

CHAPTER 203.

FIRE INSURANCE.

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203.01 Standard fire policy. (1) The commissioner of insurance shall keep on file printed forms in blank of the standard policy of fire insurance, containing the provisions, agreements and conditions specified in this section. The following policy form is declared to be and shall be known as the "Standard Policy."

[First page of policy]

No.

STANDARD POLICY

.....Company
Insert "stock" or "mutual"

[Space for insertion of name of company or companies issuing the policy and other matter permitted to be stated at the head of the policy]

[Space for listing amounts of insurance, rates and premiums for the basic coverages insured under the standard form of policy and for additional coverages or perils insured under endorsements attached.]

IN CONSIDERATION OF THE PROVISIONS AND STIPULATIONS HEREIN
OR ADDED HERETO

and of Dollars Premium
this Company, for the term of
from the day of, 19.... } at noon, Standard Time, at
to the day of, 19.... } location of property involved,
to an amount not exceedingDollars,
does insure

.....
and legal representatives, to the extent of the actual cash value of the property at the time of loss, but not exceeding the amount which it would cost to repair or replace the property with material of like kind and quality within a reasonable time after such loss, without allowance for any increased cost of repair or reconstruction by reason of any ordinance or law regulating construction or repair, and without compensation for loss resulting from interruption of business or manufacture, nor in any event for more than the interest of the insured, against all DIRECT LOSS BY FIRE, LIGHTNING AND BY REMOVAL FROM PREMISES ENDANGERED BY THE PERILS INSURED AGAINST IN THIS POLICY, EXCEPT AS HEREINAFTER PROVIDED, to the property described hereinafter while located or contained as described in this policy, or pro rata for five days at each proper place to which any of the property shall necessarily be removed for preservation from the perils insured against in this policy, but not elsewhere.

Assignment of this policy shall not be valid except with the written consent of this Company.

This policy is made and accepted subject to the foregoing provisions and stipulations and those hereinafter stated, which are hereby made a part of this policy, together with such other provisions, stipulations and agreements as may be added hereto, as provided in this policy.

IN WITNESS WHEREOF, this Company has executed and attested these presents; but this policy shall not be valid unless countersigned by the duly authorized Agent of this Company at

Secretary.

President.

Countersigned
this day of 19.... Agent.

[Second page of policy]

- 1 **Concealment,** This entire policy shall be void if, whether
2 **fraud.** before or after a loss, the insured has wil-
3 fully concealed or misrepresented any ma-
4 terial fact or circumstance concerning this insurance or the
5 subject thereof, or the interest of the insured therein, or in case
6 of any fraud or false swearing by the insured relating thereto.
7 **Uninsurable** This policy shall not cover accounts, bills,
8 **and** currency, deeds, evidences of debt, money or
9 **excepted property.** securities; nor, unless specifically named
10 hereon in writing, bullion or manuscripts.
11 **Perils not** This Company shall not be liable for loss by
12 **included.** fire or other perils insured against in this
13 policy caused, directly or indirectly, by: (a)
14 enemy attack by armed forces, including action taken by mili-
15 tary, naval or air forces in resisting an actual or an immediately
16 impending enemy attack; (b) invasion; (c) insurrection; (d)
17 rebellion; (e) revolution; (f) civil war; (g) usurped power; (h)
18 order of any civil authority except acts of destruction at the time
19 of and for the purpose of preventing the spread of fire, provided
20 that such fire did not originate from any of the perils excluded
21 by this policy; (i) neglect of the insured to use all reasonable
22 means to save and preserve the property at and after a loss, or
23 when the property is endangered by fire in neighboring prem-
24 ises; (j) nor shall this Company be liable for loss by theft.
25 **Other Insurance.** Other insurance may be prohibited or the
26 amount of insurance may be limited by en-
27 dorsement attached hereto.
28 **Conditions suspending or restricting insurance. Unless other-**
29 **wise provided in writing added hereto this Company shall not**
30 **be liable for loss occurring**
31 (a) while the hazard is increased by any means within the con-
32 trol or knowledge of the insured; or
33 (b) while a described building, whether intended for occupancy
34 by owner or tenant, is vacant or unoccupied beyond a period of
35 sixty consecutive days; or
36 (c) as a result of explosion or riot, unless fire ensue, and in
37 that event for loss by fire only.
38 **Other perils** Any other peril to be insured against or sub-
39 **or subjects.** ject of insurance to be covered in this policy
40 shall be by endorsement in writing hereon or
41 added hereto.
42 **Added provisions.** The extent of the application of insurance
43 under this policy and of the contribution to
44 be made by this Company in case of loss, and any other pro-
45 vision or agreement not inconsistent with the provisions of this
46 policy, may be provided for in writing added hereto, but no pro-
47 vision may be waived except such as by the terms of this policy
48 is subject to change.
49 **Waiver** No permission affecting this insurance shall
50 **provisions.** exist, or waiver of any provision be valid,
51 unless granted herein or expressed in writing
52 added hereto. No provision, stipulation or forfeiture shall be
53 held to be waived by any requirement or proceeding on the part
54 of this Company relating to appraisal or to any examination
55 provided for herein.
56 **Cancellation** This policy shall be cancelled at any time
57 **of policy.** at the request of the insured, in which case
58 this Company shall, upon demand and sur-

59 render of this policy, refund the excess of paid premium above
60 the customary short rates for the expired time. This pol-
61 icy may be cancelled at any time by this Company by giving
62 to the insured a five days' written notice of cancellation with
63 or without tender of the excess of paid premium above the pro-
64 rata premium for the expired time, which excess, if not ten-
65 dered, shall be refunded on demand. Notice of cancellation shall
66 state that said excess premium (if not tendered) will be re-
67 funded on demand.

68 **Mortgagee** If loss hereunder is made payable, in whole
69 **interests and** or in part, to a designated mortgagee not
70 **obligations.** named herein as the insured, such interest in
71 this policy may be cancelled by giving to such
72 mortgagee a ten days' written notice of can-
73 **cancellation.**

74 If the insured fails to render proof of loss such mortgagee, upon
75 notice, shall render proof of loss in the form herein specified
76 within sixty (60) days thereafter and shall be subject to the pro-
77 visions hereof relating to appraisal and time of payment and of
78 bringing suit. If this Company shall claim that no liability ex-
79 isted as to the mortgagor or owner, it shall, to the extent of pay-
80 ment of loss to the mortgagee, be subrogated to all the mort-
81 gagee's rights of recovery, but without impairing mortgagee's
82 right to sue; or it may pay off the mortgage debt and require
83 an assignment thereof and of the mortgage. Other provisions
84 relating to the interests and obligations of such mortgagee may
85 be added hereto by agreement in writing.

86 **Pro rata liability.** This Company shall not be liable for a greater
87 proportion of any loss than the amount
88 hereby insured shall bear to the whole insurance covering the
89 property against the peril involved, whether collectible or not.
90 **Requirements in** The insured shall give immediate written
91 **case loss occurs.** notice to this Company of any loss, protect
92 the property from further damage, forthwith
93 separate the damaged and undamaged personal property, put
94 it in the best possible order, furnish a complete inventory of
95 the destroyed, damaged and undamaged property, showing in
96 detail quantities, costs, actual cash value and amount of loss
97 claimed; and within sixty days after the loss, unless such time
98 is extended in writing by this Company, the insured shall render
99 to this Company a proof of loss, signed and sworn to by the
100 insured, stating the knowledge and belief of the insured as to
101 the following: the time and origin of the loss, the interest of the
102 insured and of all others in the property, the actual cash value of
103 each item thereof and the amount of loss thereto, all encum-
104 brances thereon, all other contracts of insurance, whether valid
105 or not, covering any of said property, any changes in the title,
106 use, occupation, location, possession or exposures of said prop-
107 erty since the issuing of this policy, by whom and for what
108 purpose any building herein described and the several parts
109 thereof were occupied at the time of loss and whether or not it
110 then stood on leased ground, and shall furnish a copy of all the
111 descriptions and schedules in all policies and, if required, verified
112 plans and specifications of any building, fixtures or machinery
113 destroyed or damaged. The insured, as often as may be reason-
114 ably required, shall exhibit to any person designated by this
115 Company all that remains of any property herein described, and
116 submit to examinations under oath by any person named by this
117 Company, and subscribe the same; and, as often as may be
118 reasonably required, shall produce for examination all books of
119 account, bills, invoices and other vouchers, or certified copies
120 thereof if originals be lost, at such reasonable time and place as
121 may be designated by this Company or its representative, and
122 shall permit extracts and copies thereof to be made.

123 **Appraisal.** In case the insured and this Company shall
124 fail to agree as to the actual cash value or

125 the amount of loss, then, on the written demand of either, each
126 shall select a competent and disinterested appraiser and notify
127 the other of the appraiser selected within twenty days of such
128 demand. The appraisers shall first select a competent and dis-
129 interested umpire; and failing for fifteen days to agree upon
130 such umpire, then, on request of the insured or this Company,
131 such umpire shall be selected by a judge of a court of record in
132 the state in which the property covered is located. The ap-
133 praisers shall then appraise the loss, stating separately actual
134 cash value and loss to each item; and, failing to agree, shall
135 submit their differences, only, to the umpire. An award in writ-
136 ing, so itemized, of any two when filed with this Company shall
137 determine the amount of actual cash value and loss. Each
138 appraiser shall be paid by the party selecting him and the ex-
139 penses of appraisal and umpire shall be paid by the parties
140 equally.

141 **Company's** It shall be optional with this Company to
142 **options.** take all, or any part, of the property at the
143 agreed or appraised value, and also to re-
144 pair, rebuild or replace the property destroyed or damaged with
145 other of like kind and quality within a reasonable time, on giv-
146 ing notice of its intention so to do within thirty days after the
147 receipt of the proof of loss herein required.

148 **Abandonment.** There can be no abandonment to this Com-
149 any of any property.

150 **When loss** The amount of loss for which this Company
151 **payable.** may be liable shall be payable sixty days
152 after proof of loss, as herein provided, is
153 received by this Company and ascertainment of the loss is made
154 either by agreement between the insured and this Company ex-
155 pressed in writing or by the filing with this Company of an
156 award as herein provided.

157 **Suit.** No suit or action on this policy for the recov-
158 ery of any claim shall be sustainable in any
159 court of law or equity unless all the requirements of this policy
160 shall have been complied with, and unless commenced within
161 twelve months next after inception of the loss.

162 **Subrogation.** This Company may require from the insured
163 an assignment of all right of recovery against
164 any party for loss to the extent that payment therefor is made
165 by this Company.

[Third page of policy]
 ATTACH FORM BELOW THIS LINE

[Fourth page of policy]
 STANDARD POLICY

Expires _____
 Property _____
 Amount \$ _____ Total Premium \$ _____
 Insured _____

SEE INSIDE OF POLICY FOR PERILS COVERED.

No.

It is important that the written portions of all policies covering the same property read exactly alike. If they do not, they should be made uniform at once.

