissioner in the United States* (1927), App. A, at 534 et seq.

However, the decisive consideration is the need for an agency to act expeditiously and unambiguously. A board that can only act in concert may be unable to make vital decisions because no quorum is present, or because the members present cannot agree, and the impact of a decision finally reached may be impaired because of dissent. Costs would be substantially increased, and it would be difficult to find enough qualified persons for the jobs. The dilution of authority and prestige would make it harder to get men of quality.

It is not necessary to provide here for removal of the commissioner. Under s. 17.07 (3) he may be removed for cause; s. 17.16 (2) defines cause. Section 17.20 provides for the filling of interim vacancies.

On the assumption that there would be a single commissioner, s. 3 continues the term of the office as it is at present, instead of increasing it. Given political appointment of the commissioner, there are powerful arguments against building in frequent 2 and 4 year periods of conflict with the chief executive. It is important to insulate the commissioner from politics in his day-to-day decisions, but there is

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no reason that he should not be in general agreement with the administration on longer range policies. Because of the political potential of some of the commissioner's decisions, he is less vulnerable to illicit pressure if a governor of the opposing political faith is not waiting in the wings to make political capital out of his decisions. In the special case of the insurance commissioner, whatever may be the case with other commissioners, a 4-year term roughly coinciding with the governor's term is better.

SECTION 4. 15.06 (3) of the statutes is amended to read:

15.06 (3) *(a)* A commissioner shall not hold any other office or position of profit or pursue any other business or vocation, but shall devote his entire time to the duties of his office. This ~~subsection~~ *paragraph* does not apply *to the commissioner of insurance nor* to the members, except the chairman, of the tax appeals commission.

(b) The commissioner of insurance shall not engage in any other occupation, business or activity that is in any way inconsistent with the performance of his duties as commissioner, nor shall he hold any other public office.

COMMENT: This amendment to s. 15.06 (3) adheres to the principle that public officers, including the insurance commissioner, should devote themselves full-time to the duties of their offices. But the amendment makes it less rigid than original s. 15.06 (3) which is so broad it would prevent many desirable appointments to the insurance commissioner's job.

Other work is forbidden to the commissioner either because of its demands on his time and energies, or because of conflict of interest. Par. (a) deals with the former, par. (b) with the latter. It is important that the commissioner work at his job on a full-time basis. But full-time commitment does not preclude all possible part-time employment any more than it precludes a weekly game of golf. Thus it would not be objectionable for one commissioner to spend a modest part of his time watching his investments in the stock market or taking care of his apartment house, but in fairness, another commissioner should not be denied the privilege of lecturing twice a week at a university. The formulation here is not free from difficulty. However, on some questions, no more can be done than to state a general principle which, in its nature, can only be enforced in egregious cases but which can nevertheless provide a useful standard, for the commissioner and for public opinion.

Full-time commitment does not preclude speaking engagements and similar activity. Needless to say, to be fully effective a commissioner must be involved in the on-going dialogue about regulatory problems, in Wisconsin and elsewhere. Of course, multiplication of speaking engagements often digs a pit into which an unwary commissioner may fall, to the detriment of the performance of his more important tasks, but the law cannot possibly control the discretion of the commissioner on such matters.

SECTION 5 . 15.73 of the statutes is amended to read:

15.73 There is created an office of the commissioner of insurance under the direction and supervision of the commissioner of insurance. ~~The person appointed commissioner of insurance shall be known to possess a knowledge of the subject of insurance, and skill in matters pertaining thereto. The commissioner shall not serve on or under any political campaign for a candidate or party.~~ *The commissioner shall not:*

(1) Be a candidate for public office in any election;

(2) Directly or indirectly solicit or receive, or be in any manner concerned with soliciting or receiving any assessment, subscription, con-

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tribution or service, whether voluntary or involuntary, for any political purpose whatever, from any person within or without the state; nor

(3) Act as an officer or manager for any candidate, political party or committee organized to promote the candidacy of any person for any public office.

COMMENT: In the earlier bill, this was found in ss. 601.11 and 601.13. Here it is incorporated into the general structure of the statutes as adopted by the Kellett legislation.

Section 15.73 as created by the Kellett trailer continues qualifications for the commissioner, also to be found in s. 200.01 (2), which are neither necessary nor sufficient for the purpose of defining a qualified regulator. Moreover, they are in fact constantly ignored in practice, both in Wisconsin and elsewhere. They are too easily met by hundreds of mediocre, uninformed people but could not be met by many of the best American commissioners in history. Moreover, the political involvement prohibitions contained in s. 15.73 are not restrictive enough; the insurance commissioner is in a position to "put the bite" on insurance companies unless fully and suitably inhibited by statute. This section is formulated differently to handle these problems.

Section 200.10 (2) and now s. 15.73 made a knowledge of insurance and skill in matters pertaining thereto a necessary condition for appointment as commissioner of insurance. This requirement, literally applied, would preclude the possibility of many excellent appointments. An occasional actuary or a few certified public accountants might qualify because they had much insurance experience and knew the subject. But even without special contact with insurance, well-trained and intelligent professionals of various kinds might be very good. So also might be some persons who are simply good executives and administrators. Many successful insurance commissioners have been lawyers who had no detailed knowledge of insurance prior to appointment. Legal training and experience is an excellent substitute for knowledge of insurance, because of the legal focus of much of the commissioner's work. The requirement of "knowledge" is too hard to interpret, to enforce and to satisfy, and is therefore of doubtful value. Moreover, because it can usually be satisfied only by someone from the insurance industry or by a lawyer with experience representing insurers, it almost guarantees an industry bias respecting some important problems. Sometimes that will be a serious handicap. For these reasons the requirement has been dropped.

The commissioner, as regulator of an important industry, is a man of great power, with legislative, executive and even judicial functions. He should not subject himself to the temptation to misuse his power for political purposes. There should be such certainty as human affairs allow that his power will not be used to extract money or favor for political purposes from the regulated industry or from any individual, and that legitimate expression of political views contrary to those of the commissioner will not subject the person expressing them to the risk of disadvantage in the regulatory process.

Subsection (1) prohibits candidacy for public office for 2 reasons. There is danger that the commissioner might use his office in a variety of improper ways to foster his candidacy. In addition, it might affect his perspective on regulatory issues and impair his effectiveness as an objective and impartial regulator.

Subsection (2) supplements ss. 12.57 and 16.30, which prohibit certain fund raising and political activities.

Subsection (3) does not prohibit the commissioner from engaging

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in reasonable political activities, so that his rights as an informed and interested member of the body politic to participate in political life are not violated.

SECTION 6. 15.731 of the statutes, as affected by chapter (Senate Bill 355), laws of 1969, is amended to read:

15.731 The office of the commissioner of insurance shall have the program responsibilities specified for the office under chs. 199 to 212 and ~~645~~ *600 to 649* and ss. 23.14 (16), 66.412, 72.15 (4), 72.76 (3) and (4), 102.31, 102.65, 148.03, 151.17, 152.53, 182.032, 185.983, ~~185.984,~~ 185.992, ~~185.994,~~ 189.13 (7) and (8), 314.06 and 954.44.

COMMENT: This is necessary to include this new chapter in the commissioner's program responsibilities, and also provides automatically for inclusion of new responsibilities in the block of chapters assigned for the insurance revision.

SECTION 7. 15.737 of the statutes is repealed.

COMMENT: Section 15.737 creates an advisory council for insurance agents, continuing s. 209.039, and a similar council for employe welfare funds, in continuation of s. 211.16. There is no justification for having these councils created by statute. This bill intends that the councils continue as presently provided in the statutes, but they should not be given statutory status not accorded to others the commissioner may create under s. 601.24. This seems to be completely consistent with the philosophy of the Kellett reorganization plan, and is a better arrangement for insurance regulation.

SECTION 8. 20.145 (1) (g) of the statutes is amended to read:

20.145 (1) (g) All moneys received under ss. ~~200.04,~~ ~~200.12,~~ ~~200.13,~~ ~~and~~ 211.07, *601.31, 601.32 and 601.45* for general operations.

SECTION 9. 20.145 (1) (h) of the statutes is created to read:

20.145 (1) (h) *Publications.* All moneys collected from the sale of publications under s. 601.23, for the preparation, printing and distribution of additional publications under s. 601.23, for the purchase of books for the library of the office of the commissioner of insurance, for research on insurance questions, or for special training of the personnel of the office of the commissioner of insurance.

SECTION 9m. 76.305 of the statutes is amended to read:

76.305 No domestic mutual insurance company shall be required to pay any taxes, charges, dues or license fees to the state except those charges and dues provided for in ss. ~~200.04~~ ~~(4),~~ ~~200.13~~ ~~and~~ 200.17, *601.31, 601.32 and 601.45.* This section shall not apply to annual license fees required under s. 76.34.

SECTION 10. 76.37 (1) of the statutes is amended to read:

76.37 (1) Every license issued pursuant to ss. 76.30 to 76.37, 201.045 and 201.34 shall certify that payment of the license fee or tax and the fee required by s. ~~200.13~~ ~~(2)~~ *601.31 (2)* has been made, be ~~attested~~ ~~by~~ ~~the~~ ~~official~~ ~~seal~~ ~~of~~ *signed by* the commissioner of insurance ~~thereto~~ ~~affixed~~, and be in such form as ~~shall~~ ~~be~~ *is* approved by the attorney general.

SECTION 11. 185.984 of the statutes is repealed.

SECTION 12. 185.994 of the statutes is repealed.

SECTION 13. 200.01 and 200.02 of the statutes are repealed.

SECTION 14. 200.03 (1) and (3) to (11) of the statutes, as affected by chapter (Senate Bill 355), laws of 1969, are repealed.

SECTION 15. 200.03 (2) of the statutes, as affected by chapter (Senate Bill 355), laws of 1969, is renumbered 200.03.

SECTION 16. 200.04, as affected by chapter (Senate Bill 355), laws of 1969, and 200.05 of the statutes are repealed.

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SECTION 17. 200.08 of the statutes is repealed.

SECTION 18. 200.10 and 200.11 of the statutes are repealed.

SECTION 19. 200.12 of the statutes, as affected by chapter (Senate Bill 355), laws of 1969, is renumbered 601.32 and 601.32 (1), as renumbered, is amended to read:

601.32 (1) If the moneys credited to s. 20.145 (1) (g) under other sections of the statutes prove inadequate for the office's supervision of insurance industry program, the commissioner may on or after January 1, 1968, increase any or all of the fees imposed by s. ~~200.13~~ *601.31*, or may annually on June 1, beginning June 1, 1968, levy a special assessment on all domestic insurance companies as defined in s. ~~200.13~~ *601.31* (26), or both, for the general program operation of that program.

SECTION 20. 200.13 of the statutes is renumbered 601.31 and 601.31 (18), as renumbered, is amended to read:

601.31 (18) For service of process on the commissioner, ~~$2~~ *$5*.

COMMENT: This change and the relationship of this section to the remainder of ch. 601 is explained in the introductory comment on s. 601.31.

SECTION 21. 200.14 and 200.15, as affected by chapter (Senate Bill 355), laws of 1969, of the statutes are repealed.

SECTION 22. 200.18 of the statutes, as affected by chapter (Senate Bill 355), laws of 1969, is repealed.

SECTION 23. 200.26 (3), (4), (5), (6) (e), (10), (11) and (12) of the statutes are repealed.

SECTION 24. 200.26 (6), (7), (8), (9) and (13) of the statutes are renumbered 200.26 (3), (4), (5), (6) and (7), and 200.26 (4), as renumbered, is amended to read:

200.26 (4) Such organizations and their agents, plans and contracts shall be subject to the provisions of ~~s. 200.13 relating to fees,~~ s. 201.045 relating to licensing, s. 201.25 relating to investments, ch. 207 relating to unfair methods of competition and unfair or deceptive acts or practices ~~and s. 200.03 (18),~~ *ch. 601* relating to ~~powers of the commissioner of insurance~~ *the administration of the insurance laws, and to ch. 645 relating to delinquency proceedings*, to the same extent and in the same manner as if such organizations were domestic insurance corporations and to s. 209.04 (11) relating to agents. Such organizations shall also be subject to s. 201.18 (1) relating to premium reserves except that where risks are written for more than one month and the premium or fee is paid on a monthly basis, the reserve shall be computed at 50 ~~per cent~~ % of the monthly premium or fee received each month. Any investments made by a corporation under s. 182.032 prior to November 6, 1959, and which investments at the time they were made compiled with ss. 206.34 and 206.35 shall not be deemed a violation of this subsection and such investments may at the option of such corporation be retained without being deemed a violation of this subsection.

SECTION 25. 201.045 (2) of the statutes is repealed.

SECTION 25m. 201.045 (3) and (4) of the statutes are amended to read:

201.045 (3) Except town mutual insurance companies, voluntary nonprofit sickness care plans organized under s. 185.981 and interscholastic benefit plans organized under s. 185.991, every insurer obtaining or renewing its certificate of authority ~~under sub. (1) or (2)~~ shall pay therefor the fee required by s. ~~200.13~~ *601.31* (2) or (3).

(4) No insurer incorporated or organized under any law of this state, including town mutual insurance companies, nonprofit service plans as defined by s. 200.26, voluntary nonprofit sickness care plans organized under s. 185.981 and interscholastic benefit plans organized under s. 185.991,

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shall transact insurance business in this state without having in effect a certificate of authority obtained or renewed ~~under sub. (1) or (2)~~.

SECTION 26. 201.08 of the statutes is amended to read:

201.08 BYLAWS, FILING. Every insurance corporation and every mutual benefit society shall adopt by laws and prescribe the manner in which the same may be amended. A copy of such bylaws and of any amendments thereto, accompanied by the certificate of the president and secretary stating that the same have been duly adopted and that such copy is true and complete, shall be filed with the commissioner of insurance within 30 days after such adoption~~, and in case of failure so to do each shall forfeit $25~~.

SECTION 27. 201.10 (7) of the statutes is repealed.

SECTION 27m. 201.18 (1) of the statutes is amended to read:

201.18 (1) The unearned premium or reinsurance reserve for every insurance company when no other statutory provision is made therefor shall be computed by setting up 50 ~~per cent~~ % or the monthly pro rata portion of the premiums in force on unexpired risks running one year or less, and the annual pro rata or the monthly pro rata portion of all premiums in force on unexpired risks running more than one year. Where risks are written for more than one year and the premium is paid on an annual basis, the reserve shall be computed at 50 ~~per cent~~ % or the monthly pro rata portion of the premium received each year. Any company may adopt either the 50 ~~per cent~~ % or the monthly pro rata basis for risks running one year or less, and either the annual pro rata or the monthly pro rata basis for risks running for more than one year, provided that the basis used shall not be changed without the prior approval of the commissioner. In case the 50 ~~per cent~~ % basis on unexpired risks of one year or less or the annual pro rata basis on unexpired risks of more than one year does not produce an adequate reserve, the commissioner may, in his discretion, require an insurer to calculate its unearned premium reserve upon the monthly pro rata basis, or if necessary, on each respective risk from the date of the issuance of the insurance, and, in the case of premiums covering indefinite terms, he may prescribe special regulations. In the case of perpetual risks or policies, not less than 90 ~~per cent~~ % of the premium deposit shall be set up as a reserve. Every such company shall show its reserve, computed upon this basis, as a liability in ~~the annual statement~~ *any report as* required ~~by section 201.59~~ *under s. 601.42*.

