CHAPTER 201.

INSURANCE CORPORATIONS IN GENERAL.

201.01 Definitions.
201.02 Organization; articles, amendments; name.
201.025 Continuity of management.
201.03 Incorporation of mutual insurance companies; consolidation or merger of domestic town mutuals.
201.04 Purposes; classification.
201.045 Certificate of authority; fee; revocation.
201.05 Formation of companies; combination of kinds of insurance.
201.06 Casualty companies; additional coverages.
201.07 Nonassessable policies by mutuals.
201.075 Assessable policies by mutuals.
201.08 Bylaws; filing; forfeiture.
201.09 Treasurer's bond.
201.10 Stock companies; promotion; funds; commissions; literature; contracts.
201.105 Insider trading of securities.
201.106 Proxy solicitation.
201.11 Stock companies' capital; surplus.
201.12 Cessation of business; incorporators,' directors' liability.
201.13 Mutuals; surplus safeguarded; dissolution; reorganization.
201.135 Dividends on mutual policies.
201.14 Reorganization of mutual companies.
201.16 Risk; maximum.
201.17 Mutuals, insure corporations; borrowing.
201.18 Reserves, basis for.
201.185 Reserves; title insurance.
201.19 Policy provisions; limitation of action; matter not incorporated by reference.
201.20 Loss, part borne by insured.
201.21 Expenses; limitations; exceptions.
201.22 Mutual companies; risks; classification.
201.24 Domestic companies; trading prohibited; real estate, investments.
201.25 Domestic companies; investments; capital.
201.27 Reinsurance.
201.29 Increase of capital from surplus.
201.30 Consolidation of corporations.
201.301 Conversion of domestic stock life insurance corporation into a mutual life insurance corporation.
201.31 Reinsurance companies; organization; admission, fees; taxes.
201.32 Foreign companies; admission.
201.33 Lloyd's association.
201.34 License; visitation; foreign companies.
201.37 Insurance on goods conditionally.
201.39 Interinsurance.
201.41 License; conditions; revocation.
201.42 Unauthorized insurance.
201.43 Service of process; proof.
201.44 Policies issued through resident agents; exceptions; penalty.
201.45 False representation.
201.46 Misrepresentation as to risks; revocation of licenses.
201.47 Company not to conceal identity.
201.49 Replies to commissioner.
201.50 Reports to commissioner, forms, contents, penalties.
201.53 Regulations, limitations, prohibitions.
201.54 Dividends.
201.58 Violations, insurance law; general penalty.
201.59 Dues, fire departments; liability of insured.
201.60 Insurance, rating organization.
201.61 Special charter companies.
201.62 Property owner report to insurance commissioner, unauthorized insurance.
201.63 Surplus lines insurance.
201.71 Motor club service; definitions.
201.72 License to sell motor club service.
201.73 Agent's license.
201.74 Manner of obtaining company license; fee.
201.75 Revocation or suspension of company license.
201.76 Form of service contract.
201.77 Execution of service contract.
201.78 Contents of contract.
201.79 Only agents to solicit business.
201.80 Misrepresentations forbid.
201.81 Company always bound by contract.
201.82 Persons exempted from act.
201.83 Penalties.

201.01 Definitions. (1) In statutes relating to insurance, unless the context indicates otherwise, "company" includes all corporations, associations, partnerships, and individuals engaged as principals in the business of insurance, except mutual benefit societies.

(2) "Mutual benefit society" has the meaning attributed to it by chapter 208.

(3) "Policy" includes every kind and form of contract of insurance.

(4) "Officers" include directors and trustees.

(5) "Department" means department of insurance.

201.02 Organization; articles; amendments; name. (1) An insurance corporation may be organized by fifteen or more residents of this state, except that the articles and amendments thereto shall be filed in the office of the commissioner.

(2) No insurance corporation shall increase its capital stock without the written consent of the holders of three-fourths of the capital stock outstanding. The amendment of its articles increasing its capital stock shall not be filed by the commissioner until after he shall have made an examination, as upon the organization or admission of a like corporation.

(3) Persons associating to form a mutual insurance company shall subscribe articles of incorporation which shall contain:

(a) The name of the company, which name must contain the word "mutual" and shall not be so similar to any name already in use as to mislead the public in any respect;

(b) The kinds of insurance to be transacted;
(c) The location of the principal office;
(d) The condition of membership which shall provide that each policyholder have one vote and shall be liable for a pro rata share of losses and expenses incurred during the time the member has been a policyholder of the company, unless the liability of all members is limited according to law;
(e) The manner in which the corporate powers are to be exercised; the number of directors, which shall not be less than three; the manner of electing the directors, the term, how many shall constitute a quorum, and the manner of filling vacancies;
(f) The general officers including the president, vice president and directors shall be policyholders of the company;
(g) A provision that the articles may be amended by a vote of three-fourths of the members voting at a meeting after the proposed amendment has been filed with its secretary and the commissioner and a copy thereof with notice of time and place of meeting has been mailed to each member at least thirty days prior to such meeting.

(4) No mutual insurance company shall be reorganized into a stock company except in accordance with s. 201.14.

(5) The articles of a mutual insurance company may limit (but to be effective the limitation must be expressed in every policy): (a) The insurance to specified kinds or classes of property, lives, individuals or liabilities; (b) the territory within which insurance shall be granted; or (c) the liability of members, which liability shall be a specified number of times the aggregate premium for a 12-month period, whether such premium is paid in one sum or in periodic instalments.

History: 1963 c. 266, 382.

201.025 Continuity of management. (1) The legislature declares it desirable for the general welfare and in particular for the welfare of insurance beneficiaries, policyholders, claimants and others that the business of domestic insurance companies be continued notwithstanding the event of a national emergency. The specific purpose of this section is to facilitate the continued operation of domestic insurance companies in the event that a national emergency is caused by an attack on the United States or by a nuclear, atomic or other disaster which makes it impossible or impracticable for a company to conduct its business in strict accord with applicable provisions of law, its bylaws, its articles or its charter.

(2) The board of directors of any domestic insurance company may at any time adopt emergency bylaws, subject to repeal or change by action of those having power to adopt regular bylaws for the company, which shall be operative during such a national emergency and which may, notwithstanding any different provisions of the regular bylaws, or of the applicable statutes, or of the company's articles or charter, make any provision that may be reasonably necessary for the operation of the company during the period of such emergency.

(3) If the board of directors of a domestic insurance company has not adopted emergency bylaws, the following provisions shall become effective upon the occurrence of such a national emergency:
(a) Three directors shall constitute a quorum for the transaction of business at all meetings of the board.
(b) Any vacancy in the board may be filled by a majority of the remaining directors, though less than a quorum, or by a sole remaining director.
(c) If there are no surviving directors, but at least 3 vice presidents of the company survive, the 3 vice presidents with the longest term of service shall be the directors and shall possess all of the powers of the previous board of directors and such powers as are granted herein or by subsequently enacted legislation. By majority vote such emergency board of directors may elect other directors. If there are not at least 3 surviving vice presidents, the commissioner of insurance or duly designated person exercising the powers of the commissioner of insurance shall appoint 3 persons as directors who shall possess all of the powers of the previous board of directors and such powers as are granted herein or by subsequently enacted legislation, and these persons by majority vote may elect other directors.

(4) At any time the board of directors of a domestic insurance company may, by resolution, provide that in the event of such a national emergency and in the event of the death or incapacity of the president, the secretary or the treasurer of the company, such officers or any of them shall be succeeded in the office by the person named or described in a succession list adopted by the board of directors. Such list may be on the basis of named persons or position titles, shall establish the order of priority and may prescribe the conditions under which the powers of the office shall be exercised.

(5) At any time the board of directors of a domestic insurance company may, by resolution, provide that in the event of such a national emergency the home office or principal place of business of the company shall be at such location as is named or described in the resolution. Such resolution may provide for alternate locations and establish an order of preference.

(6) As used in this section the term "director" means either director or trustee; and the term "domestic insurance company" includes fraternal benefit societies organized under ch. 208 except those referred to in s. 208.03 (1) and (2).

History: 1965 c. 308.

201.03 Incorporation of mutual insurance companies; consolidation or merger of domestic town mutuals. (1) After the articles of incorporation have been subscribed by the organizers, they shall be filed in the office of the commissioner and a copy thereof in the office of the register of deeds of the county where the principal office of the company is to be located. After the commissioner issues his certificate of incorporation, the company may open its books to receive applications for insurance. No such company hereafter organized shall issue any policies of insurance unless and until:

(a) It shall have not less than 400 bona fide applications for insurance on property or risks located in this state for each of the kinds of insurance specified in s. 201.04 for which the company is organized from not less than 400 persons and upon not less than 400 separate risks in this state for each of the kinds of insurance specified in s. 201.04 for which the company is organized on which the cash premiums, which shall be paid in full by each of the applicants with their applications, plus cash contributions in amounts not less than $500 of at least $100,000, which shall have been actually paid in, in cash, by the applicants and contributors, provided that such minimum amount shall be $50,000 in the case of a company organized to write only the coverage authorized by s. 201.04 (1). Cash contributions shall not exceed the minimum fund required in this subsection, except with prior approval of the commissioner. After a company has commenced issuing policies of insurance, no further cash contributions shall be made, except under s. 201.17.

(b) It shall be examined by the commissioner and he shall certify that the company has complied with all requirements of law and that it has on hand in cash or invested as permitted by law, the premiums and contributions amounting to said minimum amount.

(c) It shall have received a license to do business under the provisions of s. 201.045.

(2) Contributions to the said minimum fund by some or all of the first applicants in excess of the actual premium on the first policy to any applicant shall be returnable 5 years from date of organization or as soon thereafter when the earned surplus of the company remaining after the payment of such contributions is equal to or in excess of said minimum fund. Such refund may be made only with the approval of the commissioner and must be returned on a prorata basis to every applicant or his legal representative entitled thereto.

(3) No part of the premiums contributed upon organization shall be used for promotion expense.

(4) Persons making application in a proposed mutual insurance company, after filing the articles of incorporation, and until the corporation begins to transact insurance, shall be entitled to notice of and to participate in all meetings of the corporation.

(5) The proposed officers and directors of a mutual insurance company who shall first serve on completion of organization shall be responsible and shall possess a knowledge of insurance and shall file with the commissioner a statement showing their financial responsibility and net worth and their occupations for the past ten years.

(6) The charter of any mutual insurance company incorporated under special act and, unless otherwise provided therein, the articles of incorporation of any mutual insurance company may be amended by a vote of three-fourths of the members voting at a meeting after the proposed amendment has been filed with its secretary and the commissioner and a copy thereof with notice of time and place of meeting has been mailed to each member. In lieu of the foregoing notification to each member, and notwithstanding any specific provision in the charter or articles of incorporation, the company shall publish a copy of such notice as a class 2 notice, under ch. 985, together with such additional notice as the commissioner requires.

(7) Ten members present in person shall constitute a quorum at any policyholders' meeting unless a greater number is required by the articles or bylaws. This subsection shall be applicable from and after May 3, 1945, to all mutual insurance companies organized under the laws of this state except town mutual insurance companies.

(8) Any mutual insurance corporation which has been or may be organized under the

provisions of this chapter may absorb by merger or consolidation, or be merged into, or consolidated with, or be wholly reinsured as to all of its risks by any other such corporation or any foreign mutual insurance corporation licensed to transact business in this state or may wholly reinsure all of the risks of any other such corporation or any licensed foreign mutual insurance corporation, by action of the boards of directors of said corporations provided that as to any such merger, consolidation or total reinsurance involving only corporations organized under this chapter the resolution providing therefor and for any transfer of assets and assumption of liabilities in connection therewith, shall be approved by the commissioner of insurance as reasonable and as fair and equitable to the policyholders. In the event that any such merger, consolidation or total reinsurance involves both a mutual insurance corporation organized under this chapter and a foreign mutual insurance corporation authorization therefor shall be obtained in the manner hereinafter provided:

(a) When any such merger, consolidation or total reinsurance involves both a mutual insurance corporation organized under this chapter and a foreign mutual insurance corporation, a petition setting forth the terms and conditions and praying for approval thereof shall be presented to the commissioner of insurance. The commissioner shall thereupon issue an order fixing the time and place of hearing and requiring a notice thereof to be published as a class 2 notice, under ch. 985, in one or more newspapers designated in the order, and providing for such other notice as the commissioner requires.

(b) The governor, or some resident of the state appointed by him, the attorney general, and the commissioner of insurance shall constitute a commission to hear and determine upon every such petition. The commissioner of insurance shall have the power to summon and compel the attendance of witnesses and the production of books and records before the commission and the commission may make or order such examination into the affairs and condition of the corporations involved as it may deem proper. Any policyholder of the corporations involved may appear and be heard. The commission may authorize the proposed merger, consolidation or total reinsurance either upon the terms and conditions set forth in the petition or with such modification thereof as it shall deem necessary or desirable in the interest of the policyholders. Such mergers, consolidations or total reinsurance as to all risks shall require the approval of all members of the commission, and it shall be the duty of the commission to guard the interests of the policyholders. The decisions and orders of the commission shall be in writing and shall be signed by all members of the commission. Any final order of the commission authorizing or refusing to authorize any such merger, consolidation or total reinsurance as to all risks may be reviewed in the manner provided in chapter 227.

(c) All expenses incident to proceedings before the commission shall be paid by the companies petitioning. The commission shall file an itemized statement of such expenses in the department with its order.

(8m) The power and authority conferred by subsection (8) shall be in addition to the power and authority heretofore existing under section 201.27 and nothing contained in subsection (8) shall be deemed to limit or place any restriction on any power or authority existing under said section or on the manner of exercise thereof.

(9) Any mutual insurance company after January 1, 1943 transacting automobile insurance authorized by s. 201.04 (15) shall maintain a minimum surplus of $50,000 and when such surplus falls below $50,000, the commissioner shall order the surplus replaced and if not so replaced in 15 days, the commissioner may proceed against such company under ch. 645.

(10) Any mutual insurance corporation which has been or may be organized under this chapter may absorb by merger or consolidation any domestic town mutual insurance company, or wholly reinsure all of the risks of any such town mutual insurance company. To effect any such merger, consolidation or total reinsurance it shall be necessary:

(a) That the boards of directors of each of said corporations pass a resolution prescribing the terms and conditions of the proposed merger, consolidation or total reinsurance;

(b) That 2 certified copies of the resolution provided in par. (a) be filed with the commissioner of insurance by each of the companies and the commissioner shall within 10 days give his written approval or disapproval of the proposed merger, consolidation or total reinsurance to each of said companies. In case the commissioner disapproves such proposed merger, consolidation or total reinsurance he shall state his reasons therefor;

(c) That when the proposed merger, consolidation or total reinsurance is approved by the commissioner, a meeting of the policyholders of the town mutual insurance company shall be held on notice mailed to each of the policyholders of said company at least 30 days prior to the holding thereof, which notice shall embody a copy or the summary of

the resolution adopted by the board of directors as provided in par. (a);

(d) That a two-thirds majority of the policyholders of said town mutual insurance company present at such meeting, by resolution, approve and ratify the action of their directors and vote to carry out the proposed merger, consolidation or total reinsurance. Within 10 days after the adoption of such resolution, 2 copies thereof, with the affidavit of the president and secretary showing compliance with the law, shall be forwarded to the commissioner by such town mutual insurance company. The procedure for certifying and recording of amendment of articles required by s. 202.01 (4) shall be followed by such corporation losing its identity as a result of such merger, consolidation or total reinsurance. Any merger, consolidation or total reinsurance of a domestic town mutual insurance company by or into any mutual insurance corporation organized under this chapter approved by a two-thirds vote of the members present at an annual or special meeting of the policyholders of the town mutual insurance company prior to July 1, 1961, and approved by the commissioner of insurance is hereby validated to the same effect as though accomplished in accordance with this section.

History: 1961 c. 463, 555, 562, 624; 1965 c. 252; 1967 c. 89 s. 18; 1967 c. 210.

201.04 Purposes; classification. An insurance corporation may be formed for the following purposes:

(1) Fire Insurance.—Against loss or damage to property, by fire, lightning, hail, tempest, explosion, and against any other loss or damage from any cause to property or in the use of, or income from property.

(2) Marine Insurance.—Vessels, freight, goods, moneys, effects and money loaned on bottomry and respondentia, against the perils of the seas and other perils usually insured against by marine insurance, including the risks of inland transportation and navigation.

(3) Life Insurance.—Upon the lives or health of persons, and every assurance pertaining thereto, and to grant, purchase or dispose of annuities and endowments, including, without limitation, the kinds of insurance described in subs. (3a), (3b) and (3c).

(3a) Group Life Insurance.—Of the forms described in section 206.60.

(3b) Industrial Life Insurance.—Industrial life insurance is defined as either that form of life insurance under which the premiums are payable weekly, or that under which the premiums are payable monthly or oftener if the face amount of insurance provided in the policy is less than $1,000 and the words "industrial policy" are printed in prominent type on the face of the policy.

(3c) Credit Life Insurance.—On the lives of borrowers or purchasers of goods in connection with specific loans or credit transactions as defined in s. 206.63.

(4) Disability Insurance.—Against bodily injury or death by accident, and upon the health of persons.

(4a) Credit Accident and Sickness Insurance.—Against loss of time of debtors resulting from accident or sickness. One debtor only may be covered in connection with any one indebtedness; the total indemnity shall not exceed the initial amount of such indebtedness or $10,000, whichever is less; and coverage shall not extend beyond the term of indebtedness or 48 months, whichever is less.

(5) Liability Insurance.—(a) Against loss or damage by the sickness, personal injury, or death of any person and against loss or damage to the property of any person, for which loss or damage the insured is liable.

(b) Against loss, expense and liability resulting from errors, omissions or neglect in the performance of any official, vocational or professional service, but not including any insurance which is specified in par. (a) or in sub. (7) or (16).

(6) Steam Boiler Insurance.—Against loss or damage to the property of the insured or to the life, person or property of another, for which the insured is liable, caused by the explosion of steam boilers, pipes, engines, motors and machinery connected therewith or operated thereby.

(7) Fidelity Insurance.—Against the loss from the defaults of persons in positions of trust, public or private, and to guarantee the performance of contracts and obligations.

(8) Title Insurance.—To examine titles to real and personal property, furnish information relative thereto and insure against loss or damage by reason of encumbrance and defects in titles and against nonpayment of principal and interest of bonds and mortgages by reason thereof.

(9) Credit Insurance.—Against loss from the failure of persons indebted to the assured to meet their liabilities, including the insurance or guarantee of depositors or de-

posits in banks or trust companies and including also, without limitation by reason of enumeration, the insurance against financial loss by reason of nonpayment of principal, interest or other sums agreed to be paid under the terms of any note or bond secured by a security interest in personal property or fixtures.

(10) Burglary Insurance.—Against loss or damage by burglary or theft, or both.

(11) Plate Glass Insurance.—Against the breakage of glass, located or in transit.

(12) Sprinkler Leakage Insurance.—Against loss or damage by water, caused by the breakage or leakage of sprinklers, pumps, water pipes or plumbing, or its fixtures, and against accidental injury to such sprinklers and other apparatus.

(13) Elevator Insurance.—Upon elevators and vehicles, and to inspect the same and issue certificates thereof.

(14) Livestock Insurance.—Against loss or damage to domestic animals and to furnish the services of a veterinary surgeon for such animals.

(15) Automobile Insurance.—Against loss, expense and liability resulting from the ownership, maintenance or use of any automobile, aircraft or other vehicle.

(16) Workmen's Compensation Insurance.—Against loss, damage or liability for or under workmen's compensation and including employers' liability insurance when written in the same policy in connection with workmen's compensation insurance.

(17) Other Casualty Insurance.—Against loss or damage to property by any other casualty which may lawfully be the subject of insurance, and which shall be specified in the articles of organization, and for which no other provision is made by law.