(2) The position of the number of the policy and the arrangement of and spacing between lines indorsed on the fourth page of the policy may be modified by the insurer, to suit its convenience. It shall also be optional for the insurer to insert the words "renewal of number" on the first page of the policy followed by a blank line on which an appropriate number may be placed. In lieu of the signatures on such policy by the president and secretary of an insurer having no such officer or officers in this country, the same may be executed by such other officer or officers as have authority so to do. [Stats. 1931 s. 203.04; 1933 c. 487 s. 80, 81, 81a; 1943 c. 408; 1945 c. 474; 1947 c. 251]

Revisor's Note, 1933: The provision added for damage by lightning is from 203.03. Old lines 1 to 6 are amended to harmonize with 209.06 and old lines 159 to 175 to harmonize with 203.045, and old lines 59 and 60 amended to correspond with 203.03. The lines referred to now misstate the law. Old lines 35, 36 and 37 are struck out because they were repealed by 203.215, rn, 203.11 (chapter 456, Laws 1929). (Bill No. 50 S, s. 80)

Misstatements inserted in an insurance application by the insurer's agent without the assured's knowledge do not become the latter's misrepresentations by his signing the application. Failure to disclose defects in the title or incumbrance does not render the policy void unless the omission was intentional or increased the risk. *Taluc v. Fall Creek F. M. F. Ins. Co.*, 203 W 319, 234 NW 364.

To forfeit a policy false swearing must be wilfully done. A false representation made with intent that it shall be acted on raises the inference of fraudulent intent and forfeits the insurance. *Fink v. La Crosse M. F. Ins. Co.*, 203 W 350, 234 NW 339.

Where a husband forms a partnership with his son, which erected a building under an oral agreement that the premises, held by him and his wife jointly, should belong to the partnership and prior to the last renewal of the partnership's policy the wife died, it was held that the partnership was "unconditional and sole owner" and "owner in fee simple" within the terms of the fire policy. *Kurovski v. Retail Hardware M. F. Ins. Co.*, 203 W 644, 234 NW 900.

Insurer is liable for actual damages not exceeding the amount of hail insurance applied for, where the insurer delays in notifying the applicant of the rejection of his application, for an unreasonable length of time. *Kukuska v. Home M. H.-T. Ins. Co.*, 204 W 166, 235 NW 403.

For effect of other insurance not consented to, see note to 203.215, citing *Filipkowski v. Springfield F. & M. Ins. Co.*, 206 W 39, 238 NW 828.

The provisions of lines 62 to 67 of the standard fire insurance policy (203.01, Stats. 1931) relate to the extent of coverage, and not to the title of the property either at the time of the execution and delivery of the policy or thereafter. Consequently, an insured could not recover for the loss of furniture incumbered by a chattel mortgage under such a policy containing no special agreement, even though in the application for the policy, which was not signed by him, no reference was made to the existence or nonexistence of the mortgage and neither he nor the insurer's agent knew that it was material; the saving provisions of 209.06 relating to representations or warranties made by the insured not being applicable. *Moe v. Allemannia F. Ins. Co.*, 209 W 526, 244 NW 593.

That application for automobile liability policy contained false answers to questions as to cancellation of former policies and payment of losses thereunder to insured, held not to void policy where insurer's representative and one who brokered insurance to him knowingly inserted such false an-

swers in application which insured did not sign. *Suschnick v. Underwriters C. Co.*, 211 W 474, 248 NW 477.

Where insured left fire policy with another insurance company to be delivered to defendant insurer, thus making the other company his agent, and it held policy until after fire, so that insured's intent to cancel was never made manifest to defendant, policy was not canceled. Where fire policy required notice of loss, but did not provide that failure to give notice within time limited would work forfeiture, failure to give the notice as stipulated merely postponed maturity of claim. *Clokewicz v. Lynn M. F. Ins. Co.*, 212 W 44, 248 NW 778.

A mortgagee may protect his interest in the mortgaged property by a loss-payable clause or by a standard mortgage clause (in a fire insurance policy issued to the mortgagor) or by a policy issued to the mortgagee himself. The rights of a mortgagee under a standard fire policy to which is attached a standard mortgage clause are subject to all the terms of the policy except those which are expressly waived by the insurer in the rider containing the mortgage clause. Such waiver does not affect the option of the insurer to rebuild the destroyed property. The insurer could not exercise its option to rebuild the destroyed property by offering to rebuild the barn, where the barn and a silo, although separately valued in the policy, together constituted a single structure. *State Bank of Chilton v. Citizens M. F. Ins. Co.*, 214 W 6, 252 NW 164.

An automobile fire insurance policy taken out by a dealer in secondhand automobiles, containing a clause that unless otherwise provided the insurer should not be liable for loss or damage to any property insured thereunder while subject to any lien, mortgage, or other incumbrance, is construed not to cover automobiles which at the time of their destruction by fire were subject to an equitable mortgage in favor of a third party who financed the operations of the dealer. Where the intention was to cover the specific cars described in the policy and the agent of the insurer had knowledge that the cars were in fact mortgaged but the effect of the policy as written was to exclude coverage on mortgaged cars, there was a mutual mistake of the parties as to the effect of the policy, which, although a mistake of law, authorizes reformation of the policy to make it express the intention of the parties. *Fountain v. Importers & Exporters Ins. Co.*, 214 W 556, 252 NW 569.

Under an "open" loss-payable clause in a fire policy, which is one making the mortgagee an appointee only (by making loss, if any, payable to the mortgagee as his interest may appear), no assignment of the policy is effected, and the interest of the mortgagee is measured, not by any interest in the property insured, but by the amount due upon the obligation, the payment of which is to be secured. *Cary Mfg. Co. v. Acme B. & M. Works*, 215 W 585, 254 NW 513.

A fire policy excluding from coverage property incumbered by chattel mortgage, did not cover mortgaged chattels destroyed which were of a kind that was exempt from execution to a specified amount in value upon the claiming of the exemption, where the insured had made no claim of exemption so as to avoid the effect of the chattel mortgage. Under such a policy, incumbrances operate to withdraw the incumbered property from the protection of the policy, but do not work a forfeiture of the policy. *Mielke v. National Reserve Ins. Co.*, 216 W 148, 256 NW 776.

A lessee under a lease entered into following the lessee's inability to perform the terms of a land contract, who removed from the leased premises in accordance with a provision in the lease for delivering up the premises upon default, thereby terminated his rights under the lease and relinquished all his interest in the premises, so that the lessor, named in a short form loss-payable clause attached to a fire policy issued to the lessee, could not recover for a fire occurring after the lessee's removal, under a provision in the policy that the entire policy

should be void if any change took place in the interest, title, or possession of the insured premises. (Stats. 1931) *Korntved v. American Ins. Co.*, 216 W 470, 257 NW 670.

The word "default" in a provision of a mortgage clause in a mutual fire policy, to the effect that no "default" of the mortgagor should affect the mortgagee's right to recover in case of loss unless notice had been given to the mortgagee, is construed, in connection with other provisions of the mortgage clause, as not meaning merely a default in payment of assessments but as meaning any "act or neglect" of the mortgagor in violation of the contract of insurance; and hence the conversion of the insured premises into an excepted risk by the installation of a still, while voiding the policy as to the mortgagor, would not do so as to the mortgagee without notice. *Bank of Cashton v. La Crosse C. S. T. M. Ins. Co.*, 216 W 513, 257 NW 451.

Defaults of a vendee under a land contract, occurring subsequently to the date of a standard fire policy issued to such vendee, do not change the vendee's status as "unconditional and sole owner" or effect a "change in the interest, title, or possession" of the insured premises, so as to void the policy, in the absence of a complete forfeiture of the land contract by the vendor, assignment of the contract by the vendee, or acts by the vendee amounting to a surrender of his rights under the contract. *De Keyser v. National L. Ins. Co.*, 216 W 566, 257 NW 673.

Proof that insurance agent was informed of sale of homestead to insured by insured's parents does not establish waiver by insurer of fire policy provision requiring unconditional ownership, where in fact no title was transferred due to absence of written contract. *Bartz v. Eagle Point M. F. Ins. Co.*, 218 W 551, 260 NW 469.

Insurer who paid fire losses, and who was assigned causes of action which insureds had against persons who set fire to building, was entitled to recover sum paid in settlement of fire losses from person who set fire to building, notwithstanding insanity of such person. *Guardianship of Meyer*, 218 W 382, 261 NW 211.

A fire policy issued by an agent covering his own property or property in which he has an interest is voidable, not void, and is therefore susceptible of ratification. The purpose of the pro rata liability clause in the standard fire policy is to relieve an insured from the burden or necessity of litigating with the insured questions as to the validity of other policies covering the insured property and to guard against inducement to the insured to commit fraud. Under such clause, an insurer was entitled to prorate its liability, where an additional policy on the property had been issued by the insured to themselves in a company for which they were agents, although the property was destroyed before such company had had an opportunity to ratify or disaffirm such policy. *Kisow v. National Liberty Ins. Co.*, 220 W 586, 265 NW 569.

The failure of the insured to inform the insurance agent that judgment of foreclosure had been entered against the property at the time of oral application for insurance did not avoid the policies, where the fact of such judgment was not then known to the insured. The failure of the insured's agent, in making oral application for insurance, to disclose that the insured's title was incumbered by a second mortgage and a judgment lien was not a concealment of material facts avoiding the policies, where no questions leading to the disclosure of these incumbrances were asked, and the insurance agent had knowledge of the general condition of the property, its location, and its worth. The mortgagor's title after entry of judgment of foreclosure but before sale, was that of "unconditional and sole ownership," within a policy provision that the policy should be void if the interest of the insured be other than unconditional and sole ownership. (Stats. 1935) *Koch v. Transcontinental Ins. Co.*, 223 W 105, 269 NW 539.

An insured cannot have a standard fire policy reformed by the substitution of pro-

visions inconsistent with its standard provisions. *Ottens v. Atlas Assur. Co.*, 226 W 596, 275 NW 900.

In the prescribed space for description of property in a standard fire policy, stating the location of the insured property and that it consisted of a building "occupied and to be occupied only for dwelling purposes," the quoted phrase is construed as being purely descriptive and not as an additional limitation on the coverage, and hence the policy was not suspended at the time of a fire merely because the fire occurred while the insured building was occupied for other than dwelling purposes only. *Home Mut. B. & L. Ass'n v. Northwestern Nat. Ins. Co.*, 236 W 476, 295 NW 707.

For cases decided prior to the repeal and recreation of 203.01 (1945 c. 474) and while the standard fire insurance policy contained a clause that if the interest of the insured be other than unconditional and sole ownership the policy was rendered void, see *Johnson v. Hartland Farmers' M. F. S. Ins. Co.* 220 W 77, 264 NW 480; *Miller v. York-shire Ins. Co.* 237 W 551, 297 NW 377; *Keller v. Hartford Fire Ins. Co.* 239 W 354, 300 NW 471.

Damage to an insured's summer cottage, located on the shore of a lake, by ice blown across the lake and against the cottage by wind of a velocity ranging from 15 to 23 miles per hour, was caused by "windstorm," within a policy insuring against damage by

windstorm, cyclone, tornado and hail, and was caused by "direct action of the wind." *Gerhard v. Travelers Fire Ins. Co.* 246 W 625, 18 NW (2d) 336.

A standard policy should be construed as a voluntary contract of the parties, and not as a statutory provision, but the fact that the language is prescribed by statute should be kept in view, and the language should not be extended by construction beyond its plain meaning. *Straw v. Integrity Mut. Ins. Co.* 248 W 96, 20 NW (2d) 707.

In general, to constitute a waiver by the insurer of a condition in the policy limiting the time in which suit shall be brought after loss, the act or declaration relied on must be done or made during the running of the period of limitation or at least begun during such period; and the insurer, by conduct extending beyond the limitation period, inducing the insured to believe that his claim would be settled without suit, may be precluded from invoking the contractual limitation against the insured. *Fischer v. Harmony Town Ins. Co.* 249 W 438, 24 NW (2d) 837.

But one form of standard fire insurance policy is contemplated by 203.01 to 203.08 and the amount of insurance for each basic coverage should be specified in the space provided in the standard policy form for listing amounts of insurance, etc. 34 Atty. Gen. 227.