SECTION 28. 201.32 (6) (a) of the statutes is amended to read:

201.32 (6) (a) No corporation organized under the laws of a foreign country shall be licensed unless it has a cash capital of $200,000, and a deposit with the treasurer of this state or with the proper officer of some other state of the United States of not less than $200,000 in securities authorized by law for investments of fire insurance corporations, in trust for the benefit of its policyholders in the United States; and shall furnish the certificate of the trustee of said deposit stating the manner in which it is invested and the purposes for which it is held~~; and it shall furnish annually to the commissioner a statement of the condition of its affairs in the United States in such form as he shall require~~.

SECTION 29. 201.34 (2) of the statutes is repealed.

SECTION 30. 201.39 (7) of the statutes is repealed and recreated to read:

201.39 (7) Such exchanges shall be subject to any rating or antidiscrimination or antirebating laws applicable to other fire and casualty insurance carriers, except that any such antirebating law shall not be construed to include or apply to savings or dividends paid to subscribers or credited to their account.

SECTION 31. 201.41 (2) and (3) of the statutes are repealed.

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SECTION 32. 201.42 (4), (5), (9) (b) and (13) of the statutes are repealed.

SECTION 32m. 201.42 (6) (c) of the statutes is amended to read:

201.42 (6) (c) Nothing in par. (a) is to be construed to prevent an unauthorized person or insurer from filing a motion to quash a writ or to set aside service thereof made as provided in ~~sub. (4) or (5)~~ *s. 601.72* on the ground that such unauthorized person or insurer has not done any of the acts enumerated in sub. (2) ~~or that the person on whom service was made pursuant to sub. (4) (d) was not doing any of the acts therein enumerated~~.

SECTION 33. 201.43 of the statutes is repealed.

SECTION 34. 201.44 (3) and (7) of the statutes are repealed.

SECTION 35. 201.45 (3) of the statutes is repealed.

SECTION 36. 201.46 of the statutes is amended to read:

201.46 MISREPRESENTATION AS TO RISK. It ~~shall be~~ *is* unlawful for any insurance company to publish or permit any of its agents to publish any statement which ~~shall represent~~ *represents* said company as writing risks different in nature or class from those actually written by it, or ~~shall~~ falsely ~~represent~~ *represents* said company as confining its business to a particular class of risks. The distribution of any cards or other documents by any agent containing such false representations, or the existence of any sign exposed to public view containing them and belonging to such company, or any agent thereof, or the existence of any advertisement or statement containing any such false representations in any newspaper published in any town, village or city in which the company has an agent soliciting insurance shall be prima facie evidence of the violation of this section by the company. ~~The commissioner shall revoke the license of any company convicted of violating this section, and the licenses of all its agents immediately upon the filing of a certified copy of the record of such conviction with the commissioner. Whenever there shall be filed with him an affidavit indicating a violation of this section by any company, the commissioner shall immediately notify it of such filing and require it to show cause before him, within thirty days from such notification, why its license should not be revoked; and if it shall fail within the time specified to establish, to the satisfaction of the commissioner, that it has not violated this section in the manner alleged in such affidavit he shall immediately revoke its license and the license of all its agents. No license shall be granted to any company or to any agent thereof within one year from the date its license was revoked.~~

SECTION 37. 201.47 (3) of the statutes is repealed.

SECTION 38. 201.49 and 201.50 of the statutes are repealed.

SECTION 39. 201.53 (9) of the statutes is amended to read:

201.53 (9) Violations of this section shall not invalidate the policy, but if the insured wilfully violated any provision of this section, he shall be entitled to recover only such proportion of the amount otherwise payable under the policy as the remainder of the premiums which have become payable, after deducting any rebate and the value of any special favor or advantage or consideration or inducement in violation of this section, bears to the amount of such premiums. ~~Any company, officer, agent or employe thereof violating this section and any other person wilfully violating this section shall be punished by a fine of not less than $50 nor more than $300, or by imprisonment in the county jail for a term not exceeding 6 months, or by both such fine and imprisonment.~~

SECTION 40. 201.53 (10) of the statutes is repealed.

SECTION 41. 201.58 of the statutes is repealed.

SECTION 42. 201.60 (2) of the statutes is repealed.

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SECTION 43. 201.63 (16) and (17) of the statutes are repealed.

SECTION 44. 201.75 of the statutes is repealed.

SECTION 45. 201.83 of the statutes is repealed.

SECTION 46. 202.14 of the statutes is amended to read:

202.14 REPORTS OF SECRETARY AND TREASURER. The secretary of every town mutual shall annually prepare a statement showing its condition on the ~~thirty-first day of~~ December *31* preceding its annual meeting, which shall specify the whole number of policies issued, the whole number then in force, the aggregate amount then insured, the amount of losses paid during the year, the amount of losses sustained and unpaid, if any, and all other matters required by the ~~by-laws~~ *bylaws*. The treasurer shall before each annual meeting prepare a detailed financial statement of its affairs for the year ending the ~~thirty-first day of~~ December *31* preceding, showing amount on hand January first, amount received during the year from premiums, amount received from each separate assessment, amount received from other sources, amount paid for losses, amount paid for expenses, giving a detailed statement of every item of expenses, and amount of cash on hand. Such statements shall be read at the annual meeting and together with the action thereon shall be entered at length upon the records. ~~The company shall before February in each year make and file such report for the preceding year with the commissioner ,and for failure to so file shall forfeit and pay to the state the sum of twenty-five dollars.~~

SECTION 47. 202.19 of the statutes is repealed.

SECTION 48. 203.08 of the statutes is repealed and recreated to read:

203.08 COMPANY BOUND BY ILLEGALLY ISSUED CONTRACT. Any policy issued and delivered in violation of any provision of ss. 203.01 to 203.07 shall be binding upon the company.

SECTION 49. 203.22 of the statutes is amended to read:

203.22 Except as otherwise provided by law, no fire insurance company shall issue any policy in this state containing any provision limiting the amount to be paid in case of loss below the actual cash value of the property, if within the amount for which the premium is paid, unless, at the option of the insured, a reduced rate shall be given for the use of a coinsurance clause made a part of the policy. Any company may, by so providing in the policy, distribute the total insurance in the manner and upon as many items as specified therein, or limit the amount recoverable upon any single item, article or animal to an amount not exceeding the cost thereof, or to an amount specified in the policy. ~~Any company, officer or agent violating any provision of this section shall upon conviction thereof, be punished by a fine of not less than $100 nor more than $500 and the license of such agent and company may be suspended for a period not exceeding one year.~~

SECTION 50. 203.24 (11) of the statutes is repealed.

SECTION 51. 203.32 (13) (c) and (15) of the statutes are repealed.

SECTION 51m. 203.32 (14) of the statutes is amended to read:

203.32 (14) No person or organization shall wilfully withhold information from, or knowingly give false or misleading information to, the commissioner, any statistical agency designated by the commissioner, any rating organization or any insurer, which will affect the rates or premiums chargeable under this section. ~~A violation o fthis subsection shall subject the one guilty of such violation to the penalties provided in subsection (15).~~

SECTION 52. 203.52 and 203.53 of the statutes are repealed.

SECTION 53. 204.28 (5) of the statutes is repealed.

SECTION 54. 204.31 (3) (g) 1 and 5, (8) and (9) of the statutes are repealed.

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SECTION 55. 204.321 (3) (d) of the statutes is repealed.

SECTION 56. 204.322 (5) (d) of the statutes is repealed.

SECTION 57. 204.48 of the statutes is repealed.

SECTION 58. 204.49 (2), (3) and (4) of the statutes are repealed.

SECTION 59. 204.50 of the statutes is amended to read:

204.50 No person or organization shall wilfully withhold information from or knowingly give false or misleading information to the commissioner, any statistical agency designated by the commissioner, any rating organization, or any insurer, which will affect the rates or premiums chargeable under ~~sections~~ *ss.* 204.37 to 204.54. ~~A violation of this section shall subject the one guilty of such violation to the penalties provided in s. 204.53.~~

SECTION 60. 204.53 of the statutes is repealed.

SECTION 61. 205.02 of the statutes, as affected by chapter (Senate Bill 355), laws of 1969, is repealed.

SECTION 62. 205.03 (3) of the statutes is repealed.

SECTION 63. 205.08 (6), (7) and (8) of the statutes are repealed.

SECTION 64. 205.12 and 205.13 of the statutes are repealed.

SECTION 65. 206.14 (2) of the statutes is amended to read:

206.14 (2) No license shall be issued to any such stock company until the commissioner is satisfied that the rights of such policyholders are fully and legally determined. ~~Action by the commissioner denying such authority to transact business in this state shall be subject to review by the courts.~~

SECTION 66. 206.19 of the statutes is amended to read:

206.19 INSOLVENT COMPANY, DISCONTINUE BUSINESS. Whenever the assets of any life insurance company do not equal its liabilities, the commissioner may ~~give notice~~ *issue an order* to such company and its agents to discontinue issuing policies within this state until such time as its assets have become equal to its liabilities. ~~Any officer or agent who, after such notice has been given, issues or delivers a policy on behalf of such company before a new certificate of authority is issued shall forfeit for each offense not less than $100 nor more than $1,000.~~

SECTION 67. 206.38 (7) of the statutes is repealed.

SECTION 68. 206.41 (8) and (10) (c) of the statutes are repealed.

SECTION 69. 206.48 of the statutes is repealed.

SECTION 70. 206.49 (4) of the statutes is repealed.

SECTION 71. 206.51 (5) of the statutes is repealed.

SECTION 72. 207.05 to 207.08 of the statutes are repealed.

SECTION 73. 207.11 and 207.12 of the statutes are repealed.

SECTION 73m. 207.13 of the statutes is amended to read:

207.13 If any individual ~~shall ask~~ *asks* to be excused from attending and testifying or from producing any books, papers, records, correspondence or other documents at any hearing on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to a penalty or forfeiture, and he ~~shall~~ notwithstanding ~~be~~ *is* directed to give such testimony or produce such evidence, he must nonetheless comply with such direction, but he shall not thereafter be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he may testify or produce evidence pursuant thereto, and no testimony so given or evidence produced shall be received against him upon any criminal action, investigation or proceeding, ~~provided, that~~ *but* no such individual so testifying shall be exempt from prosecution or punishment for any perjury committed by him while so testifying and

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the testimony or evidence so given or produced shall be admissible against him upon any criminal action, investigation or proceeding concerning such perjury, nor shall he be exempt from the refusal, revocation or suspension of any license, permission or authority conferred, or to be conferred, pursuant to the insurance laws of this state, and ~~provided further, that~~ no person so testifying shall be exempt from proceedings for or the issuance of orders under ~~sections 207.01 to 207.10, or from penalties under section 207.11 for the violation of orders under section 207.08 by acts committed after the same shall have become final, or from penalties for the violation of court orders under sections 207.09 and 207.10 after the same shall be in effect~~ *ss. 207.01 to 207.04, 207.09, 207.10, 601.41 (4) and 601.64 (1), (2), (3) and (5).* Any such individual may execute, acknowledge and file in the office of the commissioner a statement expressly waiving such immunity or privilege in respect to any transaction, matter or thing specified in such statement and thereupon the testimony of such person or such evidence in relation to such transaction, matter or thing may be received or produced before any judge or justice, court, tribunal, grand jury or otherwise, and if so received or produced such individual shall not be entitled to any immunity or privilege on account of any testimony he may so give or evidence so produced.

SECTION 74. 208.03 (3) of the statutes is repealed.

SECTION 75. 208.04 and 208.05 of the statutes are repealed.

SECTION 76. 208.26 of the statutes is repealed.

SECTION 77. 208.31 to 208.33 of the statutes are repealed.

SECTION 78. 208.36 and 208.37 of the statutes are repealed.

SECTION 78m. 208.38 of the statutes is amended to read:

208.38. Any person who ~~shall~~ knowingly or wilfully ~~make~~ *makes* any false or fraudulent statement or representation in or with reference to any application for membership or in or with reference to any documentary or other proof for the purpose of obtaining membership in or benefit from any such corporation, society, order or association ~~as is mentioned in s. 208.36~~, for himself for any other person, shall be fined ~~in a sum~~ not less than $100 nor more than $1,000, or ~~be~~ imprisoned in the county jail not less than 3 months nor more than one year, or both; and any certificate of membership or policy so secured shall be absolutely void.

SECTION 79. 209.01, as affected by chapter (Senate Bill 355), laws of 1969, and 209.02 of the statutes are repealed.

SECTION 80. 209.03 of the statutes is amended to read:

209.03 NONPAYMENT OF JUDGMENT, BAR TO BUSINESS. No insurance company or mutual benefit society, order or association against which a judgment as an insurer ~~shall have~~ *has* been recovered in this state shall, after 60 days from the rendition of such judgment and while the same remains unpaid, issue any policy in this state~~;~~ ~~and in case such insurer or its officers shall violate this section it shall forfeit one thousand dollars. And any agent thereof who shall knowingly violate the same shall forfeit not less than one hundred nor more than five hundred dollars; provided, that if~~. *If* an appeal is taken ~~said~~ *the* 60 days shall not begin to run until after the case has been remitted to the trial court. ~~If the judgment appealed from shall be affirmed, any surety company which shall have executed any undertaking to stay proceedings upon such judgment, or to guarantee the payment or performance thereof, if such surety company shall not, within thirty days after notice of the filing of the remittitur, perform its undertaking in respect thereto, it shall forfeit its rights to transact such business in this state until it shall have fully performed such undertakings.~~

SECTION 81. 209.039 of the statutes, as affected by chapter (Senate Bill 355), laws of 1969, is repealed.

SECTION 82. 209.04 (7) and (9) (b) of the statutes are repealed.

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SECTION 83. 209.045 of the statutes is amended to read:

209.045 No person~~, firm or corporation~~ acting in the capacity of an insurance adviser, counselor or analyst and as such serving any person~~, firm or corporation~~ not engaged in the insurance business for compensation paid or to be paid by the person served, shall directly or indirectly receive any part of commission or compensation paid by any insurer or agent of any insurer in connection with the sale or writing of any insurance which is within the subject matter of any such service. ~~Any person violating the provisions of this section shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than $50 nor more than $500 or by imprisonment in the county jail not less than 30 days nor more than 90 days, or both.~~

SECTION 84. 211.16 of the statutes, as affected by chapter (Senate Bill 355), laws of 1969, is repealed.

SECTION 85. Chapter 601 of the statutes is created to read:

CHAPTER 601.

ADMINISTRATION OF THE INSURANCE LAWS.

SUBCHAPTER I.

GENERAL PROVISIONS.

601.01 Title, construction and purposes.
601.02 Definitions.

SUBCHAPTER II.

OFFICE OF THE COMMISSIONER OF INSURANCE.

601.11 Personnel.
601.12 Legal services.
601.13 Financial services; deposits.
601.14 Supporting services.
601.15 Oath.
601.16 Official seal and signature.
601.17 Bond.
601.18 Delegation.
601.19 Organization of the office.
601.20 Advisory councils and committees.

SUBCHAPTER III.

FINANCING OF THE INSURANCE OFFICE.

601.31 Fees.
601.32 Supplementary fees.

SUBCHAPTER IV.

POWERS AND DUTIES OF COMMISSIONER.

601.41 General duties and powers.
601.42 Reports and replies.
601.43 Examinations and alternatives.
601.44 Conducting examinations.
601.45 Examination costs.
601.46 Commissioner's records and reports.
601.47 Publications.
601.48 Participations in organizations.
601.49 Access to records.

SUBCHAPTER V.

PROCEDURES AND ENFORCEMENT.

