

CHAPTER 201

INSURANCE CORPORATIONS IN GENERAL

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201.01 Definition. In statutes relating to insurance companies, unless the context requires otherwise, "mutual benefit society" has the meaning attributed to it by ch. 208.

History: 1971 c. 260.

201.03 Consolidation or merger of domestic town mutuals into domestic mutuals.

(1) Any mutual which is organized or operating under ch. 611 may absorb by merger or consolidation any domestic town mutual, or wholly reinsure all of the risks of any such town mutual. To effect any such merger, consolidation or total reinsurance it is necessary:

(a) That the boards of each of the corporations pass a resolution prescribing the terms and conditions of the proposed action;

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

(c) That when the proposed action is approved by the commissioner, a meeting of the members of the town mutual shall be held on notice mailed to each of the members of the company at least 30 days prior to the holding thereof, which shall embody a copy or the summary of the resolution adopted by the board as provided in par. (a); and

(d) That a two-thirds majority of the members of the town mutual present at the meeting, by resolution, approve and ratify the action of their directors and vote to carry out the proposed action. Within 10 days after the adoption of the resolution, 2 copies thereof, with the affidavit of the president and secretary showing compliance with the law, shall be forwarded to the commissioner by the town mutual. The procedure for certifying and recording of amendment of articles required by s. 202.01 (4) shall be followed by the corporations losing their identity as a result of the merger, consolidation or total reinsurance.

(2) Any merger, consolidation or total reinsurance of a town mutual by or into any mutual organized or operating under ch. 611 approved by a two-thirds vote of the members present at an annual meeting of the members of the town mutual prior to July 1, 1961, and approved by the commissioner is hereby validated to the same effect as though accomplished in accordance with this section.

History: 1971 c. 260.

Legislative Council Note, 1971: This section continues s. 201.03 (10). It is temporary and will be replaced by one in ch. 612 [Bill 469-S].

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 dam-

age 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 ma-

chinery 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 deposits 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 (1), 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.

(20) **Legal Expense Insurance.**—Against expense for the professional services of licensed lawyers.

History: 1971 c. 260 ss. 11m, 92 (1)

201.045 Certificate of authority; fee. (1) SCOPE. This section applies to all insurers incorporated or organized under any law of this state except ch. 611, and to nonprofit service plans as defined by s. 200.26.

(2) **REQUIREMENT OF LICENSE.** No insurer or plan subject to this section may transact insurance business in this state without having in effect a certificate of authority.

(3) **LICENSING.** The commissioner shall issue to any insurer or plan subject to this section a certificate of authority authorizing it to transact the business of insurance in this state if he is satisfied that it has met all requirements of law and that its methods and practices and the character and value of its assets will adequately safeguard the interests of its insureds and the public in this state. Each certificate shall be issued for a period of no longer than one year and shall expire on May 1. It may be renewed from year to year.

(4) **FEES.** Except town mutuals, every insurer or plan obtaining or renewing its certificate shall pay the fee required by s. 601.31 (2) or (3).

History: 1971 c. 260

201.05 Combination of kinds of insurance. (1) (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 in the event that the insured becomes totally and permanently disabled as defined by the policy.

(2) 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).

(3) 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.

(4) 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 ex-

pected 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.

(5) 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: 1971 c. 260.

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.

201.065 Assignability. No provision of the statutes shall prohibit an insured under any policy of insurance of the kind described in s. 201.04 (3) or (4) or any other person who is the owner of any rights under such policy from making an assignment of all or any part of his rights and privileges under the policy, including any right to designate a beneficiary thereunder and any right to have an individual policy issued in accordance with s. 206.61 (8), (9) and (10) or 206.64 (5). Subject to the terms of the policy or any contract relating thereto, an assignment by an insured or by any other owner of rights under the policy, made either before, upon or after February 4, 1970, is valid for the purpose of vesting in the assignee, in accordance with any provisions included therein as to the time at which it is to be effective, all rights and privileges so assigned, but without prejudice to the insurer on account of any payment it

may make or individual policy it may issue in accordance with s. 206.61 (8), (9) and (10) or 206.64 (5) prior to receipt of notice of the assignment. This section acknowledges and declares the existing right of assignment of interests under such insurance policies.

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.

201.08 Bylaws, filing. Every mutual benefit society shall adopt bylaws and prescribe the manner in which they may be amended. A copy of the bylaws and of any amendments thereto, accompanied by the certificate of the president and secretary stating that they have been duly adopted and that the copy is true and complete, shall be filed with the commissioner within 30 days after adoption.