(18) Medical Payments and Other Supplemental Insurance.—Against expense, other than loss of time, in connection with the kinds of insurance specified in subs. (5), (6), (10), (13) and (17), and against loss, damage and expense, including loss of time, in connection with the kind of insurance specified in sub. (15), arising out of bodily injury to, or sickness, disease or death of, either or both the insured and others, by accident, with respect to which the insurer assumes an obligation to pay irrespective of the insured's legal liability therefor. The requirements applicable to the insurance specified in sub. (4), including ss. 204.31 to 204.322, shall not apply when the insurance authorized by this subsection is assumed as a part of or as supplemental to the insurance specified in any other subsection of s. 201.04 as permitted in s. 201.05 (3), provided such loss, damage or expense arises out of a hazard directly related to such other insurance.

(19) Mortgage Guaranty Insurance.—Against financial loss by reason of nonpayment of principal, interest and other sums agreed to be paid under the terms of any note or bond or other evidence of indebtedness secured by a mortgage, deed of trust or other instrument constituting a lien or charge on real estate.

History: 1961 c. 354, 463, 624; 1963 c. 502; 1965 c. 334.

201.045 Certificate of authority; fee; revocation. (1) The commissioner shall issue to any insurer incorporated or organized under any law of this state including town mutual insurance companies, nonprofit service plans as defined by s. 200.26, voluntary nonprofit sickness care plans organized under s. 185.981 and interscholastic benefit plans organized under s. 185.991, a certificate of authority authorizing it to transact the business of insurance in this state upon satisfying himself that such insurer has met all requirements of law and that its methods and practices and the character and value of its assets will be such as to adequately safeguard the interests of its policyholders and the people of this state. Each such certificate of authority shall be issued for a period of no longer than one year and shall expire on May 1 next succeeding the date on which it becomes effective and may be renewed from year to year.

(2) Each certificate of authority issued under sub. (1) may be revoked or suspended or the renewal thereof denied by the commissioner if the insurer has not fully complied with all the requirements of law or if the insurer's methods and practices in the conduct of its business and the character and value of its assets are such as to inadequately safeguard the interests of its policyholders and the people of this state. If an insurer holds a certificate of authority to transact more than one kind of insurance, the commissioner may revoke, suspend or deny renewal as to one or more kinds of insurance authorized therein for the same cause and in the same manner that he is authorized to revoke such certificate of authority for all kinds of insurance authorized therein. No revocation or suspension of a certificate of authority or denial of a renewal thereof by the commissioner shall be made until after a hearing held upon not less than 10 days' written notice to the insurer. The action of the commissioner shall not become effective for a period of 10 days provided review proceedings are commenced within said period. In the event of an application for rehearing before the commissioner, as provided in s. 200.11, he shall

suspend his action in question pending the rehearing on such reasonable terms and conditions as he may impose.

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

(4) No insurer incorporated or organized under any law of this state, including town mutual insurance companies, nonprofit service plans as defined by s. 200.26, voluntary nonprofit sickness care plans organized under s. 185.981 and interscholastic benefit plans organized under s. 185.991, shall transact insurance business in this state without having in effect a certificate of authority obtained or renewed under sub. (1) or (2).

(5) The terms "license" and "certificate of authority," as applied to the business of insurance and used in those statutes pertaining to the business of insurance, are synonymous and may be used interchangeably.

History: 1961 c. 562.

201.05 Formation of companies; combination of kinds of insurance. (1) (a) Companies may be formed upon the stock or the mutual plan to transact by direct insurance or reinsurance any or all of the kinds of insurance authorized by s. 201.04, except the kind of insurance authorized by s. 201.04 (19), and be licensed to transact such kinds of insurance upon compliance with all the provisions of law.

(b) A company may be formed upon the stock plan to transact by direct insurance or reinsurance the kind of insurance authorized by s. 201.04 (19) and be licensed to transact such kind of insurance, but such company shall not be eligible for the issuance of a renewal license if it transacts any class of insurance other than mortgage guaranty insurance.

(2) Any company formed for the purpose of and licensed to transact the kind of insurance specified in s. 201.04 (3) and one or more of the kinds of insurance specified elsewhere in s. 201.04 shall maintain separate accounts and reserves in trust for the kind of insurance specified in s. 201.04 (3).

(2m) Subject to the requirements of s. 201.39 (1) in respect to reciprocal or interinsurance, s. 204.041 as to insurance mentioned in s. 201.04 (7) and s. 206.02 (3) (a) as to insurance mentioned in s. 201.04 (3), every mutual company or reciprocal authorized to transact insurance, of any kind specified in s. 201.04 may, by and with the approval of the commissioner, write any and all other kinds of insurance specified in s. 201.04 if it maintains a surplus of at least $100,000, provided that in no case shall any surplus in addition to that required for a kind or kinds of insurance already being written, be required to qualify to write any insurance mentioned in s. 201.04 (11), (12), (14), (17) and (18).

(3) (a) The insurance specified in one or more subsections of s. 201.04 may be written in the same policy with separate premium charges except that the insurance specified in s. 201.04 (3), (4) or (16) must be written in separate and distinct policies.

(am) Notwithstanding par. (a), the insurance specified in s. 201.04 (3), (3a), (3b) or (3c) may be written in the same policy with insurance specified in s. 201.04 (4) or (4a).

(b) The insurance specified in s. 201.04 (4) and (5); (5) and (15); (5), (15) and (18); (15) and (18); or (1), (5), (6), (7), (10), (11), (12), (13), (14), (17) and (18) or any combination thereof may be written in the same policy with or without separate premium charges.

(c) Policies under s. 201.04 (3) may contain any provision operating to safeguard the insurance against lapse, or giving a special surrender value or annuity providing for payments not exceeding one per cent per month of the face amount of the policy during the lifetime of the insured, with or without reduction of the sum insured in the event that the insured becomes totally and permanently disabled for any cause.

(4) Notwithstanding any other provision of the statutes to the contrary, any insurer authorized to insure property against all of the perils specified in s. 201.04 (1), may also write the kinds of insurance specified in s. 201.04 (5), (10), (11) and (18), when written in one policy and as a part of or supplemental to the insurance specified in s. 201.04 (1), without additional surplus being required therefor if, as respects the insurance specified in s. 201.04 (5), the obligations assumed or liabilities incurred are assumed by another licensed insurer meeting the surplus requirements of sub. (2m) and the fact of such assumption of liability is shown on the policy or by endorsement thereon; or, if, as respects the insurance specified in s. 201.04 (5), the obligations assumed or liabilities incurred are fully reinsured with another licensed insurer meeting the surplus requirements of sub. (2m).

(5) Insurance in one policy may be effected, by any company licensed to transact the business mentioned in subsection (1), (2), (5), (10), (15), or (18) of section 201.04, upon automobiles, aircraft, 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, aircraft, or vehicles and against loss by burglary or theft, or both, and against any risk mentioned in said subsection (1), (2), (5), (10), (15), or (18), which said company may assume under its license. For this purpose, a fire insurance company need not use the standard fire policy.

(6) When, in a mutual company or reciprocal exchange, paying no commission for the procurement of business and confining its business to a line of risks principally sprinklered, in course of being so sprinklered, or principally of noncombustible construction and occupancy, and allied properties of such risks under the same ownership and used in connection with the business operation and conduct of such risks, and which insurer receives from its members premium deposits in excess of the expected requirements, the unabsorbed portions of which are returned to the members, the same policy embraces more than one of the risks specified in subsections (1) and (12) of section 201.04, it may be with or without a separate premium charge. This specific provision shall not change the construction of provisions applicable to other risks.

(7) Any insurer licensed to transact the business mentioned in s. 201.04 (8) may also prepare and sell abstracts of title and related documents and certificates.

History: 1961 c. 463, 611; 1963 c. 6, 502.

201.06 Casualty companies; additional coverages. Any corporation which is licensed to transact the business of insurance under section 201.04 (10) may also insure (a) against loss of or damage to any property resulting from larceny, robbery, forgery, fraud, confiscation or wrongful conversion, disposal or concealment by any person or persons or from any attempt at any of the foregoing and when written in conjunction with any of the coverages provided for under said subsection (10) may insure against vandalism and malicious mischief and (b) against loss of or damage to moneys, coins, bullion, securities and (c) against loss or damage to notes, acceptances or any other valuable papers or documents, resulting from any cause, except while in the custody or possession of and being transported by any carrier for hire or in the mail and (d) personal property of individuals when written under an all-risk type of policy commonly known as the "Personal Property Floater." Provided that all insurance under (c) and (d) shall be subject to the provisions of sections 200.17 and 201.59.

201.07 Nonassessable policies by mutuals. (1) Subject to the requirements of s. 204.041 as to insurance specified in s. 201.04 (7) any domestic mutual insurance company transacting the business of fire, marine, or casualty insurance, having accumulated a net surplus equal to the sum of 50% of the capital and surplus required of a stock company to begin to transact the same kind of business and while such surplus is so maintained as a distinct guarantee fund and so shown in its annual statement may issue a nonassessable policy; provided, that such company shall cease the issue of such policies when such guarantee fund falls below such sum, and during such period of impairment shall cease to make apportionment and declare refunds of overpayments or savings resulting from premium contributions until such guarantee fund deficiency has been made good, except where the company at a regular or called meeting of its policyholders has voted to discontinue the issuance of nonassessable policies. The conditions of such nonassessability shall be plainly stated in the policies so issued. No company shall issue a nonassessable policy until its policy form is submitted to and approved by the commissioner of insurance.

(2) No mutual insurance company licensed to transact business in this state on January 1, 1963, shall be subject to higher guarantee fund requirements than those in effect on that date.

History: 1961 c. 463; 1965 c. 586.

201.075 Assessable policies by mutuals. Every insurer issuing assessable policies shall have printed on every such policy issued, separately from any other provision of the policy and in type not smaller than that used in the body of the policy, "This policy is assessable". This section shall not apply to companies organized under ch. 202.

History: 1961 c. 463.

201.08 Bylaws; filing; forfeiture. Every insurance corporation and every mutual benefit society shall adopt bylaws and prescribe the manner in which the same may be amended. A copy of such bylaws and of any amendments thereto, accompanied by the certificate of the president and secretary stating that the same have been duly adopted

and that such copy is true and complete, shall be filed with the commissioner of insurance within 30 days after such adoption, and in case of failure so to do each shall forfeit $25.

201.09 Treasurer's bond. The treasurer of any insurance company, including mutual benefit societies, shall be required to furnish a fidelity bond in an amount not less than $5,000 in a surety company duly licensed to do business in the state of Wisconsin.

201.10 Stock companies; promotion; funds; commissions; literature; contracts. (1) No person shall, for the purpose of organizing or promoting any insurance corporation, domestic or foreign, or promoting the sale of stock of such corporation by it as principal or agent, sell or agree or attempt to sell within this state any stock in such insurance corporation, unless the contract shall be in writing and contain a provision in the following language: "No sum shall be used for commission, promotion and organization expenses on account of any share of stock in this corporation, in excess of .... per cent of the amount actually paid upon separate subscriptions (or in lieu thereof there may be inserted, 'or $.... per share from every fully paid subscription'), for such stock, and the remainder of such payments shall be held or invested as authorized by the law governing such insurance corporation and held by the organizers (or trustees, as the case may be) and the directors and officers of such corporation after organization as bailees for the subscriber, to be used only in the conduct of the business of insurance by such corporation after having been licensed therefor by proper authority." The term "stock," as used in this section, shall include bonds and any other evidences of debt or of interest in the profits of any such corporation.

(2) Funds and securities held by such organizers, trustees, directors or officers as bailees shall be deposited with a bank or trust company of this state until such corporation has been licensed as aforesaid.

(3) Every contract within subsection (1) shall give the names of the organizers (or trustees as the case may be) and their residences, the par value of the shares, and the prices at which shares have been, are, or are to be sold, the number of shares at each price, the total number of shares, and be filled in with the percentage or amount which may be used for commission, promotion or organization expenses, which together shall not exceed fifteen per cent of the amount actually paid upon separate subscriptions for such stock.

(4) No person shall participate in, receive or accept any part or promise of any part of any of the commissions or rewards of any organizer, promoter or agent for the sale of any such stock, unless the name of such person and the fact of his interest in such commissions or reward shall appear upon such contract of subscription. The omission of such statement from any such contract shall, in addition to the penalty herein provided, make such person liable to the purchaser or his assignees for all sums paid by such purchaser with interest from date of payment upon the assignment or tender of assignment of the stock so purchased.

(5) No person receiving any commission or other profit or advantage as organizer, promotor or agent, selling or agreeing or attempting to sell any such stock, or in consideration of or in connection with any such sale or contract of subscription shall, directly or indirectly, make or offer to make any contract or agreement other than as plainly expressed therein, nor shall any such contract of subscription contain any agreement for employment or for any deposit or for any special advantage to the person purchasing or contracting for such stock.

(6) No person shall issue, deliver, circulate or publish in this state any advertisement in any newspaper or periodical published in this state or any circular or prospectus for the sale of stock of any insurance corporation, whether organized or proposed to be organized within or without this state, for the purpose of soliciting or securing subscriptions to or contracts for the purchase of stock in any such corporation, unless a copy of such circular, prospectus or other advertisement shall first have been filed in the office of the commissioner, and the same shall contain the name and address of the person issuing, delivering, circulating or publishing the same, with a consecutive serial number for each separate form of such circular, prospectus or other advertisement.

(7) Any person violating this section shall be punished by a fine of not less than twenty-five dollars nor more than one thousand dollars, or by imprisonment in the county jail not exceeding six months, or by both such fine and imprisonment.

(8) A contract for subscription to or the purchase of stock in any insurance corporation not conforming to the provisions of this section shall be valid and enforcible in favor of the subscriber or purchaser, but shall not be valid or enforcible in favor of the corporation or any person selling such stock, either as principal or agent.

A contract by the promoters can be enforced even though it results in the payment of more than 15%. The remedies for violation of the section do not include penalizing persons dealing with the promoter. Ehlers-Mann & Assocs. v. Madison A. G. Ins. Corp. 28 W (2d) 12, 135 NW (2d) 815.

201.105 Insider trading of securities. (1) Every person who is directly or indirectly the beneficial owner of more than 10% of any class of any equity security of a domestic stock insurance company, or who is a director or an officer of such company, shall file in the office of the commissioner on or before January 31, 1966, or within 10 days after he becomes such beneficial owner, director or officer a statement, in such form as the commissioner prescribes, of the amount of all equity securities of such company of which he is the beneficial owner, and within 10 days after the close of each calendar month thereafter, if there has been a change in such ownership during such month, shall file in the office of the commissioner a statement, in such form as the commissioner prescribes, indicating his ownership at the close of the calendar month and such changes in his ownership as have occurred during such calendar month.

(2) For the purpose of preventing the unfair use of information which may have been obtained by such beneficial owner, director or officer by reason of his relationship to such company, any profit realized by him from any purchase and sale, or any sale and purchase, of any equity security of such company within any period of less than 6 months, unless such security was acquired in good faith in connection with a debt previously contracted, shall inure to and be recoverable by the company, irrespective of any intention on the part of such beneficial owner, director or officer in entering into such transaction of holding the security purchased or of not repurchasing the security sold for a period exceeding 6 months. Suit to recover such profit may be instituted at law or in equity in any court of competent jurisdiction by the company, or by the owner of any security of the company in the name and in behalf of the company if the company fails or refuses to bring such suit within 60 days after request or fails diligently to prosecute the same thereafter; but no such suit shall be brought more than 2 years after the date such profit was realized. This subsection shall not be construed to cover any transaction where such beneficial owner was not such both at the time of the purchase and sale, or the sale and purchase, of the security involved, or any transaction which the commissioner by rule exempts as not comprehended within the purpose of this subsection.

(3) It is unlawful for any such beneficial owner, director or officer, directly or indirectly, to sell any equity security of such company if the person selling the security or his principal does not own the security sold, or if owning the security, does not deliver it against such sale within 20 days thereafter or does not within 5 days after such sale deposit it in the mails or other usual channels of transportation; but no person shall be deemed to have violated this subsection if he proves that notwithstanding the exercise of good faith he was unable to make such delivery or deposit within such time, or that to do so would cause undue inconvenience or expense.

(4) Subsection (2) shall not apply to any purchase and sale, or sale and purchase, and sub. (3) shall not apply to any sale, of any equity security of a domestic stock insurance company not then or theretofore held by him in an investment account, by a dealer in the ordinary course of his business and incident to the establishment or maintenance by him of a primary or secondary market (otherwise than on an exchange as defined in the federal securities exchange act of 1934) for such security. The commissioner may, by such rules as he deems necessary or appropriate in the public interest, define and prescribe terms and conditions with respect to securities held in an investment account and transactions made in the ordinary course of business and incident to the establishment or maintenance of a primary or secondary market.

(5) Subsections (1), (2) and (3) shall not apply to foreign or domestic arbitrage transactions unless made in contravention of such rules as the commissioner adopts in order to carry out this section.

(6) In this section "equity security" means any stock or similar security; or any security convertible, with or without consideration, into such a security, or carrying any warrant or right to subscribe to or purchase such a security; or any such warrant or right; or any other security which the commissioner deems to be of similar nature and considers necessary or appropriate, by such rules as he prescribes in the public interest or for the protection of investors, to treat as an equity security.

(7) Subsections (1), (2) and (3) shall not apply to equity securities of a domestic stock insurance company if:

(a) Such securities are registered, or are required to be registered, pursuant to section 12 of the federal securities exchange act of 1934, as amended, or if

(b) Such domestic stock insurance company shall not have any class of its equity securities held of record by 100 or more persons on the last business day of the year

next preceding the year in which equity securities of the company would be subject to subs. (1), (2) and (3), except for this paragraph.

(8) The commissioner may make such rules as are necessary for the execution of his functions under this section, and may for such purpose classify domestic stock insurance companies, securities and persons or matters within his jurisdiction. No provision of sub. (1), (2) or (3) imposing any liability shall apply to any act done or omitted in good faith in conformity with any rule of the commissioner, notwithstanding that such rule may, after such act or omission, be amended or rescinded or determined by judicial or other authority to be invalid for any reason.

History: 1965 c. 113.

201.106 Proxy solicitation. It is unlawful for any person in contravention of such rules as the commissioner prescribes as necessary or appropriate in the public interest or for the protection of investors, to solicit or to permit the use of his name to solicit any proxy or consent or authorization in respect of any equity security of a domestic stock insurer having 100 or more stockholders of record.

History: 1965 c. 113.

201.11 Stock companies' capital; surplus. (1) No stock insurance company shall transact business unless it has capital, in cash or invested as provided by law, of at least $400,000 for the insurance specified in any one subsection of s. 201.04; with an additional $100,000 for the insurance mentioned in any other subsection which may be transacted by such company, but no such company shall be subject to higher capital requirements than those in effect when it began to transact the business of insurance in this state. No additional capital shall be required for the insurance specified in s. 201.04 (2), (11), (12), (14), (17) and (18).

(2) (a) A company transacting the business mentioned in s. 201.04 (7) shall have a capital of at least $250,000 and a surplus of at least $125,000, in addition to the capital stock and surplus requirements for other classes of insurance being transacted by such corporation.

(b) A company transacting the business specified in s. 201.04 (15) shall have a capital of at least $300,000 in addition to the capital stock and surplus requirements for other classes of insurance being transacted by such corporation, provided that no such company shall be subject to higher capital requirements than those in effect when it began to transact the business of insurance in this state.

(c) A company transacting the business specified in s. 201.04 (19) shall have a capital of at least $800,000 and a surplus of at least $400,000.

(3) No stock insurance company shall begin business unless it has a surplus equal to 50% of its capital stock.

History: 1963 c. 502; 1965 c. 586.

(2) (b) construed as to increased capital required of old and new companies desiring to write automobile insurance. 55 Atty. Gen. 79.

201.12 Cessation of business; incorporators', directors' liability. (1) No domestic insurance corporation shall transact business, other than the dissolution and winding up of its affairs, after its risks outstanding, for a period of one year, shall have been below two hundred.

(2) The incorporators during the first year after the filing of the articles and until the election of directors, and, thereafter, the directors, shall be jointly and severally liable for any losses incurred upon policies issued or delivered during any time when the risks outstanding shall be below said minimum, and for the excess of any policy above the maximum single risks prescribed by section 201.16 during the time such policy exceeds such maximum single risk.