601.61 Auxiliary procedural powers.
601.62 Hearings.
601.63 Notice and effective date of orders.

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PRELIMINARY COMMENT: This chapter, the 2nd to be completed in the revision of the insurance laws authorized by s. 13.84, provides the essential framework for the administration and enforcement of the insurance laws. It deals with the regulatory agency—its purposes, structure, personnel, financing, powers and duties, and the procedures it must follow in administering the law. In the existing insurance statutes of Wisconsin, these subjects are widely scattered and are treated in a multitude of sections, many ambiguous and repetitious and some even inconsistent. This chapter creates a simple and consistent framework for the enforcement of the insurance laws. Much has been left for administrative rule-making, to increase the flexibility with which the agency faces the world, and to help the law to maintain its vitality and its relevance.

This chapter is by its nature a skeleton only. Subsequent chapters dealing with the substance of regulation will provide the muscle and flesh; but a soundly constructed skeleton, with proper articulation at the joints, is needed in order to make the whole function properly.

After some general provisions, the chapter takes up the structure of the office of the commissioner of insurance (formerly the insurance department). There is little fundamentally new in this structure, except a search for simplicity and consistency. The problem of financing is especially difficult; while there is reason to question the merits of the existing system of financing the regulation of insurance through fees, if a change is made, the prevalence in this country of retaliatory provisions might make the change unduly expensive for Wisconsin companies doing business in other states. It would also reallocate costs in a significant way. This chapter continues the present method of financing the office, in somewhat streamlined form. A proposal for major change will be separately presented at a later date, after the necessary detailed studies have been completed.

The main part of the chapter deals with the powers and duties of the commissioner. These are stated in the broadest possible terms. One illustration is s. 601.41 (4) providing for the issuance of orders by the commissioner.

Any duty created by the insurance laws can be enforced by an order under this provision. There is no need to look elsewhere—all is here in a single sentence, with complete generality. The broad powers are accompanied by equally comprehensive provisions for protection against abuse.

Finally, several sections provide procedures and enforcement techniques—the fullest possible armory of weapons for enforcement of the commissioner's orders. Most of them are traditional, and only the completeness and comprehensive applicability of the armory is novel. There is one exception, in a novel compulsive forfeiture procedure provided in s. 601.64 (2), which is liberally adapted from European practice. It is roughly parallel to our injunction followed by contempt proceedings, but provides a somewhat different kind of leverage that may make it a useful alternative to injunction.

SUBCHAPTER I.

GENERAL PROVISIONS.

601.01 TITLE, CONSTRUCTION AND PURPOSES. (1) SHORT TITLE. This chapter may be cited as the "Administration of the Insurance Laws Act".

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(2) CONSTRUCTION. The insurance laws shall be liberally construed to achieve the purposes stated in sub. (3), which shall constitute an aid and guide to interpretation but not an independent source of power.

(3) PURPOSE. The purposes of the insurance laws shall be:

(a) To ensure the solidity of all insurers doing business in this state;

(b) To ensure that policyholders, claimants and insurers are treated fairly and equitably;

(c) To ensure that the state has an adequate and healthy insurance market, characterized by competitive conditions and the exercise of initiative;

(d) To provide for an office that is expert in the field of insurance, and able to enforce the insurance laws;

(e) To encourage full cooperation of the office with other regulatory bodies, both of this and other states and of the federal government;

(f) To improve and thereby preserve state regulation of insurance;

(g) To maintain freedom of contract and freedom of enterprise so far as consistent with the other purposes of the law;

(h) To encourage self-regulation of the insurance enterprise;

(i) To encourage loss prevention as an aspect of the operation of the insurance enterprise;

(j) To keep the public informed on insurance matters; and

(k) To achieve the other purposes stated in the insurance laws.

COMMENT: The general statement in subs. (2) and (3) concerning construction and purposes will eventually be transferred to ch. 600 (General Provisions), to apply to the entire code, not merely to this chapter. As made clear in sub. (2), the purposes of sub. (3) cannot be read to provide justification for any particular regulatory activity, nor as a basis for liability for failure to achieve the goals. The purposes do not constitute a source of power but an aid and guide to interpretation.

Sources for some particular purposes are Kimball, "The Purpose of Insurance Regulation: A Preliminary Inquiry in the Theory of Insurance Law", 45 *Minnesota Law Review* 471-524 (1961); and The Commission on Organization of the Executive Branch of Government, "Regulatory Commissions, A Report to Congress", March 1949, p. 2. The purposes referred to in par. (k), not expressly mentioned here, are classified and described in Kimball, *op. cit.* Specific statements of purpose also appear in the existing insurance laws. E.g. see s. 201.42 (1) and s. 645.01.

Sub. (3) (d) should not be read as suggesting that it is the proper role of the insurance office to replace the courts on insurance matters. However, through the complaint handling function, the office is inevitably drawn frequently into controversies between insurers and policyholders. Where there is a bona fide dispute the office should suggest to complainants that they consult counsel. Where the insurer is clearly right and the complainant has no meritorious case at all, he should be told so emphatically. On the other side, however, there are cases where the insurer's position is indefensible and where it is proper for the commissioner to "lean on" the company to force it to pay. This is a legitimate activity—indeed it is widely thought to be a main *raison d' etre* for economic regulation. It must be exercised with great restraint, so as not to put the commissioner in the posture of substituting himself for the courts, but it is legitimate when honestly and fairly done.

There is a precedent elsewhere for raising loss prevention [sub. (3) (i)] to a statutory level. Cf. Czechoslovak Law of October 25, 1966, on Insurance [36 Coll. of Laws, No. 82/1966, s. 4 (2)].

The term "solidity" in sub. (3) (a) is used advisedly. It has a

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great advantage over "solvency" which has too precise and too limited a technical connotation. "Solidity" is not intended to be mathematically precise—there is advantage to a term without clear definition which gives "flavor" or "color" to the purposes of regulation. Moreover it suggests much more than mere technical solvency. The public needs "solid" companies, not merely solvent ones.

The word "ensure" in sub. (3) (a), (b) and (c) was also chosen advisedly. It does not have the technical and financial significance of "insure" but does have the same general meaning—"to make sure" or "to make certain". The law should seek to make the listed goals certain or sure.

601.02 INTRODUCTORY COMMENT: Eventually this section will contain only those terms that are to be defined specially for this chapter, if there are any. Terms that have general and invariable definitions (hopefully all or nearly all terms that need to be defined) will be defined in Chapter 600 (General Provisions).

601.02 DEFINITIONS. In this chapter, unless the context indicates otherwise:

(1) "Adjuster" means any person who represents an insurer or an insured in negotiations for the settlement of a claim against the insurer arising out of the coverage provided by an insurance policy.

(2) "Advisory organization" means the same as in ss. 203.32 (10) (a) and 204.46 (1).

(3) "Agent" means the same as in s. 209.047.

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

(5) "Commissioner" means the commissioner of insurance of this state.

(6) "Control" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of another person, whether through the ownership of voting securities, by contract or otherwise. A person having a contract giving him control is deemed to be in control despite any limitations placed by law on the validity of the contract.

(7) "Insurance business" means the same as in s. 201.42 (2).

(8) "Insurer" means any person or association of persons doing an insurance business as a principal, and includes motor clubs, fraternal benefit societies, title guaranty corporations, cooperative associations under s. 185.981 and voluntary benefit plans under s. 185.991.

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

(10) "Proceedings" includes "actions" and "special proceedings" under ss. 260.02 and 260.03.

(11) "Unauthorized insurer" means any insurer not holding a valid certificate of authority for doing an insurance business in this state, and any insurer holding a valid certificate, with respect to business not authorized by the certificate. Unless the context requires a different meaning, "unauthorized insurer" includes a surplus lines insurer.

COMMENT: Cf. s. 203.24 on licensing of adjusters with sub. (1).

601.11 PERSONNEL. (1) DEPUTY COMMISSIONER. (a) *Appointment.* The deputy commissioner shall be appointed under the classified service and shall be subject to s. 15.73.

(b) *Acting commissioner.* When the office of commissioner is vacant, or when the commissioner is unable to perform his duties because of mental or physical disability, the deputy commissioner shall be acting commissioner. The deputy commissioner shall have such other duties and powers as the commissioner delegates and assigns to him.

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(2) OTHER PERSONNEL. Except for those employed under s. 601.14 (2) or otherwise specifically exempted, all personnel including staff attorneys shall be appointed under the classified service.

COMMENT: There may be some question about the merits of a system in which the responsible official, the commissioner, has no single subordinate he can call his own man. The attorney general has some. See s. 14.52. The secretary of administration has one. S. 16.003 (6). The secretary of agriculture has one. S. 93.02 (8) (b). The secretary of each department has one. S. 15.05 (2). See also s. 16.08 (2) (g).

This section nevertheless continues the present system. It has been argued that the politically appointed deputy would be an additional man to whom persons with axes to grind might go with substantial hope of success, and would provide an additional insulation of the commissioner (especially while new) from his technically competent staff. The politically appointed deputy was supported as a way to get a breath of fresh air into a department when it became moribund. There may be some merit on both sides of the argument. The committee's clear choice, however, was of the civil service, not the politically appointed, deputy.

Because the deputy will frequently be acting commissioner, he is subject to the same limitations as the commissioner, under sub. (1) (a).

Under prior law the deputy was automatically acting commissioner whenever the commissioner was absent. S. 200.03 (13). A commissioner who did not want to have his deputy act for him had therefore to remain in the capital. If he has no control over the selection of the deputy, the commissioner should have the option of delegating or declining to delegate to the deputy the power to act for him in his absence. Sub. (1) (b) so provides. It also provides for the case of disability so that there will be no unanticipated hiatus in responsibility for control of the office. The language of that part is similar to Wis. Const. Art. V, ss. 7 and 8.

The commissioner is specifically exempted from the rules of the classified civil service under s. 16.08 (2) (b). Persons rendering services on a contractual basis are exempted under s. 601.14 (2).

Under sub. (2) the appointment of staff attorneys and other specialists can be made under regular procedures. So there can be no doubt, special provision is made to authorize the appointment of staff lawyers. Such positions already exist, in fact.

601.12 LEGAL SERVICES. (1) LEGAL SERVICES. One or more assistant attorneys general shall devote substantially full time to the legal work of the office. One shall be designated the assistant attorney general in charge of insurance regulatory matters. The attorney general shall allocate personnel on a full-time, part-time or temporary basis as the legal needs of the office demand.

(2) ENFORCEMENT. Upon request of the commissioner, the attorney general shall proceed in any federal or state court or agency to recover any tax or fee related to insurance payable under the laws of this state and not paid when due, and any penalty or forfeiture authorized by the insurance laws. Upon request of the commissioner, the attorney general or, in a proper case, the district attorney of any county, shall aid in any investigation, hearing or other procedure under the insurance laws and shall institute, prosecute and defend proceedings relating to the enforcement or interpretation of the insurance laws, including any proceeding to which the state, or the insurance commissioner or any employe of the office, in his official capacity, shall be a party or in which he shall be interested.

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COMMENT: Sub. (1) does not contemplate that all legal work will be handled in the attorney general's office. Indeed, under s. 601.11 staff attorneys can be appointed within the limits of available funds, and additional legal help may be employed under s. 601.14 (2). This subsection is concerned with litigation and general matters over which, under present state policy, the attorney general should retain control.

There is a strong and well articulated view, on the other hand, that all legal services of whatever kind should be concentrated under the commissioner's control. Precedent for this view exists in the fields of agriculture and securities regulation. See ss. 93.05 (1) and 189.20 (1). See also s. 195.03 (3) for similar powers of the public service commission. This attitude conflicts with the view that the attorney general is the attorney for the state.

This subsection is a compromise between the conflicting views. The attorneys are subject to the general supervision and control of the attorney general but their major efforts are to be devoted to the needs of the insurance commissioner, and the commissioner will have at least some expectation of keeping qualified and experienced people, once they are developed. The arrangement would maintain the centralization of the state's legal services in the Justice Department as long as that is official state policy. The provision is consistent with the duties imposed on the attorney general by s. 14.53. When he needs it, the attorney general can obtain additional assistance under s. 14.13 (1).

In a few instances, it may be necessary for the commissioner to obtain special counsel, because of conflict with the attorney general or because the 2 officials are on the opposite sides of a dispute, or because the Justice Department is overburdened and cannot or will not supply adequate services, or because specialized services are required, or for other special reasons. This is already authorized in s. 14.13, and no special provision is necessary here.

Sub. (2) is necessary to create duties which the attorney general is required to perform under s. 14.53 (11), and the district attorney under s. 59.47. It is a generalized version of ss. 76.37 (4) and 201.42 (f). Naturally there is not, and in the nature of the case there cannot be, any way to compel them to perform. The law goes as far as it can by stating the duties.

No venue is specified, and the general law should be determinative on that point. The first sentence is comprehended within the 2nd, except that the first singles out the attorney general for collection of taxes, fees and penalties.

601.13 FINANCIAL SERVICES; DEPOSITS: (1) RECEIPT OF DEPOSITS. Subject to the approval of the commissioner, the state treasurer shall accept deposits from insurers and other licensees of the office as follows:

(a) Deposits required or permitted by the laws of this state;

(b) Deposits of domestic insurers or of alien insurers domiciled in this state if required by the laws of other states as prerequisite to authority to do an insurance business in other states; and

(c) Deposits resulting from application of any retaliatory provisions.

(2) TERMS OF DEPOSIT. Unless otherwise provided by the law requiring or permitting the deposit, each deposit shall be held in trust: first, for the claimants under s. 645.68 (3); 2nd, for the claimants under s. 645.68 (4); and thereafter, for all other creditors in the order of priority established by s. 645.68. No claim shall be made against the deposit of an alien insurer unless the claim arises out of a transaction in the United States.

(3) SECURITIES ELIGIBLE. All deposits may consist of any bonds, notes

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or other evidence of indebtedness which are permitted investments for life insurers under s. 206.34 (1) (a), (b), (bm), (bn) and (j). Each security must be approved by the commissioner, must be subject to disposition by the state treasurer, and must not be available to any other person except as expressly provided by law.

(4) VALUATION. Securities held on deposit shall be valued as provided by the insurance laws for valuation of such investments of life insurers, or at market, whichever is lower.

(5) RECEIPT, INSPECTION AND RECORD. The state treasurer shall deliver to the depositor a receipt for all securities deposited and shall permit the depositor to inspect its securities at any reasonable time. On application of the depositor the treasurer shall issue a certificate of the deposit as required by any law of the United States or of any other state or foreign country or by the order of any court of competent jurisdiction. The treasurer and the commissioner shall each keep a permanent record of securities deposited and of any substitutions or withdrawals and shall compare records at least annually.

(6) TRANSFER OF SECURITIES. No transfer of a deposited security, whether voluntary or by operation of law, shall be valid unless approved in writing by the commissioner and countersigned by the treasurer.

(7) NOT SUBJECT TO LEVY. No judgment creditor or other person shall levy upon any deposit held under this section.

(8) INTEREST AND SUBSTITUTIONS. Subject to s. 14.42 (13), a depositor shall, while solvent and complying with the laws of this state, be entitled:

(a) To receive interest and cash dividends accruing on the securities held on deposit for its account; and

(b) To substitute for deposited securities other eligible securities, as expressly approved by the commissioner.

(9) VOLUNTARY EXCESS DEPOSIT. A depositor may deposit eligible securities in excess of requirements to absorb fluctuations in value and to facilitate substitution of securities.

(10) RELEASE OF DEPOSIT. Upon approval of the commissioner, any deposit or part thereof shall be released upon the depositor's request to the extent permitted by law.