203.02 Fire policies, other conditions. (1) If the policy be made by a company having special regulations lawfully applicable to its organization, membership or policies, such regulations shall apply to and form a part of the policy if the same are written or printed upon or appended to the policy.

(2) Every mutual fire insurance company shall contain in its name, which shall be upon the first page in every policy, the word mutual, and every stock corporation shall, upon the face of its policies, express that it is a stock corporation. If necessary any company may also express its manner of operating in this state, and any company organized under special charter may so indicate and may state on filing side and front page whether the policy is nonassessable. [*Stats. 1931 s. 201.23, 203.20; 1933 c. 487 s. 82, 83, 98; 1943 c. 357; 1945 c. 474*]

203.025 [*Renumbered section 203.03 by 1933 c. 487 s. 85*]

203.03 Interest of the insured. The term "interest of the insured" as used in such standard fire insurance policy shall be deemed to include the interest of the named insured and of his or her spouse, when the insured property is owned by them in joint tenancy or is so transferred. [*Stats. 1931 s. 203.025; 1933 c. 487 s. 85; 1945 c. 474*]

203.04 Insurance appraisals. (1) Whenever an appraisal is demanded and an appraiser appointed under the standard fire insurance policy, the other party shall designate an appraiser within 20 days after receipt of notice of such demand and appointment. If no appraiser is appointed by such other party, the party demanding the appraisal may make application for the appointment of an umpire, in the manner provided in subsection (2). Such umpire together with the appraiser named by the one party shall thereupon act as a board of appraisers and their award shall be as binding as though both parties had chosen appraisers.

(2) Application for the selection of an umpire pursuant to the provisions relating to appraisals shall be made to a judge of a court of record in the state in which the property insured was located at the time of the fire, on 5 days' notice in writing, to be given by either party to the other. Such notice when served by the insured must be served as provided in section 262.09 (4) or (8); and the judge shall, on proof by affidavit of the failure or neglect of said appraisers to select an umpire within the time provided in said policy, and of the service of notice aforesaid, forthwith appoint a competent and disinterested person to act as umpire in the ascertainment of the amount of said loss or damage. [*1931 c. 308; Stats. 1931 s. 203.045; 1933 c. 487 s. 86; 43.08 (2); 1945 c. 474*]

203.045 [*Renumbered section 203.04 by 1933 c. 487 s. 86*]

203.05 Part of fire premiums held as trust fund. Unless otherwise specified in an indorsement on the policy, which is hereby authorized, the company shall hold as a deposit in trust for the insured, for which he shall have a preferred claim, a pro rata part of the premiums paid on every standard fire insurance policy. [*1933 c. 487 s. 87*]

203.06 Standard policy compulsory; permissible variations. (1) No person except town mutual insurance companies, shall issue, use or deliver for use any fire insurance

policy on property in this state, unless it shall conform as to all provisions, agreements and conditions of the standard policy as set forth in section 203.01. Appropriate forms of other contracts or indorsements, whereby the interest in the property described in such policy shall be insured against one or more of the perils which one or more of the insurers issuing the policy is empowered to assume, may be used in connection with the standard policy. Such forms of other contracts or indorsements attached or printed thereon may contain provisions and stipulations inconsistent with the standard policy, provided that the fire and lightning portions thereof shall be in accord substantially with such standard policy. Subject to the approval of the commissioner, the first page of the standard policy may be rearranged as to all provisions thereof and to provide space for the listing of rates and premiums for coverages insured thereunder or under indorsements attached or printed thereon, and such other data as may be included for duplication on daily reports for office records. The name of the company, its location or place of business, the date of its incorporation or organization and the state or country under which the same is organized, or the location of its United States office, the states wherein such policy is in use, the amount of paid-up capital, whether it is a stock or mutual company, or the manner in which it operates in this state, and the name of its officers may, at the option of the company be printed on the policies. Subject to the approval of the commissioner there may be placed on the policy an emblem or medallion commonly used by such company.

(2) (a) There may be inserted in the space indicated therefor or added to the policy by agreement in writing thereon or by indorsement thereto, the following:

1. Descriptions and specifications by schedule or otherwise of the property covered by the policy.

2. Any matter stating the extent of the application of the insurance under the policy.

3. Any matter stating the extent of the contribution to be made under the policy in case of loss or damage.

4. Any matter necessary to express all the facts and conditions relating to insurance on any particular risk.

5. In case of a mortgagee, or other person holding an interest in property by way of security, who is not named in the policy as an assured, a rider or indorsement, relating to the interest of such mortgagee or other person may be added to such policy. Provided, however, if the policy insures real estate, any losses, including losses caused by windstorm, of the amount of \$50 or less shall be paid by the company solely to the assured mortgagor.

(b) Every agreement or indorsement shall be plainly printed and in a type not smaller than 8-point and the facts or conditions of such agreement or indorsement shall not defeat or diminish the rights of the insured under the provisions of the standard fire insurance policy.

(d) Riders and indorsements may, in consideration of an adequate premium or premium deposit, be added to the standard fire insurance policy insuring property (excluding stocks of merchandise and supplies), (a) used for manufacturing and activities connected therewith, governmental operations, and public and private institutions, and which shall be regularly inspected by and approved by the insurer or its inspection bureau, or (b) used for mercantile purposes and so inspected and approved and which shall be protected by a system of automatic sprinklers, whereby the insurer agrees to reimburse and indemnify the insured for the difference between the actual value of the insured property at the time any loss or damage occurs, and the amount actually expended to repair, rebuild or replace with new materials of like size, kind and quality, such property as has been damaged or destroyed by fire or other perils insured against.

(3) A company may, with the approval of the commissioner, if the same is not already included in the standard form, print on its policies any provision, which it is required by law to insert therein, if such provision be not in conflict with the laws of this state or of the United States, or of the provisions of the standard fire insurance policy, but any such provision shall be printed apart from the other provisions of the policy, and in type not smaller than the body of the policy, and under this title: "Provisions required by law to be stated in this policy," and be a part of said policy.

(4) The name, with the word "agent" and place of business of any insurance agent may be indorsed on the policy.

(5) Where companies issue a joint policy there may be expressed in the heading of such policy the fact of the severalty of the contract; the proportion of premium to be paid to each company; the proportion of liability which each company agrees to assume; and in the printed conditions of such policy the necessary change may be made from the singular to the plural number, when reference is had to the companies issuing such policy.

[1933 c. 487 s. 88; 1941 c. 108; 1943 c. 192, 408, 472; 1943 c. 553 s. 32; 1945 c. 90, 474; 1947 c. 189, 585]

Note: A rider, not being standard form, attached to a fire policy is construed most strongly against the insurer. A haybaler and silo filler are farm machinery and this case were temporarily off the premises. *Lewis v. Insurance Co.*, 203 W 324, 234 NW 499. The use of the standard fire policy is not required for insurance in the state fire fund. 34 Atty Gen. 304.

203.07 Unauthorized insurance voidable. (1) All insurance against loss or damage to property or in the use of or income from property in this state shall be held to be made within this state.

(2) No unauthorized insurer shall issue, directly or indirectly, any policy on property in this state, except as specifically authorized by law. All policies issued in violation of this section are unenforceable by the insurer. [1933 c. 487 s. 89; 1945 c. 474]

Revisor's Note, 1933: This section conflicts with the last part of 203.08, and is amended to reconcile the two. (Bill No. 50 S, s. 89)

203.08 Penalties; company bound by voidable contract. Any insurance company, or officer or agent violating any provision of sections 203.01 to 203.07, by issuing, delivering or offering to deliver any policy of fire insurance on property in this state, shall be fined not less than fifty dollars nor more than one hundred dollars for the first offense, and not less than one hundred dollars nor more than two hundred and fifty dollars for each subsequent offense; but any policy so issued and delivered shall be binding upon the company, and such act shall be cause for revoking the company's authority to do business in this state. [1933 c. 487 s. 90]

Revisor's Note, 1933: It is thought that the statute contemplates an express revocation of license. That is the more orderly way and gives the company a chance to be heard. The fault might be wholly that of an agent. (Bill No. 50 S, s. 90)

203.09 Board of underwriters; fire patrol. (1) INCORPORATION. Three or more fire insurance agents or companies in any city may incorporate as a board of underwriters in such city under the provisions of chapter 180.

(2) FIRE PATROL; DUTIES. The board may establish a fire patrol in such city, and may appoint and remove at pleasure a superintendent and such number of patrols as it shall deem proper and provide suitable accommodations and apparatus for such patrol, and make needful regulations for the government and direction thereof; the duty of such patrol shall be to discover and prevent fires and to save life and property at and after fires, and for that purpose such superintendent and patrol may enter any building on fire or which may be in danger of taking fire, subject to the control of the chief of the city fire department, and to remove property therefrom at or immediately after a fire and to guard and protect the same.

(3) ANNUAL MEETING, BUSINESS. The board shall meet in January in each year; prior notice of such meeting, specifying the time and place, shall be inserted at least ten days prior thereto in a local daily newspaper; at such meeting each insurance company or agent doing a fire insurance business in such city and who has become a member of such corporation shall have the right to be present and each company shall be entitled to one vote. Membership in any such corporation or board shall be optional. Such meeting may determine whether a fire patrol shall be established, or continued if established, and fix the maximum expenses which shall be incurred therefor during the ensuing year; but not exceeding two per cent of the premiums for fire insurance received in such city during such year.

(4) EXPENSES OF FIRE PATROL. On the first day of each February each insurance company or agent doing fire insurance business in such city who has become a member of such corporation or board shall furnish said board a sworn statement of the amount of premiums received for insuring property in such city during the preceding calendar year. The board shall assess the amount fixed for said expenses for the current year upon the several member companies or agents, in proportion to the amount of the premiums received by each, and such assessments may be recovered by such board. If statements shall not be made as above required, the board shall serve a written demand therefor on the delinquent member company or agent personally or by leaving the same during business hours at its or his office with the person in charge thereof; and every such member company or agent who shall wilfully make a false statement, or who shall, for fifteen days after such demand, neglect to render such statement, shall forfeit fifty dollars and an additional fifty dollars for each day's neglect after the expiration of said fifteen days, one-half to the use of said board, when it shall prosecute therefor. [Stats. 1931 s. 203.16 to 203.19; 1933 c. 487 s. 91; 1939 c. 268]

Revisor's Note, 1933: The law is not changed, except to permit personal service. An amendment to the articles of incorporation of a board of fire underwriters extending membership to each insurance com- (Bill No. 50 S, s. 91)

pany doing business in the county instead of limiting them to those doing business within the city was invalid. Milwaukee Board of Fire Underwriters v. Badger Mut. Fire Ins. Co., 230 W 60, 283 NW 342.

Where a mutual insurance company was excluded from membership in the board of fire underwriters and therefore was not

subject to assessments, but voluntarily paid assessments and reported premiums for the purpose of fixing the assessments for several years, the mutual company was not estopped to deny the board's right to assess the company in the future. Milwaukee Board of Fire Underwriters v. Badger Mut. Fire Ins. Co., 230 W 60, 283 NW 342.