201.13 Mutuals; surplus safeguarded; dissolution; reorganization. Every mutual insurance corporation having assets in excess of one per cent of the amount of its insurance in force shall, before being licensed to do business in this state, file with the application for such a license a resolution duly adopted by its board of directors and signed by its president and secretary, wherein it agrees that its assets shall be distributed in accordance with s. 645.72 (2). No license shall be issued to such company until after the adoption and filing of such resolution.

History: 1963 c. 382; 1967 c. 89.

201.135 Dividends on mutual policies. Any mutual company other than life may return on all policies savings or dividends in such amounts and such classifications as the board of directors shall determine is fair and reasonable, but such refund of savings or dividends shall in no case be made contingent upon the continuance of premium payments

or maintenance of the policy, except on policies of accident, sickness and health insurance and then only on the first or second anniversary of such policies.

201.14 Reorganization of mutual companies. (1) The purpose of this section is to provide an orderly method for the reorganization of a mutual insurance corporation into a stock insurance corporation, in those cases where there is such a desire by the policyholders and where the reorganization is subject to the full and complete review and approval by the commissioner. It is the intent of the legislature that any mutual insurance corporation organized under ch. 201 may be reorganized into a domestic stock insurance corporation by action of the board of directors and members of the corporation as hereinafter provided.

(2) The board of directors shall pass a resolution to the effect that such reorganization is advisable and why, and prescribe the terms and conditions of the proposed organization, the proposed name of the new corporation and the location of its proposed office.

(3) Two certified copies of the resolution under sub. (2) shall be filed with the commissioner of insurance together with a petition to the commissioner setting forth the terms and conditions of such proposed reorganization and praying for approval thereof.

(4) (a) When the proposed reorganization is filed with the commissioner, a meeting of the members of the company shall be held on notice mailed to each of the members of said company at least 30 days prior to the holding thereof, which notice shall embody a copy of the resolution including the terms and conditions of the reorganization.

(b) A two-thirds majority of the members of said company present at such meeting in person or represented by proxy shall be necessary to approve and ratify the action of their directors and vote to carry out the proposed reorganization. Within 10 days after the adoption of such resolution, 2 copies thereof, with the affidavit of the president and secretary showing compliance with the law, shall be filed with the commissioner.

(5) The commissioner shall make or cause to be made an examination of the company to determine its assets and liabilities. He shall also appoint an appraisal committee to determine the value of the company. Such committee shall consist of a certified public accountant, a person versed in insurance management and an attorney. Such committee shall be paid reasonable compensation and expenses incurred in the course of their duties. The appraisal committee shall, in determining the value of the company, take into consideration the assets and liabilities of the company, the equity in unearned premium reserves, the value of the agency plant, the good-will value and any other factor that would either tend to increase or decrease the value of the company.

(6) After the completion of the examination of the company and the receipt of the report from the appraisal committee, the commissioner shall thereupon issue an order fixing the time and place of a hearing and require notice to be given by mail to each policyholder of such company of such petition and of the time and place of such hearing. The notice shall be published in at least 2 newspapers, as a class 2 notice, under ch. 985, the last insertion to be not less than 14 days before the time appointed for the hearing.

(7) At the time and place fixed originally or by adjournment, he shall proceed with the hearing. He may summon and compel the attendance and testimony of witnesses and the production of books, records and papers. Any policyholder of the company may appear to be heard. The commissioner, if satisfied that the interests of the policyholders are properly protected and that no reasonable objection exists thereto, may approve such reorganization or may modify the terms and conditions of such reorganization as shall be just and equitable to the policyholders. All expenses incurred by the commissioner and the appraisal committee shall be paid by the respective companies.

(8) The terms and conditions of such proposed reorganization as required by sub. (2) shall provide:

(a) The amount of capital stock of the new corporation;

(b) The price per share for which the stock is to be sold;

(c) That each policyholder at the date of the passage of the resolution by the board of directors shall be entitled to such shares of stock of the new company as his equitable share of the value of the company will purchase. This equitable share shall be determined by the ratio which the net premium (gross premium less return premium and dividends paid) he has paid to the company during the past 3 years bear to the total net premiums received by the company during said period. If such equitable share of the value of the company produces a fractional share, the policyholder shall either receive the value of said fractional share in cash or be given the option of purchasing such fractional part of a share as will entitle him to a full share.

(d) Each policyholder of the mutual corporation at the date of the passage of the reorganization resolution shall be entitled to priority in subscribing to the initial stock of

the new corporation.

(9) After approval of the reorganization and the legal existence of the new stock corporation by the commissioner, said stock corporation shall possess all of the assets of whatever nature belonging to or due the mutual corporation. The stock company shall henceforth be responsible and liable for all the contracts, liabilities and obligations of the mutual company.

(10) The mutual company shall be dissolved as provided by law.

History: 1963 c. 382; 1965 c. 252.

201.16 Risk; maximum. (1) Except as otherwise provided by law, no single risk assumed by any insurance company shall exceed 10 per cent of the admitted assets, except that in a mutual company it may be a greater amount not exceeding 3 times the average policy or one-fourth of one per cent of the insurance in force, whichever is the greater. Upon the business mentioned in s. 201.04 (8), the maximum single risk may be a greater amount not exceeding 50 per cent of the admitted assets. Upon the business mentioned in s. 201.04 (14), in a stock company, the maximum single risk shall not exceed one-twentieth of the paid-up capital. Any reinsurance taking effect simultaneously with the policy shall be deducted in determining the risk.

(2) In a mutual company organized for the insurance or guarantee of depositors or deposits in banks or trust companies, the maximum single risk may be fixed at a higher amount by the bylaws. Any such company may effect reinsurance in any authorized or unauthorized company that complies with s. 201.27. Insurance in any unauthorized company shall be reported annually and the same taxes paid upon the premiums as are paid by authorized companies.

History: 1967 c. 89.

A stock company that reinsures part of its risks with a commercial mutual does not become a member of the mutual so as to be subject to assessment. (Pella Farmers Mut. Ins. Co. v. Hartland R. T. Ins. Co. 26 W (2d) 29, distinguished.) Peerless Ins. Co. v. Manson, 27 W (2d) 601, 135 NW (2d) 258.

201.17 Mutuals, insure corporations; borrowing. (1) Any mutual insurance company may issue policies to any public or private corporation, board or association in this state and elsewhere; and any public or private corporation, board or association of this state is authorized to make applications, enter into agreements for and hold policies in any mutual insurance company.

(2) In addition to contribution notes issued for the purpose of establishing the minimum fund referred to in s. 201.03 (1) (a) any mutual insurance company may borrow money from any officer, member or other person, for the purposes of its business or to enable it to comply with any requirement of law. No discount, commissions or promotion expenses shall be allowed or paid on such loan. Upon receiving the full amount of the principal to be used solely for such purposes, the company may issue its surplus notes, which shall fully recite the conditions of the loan; provided that no such notes shall be issued by any such company or be paid, discharged or retired in whole or in part without prior approval of the commissioner of insurance, and no surplus note or notes shall be issued by any mutual insurance company unless it accepts the requirements imposed by this subsection. Except as herein provided, such notes and indebtedness shall not be a liability or claim against any of the assets of the company. The principal and interest shall be payable only from the surplus over all other liabilities. The amount of principal and interest unpaid shall be reported in each annual statement. Surplus notes issued pursuant to this section shall not be deemed a security within the meaning of the term as defined in ch. 189 and the provisions of said chapter shall not apply to such surplus notes. No mutual insurance company shall hereafter loan money to another mutual insurance company on surplus notes, while said loaning company is indebted upon surplus notes to any mutual insurance company. No mutual insurance company shall borrow money from another mutual insurance company on surplus notes, while said borrowing company has a loan outstanding to a different mutual insurance company on surplus notes. No mutual insurance company shall issue surplus notes in denominations of less than $1,000.

(3) Nothing herein contained shall be construed to prevent a mutual insurance company from borrowing money on its own notes which are its general obligations and not merely payable out of surplus and the power of said companies so to do and to pledge any part of their assets to secure same is hereby declared and confirmed.

History: 1961 c. 463.

201.18 Reserves, basis for. (1) The unearned premium or reinsurance reserve for every insurance company when no other statutory provision is made therefor shall be computed by setting up 50 per cent or the monthly pro rata portion of the premiums in force on unexpired risks running one year or less, and the annual pro rata or the monthly

pro rata portion of all premiums in force on unexpired risks running more than one year. Where risks are written for more than one year and the premium is paid on an annual basis, the reserve shall be computed at 50 per cent or the monthly pro rata portion of the premium received each year. Any company may adopt either the 50 per cent or the monthly pro rata basis for risks running one year or less, and either the annual pro rata or the monthly pro rata basis for risks running for more than one year, provided that the basis used shall not be changed without the prior approval of the commissioner. In case the 50 per cent basis on unexpired risks of one year or less or the annual pro rata basis on unexpired risks of more than one year does not produce an adequate reserve, the commissioner may, in his discretion, require an insurer to calculate its unearned premium reserve upon the monthly pro rata basis, or if necessary, on each respective risk from the date of the issuance of the insurance, and, in the case of premiums covering indefinite terms, he may prescribe special regulations. In the case of perpetual risks or policies, not less than 90 per cent of the premium deposit shall be set up as a reserve. Every such company shall show its reserve, computed upon this basis, as a liability in the annual statement required by section 201.50.

(2) The requirements of this section as to unearned premium or reinsurance reserve shall not apply to town mutual insurance companies organized under ch. 202, or to insurance of the type specified in s. 201.04 (8).

(3) The requirements of this section as to unearned premium or reinsurance reserve and the requirements of the statutes as to return premium shall not apply to a policy fee which is charged as such for the issuance of a policy of fire or windstorm insurance and is not in excess of $2.50.

(4) Where no other provision is made therefor by law, the reserves of any insurance company shall be calculated upon such basis, method and plan as shall fully provide for all liabilities, and any basis, method and plan fixed by the order of the commissioner shall be prima facie just, reasonable and proper.

201.185 Reserves; title insurance. (1) Upon issuance of each policy of insurance of the type specified in s. 201.04 (8), commencing January 1, 1956, there shall be reserved initially a sum equal to 5 per cent of the premium charged therefor as a loss and reinsurance reserve. At the end of each calendar year following the year in which the policy is issued, there may be a reduction in the sum so reserved in the amount of one-twentieth of such sum.

(2) Whenever in the judgment of the commissioner the loss and reinsurance reserve of any insurer under insurance specified in s. 201.04 (8), calculated in accordance with sub. (1), is inadequate, the commissioner may in his discretion require or permit such insurer to set up an additional loss reserve based on estimated individual claims or such other basis as he may approve.

201.19 Policy provisions; limitation of action; matter not incorporated by reference. (1) No policy shall contain any provision limiting the time for beginning an action on the policy to a time less than that authorized by the statutes, provided that the time within which an action must be brought on the insurance policies provided in ss. 202.085 and 203.01, shall also apply to any rider or endorsement attached thereto insuring property against risks of loss enumerated in s. 201.04 (1) or to any separate windstorm or hail insurance policy issued pursuant to s. 201.04 (1); or incorporate any matter not fully set forth therein, or in a copy of any application attached to and made a part of such policy at the time of its delivery; or prescribe in what court any action may be brought thereon or that no action shall be brought.

(2) In policies described in sub. (1) which contain a clause providing for appraisal at the election of either the insurance company or the insured, the time during which an appraisal procedure is conducted under the terms of the policy shall be excepted from the time provided for commencing an action under this section and ss. 202.085 and 203.01.

History: 1963 c. 54.

See note to 203.01, citing Riteway Builders, Inc. v. First National Ins. Co. 22 W (2d) 413, 126 NW (2d) 24.

201.20 Loss, part borne by insured. A policy may provide that the insured shall bear a part of any loss as provided therein. No such provision shall be valid unless the extent of the insured's participation in any loss is clearly indicated within the policy or by indorsement added to the policy.

201.21 Expenses; limitations; exceptions. Except as otherwise provided by law, and excepting companies transacting only health and accident insurance, no mutual insurance company shall pay or incur in any year any expense, exclusive of investment expenses, taxes and fees, in excess of fifty per centum of the premiums and assessments

collected during the year; or in excess of one-half of one per centum on the greatest amount of insurance in force at any time during the year, whichever is the greater.

201.22 Mutual companies; risks; classification. A mutual insurance company may classify the property or risks insured at time of insuring the same, under different rates corresponding as near as may be to the greater or less expense and probability of loss which may be attached thereto. In case a mutual insurance company does classify the property or risks insured by it, said company may levy assessments or fix rates for each class of risks based upon the expense and ascertained or estimated probability of loss involved in said class of risks. In cases where s. 203.32 is applicable, it shall take precedence over this section. No mutual insurance company shall write a like kind of risk within a class on both the advance premium and the assessment plans, except that a mutual insurance company may write fire or fire and extended coverage insurance (including all of the perils customarily included in the extended coverage and additional extended coverage endorsements to the fire insurance policy) on an advance premium plan while writing windstorm, tornado and cyclone insurance and supplemental coverage insurance in separate policies on a like kind of risk on the assessment plan. No insurance company shall write windstorm insurance or any coverage which includes windstorm insurance as one of the perils insured against, in this state on a plan embodying a regional classification of this state for the purpose of establishing regional rates, regional assessment classifications, or regional coverages for the classes so established unless such plan be filed with and approved by the commissioner of insurance under and subject to the provisions of s. 203.32.

201.24 Domestic companies; trading prohibited; real estate, investments. (1) No domestic insurance company organized under any general law shall, directly or indirectly, deal in goods or commodities, excepting such as it may have insured and are claimed to be damaged by the risk insured against, and excepting such as may be permitted by s. 201.05 (7).

(2) No such company shall acquire or hold real estate except such as shall be necessary for the convenient transaction of its business, including with its offices other apartments to rent, the value of which shall not exceed 20 per cent of its admitted assets or, in the case of insurance companies organized under ch. 202, the value thereof shall not exceed one mill on the dollar on the amount of insurance in force; and such as has been or shall be conveyed or mortgaged to it in good faith by way of security for loans or for debts or for money due in its business, or such as may have been purchased at sales upon judgments or mortgages obtained or made for such debts.

(3) All real estate except that needed for its business shall be disposed of within five years after the same shall have been acquired, unless the commissioner shall upon the application of the company showing that it will suffer materially from a forced sale thereof, authorize the postponement of such sale, not exceeding five years. Such authority may be renewed from time to time.

(4) (a) All investments and deposits of the funds of any such company shall be made and held in its corporate name, except that:

1. Securities kept under a custodial agreement or trust arrangement with a bank or banking and trust company may be issued in the name of a nominee of such bank or banking and trust company.

2. Any such company may acquire and hold securities in bearer form.

(b) No director or other officer of any such company, and no member of a committee having any authority in the investment or disposition of its funds, shall receive, in addition to his fixed salary or compensation, any money or valuable thing, either directly or indirectly, or through any substantial interest in any other corporation or business unit, for negotiating, procuring, loaning or aiding in any purchase or sale of property, loan, deposit or investment, made by such company or any affiliate or subsidiary thereof; nor shall he be pecuniarily interested, either as principal, co-principal, agent or beneficiary, either directly or indirectly or through any substantial interest in any other corporation or business unit, in any such purchase or sale of property, loan, deposit or investment. Nothing contained herein shall prohibit a life insurance company from making a policy loan upon its policy contract in accordance with its regular loaning provisions to any policyholder, not exceeding the net reserve value of the policy contract, less any indebtedness to the company under the policy contract; nor shall anything contained herein prohibit a policyholder from being entitled to all benefits accruing under the terms of his policy contract.

(5) This section shall apply to mutual benefit societies.

History: 1961 c. 562; 1967 c. 171.

201.25 (1) (n) does not authorize investing 10 per cent of the admitted assets of an insurance company contrary to the restrictions imposed by 201.24 (4) (b). 53 Atty. Gen. 152.

201.25 Domestic companies; investments; capital. (1) Except as otherwise provided by law, a domestic insurance corporation, except domestic life insurance corporations, may invest its assets as follows:

(a) In the lawfully authorized bonds or other evidences of indebtedness of the United States or of any state of the United States, or the District of Columbia, or of the Dominion of Canada or of any province thereof.

(b) In the lawfully authorized bonds or other evidences of indebtedness of any county, city, town, village, school district or other municipal district within the United States or the Dominion of Canada, which shall be a direct obligation of the county, city, town, village or district issuing the same.

(bn) In lawfully authorized bonds or other evidences of indebtedness payable from and adequately secured by revenues specifically pledged therefor of the United States or of any state of the United States, or of any county, city, village or town, or of a commission, board or other instrumentality of one or more of them.

(c) In loans upon improved and unencumbered real property in any state of the United States, and upon leasehold estates in improved real property for a term of years where 25 years or more of the term is unexpired, and where unencumbered except by rentals accruing therefrom to the owner of the fee, and where the mortgagee is entitled to be subrogated to all the rights under the leasehold; provided, that the fair market value of such real property or such leasehold estate at the time of the loan shall be at least 50 per cent more than the sum loaned thereon, exclusive of buildings unless such buildings are kept insured to an amount which, together with one half the value of the land, shall equal or exceed the loan, and the policy or policies of insurance thereon be assigned to and held by or for the benefit of said corporation as collateral to such loan.

(d) In the mortgage bonds of the farm loan banks authorized under the federal farm loan act and in obligations secured by mortgages or trust deeds authorized in par. (c), and in debentures issued by the banks for co-operatives established pursuant to the farm credit act of 1933, as amended.

(dm) In interest bearing notes of any savings and loan association organized under the laws of this state.

(e) In the first mortgage bonds of any railroad or other public service corporation of any state or territory of the United States, or of the District of Columbia, or of any province of the Dominion of Canada.

(f) In the lawfully authorized bonds or other evidences of indebtedness of any foreign government other than the Dominion of Canada or any of its provinces in an amount not exceeding one per cent of the admitted assets of such corporation.

(ff) In the bonds or other evidences of indebtedness or stocks of any solvent corporation of any state or territory of the United States, of the District of Columbia, or of any province of the Dominion of Canada, excepting stock in its own corporation provided:

1. In the case of bonds or other evidences of indebtedness, the net earnings of the issuing corporations for a period of 3 fiscal years next preceding the date of investment shall have averaged per year not less than 1½ times its average annual fixed charges applicable to such period;

2. In the case of preferred stocks, the net earnings of the issuing corporation for a period of 3 fiscal years next preceding the date of investment shall have averaged per year not less than 1½ times the sum of such average annual fixed charges plus preferred dividend requirements for such period:

3. In the case of common stocks, the net earnings of the issuing corporation for a period of 3 fiscal years next preceding the date of investment shall have averaged per year not less than 1½ times the sum of such average annual fixed charges plus preferred dividend requirements for such period, and the issuing corporation shall have paid dividends upon such stocks in each of the 3 fiscal years next preceding the date of investment;

4. The issuing corporation has not defaulted in the payment of principal or interest upon any of its bonds or other evidences of indebtedness at any time during 5 years prior to the date of investment;

5. The owners or holders of such bonds or evidences of indebtedness or stocks shall not be or become liable on account thereof to any assessment except for taxes or laborers' liens.

(fg) "Net earnings" as used in paragraph (ff) shall mean net income after allowance for operating and maintenance expenses, depreciation and depletion, and taxes, other than federal and state income taxes, but excluding extraordinary nonrecurring items of expense appearing in the regular financial statement of the issuing company. "Fixed charges" as used in paragraph (ff) shall include interest on all bonds and other evidences

of indebtedness, and amortization of debt discount. In applying tests of "net earnings" under paragraph (ff) to an issuing company, whether or not in legal existence during the whole of the test period, which has during the test period acquired the assets of any other company by purchase, merger, consolidation or otherwise substantially as an entirety, net earnings of such predecessor or constituent company for such portion of the test period as preceded acquisition, may be included in the net earnings of the issuing company, in accordance with consolidated earnings statement covering such period and giving effect to all fixed charges immediately after such acquisition.