(11) ADVANCE DEPOSIT OF FEES. With the approval of the commissioner, any person required to pay fees or assessments to the state through the commissioner may make a deposit with the treasurer from which the fees or assessments shall be paid on order of the commissioner not less than twice each year. Upon request by the depositor, any balance remaining may be returned on the certificate of the commissioner that all fees and assessments have been paid to date.

COMMENT: This is essentially the same as ss. 209.01 and 209.02. Many changes have been made in form and minor ones in substance.

Sub. (2) is essentially s. 209.01 (2), adapted to the new provisions of ch. 645.

Sub. (3) responds to a legitimate desire of insurers to see a substantial extension of the list of investments eligible for deposits under s. 209.01 (3), in order to avoid the necessity of freezing large sums into unprofitable investments. If the list is broadened, however, either it must be broadened only to include extremely conservative investments for which diversification is irrelevant, or additional safeguards must be adopted. This formulation adopts the first alternative. The list is still limited but includes enough variety to meet the legitimate needs of most depositors. The commissioner's approval is required but his power would not extend far beyond a ministerial check to see if the law is satisfied.

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This section should be tied closely to the law governing permitted investments. When that law is revised it will be necessary to amend this section, and may be possible to greatly simplify it.

601.14 SUPPORTING SERVICES. (1) OFFICES. The department of administration shall provide suitable premises for the offices of the commissioner of insurance:

(a) In the city of Madison; and

(b) Elsewhere, if approved by the governor as necessary for the efficient operation of the office.

(2) MATERIALS, SUPPLIES, EQUIPMENT AND CONTRACTUAL SERVICES. The department of administration shall provide the office with all materials, supplies, equipment and contractual services necessary for its efficient operation, including reasonable library facilities and books. Part-time or temporary services of professionals and experts shall be provided by the department of administration upon the recommendation of the commissioner, and may be provided without regard to the restrictions of ss. 16.01 to 16.32.

COMMENT: Section 16.004 (1) provides that the secretary of administration shall execute the statutory duties and powers assigned to the department of administration. Ch. 16 provides in great detail his powers and duties as well as detailed provisions for the manner of their execution, in accordance with the purposes expressed in s. 16.001 (1). Under s. 16.004 (7), the insurance commissioner is given a mandate to cooperate with the secretary of administration and to comply with every request relating to his function. It remains for this section only to provide the broad statutory duties of the secretary of administration as they relate to the office of the commissioner of insurance. It replaces s. 200.03 (1), and the appointing provision of s. 200.04 (2).

The provision for a library is necessary if the office of the Wisconsin commissioner is to do a good job of regulating and is to develop additional stature in state insurance regulation. Present library facilities are inadequate for modern regulation.

The last sentence of sub. (2) permits unrestricted contracting for specialized services of a kind that have a limited availability, without bidding or other requirements, subject to budgetary limitations. Specialized personnel with talents that are available only at a high price must sometimes be used by the commissioner. If he cannot utilize or obtain the full-time services of qualified people, it is more economical to purchase expertise from outside consultants than to rely on the unqualified. Moreover, if he can get by with occasional contractual use of such specific services, economies can be effected, and the effectiveness of regulation enhanced. This subsection contemplates the use of the services of accountants, actuaries, economists, experts in the field of electronic data processing, and even additional lawyers or examiners who are needed for a limited time or for a special purpose. It is inappropriate to require that such services be contracted for in the same way as ordinary building maintenance services. This provision leaves wide discretion to the commissioner on selection of persons and setting of compensation, without freeing him from the necessity of getting cooperation from another responsible official. Serious improprieties will be effectively prevented but without hamstringing the commissioner.

601.15 OATH. The deputy commissioner shall take and file the official oath.

COMMENT: This is essentially the first sentence of s. 200.03 (13). The commissioner's oath is required by s. 15.06 (8). The contents of and procedures for filing oaths are prescribed by ch. 19.

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601.16 OFFICIAL SEAL AND SIGNATURE. (1) SEAL. The commissioner need not have nor use an official seal. Any statutory or common law requirement that an official seal be affixed shall be satisfied by the signature of the commissioner.

(2) SIGNATURES. Any signature of the commissioner may be in facsimile unless specifically required to be handwritten.

COMMENT: An official seal is a medieval anachronism. The law relating to documentary or record evidence now requires a seal only when the public body is required to have or keep such seal. S. 889.08 (1). Formerly only s. 76.37 (1) appears to have required the commissioner's seal. That section is appropriately amended here. The commissioner needs the *power* to have a seal, however, for he may find it necessary in dealing with some other state. See s. 990.01 (38) for the necessity of a written signature in general. See s. 601.18 for a specific requirement of a handwritten signature.

601.17 BOND. (1) BLANKET BOND. The commissioner shall procure a blanket bond conforming to s. 19.01 (2) covering the commissioner and each employe of his office in the sum of $100,000, applying separately to each covered person. The premium for the bond shall be allocated to the several appropriations under s. 20.145.

(2) QUALIFICATIONS OF SURETY. The bond shall be underwritten by an insurer authorized to transact surety business in this state and shall be approved by the governor.

COMMENT: Sub. (1) follows s. 200.18 but deletes the alternative of a position schedule bond, thus recognizing the trend toward the use of blanket bonds, which gentrally provide more comprehensive and more economical protection. In recent years, the office has in practice purchased blanket bonds. The statute is drafted to require a blanket position bond rather than a commercial blanket bond.

The premium allocation continues the effect of s. 200.18 (4) but in more general terms.

Section 19.01 (2) prescribes the content of the bond.

Sub. (2) follows s. 200.18 (3). The requirement of approval by the governor ensures that the commissioner alone shall not be the sole judge of the suitability of a contract intended to protect against his malfeasance. In practice the bond is procured by the department of administration under s. 16.71 (1).

Section 200.18 (2) specified the liability of the commissioner and his employes. It has been dropped because there appears to be no justification for a different rule for the insurance office than for other state agencies.

601.18 DELEGATION. Any power, duty or function vested in the commissioner by law may be exercised, discharged or performed by any employe of the office acting in the commissioner's name and by his delegated authority. Any person whose own course of action in good faith depends upon proof of the validity of an asserted delegation is not obligated to act until he is shown a written delegation with a handwritten signature of the commissioner or deputy commissioner.

COMMENT: The first sentence is patterned after Kentucky s. 304.024 with modifications. A mere facsimile signature should not be enough to give a subordinate the sweeping powers of the commissioner under such provisions as ss. 645.21 to 645.23.

601.19 ORGANIZATION OF THE OFFICE. The commissioner shall publish periodically in the Wisconsin administrative code an up-to-date chart and explanation of the organization of his office, making clear the allocation of responsibility and authority among the staff.

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COMMENT: This section is new. There is no reason that insurers and others who deal with a complex agency, in which *de facto* power of great magnitude and significance is widely dispersed, should not be able to learn accurately and easily from official sources where power and responsibility is supposed to be located. Of course, no chart can ever show the complete picture. Only by experience can persons dealing with the office know to whom the commissioner will listen and whom he will ignore. But such a chart should be an invaluable aid and should lessen the importance of personal acquaintance in dealing with the office. Moreover, its very existence will be a disciplinary device, helping to regularize and systematize the administrative processes, so that the exercise of authority will become more responsible and less adventitious.

Even in the absence of a statutory requirement, sound management would require a carefully thought-out organizational plan. It would also require communication of the plan to others, so that a minimum of time would be wasted in trying to find the right person with whom to deal.

Publication does not subject the organizational pattern to procedural requirements of rule making. See s. 227.02 (1) (a).

601.20 ADVISORY COUNCILS AND COMMITTEES. The commissioner may create advisory councils and committees under s. 15.04 (3) to assist him in dealing with regulatory problems. He may appoint members and may provide by rule for the creation, governance, duties and termination of any council or committee he establishes.

COMMENT: The power recognized in the section surely exists in the absence of statute. It is provided in s. 227.018, for rule-making procedures, and now in s. 15.04 (3). Even if this provision adds nothing to the legal powers of the commissioner, there is advantage in enacting it here, for it may encourage the use of advisory groups, and perhaps will endow them with more prestige and effectiveness.

There is precedent elsewhere for an insurance industry advisory board. New York s. 19 provides for one. North Carolina s. 58-27.1 also provides for a board similar to that in New York, with specific duties respecting rate hearings.

In other countries formal advisory boards are common. They exist, for example, in Austria, Belgium, Denmark, France, Germany, Greece, Italy, Norway, Portugal, Spain, Turkey, and the United Kingdom. For details see OECD, Supervision of Private Insurance in Europe 35, 222-23 (1963). One of the most successful has been the German *Beirat,* which has significant and helpful functions in the regulation of insurance, without lessening the ultimate authority of the regulatory agency.

There is Wisconsin experience with advisory boards in other fields. The banking review board, the savings and loan advisory committee and the consumer credit review board, established by ss. 220.035, 215.04, and 220.037, are illustrations from other financial fields. There is also an advisory committee for the department of administration under s. 16.003 (5).

The need for more formal advisory boards has been suggested in other regulatory contexts:

"The [Maritime] Commission now obtains the views of the industry informally. But some of the many different elements in the industry appear to feel that their views are not receiving proper representation in the Commission's councils. In view of the nature of the Commission's work and of the industry, a more formal channel for exchange of opinions might be useful on both sides.

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"Accordingly, it is suggested that an Industry Advisory Committee, fairly representing the major divisions of maritime industry and labor, be established to advise the Commission and the Administrator with respect to matters under their respective control." Task Force Report on Regulatory Commissions, Appendix N, p. 69, prepared for the Commission on Organization of the Executive Branch of the Government, Jan. 1949.

Advisory councils or committees potentially have a great deal to contribute. Much depends on how far they are accepted and used. Neither acceptance nor use of such boards can be forced upon a commissioner without diminishing his power and responsibility. For this reason, it is wise to make the appointment of such bodies possible without making it mandatory. Section 15.01 (5), (6) and (7) defines "board", "council" and "committee". The term "board" means a body with policy-making powers, and therefore is inappropriate. Either "council" or "committee" has a meaning too narrow to comprehend fully all bodies contemplated in this section, but as defined in that act, the 2 terms together comprehend the intended kinds of advisory bodies.

The way in which appointment is made and the way in which the councils or committees are used can best be settled by rules made under the usual rule-making procedures.

This proposal would merely enlarge the options of the commissioner, without confining his choice. He could shape advisory bodies in terms of size, formality, frequency of meeting or any other variable, or he could dispense with them altogether.

Three advisory councils now exist, one of them created by informal act of the commissioner and the others by statutory enactment. All serve useful functions. The insurance agents advisory board (now "council") is created by s. 209.039. The employe welfare plan advisory board (now council) is created by s. 211.16. Both sections have been dropped. While these bodies perform useful functions and should be continued, simplification of the statutes demands that such bodies be created in the same way as other advisory bodies, i.e. by rule, not by statute. Rules creating and governing them should therefore be promulgated simultaneously with the enactment of this chapter, so they may continue their useful existence on an appropriate basis.

SUBCHAPTER III.

FINANCING THE INSURANCE OFFICE.

601.31 and 601.32 INTRODUCTORY COMMENT: There are cogent reasons for a major change in the method of financing the insurance office, from fees to assessments. If anything approaching consensus on a change is to be achieved, however, the proposal will have to be further perfected and more fully explained, with the aid of additional statistical data now being gathered, before there is acceptance widespread enough for hope of passage.

Apart from the proposal for financing the department, the chapter on the administration of the insurance code has been developed to a point where there is general acceptance of its provisions. Enactment of this chapter would greatly simplify and improve the present law. Moreover, like ch. 645, this chapter is sufficiently separable from the rest of the insurance laws to be discussed and enacted separately. Consequently, this section simply continues the former law (ss. 200.12 and 200.13), almost without change, leaving major change for a separate proposal.

Section 200.13 (18) is changed because the broadening by s. 601.72 of the commissioner's role as attorney for service of process requires

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some method of discouraging unnecessary use. A higher fee is a very effective device.

SUBCHAPTER IV.

POWERS AND DUTIES OF COMMISSIONER.

601.41 INTRODUCTORY COMMENT: This is a general statement of the powers and duties of the commissioner. It is intended to be broadly framed. As any person knows who has had any contact with American insurance regulation, virtually unlimited *de facto* power resides in any commissioner who chooses to exercise it (described pithily by one eminent insurance executive as "any commissioner worth his salt"). Resistance to the commissioner's will can be very costly and impractical if the commissioner is stubborn and wilful. Unless the opponent is provided with ample financial resources, he cannot resist effectively.

Insurers and others subject to control under these broad powers are better protected against abuse by appropriate procedural safeguards, including judicial review, than by circumscribing narrowly the powers of the commissioner. It is far more realistic to give the commissioner board powers to be exercised in accordance with carefully worked-out and readily available procedural and judicial safeguards against abuse than, by failing to provide him with adequate powers, to encourage him to use illicit and uncontrolled methods to achieve his objective of protecting the public.

601.41 GENERAL DUTIES AND POWERS. (1) DUTIES. The commissioner shall administer and enforce the insurance laws. He shall act as promptly as possible under the circumstances on all matters placed before him.

(2) POWERS. The commissioner shall have all powers specifically granted to him, or reasonably implied in order to enable him to perform the duties imposed on him by sub. (1).

(3) RULES. The commissioner shall have rule-making authority under s. 227.014 (2).

(4) ENFORCEMENT PROCEEDINGS. (a) The commissioner shall issue such prohibitory, mandatory and other orders as are necessary to secure compliance with the law.

(b) On request of any person who would be affected by an order under par. (a), the commissioner may issue a declaratory order to clarify the person's rights or duties.

(5) INFORMAL HEARINGS AND PUBLIC MEETINGS. The commissioner may at any time hold informal hearings and public meetings, whether or not called hearings, for the purposes of investigation, the ascertainment of public sentiment, or informing the public. No effective rule or order may result from the hearing unless the requirements of ch. 227 are satisfied.

COMMENT: Sub. (1) incorporates part of s. 200.03 (2). The duty of the commissioner to act promptly is an important one, often honored in the breach rather than in the observance.

The powers of the commissioner should be as broad as his duty to protect the public, though carefully safeguarded against abuse by strict adherence to the requirements of procedural due process. Sub. (2) is intended to make it clear that very broad power is granted. The specifics of other sections are not intended to qualify the generality of the grant here.

The commissioner should have the broadest kind of rule-making power, limited only by its relevance to the laws he is implementing, by the administrative law in ch. 227, and by general legal and constitutional restraints.

Sub. (3) simply follows the grant of rule-making power in s.

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227.014 (2). Its inclusion in this place is necessary to perform the explanatory function of the statutes, even though it duplicates the existing provision.

A realistic appraisal of the commissioner's position in the state governmental machinery would recognize the importance of his role in supplementing statutory law. He interprets the law through the formal processes of rule-making, formal adjudication and informal executive decisions. Quite naturally it will never be possible to eliminate completely the quiet and informal negotiation through which much regulation takes place. Nor should it be eliminated altogether. On the other hand, fairness requires that, so far as possible, the patterns of regulation be systematized and publicized. That is, the criteria used by the commissioner to make decisions ought to be reasonably consistent and ought to be made public.

Commissioners of insurance as well as other regulators have been reluctant, traditionally, to announce in advance the rules and criteria on the basis of which they make decisions. The reluctance is one they share with judges and legislators. It is a reluctance to try to anticipate the full range of problems that may be comprehended within any announced rule. We are not accustomed, in our legal system, to deal with broadly stated rules in advance of the controversies to which they are applied. When judges decide, the decisions are usually explained and rules develop from the decisions and the accompanying opinions. But when controversies are decided by administrative agencies the rules are less often formulated because the decisions are often not announced publicly or are unaccompanied by reasons. There is little published material from which the lawyer may make generalizations.