203.10 [Renumbered section 201.45 sub. (1) by 1933 c. 487 s. 65]

203.11 Effect of other policies on same risk. Whenever a condition is included in any fire insurance policy issued in this state that unless provided by agreement in writing added thereto the insuring company shall not be liable for loss or damage occurring while the insured shall have any other contract of insurance, whether valid or not, on property covered in whole or in part by such policy, such other or additional insurance, whether with or without knowledge of the insuring company, shall nevertheless not operate to relieve the insuring company from liability for loss or damage occurring while the insured shall have such other contract of insurance, whether valid or not. Subject to all other terms and conditions of its policy, each insuring company shall be liable for its proportionate share of any such loss or damage, but in no event shall the insured be entitled to recover from any or all of such insuring companies a sum greater than his actual loss or damage. [Stats. 1931 s. 203.215; 1933 c. 487 s. 92]

Note: This section enacted after the issuance of the standard form policy sued upon, did not affect the clause suspending liability if additional insurance is procured without the insurer's written consent, because the statute is not made retroactive by its terms and to so construe it would render it unconstitutional as impairing the obligation of contracts. Filipkowski v. Springfield F. & M. Ins. Co., 266 W 39, 238 NW 328.

Statute respecting recovery where there is condition in fire policy voiding other insurance did not apply where policy provided

that insurer should not be liable for greater portion of loss than amount insured should bear to whole insurance. Insured held entitled to recover full amount of fire policy under valued policy law, though he had received some insurance from another company and total recovery would exceed value of property. Ciokevicz v. Lynn M. F. Ins. Co., 212 W 44, 248 NW 778.

As to effect of pro rata liability clause see note to 203.01, citing Kisow v. National Liberty Ins. Co., 220 W 586, 265 NW 569.

203.12 Compulsory return of surrender value; table to ascertain same. Any company, association or corporation transacting the business of insuring property against loss or damage from any cause except steam boiler, flywheel or elevator insurance shall, except as is otherwise provided by any provision applicable to any class of insurance companies, cancel any policy at any time, by request of the party insured or his assignee, and return to said party the amount of premium paid, less the earned premium for the expired portion of the full term for which the policy has been issued as specified in the following tables:

TABLE A.

Percentages of the Annual Premiums to be Charged or Retained for Periods Less Than One Year.

Days	Per Cent	Days	Per Cent	Days	Per Cent	Days	Per Cent	Days	Per Cent	Days	Per Cent
1	2.10	61	31.17	121	50.33	181	70.17	241	80.17	301	90.17
2	3.86	62	32.10	122	50.67	182	70.34	242	80.34	302	90.34
3	5.25	63	32.80	123	51.00	183	70.50	243	80.50	303	90.50
4	6.26	64	33.27	124	51.33	184	70.67	244	80.67	304	90.67
5	7.00	65	33.50	125	51.67	185	70.84	245	80.84	305	90.84
6	8.00	66	34.32	126	52.00	186	71.00	246	81.00	306	91.00
7	8.80	67	34.97	127	52.33	187	71.17	247	81.17	307	91.17
8	9.40	68	35.46	128	52.67	188	71.34	248	81.34	308	91.34
9	9.80	69	35.79	129	53.00	189	71.50	249	81.50	309	91.50
10	10.00	70	35.95	130	53.33	190	71.67	250	81.67	310	91.67
11	11.33	71	36.30	131	53.67	191	71.84	251	81.84	311	91.84
12	12.40	72	36.58	132	54.00	192	72.00	252	82.00	312	92.00
13	13.20	73	36.79	133	54.33	193	72.17	253	82.17	313	92.17
14	13.73	74	36.93	134	54.67	194	72.34	254	82.34	314	92.34
15	14.00	75	37.00	135	55.00	195	72.50	255	82.50	315	92.50
16	15.00	76	37.50	136	55.33	196	72.67	256	82.67	316	92.67
17	15.80	77	37.90	137	55.67	197	72.84	257	82.84	317	92.84
18	16.40	78	38.20	138	56.00	198	73.00	258	83.00	318	93.00
19	16.80	79	38.40	139	56.33	199	73.17	259	83.17	319	93.17
20	17.00	80	38.50	140	56.67	200	73.34	260	83.34	320	93.34
21	17.70	81	38.85	141	57.00	201	73.50	261	83.50	321	93.50
22	18.26	82	39.13	142	57.33	202	73.67	262	83.67	322	93.67
23	18.63	83	39.34	143	57.67	203	73.84	263	83.84	323	93.84
24	18.96	84	39.48	144	58.00	204	74.00	264	84.00	324	94.00
25	19.10	85	39.55	145	58.33	205	74.17	265	84.17	325	94.17
26	19.40	86	39.70	146	58.67	206	74.34	266	84.34	326	94.34
27	19.64	87	39.82	147	59.00	207	74.50	267	84.50	327	94.50
28	19.82	88	39.91	148	59.33	208	74.67	268	84.67	328	94.67
29	19.94	89	39.97	149	59.67	209	74.84	269	84.84	329	94.84
30	20.00	90	40.00	150	60.00	210	75.00	270	85.00	330	95.00
31	21.17	91	40.33	151	60.33	211	75.17	271	85.17	331	95.17
32	22.10	92	40.67	152	60.67	212	75.34	272	85.34	332	95.34
33	22.80	93	41.00	153	61.00	213	75.50	273	85.50	333	95.50
34	23.27	94	41.33	154	61.33	214	75.67	274	85.67	334	95.67
35	23.50	95	41.67	155	61.67	215	75.84	275	85.84	335	95.84
36	24.32	96	42.00	156	62.00	216	76.00	276	86.00	336	96.00
37	24.97	97	42.33	157	62.33	217	76.17	277	86.17	337	96.17
38	25.46	98	42.67	158	62.67	218	76.34	278	86.34	338	96.34
39	25.79	99	43.00	159	63.00	219	76.50	279	86.50	339	96.50
40	25.95	100	43.33	160	63.33	220	76.67	280	86.67	340	96.67
41	26.30	101	43.67	161	63.67	221	76.84	281	86.84	341	96.84
42	26.58	102	44.00	162	64.00	222	77.00	282	87.00	342	97.00
43	26.79	103	44.33	163	64.33	223	77.17	283	87.17	343	97.17
44	26.93	104	44.67	164	64.67	224	77.34	284	87.34	344	97.34
45	27.00	105	45.00	165	65.00	225	77.50	285	87.50	345	97.50
46	27.50	106	45.33	166	65.33	226	77.67	286	87.67	346	97.67
47	27.90	107	45.67	167	65.67	227	77.84	287	87.84	347	97.84
48	28.20	108	46.00	168	66.00	228	78.00	288	88.00	348	98.00
49	28.40	109	46.33	169	66.33	229	78.17	289	88.17	349	98.17
50	28.50	110	46.67	170	66.67	230	78.34	290	88.34	350	98.34
51	28.85	111	47.00	171	67.00	231	78.50	291	88.50	351	98.50
52	29.13	112	47.33	172	67.33	232	78.67	292	88.67	352	98.67
53	29.34	113	47.67	173	67.67	233	78.84	293	88.84	353	98.84
54	29.48	114	48.00	174	68.00	234	79.00	294	89.00	354	99.00
55	29.55	115	48.33	175	68.33	235	79.17	295	89.17	355	99.17
56	29.70	116	48.67	176	68.67	236	79.34	296	89.34	356	99.34
57	29.82	117	49.00	177	69.00	237	79.50	297	89.50	357	99.50
58	29.91	118	49.33	178	69.33	238	79.67	298	89.67	358	99.67
59	29.97	119	49.67	179	69.67	239	79.84	299	89.84	359	99.84
60	30.00	120	50.00	180	70.00	240	80.00	300	90.00	360	100.00

TABLE B.

Percentages of Premiums to be Charged or Retained as Earned Premiums on Policies Written for Periods More Than One Year.

Time Months	2-year Policy	3-year Policy	4-year Policy	5-year Policy
1	11%	8%	6%	5%
2	17	12	9	8
3	23	16	12	10
4	29	20	15	13
5	34	24	18	15
6	40	28	22	18
7	43	30	23	19
8	46	32	25	20
9	49	34	26	21
10	51	36	28	23
11	54	38	29	24
12	57	40	31	25
13	61	43	33	27
14	64	45	35	28
15	68	48	37	30
16	71	50	38	31
17	75	53	40	33
18	79	55	42	34
19	82	58	44	36
20	86	60	46	38
21	89	63	48	39
22	93	65	50	41
23	96	68	52	42
24	100	70	54	44
25	---	73	56	45
26	---	75	58	47
27	---	78	60	48
28	---	80	62	50
29	---	83	63	52
30	---	85	65	53
31	---	88	67	55
32	---	90	69	56
33	---	93	71	58
34	---	95	73	59
35	---	98	75	61
36	---	100	77	63
37	---	---	79	64
38	---	---	81	66
39	---	---	83	67
40	---	---	85	69
41	---	---	87	70
42	---	---	88	72
43	---	---	90	73
44	---	---	92	75
45	---	---	94	77
46	---	---	96	78
47	---	---	98	80
48	---	---	100	81
49	---	---	---	83
50	---	---	---	84
51	---	---	---	86
52	---	---	---	88
53	---	---	---	89
54	---	---	---	91
55	---	---	---	92
56	---	---	---	94
57	---	---	---	95
58	---	---	---	97
59	---	---	---	98
60	---	---	---	100

On policies written for more than one year at pro rata of the annual rate and upon which the elapsed time is less than one year, short rates of the full annual premiums must be charged as provided in the short rate table for other than term risks. Policies written for more than one year at pro rata of the annual rate and upon which the elapsed time is one year or more than one year must be canceled pro rata. [1933 c. 487 s. 93]

Note: 203.12, relating to the compulsory return of unearned premium, in connection with 201.18 (1) and 204.27, relating to unearned premium reserves, indicates a plain statutory purpose that the cost of furnishing insurance shall be collected by a charge known as a "premium," that reserves shall be set up against this premium, and that specified portions of the premium indicated in the statutory tables shall be returned as unearned on cancellation of the insurance, and requires the conclusion that the amount exacted to cover the cost of insurance shall buy insurance protection which may be so

measured that the unearned portion of the premium deposit may be ascertained and re-

turned. *Duel v. State Farm Mut. Auto Ins. Co.*, 240 W 161, 1 NW (2d) 887, 2 NW (2d) 871.

203.13 Notice to agent, notice to company; beneficiary misnamed, immaterial when.

(1) Knowledge of an agent of a fire, casualty or marine insurance company at the time a policy is issued or an application made shall be knowledge of the company, and any fact which breaches a condition of the policy and is known to the agent when the policy is issued or the application made shall not void the policy or defeat a recovery thereon in the event of loss.

(2) Error or mistake in designating the person to whom the insurance is payable in a policy of fire insurance shall not void the policy notwithstanding its terms, unless it shall be found as a fact that such error or mistake was due to fraud, misrepresentation or concealment on the part of the owner of the property, or the person representing him, in procuring the issue of the policy, or that the company would not have issued or continued the policy if it had known the facts.

(3) If an agent of any fire, casualty or marine insurer by any act, statement or representation, after a loss and made in reference to notice of loss, or care of property or proofs of loss in connection with such loss, although such act, statement or representation may not have been authorized by the company, shall cause or induce an assured to refrain from doing an act required to be done under the policy of insurance or to delay such act or do it in a manner different from that required by the policy, then such failure to act or delay or doing of such act in a manner different than that prescribed by the policy shall not be a defense to the company or other insurer notwithstanding any provision in the policy unless such failure to act or delay or the doing of such act in a manner different from that prescribed in the policy shall actually have substantially misled or prejudiced the insurer, or unless such act, statement or representation shall have been made in collusion with assured to deceive or defraud the insurer. Nothing herein contained shall in any case be construed to limit or restrict any existing rule of law as to the insurer being bound by the knowledge, statements, acts or representations of an agent but shall apply only to cases where the company would not, under the rules of law heretofore existing, be bound by the acts, statements or representations of the agent. [1931 c. 330; Stats. 1931 s. 209.08; 1933 c. 487 s. 95]

Note: Under (1) the knowledge of such general agent respecting the title and the son's interest in the insured automobile is knowledge of the insurer, and such imputed knowledge when the policy was first issued is imputed at subsequent renewals thereof. Where the insurer, knowing that a person not named in the policy as owner held a beneficial interest in the automobile covered, issued its policy to protect him, it was estopped to deny liability after an accident. *Newburg v. United States F. & G. Co.*, 207 W 344, 241 NW 372.