(fh) In the stocks or bonds or other evidences of indebtedness of any solvent corporation or corporations of any state or territory of the United States or of the District of Columbia or of any province of the Dominion of Canada except stock in its own corporation which do not comply with the requirements of paragraphs (ff) and (fg) hereof provided that the total investment under this paragraph in all stocks, bonds, or other evidences of indebtedness shall not exceed 5 per cent of its admitted assets.

(g) In loans upon collateral security of any of the foregoing securities; provided, that the market value of such securities shall not, during the continuance of such loan, be less than the indebtedness thereon.

(h) In such real property as shall be necessary for the convenient transaction of its business, subject only to the limitation in section 201.24 (2). The restrictions imposed by section 201.25 (2) shall not apply to such investments.

(hh) In the purchase and ownership of any real estate located within the continental limits of the United States or the Dominion of Canada which produces income or which by suitable improvement will produce income. The term "real estate" as used in this paragraph shall include a leasehold of real estate and other interests in real property. The aggregate of such company's investment under this paragraph shall not exceed 5 per cent of such company's admitted assets, and shall not be subject to the limitations contained in s. 201.24 (2) and (3).

(hi) In equipment securities evidencing rights to receive partial payments agreed to be made upon any contract of leasing or conditional sale of rolling stock for use by companies operating railroads in the United States or the Dominion of Canada, the issue of which has been approved by the proper public authority, if such approval was required by law at the time of issue.

(hk) In equipment securities or in certificates of any equipment trust evidencing rights to receive partial payments agreed to be made upon any contract of leasing or conditional sale the issue of which has been approved by the proper public authority, if such approval was required by law at the time of issue, if such lessee or conditional vendee is a solvent company organized under the laws of the United States or of any state thereof, or of the Dominion of Canada or of any province thereof, if the net earnings of such company for a period of 3 fiscal years next preceding the date of investment as defined and applied pursuant to par. (fg) shall have averaged per year not less than 1½ times its average annual fixed charges applicable to such period, as defined in par. (fg), and if the company issuing such securities has not defaulted in the payment of principal or interest upon any of its bonds, or other evidences of indebtedness at any time during 5 years prior to the date of investment.

(hm) In interest-bearing notes of any mutual insurance company organized under ch. 202.

(hn) In shares in mutual funds provided the assets of such mutual funds are invested only as provided in pars. (a), (b), (bn), (d), (e), (ff), (fg), (hi), (j), (l) and (n), and provided that no such mutual fund shall invest more than 5 per cent of its aggregate assets in the securities of any one issuer, excepting securities of the United States government, or own more than 10 per cent of the securities of any one issuer. The requirements and limitations set forth in subs. (2) and (4) shall not apply to investments in shares in such mutual funds.

(i) Every such domestic corporation doing business in any foreign country, may invest the funds required to meet its obligations incurred in such foreign country in conformity to the laws thereof in the kind of securities of such foreign country in which such corporation is authorized to invest in this state.

(j) In investment shares of building and loan associations to the extent that they are or may be insured or guaranteed by the United States government, or by the federal savings and loan insurance corporation, or by any other agency of the United States government, or in shares of corporations chartered or incorporated under section 5 of the home owners' loan act of 1933. The restrictions imposed by subsection (2) shall not apply to any such shares to the extent that such shares are insured or guaranteed by the United States government or by the federal savings and loan insurance corporation or by any other agency of the United States government.

(k) In single premium endowment insurance policies and single premium life insurance policies of life insurance companies authorized to do business in Wisconsin.

(l) In such investments as are authorized by chapter 219.

(m) In such title records, including indexes, plats, maps, public records or copies thereof, and other documents and certificates as may be necessary for the convenient transaction of business by a company authorized to transact the business mentioned in ss. 201.04 (8) and 201.05 (7).

(n) In loans, securities or investments except stock in its own corporation in addition to those permitted in this section, whether or not such loans, securities or investments qualify or are permitted as legal investments under its charter, or under other provisions of this or other sections of the statutes. The portion of loans, securities and investments which is in excess of the limitations established by sub. (4) and s. 201.24 (2) shall not be deemed a permitted investment under this paragraph. The portion of the loan secured by a mortgage upon real property, permitted by par. (c), which does not exceed two-thirds of the then fair market value of said property, shall be deemed to be a permitted investment under par. (c) and the remainder of said loan may be deemed to be made under this paragraph. Any investment originally made under this paragraph which would subsequently, if it were then being made, qualify as a permitted investment under another paragraph of this subsection shall thenceforth be deemed to be a permitted investment under such other paragraph. The aggregate of such company's loans, securities and investments under this paragraph shall not exceed 10 per cent of such company's admitted assets.

(2) Before making any other investment, every domestic insurance corporation shall invest and keep invested an amount at least equal to the capital required of a stock corporation to transact the lines of business which it is authorized to transact, in any of the securities mentioned in sub. (1) (a), (b), (d), (e) and (f) in bonds or other evidences of indebtedness which meet the requirements of sub. (1) (ff) (intro. par.), 1, 4 and 5, or in loans upon real estate located within this state, or in any of the investments mentioned in sub. (1) (m), provided that any investments made prior to May 22, 1945 and complying with all other subsections of this section shall not be deemed in violation of this subsection.

(3) No domestic insurance corporation, including any domestic insurer, shall make any investment not authorized by law.

(4) No such corporation shall invest more than 10 per cent of its admitted assets in the stock or securities or evidences of indebtedness of any one person or of any one private or municipal corporation.

(5) In determining the financial condition and valuing the investments of any domestic or foreign insurance corporation as of the end of the year 1932 and thereafter, the provisions of section 206.35 shall apply whether such company writes life, fire, casualty or other types of insurance.

History: 1961 c. 562; 1963 c. 266.

See note to 201.24, citing 53 Atty. Gen. 152.

201.27 Reinsurance. Any licensed insurance company may assume as a reinsurer the whole or any part of the liability of any other company upon such risks as it may insure direct; and may reinsure the whole or any part of its liability on risks assumed:

(1) In any other responsible company, or companies, whose capital and surplus equals or exceeds the minimum of capital and surplus required by domestic companies for the transaction of similar business; provided, such company is licensed to transact business in some state of the United States; or

(2) With the United States government or any agency of the United States government or with the Wisconsin indemnity fund.

History: 1967 c. 89, 246, 347.

201.29 Increase of capital from surplus. Any domestic stock insurance company may declare and distribute a stock dividend pro rata to its stockholders if it has a surplus, in addition to its capital stock and all liabilities, in an amount at least equal to the sum of such dividend and 30 per cent of its unearned premium liability; provided, such increase of capital stock from surplus has been authorized by three-fourths of the directors and approved by the commissioner.

201.30 Consolidation of corporations. (1) Any domestic stock insurance corporation may consolidate with another stock corporation into a domestic corporation using the name of one or more of the corporations. In case of a consolidation with a foreign corporation compliance shall be had with the laws of the parent state.

(2) The agreement for consolidation shall be executed under their corporate seals by the presidents and secretaries, by the authority of the board of directors of each respectively; and shall recite the articles of organization of the new corporation which shall conform to the requirements for the articles of organization of like domestic corporations.

(3) The capital shall not be larger than the aggregate paid-up capital of the consolidating corporations unless such increase has been consented to in writing by the holders of three-fourths of the stock of each of the consolidating corporations. The same fee shall be paid for an increase of the capital above such aggregate paid-up capital, as in other cases on amendment of articles, as required by s. 180.87 (1) (b).

(4) Such agreement must be assented to by a majority of all the directors of each corporation and must be approved by the votes of stockholders owning two-thirds of the stock of each corporation, at a meeting called separately for that purpose.

(5) A notice stating the time, place and object of the meeting, shall be served upon each stockholder personally or mailed to him at his last known post-office address at least 30 days prior to the date of holding such meeting, and shall be published as a class 2 notice, under ch. 985, in the city where each corporation has its principal office.

(6) Such agreement, with the certificate of the secretaries of the respective corporations under the seals thereof, reciting compliance with the provisions of this section, shall be filed with the commissioner and may be approved by him after such examination as he may order or require.

(7) The commissioner's approval shall be indorsed on the agreement and a duplicate of such agreement, with a certificate of the commissioner showing the date when such agreement was approved and filed by him, shall be recorded by the register of deeds of each county in this state wherein any of such consolidating companies is located.

(8) Such consolidation shall be deemed effective upon the filing of such duplicate for record in all such counties, and thereafter the articles of organization recited in such agreement shall stand as the articles of organization of the new corporation.

(9) The new corporation may require the surrender of the certificates of stock in each of the corporations consolidated, and upon such surrender shall issue new certificates for such number of shares of its own stock as the stockholders may be entitled to receive.

(10) All the rights, franchises and interests of the corporations consolidating, in and to every species of property and things in action, shall be deemed to be transferred to and vested in the new corporation, without any other deed or transfer, and the new corporation shall hold and enjoy the same to the same extent as did the old corporations.

(11) The new corporation shall succeed to all the obligations and liabilities of the old corporations, and shall be held liable to pay and discharge them in the same manner as if they had been incurred or contracted by it.

(12) The stockholders of the old corporations shall continue subject to the liabilities, claims and demands existing against them at or before consolidation.

(13) No action or proceeding pending at the time of the consolidation in which any of the old corporations may be a party shall abate by reason of the consolidation, but the same may be prosecuted to final judgment in the same manner as if the consolidation had not taken place, or the new corporation may be substituted in place of the old corporation.

History: 1961 c. 562; 1965 c. 252.

201.301 Conversion of domestic stock life insurance corporation into a mutual life insurance corporation. (1) DEFINITIONS. Any domestic stock life insurance company may become a mutual company by complying with this section.

(a) The term "conversion" as used in this section means the change of an insurer of one type into an insurer of another type, but not including the change of any mutual insurance company into a stock insurance company.

(b) The term "company" as used in this section shall, unless the context otherwise requires, mean a life insurance company.

(c) The term "policyholder" as used in subs. (2) (c) and (4) (i) means the owner or absolute assignee of one or more of the following types of contracts: Individual policy of life insurance or individual annuity contract and shall not include an owner of a group certificate or of a policy providing credit, accident, health, hospitalization, medical, surgical or like insurance benefits, or of a supplementary contract issued upon maturity, either by death or as an endowment, of an original policy or contract or any insurance policy which is being continued in force under a nonforfeiture provision of the policy.

(d) The provisions of chs. 189, 219 and 320 shall not apply to the powers and procedure provided by this section.

(e) The term "commissioner" as used in this section means the commissioner of insurance.

(2) CONVERSION REQUIREMENTS. Any domestic stock life insurance company heretofore or hereafter incorporated under the laws of this state may become a mutual life insurance company, and to that end may formulate and carry out a plan for the acquisition by it of its outstanding capital stock, as follows:

(a) Such plan shall have been adopted by a vote of a majority of the directors of such company.

(b) Such plan shall have been approved by a vote of stockholders representing a majority of the outstanding capital stock at a meeting of stockholders called for such purpose.

(c) Such plan shall have been approved by the vote of a majority of the policyholders who are eligible to vote and who vote at a meeting called for that purpose. Any policyholder, who fulfills the requirements of sub. (1) (c) defining such term, and whose policy or contract amounts to at least $1,000 and has been in force for at least a year prior to such policyholders' meeting, and who also is eligible under such further rules or regulations as may be prescribed by the commissioner as to voting qualifications at such meeting, shall be eligible to cast one vote thereat, in person, or by proxy or by mail. The reference herein to insurance in the amount of $1,000 or more is deemed to include any single premium annuity contract having a consideration of $1,000 or more and any annual premium annuity having an annual consideration of $100 or more. Written or printed notice of the meeting setting forth a copy of the plan, or a summary of the same and setting the time and place of the special meeting at which it will be considered, shall be given by mailing the notice from the home office of the company at least 30 days prior to the meeting in a sealed envelope, postage prepaid, addressed to each policyholder at his last known post-office address. The meeting shall be conducted in such manner as may be provided for in the plan, with the approval of the commissioner. The commissioner shall supervise and direct the methods and procedure of the meeting and shall appoint an adequate number of inspectors to conduct the voting at the meeting, who shall have power to determine all questions concerning the verification of the ballots, the ascertaining of the validity thereof, the qualifications of the voters and the canvass of the vote. The inspectors, or any one thereof designated by the commission, shall certify to the commissioner and to the company the result of the vote, and with respect thereto shall act under such rules as shall be prescribed by the commissioner. All necessary expenses incurred by the commissioner or incurred with his approval by the inspectors appointed by him shall be paid by the company upon the certificate of the commissioner.

(d) Such plan, after approval by the directors, stockholders and policyholders, shall have been executed in duplicate by the company by its president or vice president and its secretary or assistant secretary or officers corresponding thereto and shall have been submitted to the commissioner and within 45 days the plan shall have been approved by him as conforming to this section and as not prejudicial to the policyholders of the company or to the insuring public. If the commissioner does not approve the plan, he shall notify the company in writing of his reasons for the disapproval, and if requested to do so, shall grant the company a hearing. The final action of the commissioner pursuant to this subsection shall be subject to judicial review in the manner provided in ch. 227.

(e) Such plan may specify the purchase price to be paid and the method of payment thereof by the company for shares of its capital stock, and in such case the price so specified, except as herein otherwise provided, shall be adhered to. If such plan does not specify the price to be paid for the shares, the company shall first obtain the approval of the commissioner for every payment made for the acquisition of any shares of its capital stock. Such plan may provide that the purchase price of the stock be paid by an instalment method therein described and in such an event shall contain provisions for payment of interest at a specified rate on deferred balances, acceleration of payment of principal balances at the option of the company and a condition that any principal instalment payment which otherwise would be due on any payment date shall be wholly or partially deferred by the company to the extent necessary if the commissioner shall determine that the company, after deducting the payment currently due, will not as of such date be possessed of admitted assets equal to the sum of 1, 2 and 3 defined in par. (f).

(f) Before approving any such plan or any such payment, the commissioner shall be satisfied, by such investigation as he may make or by such evidence as he may require, that the company, after deducting the aggregate sum appropriated by the plan for the acquisition of any part or all of its capital stock, and in the case of any payment not fixed by the plan and subject to approval as aforesaid, after deducting also the amount of such payment, will be possessed of admitted assets in an amount equal to the sum of 1, 2 and 3, as follows:

1. Its entire liabilities, including the net values of its outstanding contracts computed as required by law, and

2. The minimum surplus or guaranty fund required by law for mutual companies, hereafter organized to do the same kind or kinds of business, and

3. An additional contingent surplus deemed by the commissioner necessary to protect its policyholders and the insuring public in view of the past experience of the company, the character of its assets, its present management, and its probable future earnings.

(g) The commissioner shall at all times, in addition to the other powers conferred by this section, have the power either on petition or his motion after hearing on notice to the parties in interest given in the manner prescribed by s. 201.03 (8) (a) to order such changes in the plan as may be promotive of or necessary or incidental to the early accomplishment of the objectives of the plan with due regard of the interests of the policyholders, but no such changes shall substantially affect the basic objectives of the plan or change the purchase price of the stock. Except as hereinabove provided, no change shall be made in any such plan, adopted and approved as aforesaid, except upon the formulation, adoption and approval of a new plan in accordance with the foregoing requirements.

(h) When all of the shares of the outstanding stock of the company have been acquired by the trustees, the trustees shall cause a special meeting of the stockholders of the company to be called for the purpose of adopting the amendments of articles of incorporation and bylaws indicated to transform the corporation into a mutual life insurance company without stock, and authorize and direct the filing of same with the proper state officials. Upon the issuance of a certificate of amendment by the commissioner the trustees shall then present the certificates for all of the outstanding stock of the company to the secretary of the company for cancellation and the company shall thenceforward be a mutual company without stock. Neither the retirement of the corporation's capital stock nor the amendment of its articles of incorporation shall affect existing suits, rights or contracts of the corporation. The securities of the company on deposit pursuant to s. 209.01 shall be retained as provided in said section, in trust, for the benefit and security of all of the policyholders of the corporation.

(3) ACQUISITION OF STOCK. If a domestic stock life insurance corporation determines to become a mutual life insurance corporation, it may, in carrying out any plan to that end under this section, acquire any shares of its own stock by gift, bequest or purchase. Until all of the shares are acquired, any shares so acquired shall be acquired in trust for the corporation and shall be assigned and transferred on the books of the corporation to not less than 3 nor more than 5 trustees. The shares shall be held by them in trust and be voted by the trustees at all corporate meetings at which stockholders have the right to vote, until all of the capital stock of the corporation is acquired, at which time the entire capital stock shall be retired and canceled and the corporation shall become, thereupon, a mutual life insurance corporation without capital stock.

(4) RIGHTS AND PRIVILEGES OF DISSENTING STOCKHOLDER AND THE CORPORATION. (a) If a stockholder of any domestic stock life insurance corporation planning to become a mutual life insurance corporation under this section files with the corporation, prior to or at the meeting of the stockholders at which the plan is submitted to a vote, a written objection to the plan and does not vote in favor thereof, and the stockholder within 20 days after the plan is approved by the meeting makes written demand on the corporation for payment of the fair cash value of his shares as of the day prior to the date on which the plan is approved by the stockholders, excluding from such fair cash value any appreciation or depreciation in consequence of the mutualization, the stockholder shall be entitled to receive, within 90 days after the fair cash value is agreed upon or determined, upon surrender of his certificates representing his shares such fair cash value thereof, provided that payment shall not be made to the stockholder until the plan shall have been approved by the commissioner. Any stockholder who fails to make such objection or having objected fails to make demand within the 20-day period shall be conclusively presumed to have consented to the plan and shall be bound by the terms thereof. Any such objection and demand for the payment of the fair cash value of shares shall state the number and kind of shares held by the dissenting stockholder making the demand, and the amount which the stockholder claims is their fair cash value. The right of a dissenting stockholder to be paid the fair cash value of his shares shall cease when the corporation, for any reason and in accordance with this section, abandons the plan to mutualize the corporation, or when the commissioner's action becomes final if he should disapprove the plan. No demand for payment of the fair cash value may be withdrawn by the stockholder making the same unless the corporation, by its board of directors, consents to the withdrawal.

(b) Within 10 days after the receipt of any such demand the corporation shall inform the stockholder in writing whether it will pay the demanded amount, and, if it refuses to pay the amount, it shall offer in writing to pay another amount as the fair cash value.

(c) If, within 30 days after the date of the written demand made by the dissenting stockholder, the value of the shares is agreed upon between the dissenting stockholder and

the corporation and the value is approved by the commissioner, payment therefor shall be made within 90 days after the date of the agreement, upon the surrender of the stockholder's certificates representing the shares, provided that payment shall not be made to the stockholder until the plan shall have been approved by the commission. Upon payment of the agreed value the dissenting stockholder ceases to have any interest in the shares and ceases to be a stockholder in the corporation, but the shares previously held by him and upon which he has been paid the fair cash value shall be transferred to and held by the trustees appointed under this section for the benefit of the corporation.

(d) If, within the period of 30 days, the stockholder and the corporation do not agree upon the value of the shares, the corporation, or the dissenting stockholder if he has complied with this section, may, within 60 days after the expiration of the 30-day period, petition the circuit court of the county in which the principal office of the company is located, to determine the fair cash value of the shares mentioned in the demand as of the day before the vote was taken approving the plan. If the petition is not filed within the 60-day period, the fair cash value of the shares is conclusively deemed to be equal to the amount offered to the dissenting stockholder by the corporation if any such offer has been made or, if not, then an amount equal to that demanded by the dissenting stockholder.