If publicly known criteria for decision are considered desirable, they must be formulated either in the process of making decisions in individual cases, or by the promulgation of rules. It is not realistic to expect the development of clearly stated doctrine in insurance regulation through individual decisions. The only hope is to encourage expanded rule making. The real problem is finding a way to do it.

The first requisite is a broad grant of power to make rules, provided by s. 227.014 (2) and confirmed here. The 2nd requisite is an appreciation by the regulator of the importance of formal rule making to clarify the criteria of his decision making. It is this requisite that makes its especially important to repeat the grant in order to emphasize to the commissioner the rule-making power he has, and to point out its great value as a tool.

It is customary to think of rules as abstract and generalized formulations of policy. They need not be. The only generality they need is that they should apply to everyone similarly situated. Otherwise they can be as specific and concrete as the administrator wishes, even as specific and concrete as a litigated case. Professor Davis [*Administrative Law Treatise* s. 7.07 (1958)] notes that anything that can be accomplished in an adjudicatory opinion can be accomplished as well by a rule. A rule can be vague or precise, or partly one and partly the other. It can be as concrete and singular as desired, being illustrated by a single set of facts to which it is limited. Unlike a case, it can set forth any desired number of concrete illustrations, using facts of real cases, or hypothetical facts, or both. So long as it stays within the limits set by the standards of the authorizing statute, it will be valid.

While a trial-type hearing is the best way to resolve specific disputes of fact, the proper method to use in dealing with questions of law or policy is argument—written and oral. Moreover, it should not

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be narrowly circumscribed argument, as in appellate proceedings where the issues tend to be too narrowly framed.

"The extreme weakness of the procedure of appellate courts for resolving issues of law or policy is that parties not before the court have no chance to be heard, even when the law or policy to be made will vitally affect them. The typical case has two parties, one on each side. . . . Occasional cases in the Supreme Court of the United States involve a dozen or even two dozen amicus curiae briefs, but such cases are highly exceptional. Neither trial courts nor appellate courts have machinery for learning the positions and desires of hundreds or thousands or tens of thousands of parties who want to express themselves. Neither do administrative agencies which are following the procedure of adjudication.

"Rule-making procedure is the best procedure we have for allowing large numbers of parties to express what they want with respect to law or policy that will affect them. The usual procedure . . . is publishing proposed rules and inviting interested parties to make written comments. Anyone and everyone is allowed to express himself and to call attention to the impact of various possible policies on his business, activity, or interest. And this is the kind of help that agencies often need in order to make the law or the policy that is sound and wise and just." Davis, *Administrative Law Treatise* s. 6.13 (1958), in 1965 Supplement.

The commissioner should have broad rule-making power and should use it far more extensively and systematically than he now does to build up a predictable jurisprudence of insurance regulation as a dependable guide to regulated persons and to the public.

The commissioner's power to issue orders must be as wide as the insurance laws themselves. Otherwise the laws will be unenforced and unenforceable. The existence of the power to compel will enable the commissioner to negotiate settlements and induce compliance in most instances without the necessity of taking formal actions and issuing orders.

If orders do issue, they will normally result from adjudication, and should be issued in accordance with the ch. 227 requirements of notice and hearing. Special procedural rules are supplied by ss. 601.61 to 601.63. Section 601.64 provides for enforcement of orders.

The possibly serious consequences of an order issued after a course of action is undertaken and the desirability of encouraging compliance as a preferable alternative to punishing violation is enough to justify the availability of a declaratory order proceeding, at the discretion of the commissioner.

This subsection is concerned with enforcement proceedings and resulting orders. Some nonenforcement procedures need to be treated specially. Licensing and rate approval are illustrations. They are neither rule-making nor enforcement proceedings, though the orders resulting from them are enforceable. Licensing and rate approval are now treated specially in the law and should probably continue to be separately treated.

Sub. (5) deals with a problem seldom recognized. Like all other agencies, the commissioner may find it useful to exercise his administrative powers of investigation and of information transmittal in many ways. One important way is by the use of investigatory, educational or multipurpose hearings. Although such hearings would generally not be subject to the restraints of ch. 227, in the past the commissioner has sometimes been reluctant to proceed with investigatory hearings because of the fear that compliance with the full

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panoply of procedures under ch. 227 would be required. This section is intended to eliminate any reluctance, and to give the commissioner freedom to investigate and to inform without the procedural formalities and cumbersomeness of adjudication and rule making.

Hearings under this provision should be given the flexibility befitting hearings intended partly to provide dialogue and an official channel for protest. They are not subjected to the rigid rules of procedure required for adjudication and rule making, but they should be conducted fairly. No point of view should be given unfair advantage and no witness should be unfairly treated. Nor should such hearings be a platform for publicity-seeking witnesses. Considerations of these kinds will enter into a decision whether, where, when and with what procedure hearings and questions of this kind will be held. Though it may not be practicable to subject the commissioner to effective control on these matters, an exhortation to be fair and just is not without its point. All hearings not subject to the requirements of ch. 227 should be conducted in conformity with standards of fair play and substantial justice.

601.42 REPORTS AND REPLIES. (1) REPORTS. The commissioner may require from any person subject to regulation under the insurance laws:

(a) Statements, reports, answers to questionnaires and other information, and evidence thereof, in whatever reasonable form he designates, and at such reasonable intervals as he may choose, or from time to time;

(b) Full explanation of the programming of any data storage or communication system in use; and

(c) That information from any books, records, electronic data processing systems, computers or any other information storage system be made available to him at any reasonable time and in any reasonable manner.

(2) FORMS. The commissioner may prescribe forms for the reports under sub. (1) and specify who shall execute or certify such reports. The forms shall be consistent, so far as practicable, with those prescribed by other jurisdictions.

(3) ACCOUNTING METHODS. The commissioner may prescribe reasonable minimum standards and techniques of accounting and data handling to ensure that timely and reliable information will exist and will be available to him.

(4) REPLIES. Any officer, manager or general agent of any insurer authorized to do or doing an insurance business in this state, any person controlling or having a contract under which he has a right to control such an insurer, whether exclusively or otherwise, any person with executive authority over or in charge of any segment of such an insurer's affairs, and any insurance agent or other person licensed under the insurance laws shall reply promptly in writing or in other designated form, to any written inquiry from the commissioner requesting a reply.

(5) VERIFICATION. The commissioner may require that any communication made to him under this section be verified.

(6) IMMUNITY. In the absence of actual malice, no communication to the commissioner required by law or by the commissioner shall subject the person making it to an action for damages for defamation.

COMMENT: Sub. (1) is similar to the first sentence of s. 200.04. It comprehends also ss. 200.04 (1); 200.26 (3) and (5); 201.32 (6) (a) (last clause); 202.14 (last sentence). It is important that it be couched in broad and flexible terms, for it is not clear what major changes may take place in the future as a result of the communications revolu-

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tion engulfing us. In particular, the language should be broad enough to empower the commissioner to require information in any form it may take, such as data on tapes, drums and discs, as well as on paper. For safety's sake, a special provision to that effect is included. "Electronic data processing system" may be too restrictive a term to suffice alone.

New developments may also change the timing as well as the nature of the reports.

Sub. (2) departs from present s. 200.03 (7), which makes it mandatory for the commissioner to prepare and supply forms. This provision makes it optional because it is not clear that regulation of the future will even use uniform annual statements of the present kind. An entirely different kind of surveillance may be both required and made possible by modern techniques. Much flexibility must be left to the commissioner to adapt himself to the needs of tomorrow. Flexibility is in the best interests of the regulated as well as the regulator. Flexibility and generality in statute law facilitates uniformity in practice among the states.

Sub. (3) deals with a delicate problem. To require uniformity of computer programs or systems would prevent experimentation. That is not justified, at least at this stage of development. However, it is important that insurers not be permitted to obfuscate and conceal by using the mysteries of modern communication techniques. It is fair to impose reasonable minimum standards that will ensure that the commissioner can learn what he needs to know. One of the most important aspects of regulation in the future surely will be the checking of the internal controls of insurer information systems to make certain that the insurer itself is obtaining accurate information. Thereafter, for big and well organized insurers, the process of regulation will be much simpler than now. Of course, a wise commissioner will consult with the industry before prescribing standards, to ensure that they are not unnecessarily burdensome and are practical.

Sub. (4) is based on present s. 201.49, expanded to more general application. It comprehends most but not quite all cases covered by s. 645.07 and is not restricted to delinquency situations but is of general application. In one aspect, the provision moves much in advance of existing law, for it contemplates the possibility that the commissioner may wish the reply in the form of processed data from the insurer's communications systems, rather than in writing. The law must keep pace with information communication technology.

Sub. (6) probably states existing law, but is desirable to alleviate concern on the part of licensees.

601.43 EXAMINATIONS AND ALTERNATIVES. (1) POWER TO EXAMINE. (a) *Insurers and other licensees.* Whenever he deems it necessary in order to inform himself about any matter related to the enforcement of the insurance laws, the commissioner may examine the affairs and condition of any licensee under the insurance laws or applicant for a license, of any person or organization of persons doing or in process of organizing to do an insurance business in this state, and of any advisory organization serving any of the foregoing in this state.

(b) *Collateral examinations.* So far as reasonably necessary for an examination under par. (a), the commissioner may examine the accounts, records, documents or evidences of transactions, so far as they relate to the examinee, of any officer, manager, general agent, employe, person who has executive authority over or is in charge of any segment of the examinee's affairs, person controlling or having a contract under which he has the right to control the examinee whether exclusively or with others,

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person who is under the control of the examinee, or any person who is under the control of a person who controls or has a right to control the examinee whether exclusively or with others.

(c) *Availability of records.* On demand every examinee under par. (a) shall make available to the commissioner for examination any of its own accounts, records, documents or evidences of transactions and any of those of the persons listed in par. (b). Failure to do so shall be deemed to be concealment of records under s. 645.41 (8), except that if the examinee is unable to obtain accounts, records, documents or evidences of transactions, failure shall not be deemed concealment if the examinee terminates immediately the relationship with the other person.

(2) DUTY TO EXAMINE. (a) *Insurers and rate service organizations.* The commissioner shall examine every domestic insurer and every licensed rate service organization at intervals to be established by rule.

(b) *On request.* Whenever he is requested by verified petition signed by 25 persons interested as shareholders, policyholders or creditors of an insurer alleging that there are grounds for formal delinquency proceedings, the commissioner shall forthwith examine the insurer as to any matter alleged in the petition. Whenever he is requested to do so by the board of directors of a domestic insurer, the commissioner shall examine the insurer as soon as reasonably possible.

(c) *Specific requirements.* The commissioner shall examine insurers as otherwise required by law.

(3) AUDITS OR ACTUARIAL EVALUATIONS. In lieu of all or part of an examination under subs. (1) and (2), or in addition to it, the commissioner may order an independent audit by certified public accountants or actuarial evaluation by actuaries approved by him of any person subject to the examination requirement. Any accountant or actuary selected shall be subject to rules respecting conflicts of interest promulgated by the commissioner. Any audit or evaluation under this section shall be subject to s. 601.44, so far as appropriate.

(4) ALTERNATIVES TO EXAMINATION. In lieu of all or part of an examination under this section, the commissioner may accept the report of an audit already made by certified public accountants or actuarial evaluation by actuaries approved by him, or the report of an examination made by the insurance department of another state.

(5) PURPOSE AND SCOPE OF EXAMINATION. An examination may but need not cover comprehensively all aspects of the examinee's affairs and condition. The commissioner shall determine the exact nature and scope of each examination, and in doing so shall take into account all relevant factors, including but not limited to the length of time the examinee has been doing business, the length of time he has been licensed in this state, the nature of the business being examined, the nature of the accounting records available and the nature of examinations performed elsewhere. The examination of an alien insurer shall be limited to insurance transactions and assets in the United States unless the commissioner orders otherwise after finding that extraordinary circumstances necessitate a broader examination.

COMMENT: In addition to the general examination provisions of s. 200.04 (2), specific provisions related to visitorial powers are scattered elsewhere in the Wisconsin law. For example s. 208.32 now covers the examination of fraternals, and s. 200.26 (4) covers nonprofit service plans. Sub. (1) is cast in sufficiently general terms to make such specific provisions unnecessary. It also is broad enough to include pools, syndicates, joint underwriting associations or other intercorporate groups doing an insurance business.

Investigation for the purpose of ascertaining whether unfair trade

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practices are being committed, as provided in s. 207.05, is unnecessary, since sub. (1) is more far-reaching.

The present general examination provisions [ss. 200.03 (4) and 200.24 (2)] subject only companies and agents to the examination process. The new provision includes all licensees and other persons doing an insurance business, whether licensed or not.

Par. (b) is based in part on Kentucky s. 304.033.

Most insurance codes permit examinations of insurers as often as the commissioner deems it necessary. They also generally require an examination of domestic insurers at minimum specified intervals, but allow the commissioner discretion in setting minimum time periods for foreign and alien companies. The most generally adopted time period for domestic companies is 3 years. Other minimum periods range from 6 months set by Texas Art. 1.15 (for a new company during its first 3 years of existence), to 5 years, as in Maine Title 24, s. 59 (for a domestic stock company) and Georgia, s. 56-208 (1). This section permits the commissioner to set the time interval by rule. Most observers believe the resources of the commissioner are very badly deployed in examination of insurers. He should have wide discretion in using his forces effectively, but the importance of the subject is such that he should exercise his discretion by formal rule making and not by more casual decision processes.

Examples of the specific legal requirements mentioned in sub. (2) (c) are ss. 201.14 (5) and 203.16.

The source of the provision requiring examination on request of interested parties is s. 200.04 (2) and Calif. s. 730. Massachusetts requires an examination if requested by the affidavit of "five or more stockholders, creditors, policyholders or persons pecuniarily interested therein. . ." Mass. c. 175, s. 4. Colorado permits an examination "upon the request of five or more of the policyholders representing at least one hundred thousand dollars insurance in force, who shall make affidavit of their belief, with specifications of their reasons therefor in writing that such company is in an unsound or insolvent condition. . ." Colorado s. 72-1-10 (6).

Section 200.04 (2) required an examination "when written charges are filed against any company or insurance agent alleging that any return or statement filed by it with the commissioner is false, or that its affairs are in an unsound condition, or that it has violated the insurance laws of this state. . ." This provision is too wide-open in triggering the examination process. The commissioner should not be at the mercy of isolated complainants in planning his examination program. The new provision requires verified charges instead of written charges, and requires 25 complainants rather than one. There was some thought that the commissioner should not ever be required to examine on petition of interested parties, on the ground that it would subject insurers to the risk of blackmail. The concern seems extravagant, especially in view of the fact that no such problem seems ever to have arisen from the present much more liberal law. The petition must be verified and unbased petitions are not likely. Moreover, the commissioner can limit the scope of the examination under sub. (5).

Of course, the commissioner is always free to examine on his own motion so the proposed change structures restraints only against third parties, not against the commissioner.

Section 208.32 (3) requires the commissioner to examine a fraternal upon its request. This trigger for the examination process has been extended to all insurers. It is protected against abuse by the fact that the insurer pays the cost, and it enables domestic insurers to meet the requirements of other states.