An insurer is charged with the knowledge had by its agent at the time of application for a burglary policy that the premises of the insured were burglarized within five years prior to the date of the application, although a warranty stated that no burglary had occurred within five years. *McKinnon v. Massachusetts B. & I. Co.*, 213 W 145, 250 NW 503.

See note to 209.06, citing *Kline v. Washington N. Ins. Co.*, 217 W 21, 258 NW 370.

The fact that the insured building was unoccupied when destroyed by fire did not defeat recovery on the policy, where the insured at the time of applying for insurance had informed the agent of the insurance company that the premises were then vacant and would remain vacant until the insured could make suitable repairs so as to rent the building, since under the statute the knowledge which the agent had at the time of the issuance of the policy was knowledge of the company, and the issuance of the policy in the circumstances waived any provision therein as to vacancy or unoccupancy then existing. *Keller v. Hartford Fire Ins. Co.*, 239 W 354, 300 NW 471.

The knowledge of an insurance agent at the time a fire policy was issued was knowledge of the company. *Fish v. Connecticut Fire Ins. Co.*, 241 W 166, 5 NW (2d) 779.

203.14 [Renumbered section 201.47 by 1933 c. 487 s. 68]

203.15 Licensed company not to reinsure unlicensed one; reinsurance by retiring company. (1) No fire insurance company shall reinsure or assume in any manner or form, the whole or any part of any risk or liability covering property in this state, of any unlicensed insurance company.

(2) Any licensed fire insurance company or reinsurance company shall, on retiring from business before the expiration of its policies, file with the commissioner a written notice of such intention, together with a sworn statement of its outstanding liabilities or obligations under such policies, and shall reinsure such liabilities or obligations in a company authorized to do business in this state. [Stats. 1931 s. 201.27; 1933 c. 487 s. 96]

203.16 Guarantee surplus and special reserve. (1) HOW CREATED; COMMISSIONER'S DUTY. The board of directors of any fire insurance corporation may by resolution create a guaranty surplus fund and a special reserve fund. Upon filing a copy of the resolution with the commissioner he shall make an examination of such corporation and record a certificate, which shall particularly set forth the amount of its surplus funds at that time which may be equally divided between and set apart to constitute such funds. Thereafter all policies and renewals issued shall have printed thereon a notice that they are issued subject to the provisions of this section.

(2) **DIVIDENDS; SURPLUS; HOW ESTIMATED.** Thereafter such corporation shall not declare or pay any dividend exceeding seven per cent per annum upon its capital stock until after its guaranty surplus fund and its special reserve fund shall together equal its capital stock. The surplus profits of such corporation above such annual dividend shall be equally divided between and be set apart to said funds, which shall be held and used as hereinafter provided and not otherwise. Any corporation which shall declare or pay any dividend contrary to the provisions of this section shall be liable to dissolution. In estimating such surplus profits there shall be deducted from the gross assets of the corporation the sum of the following items: All outstanding claims; an amount sufficient to meet its liability for the unearned premiums received on policies having a one-year term or less and a pro rata proportion of the premiums received on the policies having more than a one-year term; its guaranty surplus fund and its special reserve fund; the capital of the corporation; and seven per cent per annum upon the capital for whatever time shall have elapsed since the last cash dividend. The balance shall constitute such surplus profits.

(3) **INVESTMENT OF SURPLUS AND SPECIAL FUND.** Said guaranty surplus fund shall be invested in the securities specified in section 209.01 (3), and shall be held liable and applicable in the same manner as the capital to the payment of the losses; and such special reserve fund shall be invested only in securities specified in section 209.01 (3), and shall be deposited from time to time as the same shall be invested with the state treasurer, who shall permit said corporation to collect and receive the interest or dividends upon such securities as the same may accrue; but no such securities so deposited shall be withdrawn unless others of equal value are substituted therefor; and such special reserve fund shall be deemed a fund contributed by the stockholders to protect such corporation and its policyholders in case of extraordinary conflagrations; and said fund shall not be liable for any claims for losses except as hereinafter provided.

(4) **CONFLAGRATION, APPLICATION OF RESERVE; DISCHARGE OF COMPANY; NEW CAPITAL.** In the event of an extensive conflagration, whereby the claims upon any corporation shall exceed the amount of the capital and of its guaranty surplus fund, the corporation shall notify the commissioner, who shall then make an examination of the corporation, and shall certify the result in duplicate showing the amounts of capital, of guaranty surplus fund, of special reserve fund, of reinsurance liability and of other assets, one copy to be given to the corporation and one to be recorded in the insurance department; thereupon the special reserve fund shall be held to protect all policyholders other than such as are claimants at the time or such as become claimants in consequence of such conflagration. Such special reserve fund and an amount equal to the unearned premiums of such corporation, to be ascertained as provided in subsection (2), shall constitute the capital and assets of such corporation for the protection of policyholders, other than such claimants, and for the further conduct of its business. Such certificate of the commissioner shall be binding and conclusive upon all parties interested, and upon pro rata payment of claims existing at the time of or caused by such conflagration, of the full sum of the capital of such corporation, its guaranty surplus fund and its assets, excepting only such special reserve fund and assets equal to its liability for unearned premiums as so certified, such corporation shall be forever discharged from all liability to such claimants and to each of them. The state treasurer shall thereupon and upon demand of such corporation, transfer to it all securities it shall have deposited with him as such special reserve fund; and if the amount of such special reserve fund be less than fifty per cent of the full amount of the capital of the corporation, a requisition shall be issued by the commissioner upon the stockholders to make up such capital to that proportion of its full amount; and up to at least two hundred thousand dollars; and in case such corporation shall fail to make up its capital to said amount of two hundred thousand dollars, said special reserve fund shall still be held as security and liable for any and all losses occurring upon its policies after such conflagration.

(5) **CONFLAGRATION, RESTORATION OF CAPITAL.** If at any time it shall appear upon examination by the commissioner that the capital of such corporation has, without the occurrence of any such extensive conflagration, become impaired, and he shall order a call upon the stockholders to make up such impairment, the board of directors may either require the necessary payment by the stockholders or transfer to capital so much of said special reserve fund as will make such impairment good. [*Stats. 1931 s. 201.31 to 201.35; 1933 c. 487 s. 97; 1947 c. 100*]

203.17 to 203.19 [*Renumbered section 203.09 (2) to (4) by 1933 c. 487 s. 91*]

203.20 [*Renumbered section 203.02 sub. (3) by 1933 c. 487 s. 98*]

203.21 **Total loss measured by amount written in policy.** Whenever any policy insures real property and the property is wholly destroyed, without criminal fault on the part of the insured or his assigns, the amount of the policy shall be taken conclusively to

be the value of the property when insured and the amount of loss when destroyed. [1933 c. 487 s. 99]

Note: In case of total loss by fire the amount of the policy is the measure of damages and appraisal proceedings under the policy are ineffective. *Eck v. Netherlands Ins. Co.*, 203 W 515, 234 NW 718.

The rule that where the insured under a valued policy has some insurable interest subject to hazard, the agreed valuation, in the absence of fraud, accident or mistake, is conclusive on the parties, is subject to the general rule that a conveyance by the insured of the insured property ordinarily terminates the policy, because if the vendor retains no interest in the property he suffers no loss by its destruction. And if the vendor of the insured property retains an interest therein, the extent of such interest measures the extent of his loss. Regardless of whether the so-called valued policy law applies to other than fire insurance (a question not determined in this case), recovery under a tornado policy containing no provision for forfeiture for change in interest of the insured should have been limited to his interest in the insured premises deeded by him to another in possession, although the value of the property destroyed exceeded the amount of the policy coverage thereon. Such interest of the insured was only the amount of a vendor's lien to the extent of the value of other premises orally agreed to be but in fact not conveyed to the insured as part consideration for his deed of the insured premises, such oral agreement being void and not subject to specific performance because the insured at the time of the destruction of the

insured property had not been placed in possession of such other premises. *Wohl v. Farmers Home H., T. & C. Ins. Co.*, 206 W 35, 238 NW 809.

Valued policy law controls over subsequently enacted standard fire policy law limiting damages to actual cash value of property at time of loss being an exception thereto. *Fox v. Milwaukee M. Ins. Co.*, 210 W 213, 246 NW 511.

Valued policy law applied where fire policy merely provided that insurer should not be liable for greater proportion of loss than amount insured should bear to whole insurance covering property. *Clockewicz v. Lynn M. F. Ins. Co.*, 212 W 44, 248 NW 778.

Under standard statutory fire policy, insured held entitled to recover as for "total destruction", where building after partial destruction by fire was ordered destroyed pursuant to ordinance, though damage to building amounted to only 66 per cent. *City of New York F. Ins. Co. v. Chapman*, 76 F (2d) 78.

Where a building after partial fire destruction is ordered destroyed under a fire ordinance, the insurer's liability is not determined by the actual fire loss but is measured by the face value of the policy as for total fire destruction. *New Hampshire Fire Ins. Co. v. Murray*, 105 F. (2d) 212.

This section is applicable where building is totally destroyed by fire and there are two or more fire insurance policies covering such property, regardless of whether several insurance companies had knowledge of existence of other policies. 21 Atty. Gen. 634.

203.215 [Renumbered section 203.11 by 1933 c. 487 s. 92]

203.22 Coinsurance clauses. 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. [1933 c. 149; 1933 c. 487 s. 100; 1943 c. 327]

Note: This section and 201.20, Stats. 1931, are independent of each other, 201.20 providing for carrying of portion of risk by insured and this section for sharing of loss, and are not in conflict. 20 Atty. Gen. 605.

203.23 Combinations to establish rates. No fire, fire and marine, or marine and inland insurance company or its agent shall enter into any agreement, combination or compact for the purpose of establishing and maintaining rates; except such agreements as are authorized by statutes, or such as may be filed with and approved by the commissioner. Such approval may be withdrawn at any time. [1933 c. 487 s. 101]

203.24 Adjusters of insurance. (1) No person, except an agent holding a certificate of authority under section 209.04, shall make any adjustment of loss under an insurance policy covering hazards described in subsections (1), (2), (11), (12), (14) and (15) of section 201.04, unless he shall hold a certificate under this section.

(2) A certificate of authority as a fire insurance adjuster, expiring January thirty-first, following, may be issued by the commissioner to any person filing an application on a prescribed form and upon the payment of a license fee of one dollar.

(3) Such certificate shall be revoked by the commissioner, if after due investigation and hearing, he determines that the holder has violated the insurance law. No person whose certificate is revoked shall be granted another certificate within one year thereafter, nor shall he, until again so authorized, act as employe or participate in the pay of any fire insurance adjuster.

(4) A person does not violate this section by making his first adjustment during a license year prior to obtaining such certificate; provided, that he shall, within two days after entering upon such adjustment, make application therefor, and shall in all other respects comply with this section.

(5) Upon the completion of each adjustment, a report thereof shall be made and signed by each adjuster participating therein and by the insured or someone authorized thereto by him, and shall be filed with the state fire marshal and a duplicate thereof shall be filed with the chief of the fire department, if any, provided that reports of adjustment under subsection (15) of section 201.04 need not be filed unless the adjustment involves a fire loss, and then only as to such fire loss.