(e) The petition shall contain a brief statement of the facts and shall show the vote and action objected to and facts entitling the dissenting stockholder to the relief demanded. Upon the filing of the petition, the court, on the motion of the petitioner, shall enter an order fixing a date for hearing, and requiring a notice of the filing and prayer of the petition and of the date for hearing to be given to the respondent or defendant in the manner in which a summons is required to be served or substituted service is required to be made in other cases. On the day fixed for the hearing of the petition, or any adjournment thereof, the court shall determine from the petition and such evidence as is submitted by either party whether the dissenting stockholder is entitled to be paid the fair cash value of any shares, and the number of such shares, and if the court finds and orders that the stockholder is entitled to be paid the fair cash value of any number of shares, the court shall appoint 3 appraisers to determine the fair cash value of such number of shares as of the day before the vote objected to was taken, excluding from such fair cash value any appreciation or depreciation in consequence of the mutualization or vote of the corporation, and the court shall further instruct the appraisers respecting their duties in making the determination. The appraisers shall forthwith proceed to determine the fair cash value and they, or a majority of them, shall make a report of award within 10 days, unless the court increases said time, and shall file the report in the office of the clerk of the circuit court, whereupon, on the motion of either party, the report shall be submitted to the court and considered on such evidence as the court considers relevant, and if the award is found to be reasonable, and is confirmed and approved by the court, judgment shall be rendered against the corporation for the payment of the amount of the award, with interest at 5 per cent from a date which shall be fixed in the judgment.

(f) If the appraisers, or a majority of them, fail to make and file an award within 10 days, or within such further time as may be fixed by the court, or the award is not confirmed by the court, it shall summarily determine the fair cash value of the shares and render judgment therefor. Any judgment shall further provide that simultaneously with its payment the certificates evidencing the shares of stock affected shall be surrendered to the corporation and, upon the failure of the holder thereof to surrender the certificates, the judgment shall stand as a cancellation of the certificates. The costs of the proceedings, including reasonable compensation to the appraisers to be fixed by the court, shall be assessed or apportioned as the court considers equitable. Such a proceeding is considered as a special proceeding within the meaning of s. 260.02 and final orders may be reviewed, affirmed, modified or reversed as provided by law. Two or more dissenting stockholders may join as plaintiffs or be joined as defendants in any proceeding under this section, and 2 or more such proceedings may be consolidated.

(g) A stockholder who so objects in writing and demands in writing payment of the fair cash value of any shares shall not be entitled to vote the shares or to exercise any rights respecting the shares or to receive any dividends or distributions thereon, unless the plan of mutualization is abandoned or disapproved by final action of the commissioner or, with the consent of the corporation, the objection and demand are withdrawn; provided that if, prior to such abandonment, dividends are paid in money to stockholders who are of the same class as those dissenting and who are of record on or after the day on which the vote was taken authorizing the mutualization, then an amount of money equal to the dividends otherwise payable upon the dissenting shares shall be paid to the holders of record thereof who would, except for their dissent, be entitled to receive the dividends, and each such payment shall be a credit upon the total amount to be paid for the shares by the corporation. All the holders of the dissenting shares of record at the time of any such abandonment of the plan or at the time of final action by the commissioner disap-

proving the plan shall thereupon be restored to the status of a stockholder, and any payments made previously on the shares shall be considered as dividends thereon.

(h) Any stockholder who has assented to the plan or who has been concluded by the vote of the assenting stockholders, and any stockholder who has objected and made demand in writing for the fair cash value of his shares subsequent to which an agreement has been reached fixing the fair cash value, but who fails to surrender his certificates for cancellation upon payment of the amount to which he is entitled, may be ordered to do so by a judgment of the circuit court for the county in which the principal office of the corporation is located, after notice and hearing in an action instituted by the corporation for that purpose and the judgment may provide that upon failure of the stockholder to surrender the certificates for cancellation, the judgment shall stand in lieu of such surrender and cancellation.

(i) At any time before there has been a vote of the policyholders approving a plan of mutualization, the corporation may abandon the plan by the same vote of the directors and of the stockholders as was required for its adoption. Upon such abandonment or if the plan is abandoned for the reason that final action by the commissioner disapproved the plan, the rights of any stockholders to be paid for their stock in accordance with the plan, and the rights of any dissenting stockholders to be paid the fair cash value of their stock, whether or not judgment may have been rendered therefor, shall terminate, and the corporation shall continue to conduct its business as a domestic stock life insurance corporation as though no plan of mutualization had ever been adopted.

(5) APPOINTMENT OF TRUSTEES. The trustees provided for in sub. (3) shall be appointed and vacancies shall be filled by the commissioner. The trustees shall be qualified directors of the corporation at the time of the appointment and shall continue as trustees until the purpose of the trust is accomplished or abandoned, unless they are removed for cause by the commissioner. The trustees shall file with the commissioner a verified acceptance of their appointment and a declaration that they will faithfully discharge their duties as trustees. The trustees shall give and file with the commissioner bonds in such an amount as under the circumstances the commissioner deems proper, with sureties thereon approved by the commissioner. All dividends and other sums received by the trustees on the shares of stock held by them shall be immediately repaid to the corporation. The necessary expenses of executing the trust shall be paid by the corporation. All shares held by the trustees are considered as admitted assets of the corporation at their par value. After all of the stock has been retired, the commissioner may enter an order discharging the trustees and their sureties upon receipt of and approval of the trustees' final report.

(6) OFFICERS AND DIRECTORS. When a domestic stock life insurance corporation has become converted into a mutual life insurance corporation, the officers and directors of the original corporation shall remain as the officers and directors of the newly converted corporation until the next annual meeting for the election of officers and directors, when their successors shall be elected in the manner provided in the amended articles of incorporation and bylaws previously adopted by the corporation.

201.31 Reinsurance companies; organization; admission; fees; taxes. Corporations may be formed for the purpose of transacting the business of reinsurance; such reinsurance companies shall transact business only with authorized insurance companies and not through agents, and such reinsurance may include all classes and kinds of insurance permitted by the statutes, but every reinsurance company shall have capital equal to the capital required of other insurance companies, and shall hold reserves in the same amount and manner as required of other companies for each kind or class of insurance. Reinsurance companies may be incorporated, and foreign reinsurance companies may be admitted to transact business in this state, in the same manner as fire, life, casualty and surety corporations are, and shall comply with the laws regulating such corporations so far as the same may be applicable. Alien, foreign and domestic reinsurance companies shall pay the same fees and taxes required to be paid by alien, foreign and domestic insurance companies, respectively.

History: 1961 c. 562.

201.32 Foreign companies; admission. (1) No foreign insurance company shall directly or indirectly transact any insurance business in this state except upon compliance with the requirements of this section.

(2) A stock company shall be possessed of capital equal to that required of like domestic companies.

(3) A mutual company shall satisfy the requirements as to solvency and the limitations as to expenses exacted of like domestic companies.

(4) The foreign company shall file a declaration that it desires to transact insurance in this state, and that it will accept a license therefor to terminate in case it shall violate

or fail to comply with any provision of law, or in case its capital shall be impaired to the extent of twenty per cent, and shall not be made good within such time as the commissioner shall require, if such commissioner shall declare its license revoked therefor.

(5) The applicant shall file in the office of said commissioner a copy of its charter or articles of organization duly certified by its secretary, together with a statement verified by the oath of the president, vice president or other chief officer and of the secretary giving the place where located, amount of capital stock, and its assets in detail, showing the amount of cash on hand and in banks, the amount of real estate, and how much the same is incumbered, the shares of stock owned by it, the par and market value of the same, the amount loaned on securities, the kinds and amounts loaned on each, the estimated value of such securities and all its other assets and the value thereof; also showing the amount of its debts, the amount of losses adjusted and unpaid, the amount in process of adjustment, the amount resisted as illegal, and all other claims existing against it; and a copy of the last report made under any law of the state or country by which it was incorporated.

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

(b) The capital of such foreign insurance company shall, for the purposes of the insurance laws of this state, be the aggregate of its deposit as aforesaid, and all lawful real estate loans in the United States and all other assets in the United States invested in property in which fire insurance companies may legally invest; and such capital shall be held in the United States for the benefit of its policyholders and creditors in the United States after making the same deduction from such aggregate value for losses and liabilities in the United States, and for unearned premiums upon risks therein as is authorized or required with respect to domestic insurance companies.

(c) Such capital, aside from said deposit, shall be held by trustees who are citizens of the United States, to be appointed by the directors of such company and approved by the commissioner; and a certified copy of the resolution by which they are appointed and of the deed of trust shall be filed in the office of the commissioner; and he may examine such trustees or their agents under oath and their assets, books and accounts in the same manner as he may examine the officers, agents, assets, books and accounts of any domestic insurance company.

201.33 Lloyd's association. Lloyd's association may be admitted to transact insurance other than life insurance upon the same terms and conditions as insurance companies of other states of the United States. No capital stock shall be required, but there shall be on deposit by each alien associate underwriter at all times with the attorney in fact for such Lloyd's association a sum in cash or in securities mentioned in section 201.25, equal to three times the maximum insurance by such alien associate on any single risk, or in lieu thereof the Lloyd's association may comply with subsection (6) of section 201.32. No underwriter shall assume any single risk (exclusive of lawful reinsurance) in excess of ten per cent of the underwriter's net worth. A statement of such limit of single risk and of liability and of such net worth with the names, addresses and occupations of all individual underwriters shall be filed with the application for admission and with each annual statement and oftener as required by the commissioner.

201.34 License; visitation; foreign companies. (1) The commissioner shall upon being satisfied by investigation that any insurance company applying for license or relicense has fully complied with all provisions of law, and that its methods and practices in the conduct of its business and the character and value of its assets are such as to safeguard the interest of its policyholders and the people of the state, issue to such company a license to transact business in this state, and shall renew the same from year to year so long as such company meets all requirements of law. Such license shall continue in force until the May 1 next after the effective date thereof, unless sooner revoked.

(2) The commissioner shall have the same supervision and make the same examination of the business and affairs of every licensed foreign insurance corporation as of domestic corporations doing the same kind of business, and of its assets, books, accounts and general condition. Every such foreign corporation and its agents and officers shall be required to make the same statements and answer the same inquiries and be subject to the

same examinations, and, in case of default therein, to the same penalties and liabilities as domestic corporations doing the same kind of business, and the agents or officers thereof may be liable to.

(3) A licensed foreign insurance corporation may transact in this state only such kinds of business as, under the laws of this state, a like domestic insurance corporation is authorized to transact.

(4) No such corporation shall transact any business in this state not specified in the license granted by the commissioner.

(5) Except as otherwise specifically provided, no such corporation shall be or continue to be licensed to do an insurance business in this state if it fails to comply substantially with any requirement or limitation of statute applicable to similar domestic insurance companies, which in the judgment of the commissioner is reasonably necessary to protect the interest of the people of the state.

History: 1961 c. 562.

201.37 Insurance on goods conditionally. No person shall include as a part of the consideration in any agreement of sale of personal property in this state on the instalment plan or under a conditional sales contract or equivalent security agreement under the commercial code any charge for insurance on such property not effected through an insurance company authorized to do business in this state, and any policies issued on such property so sold shall be issued and countersigned by a resident agent.

History: 1965 c. 334.

201.39 Interinsurance. (1) Individuals, partnerships, and corporations of this state, hereby designated subscribers, are authorized to exchange reciprocal or interinsurance contracts with each other, or with the individuals, partnerships, and corporations of other states and countries, providing indemnity among themselves from any loss which may be insured against under other provisions of the laws excepting life insurance.

(2) Such contracts may be executed by an attorney, agent or other representative herein designated attorney duly authorized and acting for such subscribers. A corporation duly authorized by its charter so to do may act as such attorney. Any such attorney may issue a nonassessable policy upon compliance and in accordance with s. 201.07.

(3) Such subscribers so contracting among themselves shall, through their attorney, file with the commissioner of insurance a declaration verified by the oath of such attorney, or where such attorney is a corporation, by the oath of its duly authorized officers, setting forth:

(a) The name of the attorney and the name or designation under which such contracts are issued which name or designation shall not be so similar to any name or designation adopted by any attorney or by an insurance organization in the United States prior to the adoption of such name or designation by the attorney, as to confuse or deceive.

(b) The location of the principal office.

(c) The kind or kinds of insurance to be effected.

(d) A copy of each form of policy, contract or agreement under or by which insurance is to be effected.

(e) A copy of the form of power of attorney under which such insurance is to be effected.

(f) That applications have been made for indemnity or insurance upon at least one hundred separate risks aggregating not less than one and one-half million dollars represented by executed contracts or bona fide applications to become concurrently effective; or in case of employers' liability or workmen's compensation insurance, covering a total pay roll of not less than two and one-half million dollars.

(g) That there is in the possession of such attorney assets amounting to not less than the sum required by subsection (6) of this section.

(h) A financial statement in form prescribed for the annual statement.

(i) The instrument authorizing service of process as provided for in this section.

(4) Concurrently with the filing of the declaration provided for by the terms of sub. (3), the attorney shall file with the commissioner of insurance an instrument in writing executed by him for said subscribers, conditioned that upon the issuance of certificate of authority provided for in sub. (10), service of process may be had upon the commissioner of insurance, subject to the fee in s. 200.13 (18) in all suits in this state arising out of such policies, contracts, or agreements, which service shall be valid and binding upon all subscribers exchanging at any time reciprocal or interinsurance contracts through such attorney. Three copies of such process shall be served and the commissioner of insurance shall file one copy, forward one copy to said attorney, and return one copy with his admission of service.

(5) There shall be filed with the commissioner of insurance, by such attorney, a statement, under the oath of such attorney, showing the maximum amount of indemnity upon any single risk, and such attorney shall, whenever and as often as the same shall be required, file with the commissioner of insurance a statement verified by his oath to the effect that he has examined the commercial rating of such subscribers as shown by the reference book of a commercial agency having at least one hundred thousand subscribers, and that from such examination, or from other information in his possession, it appears that no subscriber has assumed on any single risk an amount greater than ten per cent of the net worth of such subscriber.

(6) The attorney in fact shall have on hand at all times assets in cash or securities authorized by the laws of the state in which the principal office of the exchange is located for the investment of funds of insurance companies doing the same kind of business an amount equal to 100 per cent of the net unearned premiums or deposit collected and credited to the account of subscribers, or 50 per cent of the net annual advance premium or deposits collected and credited to the account of subscribers on policies having one year or less to run, and pro rata on those for a longer period. In addition to the foregoing there shall be maintained in cash or such securities assets sufficient to discharge all liabilities on all outstanding losses arising under policies issued, the same to be calculated in accordance with the laws of the state relating to similar reserves for companies insuring similar risks. Net premiums or deposits as used in this section shall be construed to mean the advance payments made by subscribers before deducting therefrom the amount provided in the subscriber's agreement for expenses, provided, however, that insurance organizations subject to the provisions of this section collecting expense funds separate from other premiums or deposits shall carry such a reasonable reserve on such expense items as may be required by the commissioner of insurance in accordance with s. 201.18. In no case shall the reserves required be less than the reserves required of other insurers by the statutes of this state, including the provisions of ss. 201.18 and 204.28 and any membership fee, policy fee or application fee shall be included in the deposit and charges against which reserves must be carried as provided herein. If at any time the assets on hand are less than the foregoing requirements or less than $100,000, whichever is the greater when the attorney in fact is exchanging contracts covering employers' liability or workmen's compensation, or automobile insurance, the subscribers, or their attorney in fact for them shall make up the deficiency within 30 days after notice from the commissioner of insurance so to do. Whenever such assets are less than the amount above required, or less than $50,000, whichever is the greater, if the attorney in fact is exchanging contracts other than those covering employers' liability or workmen's compensation or automobile insurance, the subscribers, or their attorney in fact for them shall make up the deficiency within 30 days after notice from the commissioner of insurance so to do. No obligation for borrowed money shall be incurred on behalf of any exchange.

(7) Such attorney shall, within the time limited for filing the annual statement by insurance companies transacting the same kind of business, make a report to the commissioner of insurance for each calendar year showing the financial condition of affairs at the office where such contracts are issued, and shall furnish such additional information and reports as may be required; provided, however, that such attorney shall not be required to furnish the names and addresses of any subscribers. The business affairs and assets of such organizations shall be subject to examination by the commissioner of insurance in the same manner as in the case of other insurance carriers, and such exchanges shall also be subject to any rating or antidiscrimination or antirebating laws applicable to other fire and casualty insurance carriers, except that any such antirebating law shall not be construed to include or apply to savings or dividends paid to subscribers or credited to their account.

(8) Any corporation now or hereafter organized under the laws of this state shall, in addition to the rights, powers, and franchises specified in its articles of incorporation, have full power and authority to exchange insurance contracts of the kind and character herein mentioned. The right to exchange such contracts is hereby declared to be incidental to the purposes for which such corporations are organized and as much granted as the rights and powers expressly conferred.

(9) Any attorney who shall, except for the purpose of applying for a certificate of authority as herein provided, exchange any contracts of indemnity of the kind and character specified in this section, or directly or indirectly solicit or negotiate any applications for same without first complying with the foregoing provisions, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be subject to a fine of not less than one hundred dollars, nor more than one thousand dollars.

(10) Each attorney, by or through whom are issued any policies of or contracts for indemnity of the character referred to in this section, shall procure from the commissioner

of insurance annually a certificate of authority stating that all the requirements of this section have been complied with, and upon such compliance and the payment of the fees required by this section, the commissioner of insurance shall issue such certificate. In case of a breach of any of the conditions imposed by law, the commissioner of insurance may revoke the certificate of authority issued hereunder.

(11) In lieu of all other taxes, licenses, or fees whatever, state or local, such attorney shall pay on account of the transaction of such business in this state, the fees as required by s. 200.13, and a license fee of 2 per cent upon the gross premiums or deposits during the preceding calendar year, deducting all amounts returned to subscribers or credited to their accounts other than for losses, except that the fee shall be at the rate of 2⅜ per cent upon the same basis for the insurance mentioned in s. 201.04 (1), and that from such latter fees there shall be set apart the fire department dues mentioned in s. 201.59.

(12) The attorney in fact may purchase reinsurance upon the risk of any subscriber at the exchange. Any reciprocal insurer may assume as a reinsurer the whole or any part of the liability of any other company or reciprocal upon such risks as it may insure direct and for which it is authorized to engage by the terms of its subscriber's agreement, provided such reciprocal insurer has an accumulated net surplus, exclusive of surplus notes, equal to the sum of 50 per cent of the capital and surplus required of a stock company to begin to transact the same kind of business. Any exchange operating in this state may consolidate with or reinsure its entire business in another exchange. If the principal office of any exchange entering into such contract of consolidation or reinsurance is located in this state the contract for such consolidation or reinsurance shall be submitted to and approved by the commissioner of insurance of this state before being effective.

(13) Failure of the attorney to file the appointment required in subsection (4) of section 201.39 or failure on the part of any subscriber to authorize the attorney to do so shall not invalidate any service made by serving upon the commissioner of insurance. By accepting a license to transact business in this state every such attorney in fact and each of the subscribers shall be held to have appointed the commissioner of insurance the agent and attorney for each of them to accept service of summons or other process and such authority shall continue so long as any liability remains unsatisfied against any of such members on any contract or contracts issued by such attorney. Any judgment recovered in any action where the summons or other process has been served upon the commissioner of insurance shall be binding upon each of the subscribers at such exchange the same as if personal service was had upon each of such subscribers.

(14) Individual firms and corporations who make contracts of insurance among themselves on their own property or risks on the reciprocal or interinsurance plan, shall not be required to act through a resident agent or use the standard fire policy, but any contract or policy insuring against loss by fire shall contain in substance the provisions of the standard fire policy.

(15) Except as herein provided, no law relating to fire insurance shall apply to reciprocal or interinsurance contracts or the execution thereof.

History: 1961 c. 463, 562.

201.41 License; conditions; revocation. (1) No insurance company shall transact insurance business in this state without first having paid the license fees as required in ss. 76.30 to 76.37, 200.13 (2) and 201.39 (11) and obtained a certificate of authority as required by law.

(2) If any such company shall violate any provision of law applicable thereto or if its capital shall be impaired to the extent of twenty per cent and shall not be made good within such time as the commissioner shall require, the commissioner shall revoke its license, and no such corporation or agent thereof shall thereafter transact any business of insurance in this state until again licensed.