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Audits by independent accountants are not new, but unusual for this country. Mass. c. 175, s. 4 now provides: "Whenever he [the commissioner] deems it advisable he shall cause a complete audit of the books of the company to be made by a disinterested expert accountant." Auditing by independent accountants has also been the common practice and main means of verification in the United Kingdom. See Insurance Companies Act, 1958 (6 and 7 Eliz. 2 ch. 72), 9, and Companies Act 1948 (11 and 12 Geo. 6 ch. 38), SS. 159-63.

In most European countries, insurers must have their accounts audited by independent auditors or accountants. See O.E.C.D., Supervision of Private Insurance In Europe 23. For Germany, as a particular example, see Prolss, Versicherungs-aufsichtsgesetz, 5th ed. 1966, at pp. 474-95 (commenting on German Insurance Regulation Code ss. 57-59), and Aktiengesetz (German Corporation Code) of 1965, ss. 162-166.

Normally, the commissioner should prescribe by rule for independent audits on actuarial evaluations, but he should have the power to order one for good reason even though no rule has been promulgated.

The rules to be promulgated on conflicts of interest would presumably be selected from the rules applicable to the employes of the office.

Sub. (4) combines and slightly modifies several existing provisions: ss. 208.32 (2) and 200.04 (5), for example. It applies to audits and evaluations the commissioner does not order.

Sub. (5) is a new departure. Traditionally examinations have been comprehensive. It should be possible for the commissioner to spot-check instead. Indeed, the computer age may make possible the development of scientific "strategies" for examination that will make the old-fashioned and inefficient comprehensive examination obsolete.

601.44 CONDUCTING EXAMINATIONS. (1) ORDER OF EXAMINATION. For each examination under s. 601.43, the commissioner shall issue an order stating the scope of the examination and designating the examiner in charge. Upon demand a copy of the order shall be exhibited to the examinee.

(2) ACCESS TO EXAMINEE. Any examiner authorized by the commissioner shall, so far as necessary to the purposes of the examination, have access at all reasonable hours to the premises and to any books, records, files, securities, documents or property of the examinee and to those of persons under s. 601.43 (1) (b) so far as they relate to the affairs of the examinee.

(3) COOPERATION. The officers, employes and agents of the examinee and of persons under s. 601.43 (1) (b) shall comply with every reasonable request of the examiners for assistance in any matter relating to the examination. No person shall obstruct or interfere with the examination in any way other than by legal process.

(4) CORRECTION OF BOOKS. If the commissioner finds the accounts or records to be inadequate for proper examination of the condition and affairs of the examinee or improperly kept or posted, he may employ experts to rewrite, post or balance them at the expense of the examinee.

(5) REPORT ON EXAMINATION. The examiner in charge of an examination shall make a proposed report of the examination which shall include such information and analysis as is ordered in sub. (1), together with the examiner's recommendations. Preparation of the proposed report may include conferences with the examinee or his representatives at the option of the examiner in charge. The proposed report shall remain confidential until filed under sub. (6).

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(6) ADOPTION AND FILING OF EXAMINATION REPORT. The commissioner shall serve a copy of the proposed report upon the examinee. Within 20 days after service, the examinee may serve upon the commissioner a written demand for a hearing on the contents of the report. If a hearing is demanded, the commissioner shall give notice and hold a hearing under ch. 227, except that on demand by the examinee the hearing shall be private. Within 60 days after the hearing or if no hearing is demanded then within 60 days after the last day on which the examinee might have demanded a hearing, the commissioner shall adopt the report with any necessary modifications and file it for public inspection, or he shall order a new examination.

(7) COPY FOR EXAMINEE. The commissioner shall forward a copy of the examination report to the examinee immediately upon adoption, except that if the proposed report is adopted without change, the commissioner need only so notify the examinee.

(8) COPIES FOR BOARD. The examinee shall forthwith furnish copies of the adopted report to each member of its board of directors or other governing board.

(9) COPIES FOR OTHER PERSONS. The commissioner may furnish, without cost or at a price to be determined by him, a copy of the adopted report to the insurance commissioner of each state in the United States and of each foreign jurisdiction in which the examinee is authorized to do business, and to any other interested person in this state or elsewhere.

(10) REPORT AS EVIDENCE. In any proceeding by or against the examinee or any officer or agent thereof the examination report as adopted by the commissioner shall be admissible as evidence of the facts stated therein. In any proceeding commenced under ch. 645, the examination report whether adopted by the commissioner or not shall be admissible as evidence of the facts stated therein. In any proceeding by or against the examinee, the facts asserted in any report properly admitted in evidence shall be presumed to be true in the absence of contrary evidence.

COMMENT: Sub. (1) is adapted from N.Y. s. 29. It also is similar to part of s. 200.04 (2). It is crucial that the commissioner shall be able to begin an examination without advance notice, whenever he deems it advisable.

This provision gives wide discretion to the commissioner to specify what he wishes the examination to include. N. Y. s. 29 would specify as the sole sources the books, documents, records of the insurer, and the sworn testimony of officers and others. That is too narrow. Reliable evidence should be acquired wherever it can be found.

Sub. (2) is patterned after N. Y. s. 29.

Sub. (3) is similar in part to a sentence in N. Y. s. 29, and to a clause in s. 200.04 (2).

About half of the states have a provision similar to sub. (4), which follows Kentucky s. 304.034, except for the following clause: "if such person has failed to correct such action after the commissioner has given him notice and a reasonable opportunity to do so." There should be no grace period as a matter of right for making records adequate.

Before the proposed report is made, it may be desirable to have extensive consultation with the employes and officers of the examinee. Errors may thus be corrected without the necessity of a formal hearing. But informal consultation should be in the discretion of the examiner in charge to minimize the risk of pressure or overreaching by the examinee. Sub. (5) so provides. The confidentiality required in the last sentence of sub. (5) is important. It would be grossly unfair to

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publish a critical report before it has been evaluated and accepted by the commissioner, after a hearing if the examinee wishes it.

Sub. (6) is adapted from N. Y. s. 30. The purpose of the hearing is to enable the insurer to get the report corrected if necessary before it is released. Though the report should be freely available to the public, that should be true only after there is reasonable ground to believe it correct. To protect the insurer against unjustified harm resulting from the publication of misinformation, it is important that an opportunity exist to correct errors before the insurer's alleged weaknesses are revealed.

In the examination section relating to fraternal benefit socieites, Wisconsin law has provided that the report shall not be made public until "a copy thereof shall have been served upon such society, at its home office, nor until such society shall have been afforded a reasonable opportunity to answer any such financial statement, report or finding and to make any showing in connection therewith as it may desire." S. 208.32 (4). This section more rigorously structures the procedure to be followed by any examinee wishing to assert its objections, and provides all insurers with the protection now provided only in s. 208.32 (4), against official disclosure of incorrect information through premature publication of the report. A new examination would be ordered under sub. (6) when the investigation or report is so badly done that it cannot be patched up enough to be satisfactory.

Subs. (7) and (8) essentially follow New York s. 31, sub. (9) is new, and sub. (10) is based on N. Y. s. 30 and complements s. 889.18. If the report has been adopted, there has been an opportunity to contest its findings in a hearing and a presumption is reasonable. The reason for not requiring adoption before creating a rebuttable presumption in delinquency proceedings cases under ch. 645 is to avoid the necessity of a superfluous hearing before the court proceeding. What the provision does for delinquency proceedings cases is to place the burden of going forward with the evidence on the insurer, if the commissioner enters the report as evidence. This does not seem an unreasonable burden in such proceedings.

601.45 EXAMINATION COSTS. (1) COSTS TO BE PAID BY EXAMINEE. The reasonable costs of an examination under ss. 601.43 and 601.44 shall be paid by the examinee except as provided in sub. (4). The costs shall include the salary and expenses of each examiner and any other expenses which may be directly apportioned to the examination.

(2) DUTY TO PAY. The amount payable under sub. (1) shall become due 10 days after the examinee has been served a detailed account of the costs.

(3) DEPOSIT. The commissioner may require any examinee, before or from time to time during an examination to deposit with the state treasurer such deposits as the commissioner deems necessary to pay the costs of the examination. Any deposit and any payment made under subs. (1) and (2) shall be credited to the appropriation under s. 20.145 (1) (g).

(4) EXEMPTIONS. On the examinee's request or on his own motion, the commissioner may pay all or part of the costs of an examination from the appropriation under s. 20.145 (1) (g), whenever he finds that because of the frequency of examinations or other factors, imposition of the costs would place an unreasonable burden on the examinee. The commissioner shall include in his annual report information about any instance in which he applied this subsection.

(5) RETALIATION. Deposits and payments under this section shall not be deemed to be a tax or license fee within the meaning of any statute. If

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any other state charges a per diem fee for examination of examinees domiciled in this state, any examinee domiciled in that other state shall be required to pay the same fee when examined by the insurance office of this state.

COMMENT: The law with respect to payment of examination costs is left virtually intact. If change is made later from a fee schedule to assessments as the basis for financing the process of regulation, this section would have to be amended, since examination costs would then normally be paid by the office budget.

The only important change of substance is in sub. (4), giving the commissioner power to remit the costs in hardship cases. This is generalized from s. 211.07, applying only to employe welfare funds. The remainder of the section is to be found mainly in s. 200.04 (4). Several other provisions will also be superseded.

The present system, under which each insurer pays for its own examinations, has long been criticized for breeding conflict of interest problems, and for staying the hand of the commissioner from examining marginal companies because of their inability to pay. Equally important, allocation of costs to specific companies will become less appropriate as the traditional examination becomes less important for determining the financial condition of insurers. A change in the financing methods from a fee to an assessment system would mitigate those problems.

601.46 COMMISSIONER'S RECORDS AND REPORTS. (1) RECORD MAINTENANCE. The commissioner shall maintain the records required by law and those necessary to provide for the continued effective operation of the office, to constitute an adequate and proper recording of its activities and to protect the rights of the people of this state. The records shall be preserved in the office except as provided in s. 16.80.

(2) RECORD OF PROCEEDINGS AND ACTIVITIES. The commissioner shall maintain a permanent record of his proceedings and important activities, including a concise statement of the condition of each insurer visited or examined by him, and including a record of all certificates of authority and licenses issued by him.

(3) ANNUAL REPORTS. Prior to September 1 of each year, the commissioner shall make a report to the governor and to the legislature which shall include, for the preceding calendar year:

(a) The chart and explanation prepared under s. 601.20;

(b) A general review of the insurance business in this state, including a report on emerging regulatory problems, developments and trends;

(c) Recommendations for legislation;

(d) A statement describing all legal proceedings instituted by or against him, including those commenced under ss. 601.64 and 601.71;

(e) A summary of the complaints made to or processed by the office about insurers, agents and others connected with insurance, and information about their disposition;

(f) A summary of the complaints made to the office about the office, and a report on the disposition thereof;

(g) A summary of rules promulgated and circular letters distributed;

(h) A list of all insurers authorized to do business in this state during the year, with appropriate and useful information concerning them; including a list of insurers organized, admitted, merged or withdrawn;

(i) A list of all revocations of licenses or certificates of authority and the reasons therefor;

(j) The information required to be included by s. 645.09;

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(k) A list of examination reports adopted and filed, and to the extent that the commissioner deems it useful, summaries of and excerpts from such reports, except that no summaries or excerpts shall be published that might be misleading because taken out of context;

(m) The changes made in the insurance laws;

(n) A summary of receipts and expenses, including the information required to be included by s. 601.45 (4);

(o) The information required to be included by s. 102.65 (15);

(p) The kind and amount of insurance carried in the state insurance fund together with the amount of premiums collected, the source and nature of any other income, and the disbursements made. The report shall state separately the premiums, losses, the kind and amount of insurance carried on state property, and on other than state property; and

(q) Such other information on the general conduct and condition of insurers doing business in this state as the commissioner or the governor deems necessary or as is prescribed by law.

(4) PUBLIC INSPECTION. All records and reports shall be open to public inspection unless specifically otherwise provided by statute or by rule.

(5) COPIES OF RECORDS. The commissioner shall provide to any person on request certified or uncertified copies of any record in the department that is open to public inspection.

COMMENT: The first sentence of sub. (1) is adapted from s. 3 of the draft of a proposed bill, the "Federal Records Administration Act of 1949," providing for the creation, preservation, management, and disposal of records of the United States, which appears in "Task Force Report on Records Management" [Appendix C], prepared for the Commission on Organization of the Executive Branch of Government, January 1949. Sections 19 *et seq.* of that draft act deal with the destruction of records. The second sentence ties the office to s. 16.80 on the preservation and destruction of public records. Insurance codes, in the absence of other provisions, often provide their own procedures for destruction of records. See e.g. Ky. 304.025.

Sub. (2) is based on ss. 200.15 (1) and 200.03 (14).

Sub. (3) is adapted from present s. 200.15 (2), with some additions.

Wis. Const. Art. IV, s. 25 puts restraints on contracts for printing that make prompt publication of the annual report difficult. September 1 is a date that will press the office as much as is reasonable. It is unfortunate, however, that the report is not available each year long before that date. It would be much more useful if it were.

Sub. (3) (b) is based in part on New York s. 18 (1). The 2nd part is intended to overcome the ever-present danger of over-emphasis on detail, and to encourage the taking of a long view. Par. (c) is based on N. Y. s. 18 (2). Ultimately a section providing special criminal proceedings will be inserted between ss. 601.64 and 601.71. When it is, par. (d) should be amended to include it. Par. (f) may not achieve a great deal, but may be of some assistance. Recent interest in the Scandinavian institution of the 'ombudsman' may eventually lead to an effective device for controlling abuse of discretion by administrative officials generally. Before that is achieved, this requirement cannot hurt and may help. Par. (k) exhorts the commissioner not to publish misleading portions or summaries of examination reports, but in the nature of the case the statement can only be an exhortation. Par. (m) is framed to leave much discretion to the commissioner whether to publish verbatim texts of statutes, summaries thereof, or a mere listing. In fact, he should do some of each, depending on the nature

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and importance of the enactment, but with care not to provide interpretation of the statute that may mislead readers in case the court should interpret it differently.

601.47 PUBLICATIONS. (1) GENERAL. The commissioner may prepare books, pamphlets and other publications relating to insurance and sell them in the manner and at the prices he determines. The cost of publication and distribution may be paid from the appropriation under s. 20.145 (1) (g) if there is not enough money available under s. 20.145 (1) (h).

(2) ANNUAL REPORT. The commissioner shall have printed in a form to be determined by him the report required in s. 601.46 (3), in number sufficient to meet all requests for copies. He shall distribute copies upon request to any person who pays the reasonable price thereof determined under sub. (1).

(3) FREE DISTRIBUTION. The commissioner may furnish free copies of the publications prepared under subs. (1) and (2) to public officers and libraries in this state and elsewhere. The cost of free distribution shall be charged to the appropriation under s. 20.145 (1) (g).

COMMENT: A traditional way to handle publication activities would be to have the money paid into the treasury to the credit of the general fund of the state. There would then not only be no incentive for the commissioner or members of his staff to be creative and helpful to the industry and others interested in insurance, but a substantial discouragement, since costs would be paid from the office budget while income would go to the general fund. Sub. (1) involves at least no discouragement and possibly a small reward connected with the effort, since a modest fund may be built and used for some important purposes which are unlikely to be funded adequately in the budget. No great sum can be contemplated, of course.

Section 601.46 (3) (k) and the new s. 20.145 (1) (h) (created simultaneously with this chapter) provide adequate opportunity to publicize examination reports.