(6) No loss shall be paid unless the report of the adjustment signed by the adjuster shall show that the report and duplicates required by this section have been filed.

(7) The deposit of such report in the mails, properly sealed, addressed and postpaid, shall be a sufficient filing.

(8) This section shall apply to all persons who act in the capacity specified in subsection (1) for any insurance company or insured and to all persons who act as advisors to or adjusters for the insured for compensation in case of loss by fire, excepting attorneys acting in the ordinary relation of attorney and client.

(9) No compensation which shall be based on the excess of recovery over a stipulated sum, or on a percentage upon the amount of recovery in excess of five per cent of the amount of such recovery, plus actual transportation charges and hotel bills, shall be paid for the services of any fire insurance adjuster, and any contract for compensation in violation of this subsection shall be void.

(10) Subsection (1) shall not apply to adjusters for town mutual companies. The reports of adjustments may be made in such form and at such times as are prescribed by the commissioner.

(11) Any person violating this section shall be fined not more than five hundred dollars or imprisoned not exceeding six months. [1933 c. 236 s. 2; 1933 c. 487 s. 102; 1933 c. 489 s. 9; 1937 c. 235]

Note: In pursuing the business of adjuster of losses when employed by an insurance company, a layman may investigate the facts of any loss, either himself or through his employes, may obtain written statements and photographs, and may appraise a loss or damages and if authorized by his employer he may obtain reports or estimates of damage to property or the extent of personal injuries from experts, and he may report all facts so obtained to his employer, and may comment on the facts found, but he may not advise his employer as to its liability or render advice as to legal rights to a claimant without thereby engaging in the "practice of law." State ex rel. Junior Ass'n of Milwaukee Bar v. Rice, 236 W 38, 294 NW 550.

203.27 [Renumbered section 209.12 by 1933 c. 487 s. 254]

203.28 Fire companies, domestic; risks; sprinkler leakage; explosion; steam boiler excepted. Any corporation organized under the laws of this state for the insurance of property against loss or damage by fire may also insure the same classes of property, subject to the limitations prescribed by the law under which it was organized or is governed as to the amount of any single risk, against loss or damage by lightning, hail, windstorms, tornadoes, cyclones, hurricanes, earthquake, bombardment, invasion, insurrection, riot, civil war, military or usurped power, leakage of sprinklers and sprinkler systems, installed or maintained for the purpose of protection against fire and by explosions, whether fire ensues or not, including insurance upon automobiles and vehicles and the accessories and other property transported upon and used in connection therewith against loss by collision and against loss by legal liability for damage to property resulting from the maintenance and use of such automobiles or vehicles and against loss by burglary or theft or both and against any risk mentioned in subsection (1), (2), (5) or (10) of section 201.04 which said company may assume under its license; provided the same shall be clearly expressed in the policy, but nothing herein shall be construed to empower such companies to insure against loss or damage to persons or property resulting from explosions of steam boilers. [1933 c. 487 s. 103]

203.29 Classification of directors. Any fire insurance company organized under any special law of this state may classify its directors so that a proportionate number of them shall hold for one, two and three years respectively. [1933 c. 487 s. 104]

203.30 Liability of directors of mutual companies. The directors of every mutual fire insurance corporation shall be personally liable for all dues owing and assessments made on policies written upon property in any other state, territory or foreign country in which the corporation has not been duly admitted to do business and wherein such policies have been issued in violation of the law of such state, territory or foreign country; provided, this section shall not apply to church mutual insurance companies. [1933 c. 487 s. 105]

203.31 Assessment by foreign company. Every foreign mutual fire insurance company licensed in this state shall, immediately after making an assessment upon any of its members herein, notify the commissioner thereof and accompany such notice with a statement of the condition of the company, setting forth in particular the facts showing the

necessity for each assessment. No company shall make or increase any such assessment because of its inability to collect assessments from its members in states or territories in which its policies were written in violation of the laws thereof. This section shall not apply to church mutual insurance companies. [1933 c. 487 s. 106]

[203.32 Stats. 1945 repealed by 1947 c. 487]

203.32 Insurance rates and practices. (1) **PURPOSE OF SECTION.** The purpose of this section is to promote the public welfare by regulating insurance rates to the end that they shall not be excessive, inadequate or unfairly discriminatory, and to authorize and regulate co-operative action among insurers in rate making and in other matters within the scope of this section. Nothing in this section is intended (1) to prohibit or discourage reasonable competition, or (2) to prohibit, or encourage except to the extent necessary to accomplish the aforementioned purpose, uniformity in insurance rates, rating systems, rating plans or practices. This section shall be liberally interpreted to carry into effect the provisions of this subsection. Section 201.60 shall not apply in respect to the subject matter of this section.

(2) **SCOPE OF SECTION.** (a) This section applies to fire and allied lines, marine and inland marine insurance as authorized under the provisions of 201.04 (1), (2) and (12) and 203.28 as written on risks located in this state by any company, association, or other carrier including interinsurers. Inland marine insurance shall be deemed to include insurance now or hereafter defined by statute, or by interpretation thereof, or if not so defined or interpreted, by ruling of the commissioner of insurance, hereinafter referred to as commissioner, or as established by general custom of the business, as inland marine insurance.

(b) This section shall not apply:

1. To reinsurance, other than joint reinsurance to the extent stated in subsection (11);
2. To insurance of vessels or craft, their cargoes, marine builders' risks, marine protection and indemnity, or other risks commonly insured under marine, as distinguished from inland marine, insurance policies;
3. To insurance of hulls of aircraft, including their accessories and equipment, or against liability arising out of the ownership, maintenance or use of aircraft;
4. To motor vehicle insurance, nor to insurance against liability arising out of the ownership, maintenance or use of motor vehicles;
5. To town mutual companies except as to specifically rated risks in incorporated villages and cities;
6. To windstorm, tornado and cyclone insurance and supplemental coverage written by domestic mutual companies on the assessment plan.

(c) If any kind of insurance, subdivision or combination thereof, or type of coverage, subject to this section, is also subject to regulation by another rate regulatory act of this state, an insurer to which both acts are otherwise applicable shall file with the commissioner a designation as to which rate regulatory act shall be applicable to it with respect to such kind of insurance, subdivision or combination thereof, or type of coverage.

(3) **MAKING OF RATES.** (a) Rates shall be made in accordance with the following provisions:

1. Manual, minimum, class rates, rating schedules or rating plans, shall be made and adopted, except in the case of specific inland marine rates on risks specially rated.
2. Rates shall not be excessive, inadequate or unfairly discriminatory.
3. Due consideration shall be given to past and prospective loss experience within and outside this state, to the conflagration and catastrophe hazards, to a reasonable margin for underwriting profit and contingencies, to dividends, savings or unabsorbed premium deposits allowed or returned by insurer to their policyholders, members or subscribers, to past and prospective expenses both countrywide and those specially applicable to this state, and to all other relevant factors within and outside this state; and in the case of fire insurance rates consideration shall be given to the experience of the fire insurance business during a period of not less than the most recent 5-year period for which such experience is available. In the case of classes of risks which do not develop an adequate amount of experience in this state, the experience in states with similar conditions prevailing on such risks may be taken into consideration if available.

(b) Except to the extent necessary to meet the provisions of paragraph (a) 2, uniformity among insurers in any matters within the scope of this subsection is neither required nor prohibited.

(c) Rates made in accordance with this subsection may be used subject to the provisions of this section and shall be considered in connection with rating schedules and underwriting rules as applied to the coverage afforded by the policy provisions, including forms.

(4) **RATE FILINGS.** (a) Every insurer shall file with the commissioner, except as to inland marine risks which by general custom of the business are not written according to

manual rates or rating plans, every manual, schedule, minimum, class rate, rating schedule or rating plan and every underwriting rule, and every modification of any of the foregoing which it proposes to use. Every such filing shall state the proposed effective date thereof, and shall indicate the character and extent of the coverage contemplated.

(b) When a filing is not accompanied by the information upon which the insurer supports such a filing, and the commissioner does not have sufficient information to determine whether such filing meets the requirements of the section, he shall require such insurer to furnish the information upon which it supports such filing and in such event the waiting period shall commence as of the date such information is furnished. The information furnished in support of a filing may include (1) the experience or judgment of the insurer or rating organization making the filing, (2) its interpretation of any statistical data it relies upon, (3) the experience of other insurers or rating organizations, or (4) any other relevant factors. A filing and any supporting information shall be open to public inspection after the filing becomes effective. Specific inland marine rates on risks specially rated, made by a rating organization, shall be filed with the commissioner.

(c) An insurer may satisfy its obligation to make such filings by becoming a member of, or a subscriber to, a licensed rating organization which makes such filings, and by authorizing the commissioner to accept such filings on its behalf; provided, that nothing contained in this section shall be construed as requiring any insurer to become a member of or a subscriber to any rating organization.

(d) The commissioner shall review filings as soon as reasonably possible after they have been made in order to determine whether they meet the requirements of this section.

(e) Subject to the exception specified in paragraph (f), each filing shall be on file for a waiting period of 15 days before it becomes effective, which period may be extended by the commissioner for an additional period not to exceed 15 days if he gives written notice within such waiting period to the insurer or rating organization which made the filing that he needs such additional time for the consideration of such filing. Upon written application by such insurer or rating organization, the commissioner may authorize a filing which he has reviewed to become effective before the expiration of the waiting period or any extension thereof. A filing shall be deemed to meet the requirements of this section unless disapproved by the commissioner within the waiting period or any extension thereof.

(f) Specific inland marine rates on risks specially rated by a rating organization shall become effective when filed and shall be deemed to meet the requirements of this section until such time as the commissioner reviews the filing and so long thereafter as the filing remains in effect.

(g) Under such rules and regulations as he shall adopt the commissioner may, by written order, suspend or modify the requirement of filing as to any kind of insurance, subdivision or combination thereof, or as to classes of risks, the rates for which cannot practicably be filed before they are used. Such orders, rules and regulations shall be made known to insurers and rating organizations affected thereby. The commissioner may make such examination as he may deem advisable to ascertain whether any rates affected by such order meet the standards set forth in subsection (3) (a) 2.

(h) Upon the written application of the insured, stating his reasons therefor, filed with and approved by the commissioner, a rate in excess of that provided by a filing otherwise applicable may be used on any specific risk.

(i) On or after January 1, 1948, no insurer shall make or issue a contract or policy except in accordance with the filings which are in effect for said insurer as provided in this section or in accordance with paragraphs (g) or (h). This subsection shall not apply to contracts or policies for inland marine risks as to which filings are not required. Until January 1, 1948, or until new filing shall have become effective in accordance with the provisions of this section, the rates and underwriting rules in force for any insurer on October 1, 1947 shall be the rates and underwriting rules for such insurer. As to such rates and rules, the statutory provisions repealed by this section [1947 c. 487 s. 3] shall remain in effect until January 1, 1948.

(5) DISAPPROVAL OF FILINGS. (a) If within the waiting period or any extension thereof as provided in subsection (4) (e), the commissioner finds that a filing does not meet the requirements of this section, he shall, except as provided in subsection (7) hereof, send to the insurer or rating organization which made such filing, written notice of disapproval of such filing specifying therein in what respects he finds such filing fails to meet the requirements of this section and stating that such filing shall not become effective.