(3) If an insurance company shall hold a license to transact more than one kind of insurance, the commissioner may revoke such license as to one or more kinds of insurance authorized therein for the same cause and in the same manner that he is authorized to revoke such license for all kinds of insurance authorized therein.

History: 1961 c. 562.

201.42 Unauthorized insurance. (1) PURPOSE. The purpose of this section is to subject certain persons and insurers to the jurisdiction of the commissioner, of proceedings before the commissioner, and of the courts of this state in suits by or on behalf of the state and insureds or beneficiaries under insurance contracts. The legislature declares that it is a subject of concern that many residents of this state hold policies of insurance

issued by persons and insurers not authorized to do insurance business in this state, thus presenting to such residents the often insuperable obstacle of asserting their legal rights under such policies in forums foreign to them under laws and rules of practice with which they are not familiar. The legislature declares that it is also concerned with the protection of residents of this state against acts by persons and insurers not authorized to do an insurance business in this state by the maintenance of fair and honest insurance markets, by protecting the premium tax revenues of this state, by protecting authorized persons and insurers, which are subject to strict regulation, from unfair competition by unauthorized persons and insurers and by protecting against the evasion of the insurance regulatory laws of this state. In furtherance of such state interest, the legislature herein provides methods for substituted service of process upon such persons or insurers in any proceeding, suit or action in any court and substitute service of any notice, order, pleading or process upon such persons or insurers in any proceeding before the commissioner to enforce or effect full compliance with the insurance and tax statutes of this state, and declares in so doing it exercises its power to protect residents of this state and to define what constitutes doing an insurance business in this state, and also exercises powers and privileges available to this state by virtue of P.L. 79–15 (1945), (Chapter 20, 1st Sess., S. 340), 59 Stat. 33, as amended, which declares that the business of insurance and every person engaged therein shall be subject to the laws of the several states.

(2) INSURANCE BUSINESS DEFINED. (a) Any of the following acts in this state effected by mail or otherwise is defined to be doing an insurance business in this state. The venue of an act committed by mail is at the point where the matter transmitted by mail is delivered and takes effect. Unless otherwise indicated, the term "insurer" as used in this section includes all corporations, associations, partnerships and individuals, engaged as principals in the business of insurance and also includes interinsurance exchanges and mutual benefit societies.

1. The making of or proposing to make, as an insurer, an insurance contract.

2. The making of or proposing to make, as guarantor or surety, any contract of guaranty or suretyship as a vocation and not merely incidental to any other legitimate business or activity of the guarantor or surety.

3. The taking or receiving of any application for insurance.

4. The receiving or collection of any premium, commission, membership fees, assessments, dues or other consideration for any insurance or any part thereof.

5. The issuance or delivery of contracts of insurance to residents of this state or to persons authorized to do business in this state.

6. Directly or indirectly acting as an agent for or otherwise representing or aiding on behalf of another any person or insurer in the solicitation, negotiation, procurement or effectuation of insurance or renewals thereof or in the dissemination of information as to coverage or rates, or forwarding of applications, or delivery of policies or contracts, or inspection of risks, a fixing of rates or investigation or adjustment of claims or losses or in the transaction of matters subsequent to effectuation of the contract and arising out of it, or in any other manner representing or assisting a person or insurer in the transaction of insurance with respect to subjects of insurance resident, located or to be performed in this state. The provisions of this subdivision shall not operate to prohibit full-time salaried employes of a corporate insured from acting in the capacity of an insurance manager or buyer in placing insurance in behalf of such employer.

7. The doing of any kind of insurance business specifically recognized as constituting the doing of an insurance business within the meaning of the statutes relating to insurance.

8. The doing or proposing to do any insurance business in substance equivalent to any of the foregoing in a manner designed to evade the provisions of the statutes.

9. Any other transactions of business in this state by an insurer.

(b) The provisions of this subsection do not apply to:

1. The lawful transaction of surplus lines insurance.

2. The lawful transaction of reinsurance by insurers.

3. Transactions in this state involving a policy lawfully solicited, written, and delivered outside of this state covering only subjects of insurance not resident, located, or expressly to be performed in this state at the time of issuance, and which transactions are subsequent to the issuance of such policy.

4. Transactions involving contracts of insurance independently procured through negotiations occurring entirely outside of this state which are reported and on which premium tax is paid in accordance with sub. (12).

5. Attorneys acting in the ordinary relation of attorney and client in the adjustment of claims or losses.

(3) UNAUTHORIZED INSURANCE PROHIBITED. No person or insurer shall directly or indirectly do any of the acts of an insurance business set forth in sub. (2) except as provided by and in accordance with the specific authorization of statute. In respect to the insurance of subjects resident, located or to be performed within this state this subsection shall not prohibit the collection of premium or other acts performed outside of this state by persons or insurers authorized to do business in this state provided such transactions and insurance contracts otherwise comply with statute.

(4) SERVICE OF PROCESS ON COMMISSIONER. (a) Any act of doing an insurance business as set forth in sub. (2) by any unauthorized person or insurer is equivalent to and shall constitute an irrevocable appointment by such person or insurer, binding upon him, his executor, administrator or personal representative, or successor in interest if a corporation, of the commissioner, his successor or successors in office to be the true and lawful attorney of such person or insurer upon whom may be served all legal process in any action, suit or proceeding in any court arising out of doing an insurance business in this state by such person or insurer, except in an action, suit or proceeding by the commissioner or by the state. Any act of doing an insurance business as set forth in sub. (2) by any unauthorized person or insurer shall be signification of its agreement that any such legal process so served shall be of the same legal force and validity as personal service of process in this state upon such person or insurer, or upon his executor, administrator or personal representative, or its successor in interest if a corporation.

(b) Such service of process shall be made by leaving 2 copies thereof in the hands or office of the commissioner and paying to him for the use of the state the fee required by s. 200.13 (18) for each person or insurer. A certificate by the commissioner showing such service and attached to the original or third copy of such process presented to him for that purpose shall be sufficient evidence thereof. Service upon the commissioner as such attorney shall be service upon the principal.

(c) The commissioner shall forthwith mail one copy of such process to the defendant at its last known principal place of business and shall keep a record of all process so served upon him which shall show the day and hour of service. Such service of process is sufficient, provided notice of such service and a copy of the process are sent within 10 days thereafter by registered mail by plaintiff or plaintiff's attorney to the defendant at the last known principal place of business of the defendant and the defendant's receipt, or receipt issued by the post office with which the letter is registered, showing the name of the sender of the letter and the name and address of the person or insurer to whom the letter is addressed, and the affidavit of the plaintiff or plaintiff's attorney showing compliance herewith are filed with the clerk of the court in which such action is pending on or before the date the defendant is required to appear, or within such further time as the court may allow.

(d) Service of process in any such action, suit or proceeding shall, in addition to the manner provided in pars. (b) and (c), be valid if served upon any person within this state who on behalf of such unauthorized person or insurer is doing any act of an insurance business as set forth in sub. (2) and if a copy of such process is sent within 10 days thereafter by registered mail by plaintiff or plaintiff's attorney to the defendant at the last known principal place of business of the defendant and the defendant's receipt, or receipt issued by the post office with which the letter is registered, showing the name of the sender of the letter and the name and address of the person or insurer to whom the letter is addressed and the affidavit of the plaintiff or plaintiff's attorney showing compliance herewith are filed with the clerk of the court in which such action is pending on or before the date the defendant is required to appear, or within such further time as the court may allow.

(e) No plaintiff or complainant shall be entitled to a judgment by default in any action, suit or proceeding in which the process is served under this subsection until the expiration of 45 days from the date of filing of the affidavit of compliance.

(f) Nothing contained in this subsection shall limit or abridge the right to serve any process, notice or demand upon any person or insurer in any other manner now or hereafter permitted by law.

(5) SERVICE OF PROCESS ON SECRETARY OF STATE. (a) Any act of doing an insurance business as set forth in sub. (2) by any unauthorized person or insurer is equivalent to and shall constitute an irrevocable appointment by such person or insurer, binding upon him, his executor, administrator or personal representative, or successor in interest if a corporation, of the secretary of state, his successor or successors in office to be the true and lawful attorney of such person or insurers upon whom may be served all legal process in any action, suit or proceeding in any court by the commissioner or by the state and upon whom may be served any notice, order, pleading or process in any proceeding before the commissioner and which arises out of doing an insurance business in this

state by such person or insurer. Any act of doing an insurance business as set forth in sub. (2) by any unauthorized person or insurer shall be signification of its agreement that any such legal process in such court action, suit or proceeding and any such notice, order, pleading or process in such administrative proceeding before the commissioner so served shall be of the same legal force and validity as personal service of process in this state upon such person or insurer, or upon his executor, administrator or personal representative, or its successor in interest if a corporation.

(b) Such service of process in such action, suit or proceeding in any court or such notice, order, pleading or process in such administrative proceeding authorized by par. (a) shall be made by leaving 2 copies thereof in the hands or office of the secretary of state. A certificate by the secretary of state showing such service and attached to the original or third copy of such process presented to him for that purpose shall be sufficient evidence thereof. Service upon the secretary of state as such attorney shall be service upon the principal.

(c) The secretary of state shall forthwith mail one copy of such court process or such notice, order, pleading or process in proceedings before the commissioner to the defendant in such court proceeding or to whom the notice, order, pleading or process in such administrative proceeding is addressed or directed at its last known principal place of business and shall keep a record of all process so served on him which shall show the day and hour of service. Such service is sufficient, provided notice of such service and a copy of the court process or the notice, order, pleading or process in such administrative proceeding are sent within 10 days thereafter by registered mail by the plaintiff or the plaintiff's attorney in the court proceeding or by the commissioner in the administrative proceeding to the defendant in the court proceeding or to whom the notice, order, pleading or process in such administrative proceeding is addressed or directed at its last known principal place of business of the defendant in the court or administrative proceeding, and the defendant's receipt, or receipt issued by the post office with which the letter is registered, showing the name of the sender of the letter and the name and address of the person or insurer to whom the letter is addressed, and the affidavit of the plaintiff or plaintiff's attorney in court proceeding or of the commissioner in administrative proceeding, showing compliance herewith are filed with the clerk of the court in which such action, suit or proceeding is pending or with the commissioner in administrative proceedings, on or before the date the defendant in the court or administrative proceeding is required to appear or respond thereto, or within such further time as the court or commissioner may allow.

(d) No plaintiff or complainant shall be entitled to a judgment or determination by default in any court or administrative proceeding in which court process or notice, order, pleading or process in proceedings before the commissioner is served under this subsection until the expiration of 45 days from the date of filing of the affidavit of compliance.

(e) Nothing contained in this subsection shall limit or abridge the right to serve any process, notice, order, pleading or demand upon any person or insurer in any other manner now or hereafter permitted by law.

(f) The attorney general upon request of the commissioner is authorized to proceed in the courts of this or any other state or in any federal court or agency to enforce an order or decision in any court proceeding or in any administrative proceeding before the commissioner.

(6) UNAUTHORIZED PERSON OR INSURER DEFENSE OF ACTION. (a) Before any unauthorized person or insurer files or causes to be filed any pleading in any court action, suit or proceeding or in any notice, order, pleading or process in such administrative proceeding before the commissioner instituted against such person or insurer, by service made as provided in subs. (4) and (5), such person or insurer shall either:

1. Deposit with the clerk of the court in which such action, suit or proceeding is pending, or with the commissioner in administrative proceedings before the commissioner, cash or securities or bond with good and sufficient sureties to be approved by the court or the commissioner, in an amount to be fixed by the court or the commissioner sufficient to secure the payment of any final judgment which may be rendered in such court proceeding or in such administrative proceeding before the commissioner, provided that the court or the commissioner in administrative proceedings before the commissioner may in its or his discretion make an order dispensing with such deposit or bond where the insurer makes a showing satisfactory to such court or the commissioner that it maintains in a state of the United States funds or securities, in trust or otherwise, sufficient and available to satisfy any final judgment which may be entered in such court action, suit or proceeding or in such administrative proceeding before the commissioner; or

2. Procure proper authorization to do an insurance business in this state.

(b) The court in any action, suit or proceeding in which service is made as provided in sub. (4) or the commissioner in any administrative proceeding before the commissioner in which service is made as provided in sub. (5), may, in his discretion, order such postponement as may be necessary to afford the defendant reasonable opportunity to comply with par. (a) and to defend such court action or administrative proceeding.

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

(7) ATTORNEY FEES. In an action against an unauthorized person or insurer upon a contract of insurance issued or delivered in this state to a resident thereof or to a corporation authorized to do business therein, if the person or insurer has failed for 30 days after demand prior to the commencement of the action to make payment in accordance with the terms of the contract, and it appears to the court that such refusal was vexatious and without reasonable cause, the court may allow to the plaintiff a reasonable attorney fee and include such fee in any judgment that may be rendered in such action. Failure of the person or insurer to defend any such action shall be deemed prima facie evidence that its failure to make payment was vexatious and without reasonable cause.

(8) VALIDITY OF INSURANCE CONTRACTS. Except for lawfully procured surplus lines insurance and contracts of insurance independently procured through negotiations occurring entirely outside of this state which are reported and on which premium tax is paid in accordance with sub. (12), any contract of insurance effective in this state and entered into by an unauthorized insurer is unenforceable by such insurer. In event of failure of any such unauthorized insurer to pay any claim or loss within the provisions of such insurance contract, any person who assisted or in any manner aided directly or indirectly in the procurement of such insurance contract shall be liable to the insured for the full amount thereof pursuant to the provisions of such insurance contract.

(9) INVESTIGATION AND DISCLOSURE OF INSURANCE CONTRACTS. (a) Whenever the commissioner has reason to believe that insurance has been effectuated by or for any person in this state with an unauthorized insurer the commissioner shall in writing order such person to produce for examination all insurance contracts and other documents evidencing insurance with both authorized and unauthorized insurers and to disclose to the commissioner the amount of insurance, name and address of each insurer, gross amount of premium paid or to be paid and the name and address of the person or persons assisting or aiding in the solicitation, negotiation or effectuation of such insurance.

(b) Every person who, for 30 days after such written order pursuant to par. (a), neglects to comply with the requirements of such order or who willfully makes a disclosure that is untrue, deceptive or misleading shall forfeit $50 and an additional $50 for each day of neglect after expiration of said 30 days.

(10) REPORTING OF UNAUTHORIZED INSURANCE. (a) Every person investigating or adjusting any loss or claim on a subject of insurance in this state shall immediately report to the commissioner every insurance policy or contract which has been entered into by any insurer not authorized to transact such insurance in this state.

(b) Every person acting in the capacity of insurance adviser, counselor or analyst in accordance with s. 209.045, shall report to the commissioner every insurance policy or contract covering a subject of insurance in this state which has been entered into by an insurer not authorized to transact such insurance in this state.

(c) This subsection does not apply to transactions in this state involving a policy lawfully solicited, written, and delivered outside of this state covering only subjects of insurance not resident, located or expressly to be performed in this state at the time of issuance, and which transactions are subsequent to the issuance of such policy.

(11) UNAUTHORIZED INSURANCE PREMIUM TAX. (a) Except as to premiums on lawfully procured surplus lines insurance and premiums on independently procured insurance on which a tax has been paid pursuant to sub. (12), every unauthorized insurer shall pay to the commissioner before March 1 next succeeding the calendar year in which the insurance was so effectuated, continued or renewed a premium receipts tax of 3 per cent of gross premiums charged for such insurance other than marine insurance and a premium receipts tax of one-half of one per cent of gross premiums charged for such marine insurance on subjects resident, located or to be performed in this state. Such insurance on subjects resident, located or to be performed in this state procured through negotiations or an application, in whole or in part occurring or made within or from within or outside of this state, or for which premiums in whole or in part are remitted

directly or indirectly from within or outside of this state, shall be deemed to be insurance procured, or continued or renewed in this state. The term "premium" includes all premiums, membership fees, assessments, dues and any other consideration for insurance. Such tax shall be in lieu of all taxes and fire department dues. On default of any such unauthorized insurer in the payment of such tax the insured shall pay the tax. If the tax prescribed by this subsection is not paid within the time stated, the tax shall be increased by a penalty of 25 per cent and by the amount of an additional penalty computed at the rate of one per cent per month or any part thereof from the date such payment was due to the date paid.

(b) If a policy covers risks or exposures only partially in this state, the tax payable shall be computed on the portions of the premium which are properly allocable to the risks or exposures located in this state. In determining the amount of premiums taxable in this state, all premiums written, procured, or received in this state and all premiums on policies negotiated in this state shall be deemed written on property or risks located or resident in this state, except such premiums as are properly allocated or apportioned and reported as taxable premiums of any other state or states.

(12) INDEPENDENTLY PROCURED INSURANCE. (a) Every insured who procures or causes to be procured or continues or renews insurance with any unauthorized insurer, or any insured or self-insurer who so procures or continues excess loss, catastrophe or other insurance, upon a subject of insurance resident, located or to be performed within this state, other than insurance procured through a surplus lines agent pursuant to the surplus lines law of this state shall within 60 days after the date such insurance was so procured, continued, or renewed, file a report of the same with the commissioner in writing and upon forms designated by the commissioner and furnished to such an insured upon request. The report shall show the name and address of the insured or insureds, name and address of the insurer, the subject of the insurance, a general description of the coverage, the amount of premium currently charged therefor, and such additional pertinent information as is reasonably requested by the commissioner.

(b) Any insurance in an unauthorized insurer of a subject of insurance resident, located or to be performed within this state procured through negotiations or an application, in whole or in part occurring or made within or from within or outside of this state, or for which premiums in whole or in part are remitted directly or indirectly from within or outside of this state, shall be deemed to be insurance procured, or continued or renewed in this state within the intent of par. (a).

(c) There is hereby levied upon the obligation, chose in action, or right represented by the premium charged for such insurance, a premium receipts tax of 3 per cent of gross premiums charged for such insurance other than marine insurance and a premium receipts tax of one-half of one per cent of gross premiums charged for such marine insurance. The term "premium" shall include all premiums, membership fees, assessments, dues and any other consideration for insurance. Such tax shall be in lieu of all taxes and fire department dues. The insured shall, before March 1 next succeeding the calendar year in which the insurance was so procured, continued or renewed, pay the amount of the tax to the commissioner. In event of cancellation and rewriting of any such insurance contract the additional premium for premium receipts tax purposes shall be the premium in excess of the unearned premium of the canceled insurance contract.

(d) If a policy covers risks or exposures only partially in this state, the tax payable shall be computed on the portions of the premium which are properly allocable to the risks or exposures located in this state. In determining the amount of premiums taxable in this state, all premiums written, procured or received in this state and all premiums on policies negotiated in this state shall be deemed written on property or risks located or resident in this state, except such premiums as are properly allocated or apportioned and reported as taxable premiums of any other state or states.

(e) If the insured fails to withhold from the premium the amount of tax herein levied, the insured shall be liable for the amount thereof and shall pay the same to the commissioner within the time stated in par. (c). If the tax prescribed by this subsection is not paid within the time stated in par. (c), the tax shall be increased by a penalty of 25 per cent and by the amount of an additional penalty computed at the rate of one per cent per month or any part thereof from the date such payment was due to the date paid.

(f) The attorney general, upon request of the commissioner, shall proceed in the courts of this or any other state or in any federal court or agency to recover such tax not paid within the time prescribed in this section.

(g) This subsection shall not be construed or deemed to abrogate or modify any provision of this section. This subsection does not apply as to individual life or individual disability insurance.

(13) PENALTY FOR UNAUTHORIZED INSURANCE. (a) Any unauthorized insurer who does any unauthorized act of an insurance business as set forth in sub. (2) shall be fined not more than $5,000.

(b) In addition to any other penalty provided for herein or otherwise provided by law, any person or insurer violating this section shall forfeit to the people of this state the sum of $500 for the first offense and an additional sum of $500 for each month during which any such person or insurer continues such violation.

(15) NONAPPLICATION OF SECTION. This section shall not apply to any life insurance company organized and operated, without profit to any private shareholder or individual, exclusively for the purpose of aiding educational or scientific institutions organized and operated without profit to any private shareholder or individual by issuing insurance and annuity contracts direct from the home office of the company and without agents or representatives in this state only to or for the benefit of such institutions and to individuals engaged in the services of such institutions; nor shall this section apply to any life, disability or annuity contracts issued by such life insurance company, provided such contracts otherwise comply with the statutes.