Sub. (2) is similar to s. 200.15 (3), which requires printing from 1,000 to 2,500 copies, but it imposes a duty upon the commissioner to distribute the copies on request. The price should be set high enough to recoup the expense of publication and distribution, but as low as possible consistent with that objective, in view of the importance of making this document widely available.

It is desirable, and worth the cost to the state, to ensure availability of the literature produced under this section to serious students of these questions, especially in official positions elsewhere. Sub. (3) would give the commissioner considerable discretion to decide how widely free distribution should be made. He is hardly likely to waste the state's substance in pointless distributions—the real danger is the contrary.

601.48 PARTICIPATION IN ORGANIZATIONS. (1) NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS. The commissioner and his office shall maintain close relations with the commissioners of other states and shall participate in the activities and affairs of the national association of insurance commissioners and other organizations so far as it will, in his judgment, enhance the purposes of the insurance laws. The actual and necessary expenses incurred thereby shall be reimbursed out of the appropriation under s. 20.145 (1) (g).

(2) CONSULTATION IN REGULATION. The commissioner may exchange information and data and consult with other persons in order to improve and carry out insurance regulation.

COMMENT: It will be helpful to provide in the statutes that the commissioner and his staff have an obligation to participate in the

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activities of the NAIC, in order to facilitate approval of budget items and of expenditures for necessary travel and other expenses. It is desirable, however, not to obligate him by inflexible provisions to attend meetings that are of little value or are unduly expensive. Sub. (1) will facilitate the appropriate expenditures while leaving the commissioner free to limit himself and his staff to productive activities.

Sub. (2) is a generalized adaptation of s. 203.32 (13) (c), which applies to rate regulation only.

601.49 ACCESS TO RECORDS. The commissioner shall have access to the records of any agency of the state government or of any political subdivision thereof which he may wish to consult in discharging his duties.

COMMENT: This preserves the essential part of s. 205.02 (1). The remainder of that provision, which is dropped, permitted consultation with the industrial commission. Such a provision can hardly be regarded as necessary, but in any event is covered in s. 601.48 (2). The range of this provision has been extended to include all agencies.

SUBCHAPTER V.

PROCEDURES AND ENFORCEMENT.

601.61 AUXILIARY PROCEDURAL POWERS. The commissioner may administer oaths, take testimony, issue subpoenas and take depositions in connection with any hearing, meeting, examination, investigation or other proceeding that he may conduct.

COMMENT: Most of the procedural powers granted by this section are already conferred elsewhere. To remove doubts and provide a single clear point of reference, the commissioner is here empowered to perform the necessary incidents of any procedure he may conduct.

The insurance law now expressly grants the power to administer oaths and take testimony in s. 200.03 (2). Section 885.01 (4) grants subpoena power.

Section 887.01 (1) grants the power to administer oaths. The power to coerce a witness is not expressly conferred but under s. 885.12 the commissioner has access to a court procedure for the purpose.

601.62 HEARINGS. (1) HEARING REQUIRED. Whenever the insurance laws expressly so provide, the commissioner shall hold a hearing before issuing an order.

(2) SPECIAL INSURANCE HEARINGS. Chapter 227 shall apply to all hearings under the insurance laws, except those for which special procedures are prescribed.

(3) ADJUDICATORY HEARINGS. In addition to the requirements of ch. 227, the following provisions shall apply:

(a) *Subsequent hearings.* Whenever an order is issued without a hearing, any person aggrieved by the order may demand a hearing within 20 days after receiving notice of the order. Failure to demand a hearing within the period prescribed therefor shall constitute waiver of a hearing. The demand shall be in writing and shall be served on the commissioner by delivering a copy to the commissioner or by leaving it at his office. The commissioner shall thereupon hold a hearing not less than 10 nor more than 30 days after service of the demand.

(b) *Rehearing.* When an order is issued after a hearing, any person aggrieved by the order may request a rehearing within 20 days after notice of the order. The commissioner may hold a rehearing pursuant to the request not less than 10 nor more than 30 days after the request.

(c) *Reduction and extension of periods.* Upon request of the person demanding the hearing or of any other aggrieved person, the commissioner may reduce or extend the period prescribed by par. (a) or (b) for holding a hearing.

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(4) FEES IN INVESTIGATIONS AND HEARINGS. The fees for stenographic services in investigations, examinations and hearings shall not exceed the sum provided for like services in the circuit court. The fees of officers, witnesses, interpreters and stenographers on behalf of the commissioner or the state shall be paid by the state treasurer upon the warrant of the department of administration, authorized by the certificate of the commissioner, and shall be charged to the appropriation under s. 20.145 (1) (g).

COMMENT: Section 227.07 guarantees the "opportunity for full, fair, public hearing after reasonable notice" prior to the "final disposition of a contested case". It does not require a hearing as a condition of validity of any order issued by an administrative agency. Such a requirement would serve neither the purposes of the law nor the interests of the citizen.

Most administrative orders are accepted without objection by the addressees and only a few develop into "contested cases". An agency seldom knows in advance if a case will become a "contested case". It would be unduly burdensome, time-consuming and expensive to hold a hearing prior to most orders only to find out that there is no opposition.

Sub. (1), therefore, permits the issuance of orders without prior hearing. The guarantee of s. 227.07 and the interests of the addressee are satisfied by giving him an option to demand a subsequent hearing, if he is opposed to the order. See sub. (3) (a). If a hearing is demanded, the order can be suspended by the commissioner or stayed by the court. See s. 601.63 (4). Any order issued by the commissioner after the hearing and after reevaluation of the facts would then conform to the requirements of s. 227.07, and would be subject to judicial review under s. 227.15.

Some orders have such a heavy impact that a prior hearing seems indispensable, and any resulting delay in law enforcement must be tolerated. This is true, e.g., for revocations of licenses [see s. 601.64 (4)], and for summary orders under ch. 645, which have immediate effect and therefore permit orders without prior hearing only in cases of clear danger (s. 645.21). However, it seems more practicable to single out the exceptional cases and specifically requiring prior hearing, than to establish the requirement of prior hearings as a general rule, with express exemptions for the vast number of routine orders.

Though a hearing is not expressly prescribed by statute, the commissioner is of course not prohibited from holding one. He may also exercise his rule-making power to provide for prior hearings for cases where he deems it desirable.

In various provisions, such as present ss. 201.03 (8) (a) to (c) and 206.38 (4), (5), special procedures are now set up; in some of them special commissions are created to decide "momentous" questions. Thorough consideration will be given subsequently to the question what special procedures should be created or retained because of the gravity of the issues or the special character of the problems. Rate filings and license revocations are cases that may need special hearing rules. Sub. (2) deals with only the general run of insurance hearings.

Sub. (3), as implemented by the commissioner's rules, will take the place of present s. 200.11 (2) and of a large number of special provisions. Basic rules for administrative adjudication procedure are fixed by the Administrative Procedure Act (ch. 227), which in turn requires each agency to "adopt rules governing the form, content, and filing of pleadings, the form, content and service notice, the conduct of prehearing conferences, and the other necessary rules of procedure and practice" (s. 227.08). In the present code, procedural requirements

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in great variety are affixed to individual provisions for specific orders. It seems useful to establish rules for the adjudication procedure of the commissioner more general than those now found for individual cases, but more concrete than those provided by ch. 227. There should be some distinction between orders of more and of less serious import. The adjustment of procedures to the vast variety of cases should be left in large part to the commissioner acting through his rule-making power; the statutes should impose only a few general standards.

Some hearing provisions, including rate hearings, are temporarily left in effect, pending further consideration in the context of substantive regulation.

Sub. (4) was s. 200.05.

601.63 NOTICE AND EFFECTIVE DATE OF ORDERS. (1) NOTICE TO PERSON ADDRESSED BY ORDER. Notice of any order by the commissioner shall be served under 227.14.

(2) NOTIFICATION TO AGENTS OF REVOCATION OF CERTIFICATE OF AUTHORITY OF INSURER. Upon issuance of any order limiting, suspending or revoking an insurer's authority to do business in this state, the commissioner shall notify by mail all agents of the insurer of whom he has record. He shall also publish a class 1 notice of the order under ch. 985.

(3) DELAY OF EFFECTIVE DATE. Except as provided in sub. (4) or as expressly provided otherwise by statute, all orders of the commissioner shall take effect 10 days after notice under sub. (1) or at a later date specified in the order.

(4) SUSPENSION OF ORDER. Whenever a hearing is demanded under s. 601.62 (2) (a) or a rehearing is requested under s. 601.62 (2) (b), the commissioner may suspend the order or any part thereof until after the hearing or rehearing. If he refuses to suspend the order, any person aggrieved thereby may seek a court order under ch. 268 to restrain enforcement of the order until after the hearing or rehearing.

(5) ACTIONS SUBJECT TO APPROVAL OR DISAPPROVAL. (a) *Required approval.* Whenever the law requires the commissioner's approval for a certain action, the action shall not become effective until expressly approved. The approval shall be deemed refused if the commissioner does not act within 60 days after receiving the application for approval.

(b) *Reserved disapproval.* Whenever the law provides that a certain action shall not become effective if disapproved by the commissioner within a certain period, the action may be made effective prior to the expiration of the period by being affirmatively approved by the commissioner.

(c) *Specific provisions.* Paragraphs (a) and (b) shall not apply to the extent that the law specifically provides otherwise.

COMMENT: Sub. (1) replaces s. 200.11 and ties all the commissioner's orders to ch. 227. Sub. (2) is essentially s. 200.03 (5). Subs. (3) and (4) give the commissioner the tools for quick and effective action without depriving persons adversely affected of a right to review. Immediate effect is only possible when liquidation is in prospect; then summary orders may be issued under s. 645.21. Otherwise a slower procedure is required. Expeditious challenge of the commissioner in court is also possible. A person subjected to abuse by the commissioner can be before the court very quickly and can prevent enforcement of the commissioner's improper order. There is complete judicial control over abuse of power by the unusual commissioner who is arbitrary.

Sub. (5) establishes general rules for the many cases in which the commissioner's approval is required or in which he is given the power

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to disapprove. By determining once and for all the effect of approval or disapproval in these cases, this provision avoids a great deal of repetition and possible inconsistency in the special statutes. See, e.g. in the proposed chapter on domestic corporations ss. 611.15, 611.18 (3) (a), 611.19 (2) (d), 611.21, 611.28 (1) (b), 611.40 (2) (b) and (c), 611.41 (3) and 611.43 (3).

Paragraph (a) is designed to implement the general principle expressed in s. 601.41 (1) (second sentence). It gives the applicant the basis for asking judicial review where inaction on the part of the commissioner leaves the applicant without a decision from which to appeal.

Paragraph (b) ensures that a "deemer" provision does not lead to unnecessary delays when the commissioner has already made an affirmation decision.

601.64 ENFORCEMENT PROCEDURE. (1) INJUNCTIONS. Whenever a person fails to comply with an order issued under s. 601.41 (4), the commissioner may, in the name of the state, commence an action to obtain an order under ch. 268 directing the person to comply with the commissioner's order, and restraining him from further violation thereof. The commissioner may, whenever he deems it advisable, seek an injunction under ch. 268 as an alternative to issuing an order under s. 601.41 (4).

(2) COMPULSIVE FORFEITURES. If a person does not comply with an order issued under s. 601.41 (4) within 2 weeks after the commissioner has given him notice of his intention to proceed under this subsection, the commissioner may commence an action for a forfeiture in such sum as the court considers just, but not exceeding $5,000 for each day that the violation continues after the commencement of the action until judgment is rendered. No forfeiture shall be imposed under this subsection if at the time the action was commenced the person was in compliance with the order. For purposes of this subsection, no forfeiture shall be imposed for any violation of an order occurring while any proceeding for judicial review of the order was pending, unless the court in which the proceeding was pending certifies that the claim of invalidity or nonapplicability of the order was frivolous or a sham. If after judgment is rendered the person still does not comply with the order, the commissioner may commence a new action for a forfeiture, and may continue commencing actions until the person complies. The proceeds of all actions under this subsection, after deduction of the expenses of collection, shall be paid into the common school fund of the state.

(3) FORFEITURES AND CIVIL PENALTIES. (a) *Restitutionary forfeiture.* Whoever violates an effective order issued under s. 601.41 (4) or any insurance statute or rule shall forfeit to the state twice the amount of any profit gained from the violation, in addition to any other forfeiture or penalty imposed.

(b) *Forfeiture for violation of order.* Whoever violates an order issued under s. 601.41 (4) which is effective under s. 601.63 shall forfeit to the state not more than $1,000 for each violation. Each day that the violation continues shall be deemed a separate offense.

(c) *Forfeiture for violation of statute or rule.* Whoever violates an insurance statute or rule shall forfeit to the state not more than $1,000 for each violation. If the statute or rule imposes a duty to make a periodic or recurring report to the commissioner, each week of delay in complying with the duty shall constitute a new violation.

(d) *Procedure.* The commissioner may demand and accept any forfeiture imposed under this subsection, which shall be paid into the common school fund. At his discretion he may cause action to be commenced to recover the forfeiture in an amount to be determined by the court. Before an action is commenced, the commissioner may compromise the for-

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feiture; after the action is commenced, the attorney general may compromise the forfeiture.

(4) CRIMINAL PENALTY. Whoever intentionally violates or intentionally permits any person over whom he has authority to violate or intentionally aids any person in violating any insurance statute or rule of this state or any effective order issued under s. 601.41 (4) may, unless a specific penalty is provided elsewhere in the statutes, be fined not more than $10,000 if a corporation or if a natural person be fined not more than $5,000 or imprisoned for not to exceed 3 years or both. Intent has the meaning expressed under s. 939.23.

(5) REVOCATION, SUSPENSION, AND LIMITATION OF LICENSES. Whenever a licensee of the office other than a domestic insurer persistently or substantially violates the insurance law or an order of the commissioner under s. 601.41 (4), or if there are grounds for delinquency proceedings against him under ch. 645, or if the licensee's methods and practices in the conduct of his business endanger, or his financial resources are inadequate to safeguard, the legitimate interests of his customers and the public, the commissioner may, after a hearing, in whole or in part revoke, suspend, limit or refuse to renew the license or certificate of authority.

COMMENT: Injunctions are expressly provided by s. 207.09 (2) for unfair practices and s. 211.15 for violations of the law relating to employe welfare funds by employers, trustees and other officials. Cf. also New York s. 35, which provides generally for injunctions in case of violations of the insurance laws, and California s. 12928.6 which provides for injunctions to enforce the commissioner's orders. It seems important to provide expeditious means of enforcement of orders issued by the commissioner under s. 601.41 (4).

The interests of the insurers and other persons subjected to regulation are sufficiently protected by the safeguards inherent in a court procedure.

The dozens of forfeitures now provided in the law are less measures to compel actual compliance than penalties—measures to punish. They are usually too small to serve adequately either as coercive measures or as punishment. This section provides three quite different kinds of forfeitures. The first kind, treated in sub. (2), is a coercive measure similar to injunction, and not a punishment. The second kind, in sub. (3) (a), is a quasi-restitutionary, quasi-penalty provision for recapturing illicit profits plus an equivalent additional amount. The third kind, in sub. (3) (b) and (c) is a civil penalty—a noncriminal punishment. (Conduct punishable only by a forfeiture is not a crime. s. 939.12.)

The kind of forfeiture in sub. (2) is novel; it is borrowed from European practice. It is a coercive technique from a legal system that does not know injunctions—it is somewhat like an injunction followed by contempt proceedings. Because of the similarity, it is not vitally necessary to have this forfeiture procedure in the commissioner's armory. However, there is merit in providing many different tools, even if they are not radically different. This type of forfeiture adds a weapon that may sometimes be more effective than injunction.