(b) If within 30 days after a specific inland marine rate on a risk specially rated by a rating organization, subject to subsection (4) (f) has become effective, the commissioner finds that such filing does not meet the requirements of this section, he shall send to the rating organization which made such filing written notice of disapproval of such filing specifying therein in what respects he finds that such filing fails to meet the requirements

of this section and stating when, within a reasonable period thereafter, such filing shall be deemed no longer effective. Said disapproval shall not affect any contract made or issued prior to the expiration of the period set forth in said notice.

(c) If at any time subsequent to the applicable review period provided for in paragraph (a) or (b), the commissioner finds that a filing does not meet the requirements of this section, he shall, after a hearing held upon not less than 10 days' written notice, specifying the matters to be considered at such hearing, to every insurer and rating organization which made such filing, issue an order specifying in what respects he finds that such filing fails to meet the requirements of this section, and stating when, within a reasonable period thereafter, such filing shall be deemed no longer effective. Copies of said order shall be sent to every such insurer and rating organization. Said order shall not affect any contract or policy made or issued prior to the expiration of the period set forth in said order.

(d) Any person or organization aggrieved with respect to any filing which is in effect may make written application to the commissioner for a hearing thereon, provided, however, that the insurer or rating organization that made the filing shall not be authorized to proceed under this subsection. Such application shall specify the grounds to be relied upon by the applicant. If the commissioner shall find that the application is made in good faith, that the applicant would be so aggrieved if his grounds are established, and that such grounds otherwise justify holding such a hearing, he shall, within 30 days after receipt of such application, hold a hearing upon not less than 10 days' written notice to the applicant and to every insurer and rating organization which made such filing.

(e) If, after such hearing, the commissioner finds that the filing does not meet the requirements of this section, he shall issue an order specifying in what respects he finds that such filing fails to meet the requirements of this section, and stating when, within a reasonable period thereafter, such filing shall be deemed no longer effective. Copies of said order shall be sent to the applicant and to every such insurer and rating organization. Said order shall not affect any contract or policy made or issued prior to the expiration of the period set forth in said order.

(f) No manual, minimum, class rate, rating schedule, rating plan, rating rule, or any modification of any of the foregoing which has been filed pursuant to the requirements of subsection (4) shall be disapproved if the rates thereby produced meet the requirements of this section.

(6) RATING ORGANIZATIONS. (a) A corporation, an unincorporated association, a partnership or an individual, whether located within or outside this state, may make application to the commissioner for license as a rating organization for such kinds of insurance, or subdivision or class of risk or a part or combination thereof as are specified in its application and shall file therewith (1) a copy of its constitution, its articles of agreement or association or its certificate of incorporation, and of its by-laws, rules and regulations governing the conduct of its business, (2) a list of its members and subscribers, (3) the name and address of a resident of this state upon whom notices or orders of the commissioner or process affecting such rating organization may be served and (4) a statement of its qualifications as a rating organization. There shall be paid to the commissioner the sum of \$25 for such original filing. If the commissioner finds that the applicant is competent, trustworthy and otherwise qualified to act as a rating organization and that its constitution, articles of agreement or association or certificate of incorporation, and its by-laws, rules and regulations governing the conduct of its business conform to the requirements of law, he shall issue a license specifying the kinds of insurance, or subdivision or class of risk or part of [or] combination thereof for which the applicant is authorized to act as a rating organization. Every such application shall be granted or denied in whole or in part by the commissioner within 60 days of the date of its filing with him. Licenses issued pursuant to this subsection shall remain in effect during a license year from February 1 to January 31 succeeding unless sooner suspended or revoked by the commissioner. The fee for said license shall be \$100. Licenses issued pursuant to this subsection may be suspended or revoked by the commissioner, after hearing upon notice, in the event the rating organization ceases to meet the requirements of this subsection. Every rating organization shall notify the commissioner promptly of every change in (1) its constitution, its articles of agreement or association, or its certificate of incorporation, and its by-laws, rules and regulations governing the conduct of its business, (2) its list of members and subscribers and (3) the name and address of the resident of this state designated by it upon whom notices or orders of the commissioner or process affecting such rating organization may be served.

(b) If there are both stock and nonstock insurers in any fire insurance rating organization located in this state and consisting of 5 or more insurers, such nonstock insurer shall be entitled to at least 2 members on the managing committee. The managing com-

mittee shall hold a meeting at least once a year in the city where such resident rating organization has its principal office.

(c) Subject to rules and regulations which have been approved by the commissioner as reasonable, each rating organization shall permit any insurer, not a member, to be a subscriber to its rating services for any kind of insurance, subdivision, or class of risk or a part or combination thereof for which it is authorized to act as a rating organization. Notice of proposed changes in such rules and regulations shall be given to subscribers. Each rating organization shall furnish its rating services without discrimination to its members and subscribers. The reasonableness of any rule or regulation in its application to subscribers, or the refusal of any rating organization to admit an insurer as a subscriber, shall, at the request of any subscriber or any such insurer, be reviewed by the commissioner at a hearing held upon at least 10 days' written notice to such rating organization and to such subscriber or insurer. If the commissioner finds that such rule or regulation is unreasonable in its application to subscribers, he shall order that such rule or regulation shall not be applicable to subscribers. If the rating organization fails to grant or reject an insurer's application for subscribership within 30 days after it was made, the insurer may request a review by the commissioner as if the application had been rejected. If the commissioner finds that the insurer has been refused admittance to the rating organization as a subscriber without justification, he shall order the rating organization to admit the insurer as a subscriber. If he finds that the action of the rating organization was justified, he shall make an order affirming its action.

(d) No rating organization shall adopt any rule the effect of which would be to prohibit or regulate the payment of dividends, savings or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members or subscribers.

(e) Co-operation among rating organizations or among rating organizations and insurers in rate making or in other matters within the scope of this section is hereby authorized, provided the filings resulting from such co-operation are subject to all the provisions of this section which are applicable to filings generally. The commissioner may review such co-operative activities and practices and if, after a hearing, he finds that any such activity or practice is unfair or unreasonable or otherwise inconsistent with the provisions of this section, he may issue a written order specifying in what respects such activity or practice is unfair or unreasonable or otherwise inconsistent with the provisions of this section, and requiring the discontinuance of such activity or practice.

(f) Any rating organization or insurer may, and on order of the commissioner shall, provide for the examination of policies, daily reports, binders, renewal certificates, endorsements or other evidences of insurance, or the cancellation thereof, and such rating organization shall make reasonable rules, subject to the approval of the commissioner, governing their submission. Such rules shall contain a provision that in the event any insurer does not within 30 days furnish satisfactory evidence to the rating organizations of the correction of any error or omission previously called to its attention by the rating organization, it shall be the duty of the rating organization to notify the commissioner thereof. All information so submitted for examination shall be confidential. This paragraph shall not apply to policies and contracts as to which rates are not required by this section to be filed, nor to policies or contracts on farm property written under a merit rating plan nor to farm windstorm insurance written by domestic mutual insurance companies.

(g) Any rating organization may subscribe for or purchase actuarial, technical or other services, and such services shall be available to all members and subscribers without discrimination.

(7) DEVIATIONS. (a) Every member of or subscriber to a rating organization shall adhere to the filings made on its behalf by such organization except that any insurer may file with the commissioner and with the rating organization of which it is a member or to which it is a subscriber, a deviation upon any class of risk from the rates or any underwriting rule filed by such rating organization. Any such deviation of a rate shall be by a percentage increase or decrease, shall be uniform in its application to all risks in the same class and in the same regional classification, if any, and shall not be such as to result in a rate which is excessive, inadequate or unfairly discriminatory. Any such deviation shall not take effect for a period of 15 days after filing which waiting period may be extended for an additional period of 15 days by the commissioner if he gives written notice to the insurer and rating organization in accordance with the provisions of subsection (4)

(e). Co-operation among insurers in the preparation, filing and use of deviations is hereby authorized. The commissioner may review such co-operative activities and practices and if, after hearing, held after notice to the insurer and rating organization involved in accordance with subsection (5), he finds that any such activity or practice is unfair or unreasonable, or otherwise inconsistent with the provisions of this section, he may issue

a written order specifying in what respects he finds that such activity or practice fails to meet the requirements of this section and requiring the discontinuance of such activity or practice within such reasonable period thereafter as shall be fixed by said order. Any such deviation shall be subject to disapproval by the commissioner if after notice to said insurer and rating organization and hearing in accordance with the provisions of subsection (5) (c) the commissioner shall find that such deviation does not meet the requirements of this section. Any such order of disapproval shall specify in what respects he finds that such deviation fails to meet the requirements of this section. If such order is made after the expiration of the waiting period herein provided and any extension thereof made in accordance herewith, the order shall state when, within a reasonable period thereafter, such filing shall be deemed no longer effective. Until an order of disapproval has become effective in accordance with the provisions of this subsection, such deviation shall be deemed to meet the requirements of this section. When said order of disapproval is made after the expiration of said waiting period or any extension thereof, as hereinbefore provided, said disapproval shall not affect any contract or policy made or issued prior to the expiration of the period set forth in said order. Such deviation shall be subject to the provisions of subsection (5) (d) and (e). In the event of an application for rehearing before the commissioner, he shall suspend his action in question pending the rehearing on such reasonable terms and conditions as he may impose. The action of the commissioner shall not become effective for a period of 10 days provided review proceedings are commenced within said period.

(b) The pendency of a review of any disapproval or other order of the commissioner made under the provisions of this subsection shall suspend such disapproval or order on such reasonable terms and conditions as may be imposed by the court. The aggrieved party shall make application to the court for an order fixing such terms and conditions within 10 days after commencement of such proceedings.

(8) APPEAL BY MINORITY. Any member of or subscriber to a rating organization may appeal to the commissioner from the action or decision of such rating organization in approving or rejecting any proposed change in or addition to the filings of such rating organization and the commissioner shall, after a hearing held upon not less than 10 days' written notice to the appellant and to such rating organization, issue an order approving the action or decision of such rating organization or directing it to give further consideration to such proposal, or, if such appeal is from the action or decision of the rating organization in rejecting a proposed addition to its filings, he may, in the event he finds that such action or decision was unreasonable, issue an order directing the rating organization to make an addition to its filings, on behalf of its members and subscribers, in a manner consistent with his findings, within a reasonable time after the issuance of such order.

(9) INFORMATION TO BE FURNISHED INSUREDS; HEARINGS AND APPEALS OF INSUREDS. Every rating organization and every insurer which makes its own rates shall, within a reasonable time after receiving written request therefor and upon payment of such reasonable charge as it may make, furnish to any insured affected by a rate made by it, or to the authorized representative of such insured, all pertinent information as to such rate. Every rating organization and every insurer which makes its own rates shall provide within this state reasonable means whereby any person aggrieved by the application of its rating system may be heard, in person or by his authorized representative, on his written request to review the manner in which such rating system has been applied in connection with the insurance afforded him. If the rating organization or insurer fails to grant or reject such request within 30 days after it is made, the applicant may proceed in the same manner as if his application had been rejected. Any party affected by the action of such rating organization or such insurer on such request may, within 30 days after written notice of such action, appeal to the commissioner, who, after a hearing held upon not less than 10 days' written notice to the appellant and to such rating organization or insurer, may affirm or reverse such action.

(10) ADVISORY ORGANIZATIONS. (a) Every group, association or other organization of insurers, whether located within or outside this state, which assists insurers which make their own filings or rating organizations in rate making, by the collection and furnishing of loss or expense statistics, or by the submission of recommendations, but which does not make filings under this section, shall be known as an advisory organization.