History: 1961 c. 397, 624.

This section is constitutional. Ministers Life & Casualty Union v. Haase, 30 W (2d) 339, 141 NW (2d) 287.

Mail order insurers; a case study of the ability of the states to regulate the insurance business. Hanson and Obenberger, 50 MLR 175.

201.43 **Service of process; proof.** (1) Service of summons or other legal process upon the commissioner as attorney for any insurance company shall be deemed personal service, and shall be made by delivering 2 copies thereof to him or at his office and paying him the fee required by s. 200.13 (18). A certificate by the commissioner showing such service shall be proof of service.

(2) The commissioner shall immediately forward by mail one copy to the secretary or attorney in fact of the company, or, in case of an insurer from a foreign country, the copy shall be forwarded to its resident manager or attorney in fact in this country, but any company may in writing filed with the commissioner designate some other person to whom the copy shall be forwarded. The commissioner shall file the other copy and shall make a record of the day and hour of service upon him.

(3) If the license of any foreign insurance company shall be revoked or it shall cease to transact business in this state, process for commencing actions upon any policy or liability incurred in this state while it transacted business herein may nevertheless be served upon the commissioner and the agents last designated as acting for it so long as any such liability shall exist.

History: 1961 c. 562.

201.44 Policies issued through resident agents; exceptions; penalty. (1) No policy of insurance shall be solicited, issued or delivered in this state, except through an agent lawfully authorized as to the kind of insurance effected by such policy. Under such regulations and restrictions as is deemed necessary by the commissioner of insurance, licenses may be issued to nonresident agents, other than persons who represent the insured, who are licensed by the state in which they reside upon payment of the fee required by s. 200.13 (15) (b); but such agents shall not countersign any policy or contract of insurance.

(1a) An agent may not regularly or frequently solicit insurance on behalf of or for placement in an insurance company without being so licensed to solicit insurance for that company. No company shall issue any such insurance solicited as herein described.

(2) In case of fire insurance, the agent shall countersign and enter the policy in a permanent record to be kept by him. Such agent shall be paid the commission on the policy.

(3) The books of every insurance agent shall be open to the inspection of the commissioner, his deputy or examiners.

(4) This section shall not invalidate any insurance placed in violation thereof.

(5) Any company or person soliciting or placing insurance without complying with this section shall be liable upon the policy to the same extent as the company issuing the same.

(6) This section shall not apply to policies issued directly from the home office or a branch or department thereof of any domestic company, or to policies covering property in transit while in the possession or custody of any common carrier, or the property of a common carrier used by it as such, or to policies or contracts issued directly, by any mutual company or any association doing business on the interinsurance or reciprocal plan, on which no commissions are paid, except to a home office manager or an attorney

in fact for such company or association, as specifically authorized by the insured, or to bid bonds issued by any surety company in connection with any public or private contract.

(7) Any company or agent violating this section shall be subject to the penalty provided by subsection (10) of section 201.53.

(8) Any insurance company which has lawfully issued a policy of insurance upon property within this state, may reinsure said risk or any portion thereof, without having said policy of reinsurance signed by a local agent.

History: 1961 c. 562; 1963 c. 111, 299.

201.45 False representation. (1) AS TO CAPITAL AND SURPLUS. Every advertisement or public announcement and every sign, circular or card made or issued by any insurance company, or any officer, agent, manager or representative thereof, within this state, which shall purport to make known its financial standing, shall exhibit the capital actually paid in, and the amount of its net surplus over all liabilities actually available for the payment of losses and held for the protection of its policyholders, including in such liabilities capital actually paid in and the fund reserved for reinsurance; and shall correspond with the last verified statement made by the company to the insurance department of this state. In policies or renewals thereof there may be stated a single item showing the amount of authorized capital.

(2) AS TO ASSETS. It shall be unlawful for any company to represent in any form any funds as assets in its possession when not so actually possessed and available for the payment of losses and held for the protection of the policyholders.

(3) PENALTY. Any company or individual violating this section or section 201.46 shall, for the first offense, forfeit five hundred dollars, and for each subsequent violation shall forfeit not less than $1,000.

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

201.47 Company not to conceal identity. (1) No insurance company or its officers or agents shall issue any false or misleading advertisements or representations tending to conceal or misrepresent the identity of the company issuing any policy.

(2) No company or person shall issue any policy, advertisement or representation giving the appearance of a separate or independent insuring organization to any department, underwriter's agency or general agency of a company; every company issuing a policy under the title of an underwriters' agency shall register with the commissioner the name or title under which its policy will be issued and before it commences to issue policies under the name or title of an underwriters' agency it shall file a copy of the policy with the commissioner; and the type used in any policy, advertisement or representation shall set forth the name of the company assuming the risk more conspicuously than that of any department, underwriters' agency or general agency.

(3) Any violation of this section shall be punished by a fine not exceeding five hundred dollars.

201.49 Replies to commissioner. Every insurance agent or duly elected official of any authorized or licensed insurance company shall promptly reply in writing to any

inquiry of the commissioner relative to the business of insurance. Any person violating this section shall forfeit not to exceed $100.

History: 1961 c. 354.

201.50 Reports to commissioner, forms, contents, penalties. (1) Every insurance company and mutual benefit society shall annually by March 1 file with the commissioner a sworn statement concerning its affairs for the preceding calendar year, upon such forms and including such information as is prescribed by him. The statement of any company organized under the laws of any foreign country shall set forth its business and affairs in the United States, verified by its resident manager in the United States. The commissioner shall prepare forms of annual statement for the various kinds and classes of insurance companies and mutual benefit societies, suitable for eliciting a true and complete exhibit of the financial condition, character and methods of each company or society, and he shall include in such forms, requisition for information upon all important elements of business transacted in each kind and class of insurance, including gain and loss, and any matter, condition or requirement imposed by law and tending to a strict accountability of the management. The commissioner shall furnish annual statement blanks to the insurance companies and mutual benefit societies, and shall cause the information contained in the annual statements which he deems pertinent to be arranged in convenient form and published in his annual report.

(2) No company or society shall be relicensed until such annual statement has been so filed and all other provisions of the law complied with. The commissioner may extend the time for filing such annual statement to March 31. For failure to deposit such annual statement, or for wilfully making any false statement therein, every company or society shall forfeit $500, and for neglecting to file the annual statement an additional $500 for every month that such company or society continues to transact business in this state until such statement is filed.

History: 1961 c. 354, 562.

201.53 Regulations, limitations, prohibitions. (1) No insurance company shall make any agreement of insurance other than as plainly expressed in the policy.

(2) No insurance company, nor any officer, agent or employe thereof, shall pay, allow or give or offer to pay, allow or give, nor shall any person receive, any rebate of premium, or any special favor or advantage whatever in the dividends or other benefits to accrue, or any valuable consideration or inducement whatever not specified in the policy. Any violation of this subsection that is a violation of section 204.52 shall be subject to the fine provided in section 204.53 in lieu of the penalty imposed by section 201.53 (9).

(3) No agent shall receive any compensation for effecting insurance upon his own property, life or other risk, unless during the twelve months preceding, as agent for the company assuming such risk, he shall have effected other insurance therein, the premium on which shall exceed the premium on the insurance on his own risk.

(4) It is not unlawful to pay the whole or any part of any commission to a corporation or partnership principally engaged in the insurance business, or to a bank organized under ch. 221, a permittee under s. 138.07 (4), a licensee under s. 138.09 or 218.01, or a national bank of which the agent writing the insurance shall be an officer or salaried employe, but no commission shall be so paid where any officer or stockholder of such corporation or partner of a partnership is interested in the property or risk insured, otherwise than as an agent authorized under s. 209.04, nor is it unlawful for the corporation or partnership of which such agent is an officer, partner or salaried employe to collect and remit premiums and keep account thereof.

(5) Any agent may pay the whole or any part of his commission to an insurance agent for writing the kind of insurance for which such commissions are paid, a nonresident insurance agent licensed to transact business in this state, a bank organized under ch. 221, a permittee under s. 138.07 (4), a licensee under s. 138.09 or 218.01, or a national bank, if the agent is an officer, member or employe of any of the aforesaid agencies and his commission is earned from the sale of credit life insurance or credit accident and health insurance. Except as aforesaid, no agent shall pay any part of his commission to any person.

(6) Furnishing information, advice or service by any company, officer, agent or employe, with regard to any risk or for the purpose of reducing the loss or liability to loss, shall not be a violation of this section.

(7) The extension of credit to the insured upon a premium without interest for not exceeding 60 days from the effective date of the policy, or thereafter with interest at not less than the legal rate, is permissable.

(8) No insurance company nor any agent thereof shall in consideration of or in connection with a policy issued or proposed to be issued, make or offer to make any agreement for any deduction from any premium or any addition to any dividend or other benefit, on account of services rendered or to be rendered by the applicant for the policy or any person interested therein in any capacity or manner; nor contract for, sell or offer for sale any stock of such insurance company or any stocks, bonds or other certificates representing any interest in any company which shall at the time have any agreement with such insurance company, or own or control any of the stock thereof, or in any case where any part of the stocks, bonds or certificates of indebtedness of such company shall be owned or held by such insurance company. No person shall so contract with any such company or agent, or receive any such favor, privilege or advantage.

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

(10) Whenever it appears to the commissioner after a hearing upon notice, that any company, or any officer of any company, has violated any provision of this section, he shall revoke the license of such company to transact business in this state, and no other license shall be issued to such company within 3 years after such revocation, unless the commissioner in his order of revocation fixes a less time, which shall not be less than 6 months.

(11) No person and no officer or agent of any insurance company shall be excused from producing books, papers, contracts, agreements or documents or be privileged from testifying in relation to anything by this section prohibited, on the ground that the testimony or evidence required of him may tend to criminate him or subject him to a penalty or forfeiture.

(12) But no person shall be liable in any suit or prosecution, civil or criminal, for or on account of any transaction, matter or thing concerning which he may so testify or procure evidence, but no person so testifying or producing evidence shall be exempt from punishment for perjury committed in testifying.

(13) No insurance company, association or society, or any officer, or agent or deputy thereof shall make any misrepresentation to any person for the purpose of inducing such person to take out a policy or for the purpose of inducing a policyholder in any other company, association or society, to lapse, forfeit, cancel or surrender his policy of insurance therein.

History: 1961 c. 562; 1963 c. 266; 1967 c. 92.

Insurance companies, through licensed agents who are also licensed securities agents, may sell stock to policyholders or insurance to stockholders if not conditioned on the issuance of a policy. 52 Atty. Gen. 185.

201.54 Dividends. Any company may make distribution of savings, earnings or surplus to any class of policyholders, without having specified such dividends or distribution in the policy, where a schedule thereof has been filed with the commissioner.

201.58 Violations, insurance law; general penalty. Any corporation violating any law of this state relating to insurance shall, where no other penalty is prescribed, be fined not more than five thousand dollars, and any person violating any such law shall, where no other penalty is prescribed, be fined not more than one thousand dollars, or imprisoned in the county jail not exceeding one year, or so fined and imprisoned.

201.59 Dues, fire departments; liability of insured. (1) (a) Every city, village or town maintaining a fire department, as herein provided, shall be entitled, for the support thereof, to two per centum upon the amount of all premiums which, during the preceding calendar year, shall have been received by, or shall have been agreed to be paid to any company, for insurance, including property exempt from taxation, against loss by fire in such city, village or town.

(b) Every such city, village or town which furnishes fire protection under contract to another city, village or town or any part thereof shall be entitled to the dues specified in paragraph (a) from the premiums for fire insurance on property in such other city, village or town or part thereof, provided, that a certified copy of the contract, ordinances or resolutions constituting the agreement shall be filed with the commissioner, together with a

certificate of the industrial commission that the fire department furnishing the protection has sufficient equipment to and can afford the agreed protection without endangering property within its own limits. All such contracts, ordinances or resolutions shall describe the territory protected by township or section lines.

(d) Any city, village or town, not maintaining a fire department, which purchases not less than the minimum fire fighting equipment required for eligibility under subsection (3), and which for the purpose of obtaining fire protection for itself enters into an agreement with another city, village or town for the fire department of such other municipality to house and operate such equipment, shall be entitled to the dues specified in paragraph (a) from the premiums for fire insurance on property in the territory obtaining fire protection, if such municipality by agreement shall assume responsibility for the repair, maintenance and replacement of such fire fighting equipment. A certified copy of the contract constituting the agreement, containing a complete description of the fire fighting equipment purchased by the municipality receiving protection, and a description of the territory protected by township or section lines, shall be filed with the commissioner, together with a certificate of the industrial commission that such equipment meets the requirements of subsection (3). Two or more municipalities which together have purchased not less than the minimum fire fighting equipment as provided in this paragraph may enter into a fire protection agreement in the herein prescribed manner and shall under such conditions be jointly entitled to the dues as required by this subsection, provided such municipalities obtaining protection under the contract shall jointly and severally assume the responsibility for the repair, maintenance and replacement of the fire fighting equipment required. Such 2 per cent as required by this subsection shall be used for the operation, maintenance, repair or replacement of such equipment as described in subsection (3).

(2) Whenever a city or village shall contract to provide fire protection and the services of its fire department outside of its boundaries, it shall be subject to the same liability for property damage and personal injury when responding to calls and providing such services as when providing the same services within its limits.

(3) No city, village or town shall be entitled to such dues unless it shall have a voluntary fire department with not less than twenty-two active members, having at least one good pumper or one chemical fire truck with a capacity of fifty gallons and not less than five hundred feet of sound hose for a pumper or not less than one hundred fifty feet of sound hose for a chemical fire truck, housed and fit and ready at all times for actual service, and with at least one good hook and ladder truck, which may be combined with the pumper or chemical truck. Each volunteer fire department shall hold a meeting at least once a month. In case of paid or partly paid fire department, the buildings, machinery and materials hereinbefore enumerated and the necessary men and equipment to constitute an active and properly equipped department, ready for service at all times, shall entitle the city, village or town to such dues. The industrial commission shall from time to time notify the insurance commissioner of changes in the list of departments eligible to receive such fire department dues.

(4) In case any city, village or town shall maintain a system of waterworks with sufficient pressure for fire fighting purposes, with one or more hose trucks or carts, each having not less than five hundred feet of sound hose, kept fit and ready at all times for actual service, it shall not be required to maintain a pumper.

(5) No city, village or town shall be paid any fire department dues for any year unless the industrial commission shall have certified to the commissioner of insurance that the requirements of section 101.29 have been complied with as to such city, village or town. Any fire department dues paid into the state treasury for any city, village or town not entitled to receive the same may be expended by the industrial commission for making the necessary inspections within such city, village or town. In case such dues shall be withheld, where the same shall be payable into any firemen's pension fund or other special funds for the benefit of disabled or superannuated firemen, an amount equal to the fire department dues so withheld shall be paid into such pension fund from any fund of such city, village or town available therefor, and if no such fund be so available, the same shall be included in and paid out of the next taxes levied and collected for such city, village or town.

201.60 Insurance, rating organization. (1) No licensed insurance company shall be a member or subscriber of, or shall contribute to or financially aid any rating organization or any organization furnishing any services in connection with the making of rates for insurance in this state, unless such organization shall furnish its services without discrimination to all insurers licensed in this state that apply therefor; and shall file with the commissioner a copy of its charter or articles of organization and by-laws and plan of operation, including a brief statement of the services rendered and the conditions and charges

imposed upon members or subscribers for such services, and such other information as the commissioner may require, and shall from time to time file with the commissioner copies of any changes made in the papers so filed.

(2) Any insurance company violating the provisions of this section shall forfeit not exceeding $100 per day for each day of violation.

(3) This section shall not apply with respect to the kinds of insurance which are subject to the provisions of ss. 204.37 to 204.54 nor to organizations referred to in ss. 204.42, 204.46 and 204.47.

201.61 Special charter companies. All fire or fire and inland navigation or transportation insurance companies organized under any special law shall be subject to all the provisions applicable to like corporations organized under the general law, except that their capitals may continue of the amount and character provided by their respective charters during the term authorized by such charters, and their investments may remain as prescribed by their charters, and they shall enjoy any peculiar privileges and powers given in their charters not inconsistent with said general law.

201.62 Property owner report to insurance commissioner, unauthorized insurance. (1) The owner of property situated in this state including property exempt from taxation shall, upon demand of the commissioner, furnish him a sworn statement showing the description and location of the property, the amount of insurance he has effected against loss by fire, the number of each policy, the name and location of the company issuing such policy, and the premiums paid, or if he has not insured his property the amount paid into or credited to any insurance fund or other reserve against loss or damage by fire. If any such statement shall not be made as required, said commissioner shall cause a demand in writing to be served on the owner so failing to make such sworn statement. Every person who shall wilfully make false statement or who shall, for thirty 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 thirty days.

(2) If such insurance has been effected in any company not authorized to do business in this state, the provisions of s. 201.42 shall apply to such insurance but if such owner carried his own insurance, the commissioner shall collect from such property owner an amount equal to 2 per cent of the annual premium which authorized insurance companies would have charged for insuring such property and may maintain a civil action therefor in the name of the state, and when recovered it shall be payable as fire department dues as provided in s. 201.59 to the respective cities, villages and towns entitled to the same.

(3) This section shall not be applicable to the property of any city, village or other unit of government which maintains a public fire department and furnishes full fire protection for such property.

History: 1961 c. 397.

201.63 Surplus lines insurance. (1) PURPOSE. Insurance transactions which are entered into by citizens of this state with unauthorized insurers through a surplus lines agent as a result of difficulty in obtaining coverage from licensed insurers are a matter of public interest. The legislature declares that such transaction of surplus lines insurance is a subject of concern and that it is necessary to provide for the regulation, taxation, supervision and control of such transactions and the practices and matters related thereto by requiring appropriate standards and reports concerning the placement of such insurance; by imposing requirements necessary to make such regulation and control reasonably complete and effective; by providing orderly access to insurers that are not authorized to transact the business of insurance in this state; by insuring the maintenance of fair and honest markets; by protecting the revenues of this state; and by protecting authorized insurers, which under the laws of this state must meet strict standards as to the regulation of the business of insurance and the taxation thereof, from unfair competition by unauthorized insurers. In order to properly regulate and tax such unauthorized insurance within the meaning and intent of P.L. 79–15 (1945), (Chap. 20, 1st Sess., S. 340), 59 Stat. 33, the legislature herein provides an orderly method for the insuring public of this state to effect insurance with unauthorized insurers through qualified, licensed and supervised surplus line agents in this state and under reasonable and practical safeguards so that such insurance coverage may be obtained by residents of this state to the extent that the coverage is not procurable from duly licensed, regulated insurers conducting business in this state.

(2) DEFINITIONS. (a) "Surplus lines agent" means a resident agent authorized under s. 209.04 who is granted a surplus lines license in accordance with this section.

(b) "Surplus lines insurer" means an unauthorized insurer in which an insurance coverage is placed or may be placed under this section.

(3) SURPLUS LINES INSURANCE AUTHORIZED. (a) If the insurance coverages specified in s. 201.04 (1) to (7), (9) to (15), (17) and (18) of subjects resident, located or to be performed in this state cannot be procured from licensed insurers, such coverages, hereinafter designated as surplus line insurance, may be procured from unauthorized insurers subject to the following conditions:

1. The insurance must be eligible for surplus lines under sub. (5).
2. The insurer must be an eligible surplus lines insurer under sub. (8).
3. The insurance must be placed through a licensed Wisconsin surplus lines agent resident in this state.
4. The other applicable provisions of this section must be complied with.

(b) Any insurance of subjects resident, located or to be performed in this state, procured through negotiations or an application, in whole or in part occurring or made within or from within this state, or for which premiums in whole or in part are remitted directly or indirectly from within this state, shall be deemed to be insurance procured, or continued or renewed in this state within the intent of par. (a).