There may be cases where a stubborn defendant will respond better to the prospect of an imminent heavy monetary forfeiture than to a court order, possibly to be followed by imprisonment. Moreover, the fact that this remedy is controlled by the commissioner to a later stage may make it more effective. To serve the purpose of a coercive enforcement measure, the amount of the forfeiture must be substantial. It is not designed to be collected as a punishment; if compliance is actually achieved by the threat the amount is irrelevant.

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No one's rights are endangered. Orders become effective and enforceable only in the usual way. Whoever disagrees in good faith with an order can challenge it in the courts which may stay enforcement (s. 227.17); once it has become enforceable, however, it should be complied with or else enforced with all the power of the law, in order to discourage the indefensible practice of defiance of the law in reliance on the exhausting effects of delay in litigation. Even so high a forfeiture as is proposed here is less devastating to an insurer than revocation of its license—the death sentence—which is now provided by statute as an enforcement tool, without having aroused much opposition. What is provided here is mainly a weapon to combat open defiance of the law.

When restitution is appropriate, sub. (3) (a) should be applied.

The forfeitures in sub. (3) (b) and (c) are much like a multitude of forfeiture provisions now in the statute book. Even in their crudest form, they are provisions with which courts have long lived and which they know how to control. However, the formulation here has gone a long way to remedy difficulties that exist in the traditional provisions. Par. (b) is limited to orders. This eliminates both the danger of inadvertence, and the possibility of accumulation of an enormous liability to forfeiture before there can be a test of the propriety of the conduct. Orders can be judicially tested under s. 601.62 and ch. 227; they have delayed effect under s. 601.63 pending hearing or review by action of the commissioner or the court under s. 601.63 (4) and s. 227.17. Consequently the forfeiture lacks the alleged danger, when thus limited to violation of orders. Because an explicit order is involved, there is also much less chance of inadvertent violation.

The enforcement of statutes and rules by civil penalty or forfeiture under par. (c) raises different questions. Although in one sense, statutes and perhaps even rules should have superior sanctity to orders, they do involve the special problem that they may be more or less hidden and are much more easily disobeyed by inadvertence. The problem of inadvertence is handled by encouraging use of the order procedure through issuance of orders without or before hearing. See s. 601.62 (1) and comment thereon. It is also handled in part by lessening significantly the seriousness of the forfeiture provision for statutes and rules. The latter is done by reducing the rate of cumulation and in some instances eliminating cumulation altogether.

It has been made clear in par. (d) that the institution of the proceeding to collect the forfeiture is discretionary with the commissioner, who may also compromise it. There is no *duty* on his part to proceed. Finally, it has been made clear that the procedure is under court control, and that the court need not award the maximum forfeiture, nor accumulate the forfeiture at the maximum rate. It can, indeed, award none at all. It cannot be assumed that both bad motives and bad judgment will exist simultaneously at *all* levels of the administrative and judicial machinery of Wisconsin.

These provisions for forfeitures give the commissioner a variety of tools to deal with violation of orders, statutes and rules, and protect the citizen as far as possible against abuse of his power.

Sub. (4), which makes intentional violation of the insurance laws or an effective order a crime, is adapted from s. 201.58. The fine is intended as punishment for morally reprehensible conduct and not as a device to induce compliance. In one respect the section is greatly liberalized from s. 201.58. It requires intentional violation. This seems an appropriate requirement for criminal punishment, especially when the severity can be as great as the maximum here. Where violation is not intentional, the attribution of criminality is not usually justified.

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Moreover, civil enforcement devices are more appropriate and usually equally coercive.

In the present law, there are also various specific criminal provisions, the great diversity of which is unwarranted. Most of them are replaced by this subsection and only a few remain. Such flexibility as is desirable can better be provided by courts than by the legislature, which cannot adequately anticipate the variety of circumstances under which violation will take place.

There may remain some question whether criminal sanctions are ever appropriate, even when the violation is an "intentional" one. Minor offenses should not be thus dignified, and civil sanctions should be applied instead. The deterrent effect of criminal sanctions might even be enhanced if they were limited to a small number of clearly defined serious offenses, and were enforced by drastic penalties and by undiluted castigation of the offender as a real criminal. Despite these doubts, the traditional pattern has been followed. But the attribution of criminality has in general been restricted to cases where there is criminal intent.

Sub. (5) is adapted from s. 201.045 (2), which deals with revocation of the certificate of authority of an insurer. "License" includes "certificate of authority". See s. 201.045 (5). Revocation or suspension of license is a very common enforcement measure under the present law. However, even suspension necessarily has serious consequences to the business and reputation of the person affected, and may also prove highly prejudicial to policyholders. Moreover, it may weaken rather than strengthen the commissioner's powers to deal with the problem at hand. For these reasons, it should rarely be applied in practice. See General Comment on Summary Proceedings, in Third Draft of *Delinquency Proceedings in Insurance*, at p. 36, and in Laws of 1967, ch. 89, General Comment to Subchapter II. The emphasis in regulation should be on lawful and sound conduct of the going concern, without depriving it of its very existence.

Revocation of license should be the last step, to be taken only when it cannot be expected that a person will return to sound business practices, and when he should be removed from the market in this state. For this reason it is not appropriate to regard revocation as a "sanction".

It is proposed that later this subsection be removed to a new chapter dealing with the admission of foreign and alien insurers. A counterpart provision would go into the chapter dealing with licensing of agents.

The new version adds the option of limitation to revocation and suspension, in order to give the commissioner greater flexibility. Where abuses are limited to a certain line of insurance, or in other ways, limitation of license may be sufficient to protect the public. There are occasions when suspension may be more appropriate than revocation, or limitation more appropriate than suspension.

The new generalized provision will take the place of all the special provisions dealing with revocation or suspension of licenses in the present statute. It will apply to all licensees except domestic insurers. For domestic insurers, more effective remedial devices are available, especially those provided in ch. 645.

601.71 ENFORCEMENT OF POLICYHOLDER RIGHTS. When the commissioner is satisfied that any foreign or alien insurer which no longer has a certificate of authority in this state does or omits to do any act whereby the rights of policyholders who are residents of this state, or who hold contracts issued or delivered in this state, are adversely affected, or

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whereby its ability to carry out its contracts with those policyholders is impaired, he may, with the agreement of the attorney general, bring an action in the name of the state on behalf of all policyholders so situated for the purpose of enforcing their rights. The attorney general shall act as attorney for the state in the action and the expenses shall be borne as in other civil actions in behalf of the state. Upon service of the complaint the insurer shall file with the commissioner the names and addresses of all policyholders so situated. A notice of the action shall be mailed to every such policyholder either by the commissioner or by the insurer, as the commissioner determines. Any policyholder affected by the action may intervene.

COMMENT: This is based on s. 200.10, but without the hearing involving the attorney general and governor. The ordinary interaction between commissioner and attorney general should suffice to ensure that the latter does not get overloaded with work that may have no significance. It is applicable only when all ordinary weapons against the insurer are ineffective, after it has withdrawn from the state.

601.72 SERVICE OF PROCESS THROUGH STATE OFFICER. (1) GENERAL. The commissioner is by law constituted attorney, except in cases in which the proceeding is to be brought by the state, in which event the secretary of state is by law constituted attorney, to receive service of summons, notices, orders, pleadings and all other legal processes relating to any court or administrative agency in this state:

(a) *Authorized insurers.* For all insurers authorized to do business in this state, while authorized to do business in this state, and thereafter in any proceeding arising from or related to any transaction having any connection with this state;

(b) *Surplus lines insurers.* For all surplus lines insurers as to any proceeding arising out of any contract that is subject to the surplus lines law, or out of any certificate, cover note or other confirmation of such insurance; and

(c) *Unauthorized insurers.* For all unauthorized insurers or other persons doing an insurance business in this state as to any proceeding arising out of the transaction that is subject to the unauthorized insurance law.

(2) APPOINTMENT OF ATTORNEY. Every licensed insurer by applying for and receiving a certificate of authority, every surplus lines insurer by entering into a contract subject to the surplus lines law, and every unauthorized insurer by doing an insurance business in this state, shall be deemed to have irrevocably appointed the commissioner and secretary of state as his attorneys in accordance with sub. (1).

(3) OTHERS AFFECTED. The commissioner and secretary of state shall also be attorneys for the executors, administrators or personal representatives, receivers, trustees or other successors in interest of the persons specified in sub. (1).

(4) FEES. Litigants serving process on the commissioner under this section shall pay the fees specified in s. 601.31 (18).

(5) ORDINARY MEANS OF SERVICE. The right to substituted service under this section shall not limit the right to serve summons, notice, orders, pleadings, demands or other process upon any person in any manner provided by law.

COMMENT: Sub. (1) (a) was essentially s. 200.03 (15), with the change that the subjection to process that survives after withdrawal is related here to business done in this state, rather than being unlimited so long as any potential liability remains in this state, as in s. 200.03 (15). That wide reach is unfairly broad. This provision also does the job of s. 201.39 (13) dealing with interinsurance agreements, and

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s. 208.26 (1), dealing with fraternal benefit societies.

Par. (1) (b) was part of s. 201.63 (11), the surplus lines statute.

Par. (1) (c) was part of s. 201.42 (4) (a), the unauthorized insurance law. "Doing business" is broadly defined in s. 201.42 (2).

Sub. (2) is cautionary, but care should be taken to obtain the full benefit of precedents affirming jurisdiction in cases of substituted service.

Sub. (3) is adapted from s. 201.42 (4) (a).

The fees mentioned in sub. (4) are set at a level intended to discourage this avenue of service when normal means are available. This section is not intended to provide a usual means of access to the courts but only a residual one when normal means fail.

Sub. (5) is based on s. 201.42 (4) (f).

601.73 PROCEDURE FOR SERVICE OF PROCESS THROUGH STATE OFFICER. (1) REQUIREMENTS FOR EFFECTIVE SERVICE. Service upon the commissioner or secretary of state under s. 601.72 shall be service on the principal, if:

(a) Two copies of the process are left in the hands or office of the commissioner or secretary of state respectively;

(b) The serving party, within 10 days after delivery to the state officer, sends notice of the service and a copy of the process by certified mail to the person being served at his last known principal place of business or residence or post-office address; and

(c) The serving party files with the clerk of the court or agency in which the matter is pending his or his attorney's affidavit showing compliance with pars. (a) and (b) within 10 days after sending notice under par. (b), or within such further time as the court or agency allows.

(2) COMMISSIONER'S ACTION. (a) *Records.* The commissioner and secretary of state shall give receipts for and keep records of all process served through them.

(b) *Process mailed.* The commissioner or secretary of state shall send to the person served immediately at his last known principal place of business or residence or post-office address one copy of any process received by certified mail and shall retain the other copy for his files.

(c) *Default judgment.* No plaintiff or complainant shall be entitled to a judgment by default in any proceeding in which process is served under ss. 601.72 and 601.73 until the expiration of 20 days from the date of filing of an affidavit of compliance under sub. (1) (c).

(3) PROOF OF SERVICE. A certificate by the commissioner or the secretary of state, showing service made upon him, and attached to a copy of the process presented to him for that purpose shall be sufficient evidence of the service.

COMMENT: Subs. (1) and (2) are adapted from ss. 201.42 (4) (b), (c) and (e) and 201.43. The former sections have been somewhat shortened, without losing any of their impact. Section 201.42 (4) (d) authorized service on an unauthorized insurer through any person doing any act of an insurance business in this state on behalf of the unauthorized insurer. This seems both unnecessary and likely to be ineffective, since such a person might not be reliable and might not transmit the service or notice to the insurer. The provisions included here seem adequate and more likely to be effective.

SECTION 86. 645.21 (3), (5) and (6) of the statutes are repealed.

SECTION 87. SECTION 3 of this act supersedes chapter (Senate Bill 68) with regard to the term of office of the commissioner of insurance.

SECTION 88. CROSS REFERENCE CHANGES. In the sections listed

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in column A below, the cross references shown in column B are changed to the references shown in column C:

A Statute Section	B Old cross reference	C New cross reference
15.251 (intro.)	200.10, 200.14	601.71
20.913 (1) (c)	209.02	601.13 (11)
76.30 (1)	200.13	601.31
76.34 (1)	200.13 (20)	601.31 (20)
76.36	200.13	601.31
76.37 (2)	200.13	601.31
185.983 (1) (intro.)	200.13	601.31
185.992 (intro.)	200.13	601.31
200.26 (7), as renumbered	200.26 (6)	200.26 (3)
200.26 (7), as renumbered	200.26 (7)	200.26 (4)
200.301 (2) (h)	209.01	601.13
201.39 (4)	200.13 (18)	601.31 (18)
201.39 (11)	200.13	601.31
201.41 (1)	200.13 (2)	601.31 (2)
201.42 (6) (a) (intro.)	201.42 (4) and (5)	601.72
201.42 (6) (b)	201.42 (4)	601.72
201.42 (6) (b)	201.42 (5)	601.72
201.44 (1)	200.13 (15) (b)	601.31 (15) (b)
201.63 (4) (b)	200.13 (15) (c)	601.31 (15) (c)
201.71 (intro.)	201.83	201.82
201.72	201.83	201.82
201.74 (2)	200.13 (2) (f)	601.31 (2) (f)
201.79	201.83	201.82
201.81	201.83	201.82
201.82	201.83	201.82
203.24 (2)	200.13 (15) (d)	601.31 (15) (d)
203.32 (6) (a)	200.13 (1) (e)	601.31 (1) (e)
203.32 (6) (a) and (10) (b)	200.13	601.31
203.32 (11) (a)	203.32 (12), (15) and (16)	203.32 (12) and (16)
204.04 (1)	200.13	601.31
204.06 (4)	209.01	601.13
204.42 (1)	200.13	601.31
204.42 (1)	200.13 (1) (e)	601.31 (1) (e)
204.46 (2)	200.13	601.31
204.46 (2)	204.48	601.43
204.47 (1)	204.48	601.43
205.03 (2)	200.13 (3) (d)	601.31 (3) (d)
205.11 (2) (d)	205.12	601.43
206.02 (3) (b)	200.13 (2) (a)	601.31 (2) (a)
206.02 (11)	200.13	601.31
206.21	200.13 (20)	601.31 (20)
206.34 (1) (i)	201.50	601.42
206.41 (4) (b)	200.13 (17)	601.31 (17)
206.41 (4) (c) and (d)	200.13 (16m)	601.31 (16m)
206.41 (5) (b) and (g) 2	200.13 (15)	601.31 (15)
207.04 (2)	207.07	601.41 (4) and 601.64
207.09 (1)	207.06	601.62
208.25 (8)	208.31	601.42
208.35	200.13 (25)	601.31 (25)
209.04 (2) (b)	200.13 (17)	601.31 (17)
209.04 (2) (c) and (d)	200.13 (16m)	601.31 (16m)
209.04 (3) (b)	200.13 (15)	601.31 (15)
209.04 (4) (d)	200.13 (16)	601.31 (16)
601.32 (1), as renumbered	200.13	601.31
601.32 (1), as renumbered	200.13 (26)	601.31 (26)
645.21 (1) and (2)	645.21 (3)	601.62

SECTION 89. EFFECT AND TRANSITION. (1) GENERAL. Except as provided in sub. (2), this act shall become effective on the day after publication.

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(2) DELAYED EFFECT. SECTIONS 81 and 84 shall become effective 6 months after publication.

(3) TRANSITION. All rules and orders in effect prior to the effective date of this act shall remain in force under this act until modified or rescinded.

Approved December 17, 1969.