(b) Every advisory organization shall file with the commissioner (1) a copy of its constitution, its articles of agreement or association or its certificate of incorporation and of its by-laws, rules and regulations governing its activities, (2) a list of its members, (3) the name and address of a resident of this state upon whom notices or orders of the commissioner or process issued at his direction may be served, and (4) an agreement that

the commissioner may examine such advisory organization in accordance with the provisions of subsection (12).

(c) If, after a hearing, the commissioner finds that the furnishing of such information or assistance involves any act or practice which is unfair or unreasonable or otherwise inconsistent with the provisions of this section, he may issue a written order specifying in what respects such act or practice is unfair or unreasonable or otherwise inconsistent with the provisions of this section, and requiring the discontinuance of such act or practice.

(d) No insurer which makes its own filings, nor any rating organization shall support its filings by statistics or adopt rate making recommendations, furnished to it by an advisory organization which has not complied with this subsection or with an order of the commissioner involving such statistics or recommendations issued under paragraph (c). If the commissioner finds such insurer or rating organization to be in violation of this subsection he may issue an order requiring the discontinuance of such violation.

(11) JOINT UNDERWRITING OR JOINT REINSURANCE. (a) Every group, association or other organization of insurers which engages in joint underwriting or reinsurance, shall be subject to regulation with respect thereto as herein provided, subject, however, with respect to joint underwriting, to all other provisions of this section and, with respect to joint reinsurance, to subsections (12) and (15) to (17). Nothing herein shall limit the regulation provided in this section of the original contracts which may be the subject of such reinsurance.

(b) If, after a hearing, the commissioner finds that any activity or practice of any such group, association or other organization is unfair or unreasonable or otherwise inconsistent with the provisions of this section, he may issue a written order specifying in what respects such activity or practice is unfair or unreasonable or otherwise inconsistent with the provisions of this section, and requiring the discontinuance of such activity or practice.

(12) EXAMINATIONS. The commissioner shall, at least once in 5 years, make or cause to be made an examination of each rating organization licensed in this state as provided in subsection (6), and he may, as often as he may deem it expedient, make or cause to be made an examination of each advisory organization referred to in subsection (10) and of each group, association or other organization referred to in subsection (11). The reasonable costs of any such examination shall be paid by the rating organization, advisory organization, or group, association or other organization examined upon presentation to it of a detailed account of such costs. The officers, manager, agents and employees of such rating organization, advisory organization, or group, association or other organization may be examined at any time under oath and shall exhibit all books, records, accounts, documents, or agreements governing its method of operation. The commissioner shall furnish 2 copies of the examination report to the organization, group or association examined and shall notify such organization, group or association that it may, within 20 days thereafter, request a hearing on said report or any facts or recommendations therein. Before filing any such report for public inspection the commissioner shall grant a hearing to the organization, group or association examined. The report of any such examination when filed for public inspection shall be admissible in evidence in any action or proceeding brought by the commissioner against the organization, group or association examined, or its officers or agents, and shall be prima facie evidence of the facts stated therein. The commissioner may withhold the report of any such examination from public inspection for such time as he may deem proper. In lieu of any such examination the commissioner may accept the report of an examination made by the insurance supervisory official of another state, pursuant to the laws of such state.

(13) RATE ADMINISTRATION. (a) *Recording and reporting of loss and expense experience.* The commissioner shall promulgate reasonable rules and statistical plans, reasonably adapted to each of the rating systems on file with him, which may be modified from time to time and which shall be used thereafter by each insurer in the recording and reporting of its loss and countrywide expense experience, in order that the experience of all insurers may be made available at least annually in such form and detail as may be necessary to aid him in determining whether rating systems comply with the standards set forth in subsection (3). Such rules and plans may also provide for the recording and reporting of expense experience items which are specially applicable to this state and are not susceptible of determination by a prorating of countrywide expense experience. In promulgating such rules and plans, the commissioner shall give due consideration to the rating systems on file with him and, in order that such rules and plans may be as uniform as is practicable among the several states, to the rules and to the form of the plans used for such rating systems in other states. No insurer shall be required to record or report its loss experience on a classification basis that is inconsistent with the rating system filed

by it. The commissioner may designate one or more rating organizations or other agencies to assist him in gathering such experience and making compilations thereof, and such compilations shall be made available, subject to reasonable rules promulgated by the commissioner, to insurers and rating organizations. There shall be paid to the commissioner the sum of \$10 for filing of each Wisconsin underwriting experience report.

(b) *Interchange of rating plan data.* Reasonable rules and plans may be promulgated by the commissioner for the interchange of data necessary for the application of rating plans.

(c) *Consultation with other states.* In order to further uniform administration of rate regulatory laws, the commissioner and every insurer and rating organization may exchange information and experience data with insurance supervisory officials, insurers and rating organizations in other states and may consult with them with respect to rate making and the application of rating systems.

(d) *Rules and regulations.* The commissioner may make reasonable rules and regulations in conformity with and necessary to enforce the provisions of this section. The commissioner shall require the filing of all basic policies and all standard forms used in this state for the kinds of insurance as to which rates are required to be filed by this section and may require the filing of other policies and forms when necessary to a review of a rate, rate schedule and rules or other review as provided in this section.

(14) FALSE OR MISLEADING INFORMATION. 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 of this subsection shall subject the one guilty of such violation to the penalties provided in subsection (15).

(15) PENALTIES. (a) Any person or organization who has violated any of the provisions of this section shall be punished by a fine of not more [than] \$50 for each such violation, but if such violation is held to be wilful, such person or organization shall be punished by a fine of not less than \$50 nor more than \$500.

(b) The commissioner may suspend the license of any rating organization or insurer which fails to comply with an order of the commissioner within the time limited by such order, or any extension thereof which the commissioner may grant. The commissioner shall not suspend the license of any rating organization or insurer for failure to comply with an order pending any application for rehearing, nor until the time prescribed for an appeal therefrom has expired nor, if an appeal has been taken, until such order has been affirmed. The commissioner may determine when a suspension of license shall become effective and it shall remain in effect for the period fixed by him, unless he modifies or rescinds such suspension, or until the order upon which such suspension is based is modified, rescinded or reversed.

(c) No penalty shall be imposed and no license shall be suspended or revoked except upon a written order of the commissioner, stating his findings, made after a hearing held upon not less than 10 days' written notice to such person or organization specifying the alleged violation.

(16) HEARING PROCEDURE AND JUDICIAL REVIEW. (a) Any insurer or rating organization aggrieved by any order or decision of the commissioner made without a hearing, may, within 30 days after notice of the order or decision to the insurer organization, make written request to the commissioner for a hearing thereon. The commissioner shall hear such party or parties within 20 days after receipt of such request and shall give not less than 10 days' written notice of the time and place of the hearing. Within 10 days after such hearing the commissioner shall affirm, reverse or modify his previous action, specifying his reasons therefor. Pending such a hearing and decision thereon the commissioner may suspend or postpone the effective date of his previous action. Any approval, disapproval, order or decision of the commissioner under this section made after a hearing shall be subject to review at the instance of any party in interest in the manner provided in chapter 227.

(b) The procedure in the conduct of hearings and making of approvals, disapprovals and any other orders by the commissioner under the provisions of this section and the review thereof in court shall be governed by the provisions of chapter 227 of the statutes, except so far as they may be inconsistent with specific provisions of said section. No application for rehearing or any rehearing shall be a condition precedent to review in court of any approval, disapproval or other order of the commissioner made under the provisions of said section. In the event of an application for rehearing before the commissioner, he shall stay his action in question pending the rehearing upon such reasonable terms and conditions as he may impose. The action of the commissioner shall not become effective for a period of 10 days provided review proceedings are commenced within

said period. The pendency of a review of any disapproval or other order of the commissioner made under the provisions of subsection (5) shall suspend such disapproval or order on such reasonable terms and conditions as may be imposed by the court. The aggrieved party shall make application to the court for an order fixing such terms and conditions within 10 days after the commencement of such proceedings.

(17) **CONSTITUTIONALITY.** If any section, subsection, subdivision, paragraph, sentence or clause in this section is held invalid or unconstitutional, such decision shall not affect the remaining portions of this section. [1947 c. 487, 614]

[203.33 to 203.46 Stats. 1945 repealed by 1947 c. 487]

[203.47 Stats. 1931 repealed by 1933 c. 236 s. 1; 1933 c. 489 s. 2]

[203.48, 203.49, 203.495 Stats. 1945 repealed by 1947 c. 487]

203.50 [Subsections (1) and (2) repealed by 1933 c. 487 s. 125; subsections (3) and (4) renumbered section 209.13 by 1933 c. 487 s. 255]

203.52 Report reinsurance; penalty. Every fire insurance company shall annually and at such other times as the commissioner may require report to him in such form and detail as he may prescribe all reinsurance contracted by it upon property in this state, or covering any risk or liability upon property so located, such report to be verified by the oath of its president and secretary, if a company of one of the United States, and, if of a foreign country, by the oath of its managers in the United States, as to such reinsurance effected through its office in the United States, and by the oath of its president and secretary or by officers corresponding thereto at its home office, as to reinsurance effected through the foreign office. [Stats. 1931 s. 201.45; 1933 c. 487 s. 126]

203.53 Penalties; nonpayment of judgment. Any insurance company wilfully violating or failing to comply with any of the provisions of sections 203.52 to 203.54, shall forfeit five hundred dollars for each violation. Any insurance company which shall fail for thirty days after judgment in any action for such forfeiture to pay such judgment shall have its license revoked, and such company shall not be relicensed for at least one year from the date thereof, nor until it shall have paid such judgment. [Stats. 1931 s. 201.46; 1933 c. 487 s. 127]

203.54 Unauthorized risks; duty of commissioner. Any person who shall solicit or place insurance in an unlicensed fire insurance company shall, in the event of the failure of such company to pay any claim or loss within the policy issued, be liable to the insured for the amount thereof pursuant to the policy; and his license shall be revoked for a period of not less than ninety days, and shall not be permitted to do business here until all liability for such violation shall be discharged and the provisions for the admission of foreign fire insurance companies be complied with. Whenever said commissioner shall receive notice of the violation of this section he shall forthwith make an inspection of the books and records of such agent, and his refusing to permit such inspection shall be a violation of this section, and such commissioner shall revoke his license. [Stats. 1931 s. 201.47; 1933 c. 487 s. 128]

203.55 Insurance in unlicensed companies; agents. (1) Before any insurance shall be procured in an unlicensed company the agent shall make an affidavit, which shall be promptly filed with the commissioner, that he is, after diligent effort, unable to procure the amount of insurance required to protect the property described in said affidavit from companies in this state.

(2) The insured may in writing relieve the agent from the personal liability imposed by section 201.44, which release shall be good for one year.

(3) The agent procuring policies in any unlicensed company shall keep a separate account thereof, open at all times to the inspection of the commissioner, showing the company's name; the amount of such insurance; the gross premiums thereon; the return premiums on cancellations; date of the policy; the term thereof; the form of policy; and separately, the cities, towns and villages in which the insured property is located.

(4) Such agent shall, before the first day of February in each year, make a report to the commissioner for the preceding calendar year on the form prescribed by him, of the facts required by subsection (3), and pay to the commissioner the state tax provided by section 76.30.

(5) Such agent shall execute and deliver to the commissioner a bond in the penal sum of one thousand dollars, with such sureties as the commissioner shall approve, conditioned that the agent will comply with all the requirements of this section.

(6) In default of the payment of said tax, the commissioner may sue for the same.

(7) Any violation of this section shall subject the agent to a revocation of his license. [Stats. 1931 s. 201.49; 1933 c. 487 s. 4, 129]

Note: This section relates only to fire insurance. 31 Atty. Gen. 253.