(4) SURPLUS LINES AGENT'S LICENSE. (a) The commissioner may issue a surplus lines license to any authorized agent which shall grant such agent authority to procure the kinds of insurance provided for in this section from companies not licensed in this state under the conditions prescribed in this section. Every license issued pursuant to this subsection shall be for a term expiring on the last day of February next following the date of issuance and may be renewed for ensuing periods of 12 months. Before any such license shall be issued and before each renewal thereof a written application shall be filed by the applicant in such form as the commissioner prescribes and the fee provided therefor by this section shall be paid.

(b) The fee for issuance of a surplus lines license shall be the fee required by s. 200.13 (15) (c).

(5) ELIGIBILITY FOR SURPLUS LINES INSURANCE. (a) No insurance coverage shall be eligible for surplus lines unless the full amount of insurance required is not procurable, after a diligent effort has been made to do so, from among the insurers licensed to transact and actually writing that kind and class of insurance in this state, and the amount of insurance eligible for surplus lines shall be only the amount in excess of the amount so procurable from licensed insurers.

(b) Policy or contract forms shall not be eligible unless the use is reasonably necessary for the principal purposes of the coverage or unless the use would not be contrary to the purposes of the coverage or unless the use would not be contrary to the purposes of this section with respect to the reasonable protection of authorized insurers from unwarranted competition by unauthorized insurers.

(6) PROCEDURE FOR EFFECTING SURPLUS LINES CONTRACTS. (a) Before any new or renewal 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 from any licensed insurer or insurers the full amount of insurance required to protect the interest of the insured.

(b) Upon placing a new or renewal surplus line coverage, the surplus lines agent shall promptly issue and deliver to the insured evidence of the insurance consisting either of the policy as issued by the insurer or, if such policy is not then available, a certificate, cover note or other confirmation of insurance.

(c) Within 60 days after the effectuation of any new or renewal surplus lines insurance the surplus lines agent shall file with the commissioner an exact copy of the policy issued. If a policy has not been issued, the surplus lines agent shall so file an exact copy of his certificate, cover note or other confirmation of insurance as delivered to the insured. The surplus lines agent shall likewise promptly file with the commissioner an exact copy of any substitute certificate, cover note or other confirmation of insurance, and of every endorsement of an original policy, certificate, cover note or other confirmation of insurance, delivered to an insured, together with such surplus lines agent's memorandum informing the commissioner as to the substance of any change represented by such substitute certificate, cover note or other confirmation, or of any such endorsement, as compared with the coverage as originally placed or issued.

(d) No surplus lines agent shall deliver any such document, or purport to insure or represent that insurance will be or has been granted by any unauthorized insurer unless he has prior written authority from the insurer for the insurance, or has received information from the insurer in the regular course of business that such insurance has been granted, or an insurance policy providing the insurance actually has been issued by the insurer and delivered to the insured.

(e) If after the delivery of any such document there is any change as to the identity of the insurers, or the proportion of the direct risk assumed by the insurer as stated in the original certificate, cover note or confirmation, or in any other material respect as to the insurance coverage evidenced by such a document, the surplus lines agent shall promptly deliver to the insured a substitute certificate, cover note, confirmation or endorsement for the original such document, accurately showing the current status of the coverage and the insurers responsible thereunder. No such change shall result in a coverage or insurance contract which would be in violation of this section if originally issued on such basis.

(f) If a policy issued by the insurer is not available upon placement of the insurance and the surplus lines agent has delivered a certificate, cover note or confirmation, as hereinabove provided, upon request therefor by the insured the surplus lines agent shall as soon as reasonably possible procure from the insurer its policy evidencing the insurance and deliver the policy to the insured in replacement of the certificate, cover note or confirmation theretofore issued.

(7) REQUIREMENTS FOR SURPLUS LINES CONTRACTS. (a) Every new or renewal insurance contract certificate, cover note or other confirmation of insurance procured and delivered as a surplus line coverage pursuant to this section shall bear the name and address of the insurance agent who procured it and, except for marine insurance, shall have stamped or affixed upon it the following: "This insurance contract is with an insurer not licensed to transact insurance in this state and is issued and delivered as a surplus line coverage pursuant to the Wisconsin insurance statutes. Section 201.63 (12), Wisconsin statutes, requires payment of 3 per cent tax on gross premium." Every marine insurance contract shall have stamped or affixed upon it the above statement except that such statement shall be amended to state that s. 201.63 (12) requires payment of one-half of one per cent tax on gross premium.

(b) Such document shall show the description and location of the subject of the insurance, coverage, conditions and term of the insurance, the premium and rate charged and premium taxes to be collected from the insured, and the name and address of the insured and insurer. If the direct risk is assumed by more than one insurer, the document shall state the name and address and proportion of the entire direct risk assumed by each insurer.

(8) ELIGIBILITY OF SURPLUS LINES INSURERS. (a) A surplus lines agent shall not knowingly place surplus lines insurance with financially unsound insurers. The agent shall make a reasonable effort to ascertain the financial condition of the unauthorized insurer before placing insurance therewith. An insurer shall not be eligible unless it has capital and surplus or its equivalent that is adequate in relation to its premium writings and the exposure it assumes.

(b) The unauthorized insurer must be of good repute and provide reasonably prompt service to its policyholders in the payment of just losses and claims.

(c) No unauthorized insurer shall be eligible if the management is incompetent or untrustworthy, or so lacking in insurance company managerial experience as to make its proposed operation hazardous to the insurance-buying public; or if the commissioner has good reason to believe that it is affiliated directly or indirectly through ownership, control, reinsurance transactions or other insurance or business relations, with any person whose business operations are or have been detrimental to policyholders, stockholders, investors, creditors or to the public.

(d) No unauthorized insurer shall be eligible if the insurer or its agents have failed to submit to any fine or penalty levied pursuant to statute. The commissioner may order revocation of insurance contracts issued by insurers that do not conform with the eligibility requirements of this section.

(e) No new or renewal surplus lines insurance shall be placed with any surplus lines insurer which requires as a condition precedent to writing such new or renewal insurance that the prospective insured or the insured place other insurance not eligible as surplus lines insurance with such surplus lines insurer.

(f) This section shall not be deemed to cast upon the commissioner any duty or responsibility to determine the actual financial condition or claims practice of any unauthorized insurer.

(9) VALIDITY OF CONTRACTS. (a) Insurance contracts procured as surplus line coverage from unauthorized insurers in accordance with this section shall be fully valid and enforceable as to all parties, and shall be given recognition in all matters and respects to the same effect and extent as like contracts issued by authorized insurers.

(b) A contract of insurance placed in effect by an unauthorized insurer in violation of this section is unenforceable by the insurer. The insured shall not be precluded from enforcing his rights in accordance with the terms and provisions of such contract.

(10) LIABILITY OF SURPLUS LINES INSURER FOR LOSSES AND UNEARNED PREMIUMS. If the surplus lines insurer has assumed the risk in accordance with this section and if the premium therefor has been received by the surplus lines agent who placed such insurance, then in all questions thereafter arising under the coverage as between the insurer and the insured, the insurer shall be deemed to have received the premium due to it for such coverage; and the insurer shall be liable to the insured as to losses covered by such insurance, and for unearned premiums which may become payable to the insured upon cancellation of such insurance, whether or not in fact the surplus lines agent is indebted to the insurer with respect to such insurance or for any other cause. Each surplus lines insurer assuming a surplus lines risk under this section shall be deemed thereby to have subjected itself to the terms of this subsection.

(11) ACTIONS AGAINST INSURER; SERVICE OF PROCESS. A surplus lines insurer may be sued upon any cause of action arising in this state under any surplus lines insurance contract issued by it or certificate, cover note or other confirmation of such insurance issued by the surplus lines agent, pursuant to the same procedure as is provided for unauthorized insurers in s. 201.42. Any such policy issued by the insurer, or any certificate of insurance issued by the surplus lines agent, shall contain a provision stating the substance of this subsection and designating the person to whom the commissioner shall mail process. Each surplus lines insurer assuming a surplus lines risk pursuant to this section shall be deemed thereby to have subjected itself to the terms of this subsection. This subsection shall be cumulative to any other methods which may be provided by law for service of process upon the insurer.

(12) SURPLUS LINES INSURANCE PREMIUM TAX. (a) The premiums charged for surplus lines insurance other than marine insurance are subject to a premium receipts tax of 3 per cent of gross premiums charged for such insurance. The premiums charged for marine insurance are subject to a premium receipts tax of one-half of one per cent of gross premiums charged for such insurance. The term premium includes all premiums, membership fees, assessments, dues or any other consideration for insurance. Such tax shall be in lieu of all taxes and fire department dues. The surplus lines agent shall collect from the insured the amount of the tax at the time of delivery of the cover note, certificate of insurance, policy or other initial confirmation of insurance, in addition to the full amount of the gross premium charged by the insurer for the insurance. No agent shall absorb such tax nor shall any agent, as an inducement for insurance or for any other reason, rebate all or any part of such tax or his commission. The surplus lines agent shall, before March 1 in each year, forward to the commissioner together with his annual report the amount of the premium receipts tax due for the preceding calendar year. If a surplus lines policy covers risks or exposures only partially in this state, the tax payable shall be computed on the portions of the premium which are properly allocable to the risks or exposures located in this state. In determining the amount of premiums taxable in this state, all premiums written, procured, or received in this state and all premiums on policies negotiated in this state shall be deemed written on property or risks located or resident in this state, except such premiums as are properly allocated or apportioned and reported as taxable premiums of any other state or states. In event of cancellation and rewriting of any surplus lines insurance contract the additional premium for premium receipts tax purposes shall be the premium in excess of the unearned premium of the canceled insurance contract.

(b) All surplus lines premium receipt taxes collected by a surplus lines agent are trust funds in his hands and the property of this state. Such funds shall be maintained by the surplus lines agent in a separate account and shall not be mingled with any other funds, either business or private. Any surplus lines agent who fails or refuses to pay over to the state the surplus lines premium receipts tax at the time required in this section, or who fraudulently withholds or appropriates or otherwise uses such money or any portions thereof belonging to the state is guilty of theft and shall be punished as provided by law for the crime of theft, irrespective of whether any such surplus lines agent has or claims to have any interest in such money so received by him.

(c) If the property of any surplus lines agent is seized upon any mesne or final process in any court in this state, or when the business of any surplus lines agent is suspended by the action of creditors or put into the hands of any assignee, receiver or trustee, all surplus lines premium receipts tax money and penalties due the state from such surplus lines agent shall be considered preferred claims and the state shall be a preferred creditor and shall be paid in full.

(d) The attorney general, upon request of the commissioner, shall proceed in the courts of this or any other state or in any federal court or agency to recover such license fees or tax not paid within the time prescribed in this section.

(13) SURPLUS LINES AGENTS MAY ADVERTISE. Any agent who is granted a surplus lines license in accordance with this section may bring announcements or statements before the public in respect to his ability to place such surplus lines insurance as may be permitted by this section.

(14) SURPLUS LINES AGENTS' COMMISSIONS. Agents licensed in accordance with this section may not pay the whole or any part of the commission on surplus lines insurance to any person, except that such commissions may be shared or divided with any other licensed agent.

(15) RECORDS OF SURPLUS LINES AGENT. (a) Each surplus lines agent shall keep in his office in this state a full and true record of each surplus lines contract procured by him, including a copy of the daily report, if any, and showing such of the following items as may be applicable:

1. Amount of the insurance and perils insured against;
2. Brief general description of property insured and where located;
3. Gross premium charged;
4. Return premium paid, if any;
5. Rate of premium charged upon the several items of property;
6. Effective date of the contract, and the terms thereof;
7. Name and post-office address of the insured;
8. Name and home office address of the insurer;
9. Amount collected from the insured; and
10. Other information as may be required by the commissioner.

(b) The record shall at all times be open to examination by the commissioner without notice, and shall be so kept available and open to the commissioner for 3 years next following expiration or cancellation of the contract.

(16) ANNUAL REPORT OF SURPLUS LINES AGENT. Each surplus lines agent shall, before March 1 in each year, make a report to the commissioner for the preceding calendar year, on the form prescribed by him, of such facts as he requires and including a showing that the amount of insurance procured from such unauthorized insurer or insurers is only the amount in excess of the amount procurable from licensed insurers.

(17) PENALTY. Any violation of this section shall subject the agent to suspension of his agent's license for a period of not less than 90 days and a fine of not more than $500.

(18) OTHER STATUTES. This section shall not be construed or deemed to abrogate or modify any other provision of statute.

History: 1961 c. 397, 562, 624.

201.71 Motor club service; definitions. As used in ss. 201.71 to 201.83, unless the context or subject matter otherwise requires:

(1) "Commissioner" means the commissioner of insurance, or his assistants or deputies, or other persons authorized to act for him.

(2) "Company" means any person, firm, copartnership, company, association or corporation engaged in selling, furnishing or procuring, either as principal or agent, for a consideration, motor club service as herein defined.

(3) "Agent" means one who solicits the purchase of service contracts, as herein defined, or transmits for another any such contract, or application therefor, to or from the company, or acts or aids in any manner in the delivery or negotiation of any such contract, or in the renewal or continuance thereof.

(4) "Towing service" means any act by a company, as herein defined, consisting of the drafting or moving of a motor vehicle from one place to another under other than its own power.

(5) "Emergency road service" means any act by a company, as herein defined, consisting of the adjustment, repair or replacement of the equipment, tires or mechanical parts of an automobile so as to permit it to be operated under its own power.

(6) "Insurance service" means any act by a company, as herein defined, consisting of the selling or giving with a service contract, as herein defined, or as a result of membership in or affiliation with a company, as herein defined, a policy of insurance covering liability or loss by the holder of a service contract with any such company as the result of injury to the person of such service contract holder following an accident resulting from the ownership, maintenance, operation or use of a motor vehicle.

(7) "Bail bond service" means any act by a company, as herein defined, the purpose of which is to furnish to, or procure for, any person accused of violation of any law of this state a cash deposit, bond or other undertaking required by law in order that the accused might enjoy his personal freedom pending trial.

(8) "Legal service" means any act by a company, as herein defined, consisting of the hiring, retaining, engaging or appointing of an attorney or other person to give professional advice to, or represent, holders of service contracts with any such company, in any court, as the result of liability incurred by the right of action accruing to the holder of a service contract as a result of the ownership, operation, use or maintenance of a motor vehicle.

(9) "Discount service" means any act by a company, as herein defined, resulting in the giving of special discounts, rebates or reductions of price on gasoline, oil, repairs, parts, accessories or service for motor vehicles, to holders of service contracts with any such company.

(10) "Financial service" means any act by a company, as herein defined, whereby loans or other advances of money, with or without security, are made to holders of service contracts with any such company.

(11) "Buying and selling service" means any act by a company, as herein defined, whereby the holder of a service contract with any such company is aided in any way in the purchase or sale of an automobile.

(12) "Theft service" means any act by a company, as herein defined, the purpose of which is to locate, identify or recover a motor vehicle, owned or controlled by the holder of a service contract with any such company, which has been, or may be, stolen, or to detect or apprehend the person guilty of such theft.

(13) "Map service" means any act by a company, as herein defined, by which road maps are furnished without cost to holders of service contracts with any such company.

(14) "Touring service" means any act by a company, as herein defined, by which touring information is furnished without cost to holders of service contracts with any such company.

(15) "Motor club service" means the rendering, furnishing or procuring of towing service, emergency road service, insurance service, bail bond service, legal service, discount service, financial service, buying and selling service, theft service, map service and touring service, or any three or more thereof, as herein defined, to any person, in connection with the ownership, operation, use, or maintenance of a motor vehicle by such person, in consideration of such other person being or becoming a member of any company rendering, procuring or furnishing the same, or being or becoming in any manner affiliated therewith, or being or becoming entitled to receive membership or other motor club service therefrom by virtue of any agreement or understanding with any such company.

(16) "Service contract" means any written agreement whereby any company, as herein defined, for a consideration, promises to render, furnish, or procure for any other person, whether he is a member of such company or otherwise, motor club service, as herein defined.

201.72. License to sell motor club service. No company shall sell or offer for sale any motor club service without first having deposited with the commissioner the sum of $25,000, in cash or securities approved by the commissioner, or, in lieu thereof, a bond in the form prescribed by the commissioner, payable to the state of Wisconsin, in the sum of $50,000, with corporate surety approved by the commissioner, conditioned upon the faithful performance in the sale or rendering of motor club service and payment of any fines or penalties levied against it for failure to comply with ss. 201.71 to 201.83. Upon the depositing of such security with the commissioner, it shall be the duty of said commissioner to issue a certificate of authority to said company. The provisions of this section shall not affect or apply to any company heretofore organized which has been in continuous operation in this state for a period of more than 3 years immediately prior to May 24, 1933 and has a fully paid annual membership of more than 500 members within this state. The foregoing cash deposit or bond is not required in any instance as a penalty, but for the protection of the public only.

201.73 Agent's license. No agent, doing business in this state, shall execute, issue or deliver any service contract as herein defined to any person owning or operating a motor vehicle without first having obtained a license from the commissioner; nor shall any agent collect or receive from any person, in advance of the execution, issuance or delivery of any such service contract, any money or other thing of value upon any promise or

agreement to execute, issue or deliver any such service contract, without first having obtained a license from said commissioner.

201.74 Manner of obtaining company license; fee. (1) No certificate of authority shall be issued by the commissioner until the company has filed with him the following:

(a) A formal application in such form and detail as the commissioner may require, executed under oath by its president or other principal officer;

(b) A certified copy of its charter or articles of incorporation and its bylaws, if any;

(c) A certificate from the secretary of state, if it is a nonprofit corporation, that it has complied with the corporation laws of this state; if it is a corporation the stock of which has been or is being sold to the general public, a certificate from the department of securities that it has complied with the requirements of the securities law of this state.

(2) No certificate of authority shall be issued by the commissioner until the company has paid to the commissioner the fee required by s. 200.13 (2) (f).

(3) Every certificate of authority issued hereunder shall expire annually on July 1, of each year, unless sooner revoked or suspended, as hereinafter provided.

History: 1961 c. 562; 1965 c. 218.

201.75 Revocation or suspension of company license. If the commissioner, at any time for cause shown and after a hearing, shall determine that a company has violated any provision of sections 201.71 to 201.83, or that it is insolvent, or that its assets are less than its liabilities, or that it or its officers refuse to submit to an examination, or that it is transacting business fraudulently, he shall thereupon revoke or suspend its certificate of authority and shall give notice thereof to the public in such manner as he may deem proper.

201.76 Form of service contract. No service contract shall be executed, issued, or delivered in this state until the form thereof has been approved in writing by the commissioner.

201.77 Execution of service contract. Every service contract, executed, issued, or delivered in this state shall be made in duplicate, and shall be dated and signed by the company issuing the same, and countersigned by its duly authorized agent, and by the party purchasing the same, and one copy thereof shall be kept by said company, and the other copy shall be delivered to the party purchasing the same.

201.78 Contents of contract. No service contract shall be executed, issued, or delivered in this state unless it contains the following:

(1) The exact corporate or other name of the company.

(2) The exact location of its home office and of its usual place of business in this state, giving street number and city.

201.79 Only agents to solicit business. No person shall solicit, or aid in the solicitation of, another person to purchase a service contract issued by a company not duly licensed under ss. 201.71 to 201.83.

201.80 Misrepresentations forbid. No company, and no officer or agent thereof, shall orally, or in writing, misrepresent the terms, benefits, or privileges of any service contract issued, or to be issued, by it.

201.81 Company always bound by contract. Any service contract made, issued, or delivered contrary to any provision of ss. 201.71 to 201.83 shall nevertheless be valid and binding on the company.

201.82 Persons exempted from act. Nothing in ss. 201.71 to 201.83 shall apply to a duly authorized attorney at law acting in the usual course of his profession, nor to any insurance company, bonding company, or surety company now or hereafter duly and regularly licensed and doing business as such under the laws of this state.

201.83 Penalties. Any person violating any provision of ss. 201.71 to 201.83 shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than $500, or by imprisonment in the county jail for not more than 6 months, or by both such fine and imprisonment.