History: 1971 c. 260.

201.09 Treasurer's bond. The treasurer of any mutual benefit society 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 this state.

History: 1971 c. 260.

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.

201.16 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.

201.17 Mutuals, insure corporations. 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.

History: 1971 c. 260.

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% 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% or the monthly pro rata portion of the premium received each year. Any company may adopt either the 50% 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% 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% 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 any report as required under s. 601.42.

(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

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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.

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 ch. 625 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 wind-

storm 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 ch. 625.

201.24 Domestic companies; trading prohibited; real estate, investments. (1) No domestic insurer organized or operating under any general law other than ch. 611 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 (5).

(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.

(5) (a) Any material transaction between a domestic insurance corporation and one or more of its directors or officers, or between a domestic insurance corporation and any other person in which one or more of its directors or

officers or any person controlling the corporation has a material interest, shall be voidable by the corporation unless:

1. The transaction at the time it is entered into is reasonable and fair to the interests of the corporation; and

2. The transaction has, with full knowledge of its terms and of the interests involved, been approved in advance by the board of directors or by the shareholders; and

3. The transaction has been reported to the commissioner immediately after such approval.

(b) Directors whose interest or status make the transaction subject to this section may be counted in determining a quorum for a board meeting approving a transaction under par. (a) 2, but may not vote. Approval shall require affirmative vote of a majority of those present.

(c) The commissioner may, by rule, require that any class of transactions subject to par. (a), which by their nature tend to be unreasonable or unfair to the interests of the corporation, shall be submitted to him in advance. Unless the commissioner approves of such a transaction, it shall not be carried out even though approved under par. (a) 2.

(d) This section does not apply to transactions subject to sub. (6), nor to transactions made between an insurance corporation and its wholly owned subsidiary, nor to policies of insurance, other than reinsurance, issued in the normal course of business. Nothing in this section shall deprive any person of any rights accruing at usual terms under a policy of insurance, other than reinsurance. The commissioner may, by rule, exempt other classes of transactions from the requirement of par. (a) 3 to the extent that the purposes of this section may be achieved without such report being made.

(6) (a) No transaction shall be entered into between a domestic stock insurance corporation and a person controlling it or between the corporation and a person controlled by the same person who controls it unless:

1. The transaction at the time it is entered into is reasonable and fair to the interests of the corporation; and

2. The books, accounts and records of each party to the transaction are kept in a manner that clearly and accurately disclose the nature and details of the transaction and are in accordance with an adequate cost accounting system permitting ascertainment of appropriate charges relating to the transaction; and

3. If the transaction is a reinsurance transaction, it is reported to the commissioner immediately.

(b) Transactions entered into in violation of par. (a) shall be voidable by the corporation.

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

(8) Subsections (1) to (6) do not apply to corporations organized or operating under ch. 611.

History: 1971 c. 260.

Legislative Council Note, 1971: The definition in s. 201.24 (5) (a) 4 is replaced in s. 600.03

Sub. (8) is proposed since chs. 611 and 620 replace the whole of s. 201.24 as applied to domestic insurance corporations, except for sub. (1) which will be dealt with in another chapter. [Bill 469-S]

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.

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.

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. 601.31 (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.

(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.

(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.

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 office of the commissioner of insurance 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.

201.46 Misrepresentation as to risk. It is unlawful for any insurance company to publish or permit any of its agents to publish any statement which represents said company as writing risks different in nature or class from those actually written by it, or falsely represents said company as confining its business to a particular class of risks. The distribution of any cards or other documents by any agent containing such false representations, or the existence of any sign exposed to public view containing them and belonging to such company, or any agent thereof, or the existence of any advertisement or statement containing any such false representations in any newspaper published in any town, village or city in which the company has an agent soliciting insurance shall be prima facie evidence of the violation of this section by the company.

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.

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.

(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.

Note: Subs. (4) and (5) are amended by ch. 239, laws of 1971, effective March 1, 1973, by deleting "a permittee under s. 138.07 (4)".

(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 permissible.

(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.

(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 compa-

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ny, association or society, to lapse, forfeit, cancel or surrender his policy of insurance therein.

History: 1971 c. 239.

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.

201.59 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 department of industry, labor and human relations 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 department of industry, labor and human relations 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 department of industry, labor and human relations 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 department of industry, labor and human relations shall have certified to the commissioner of insurance that the requirements of s. 101.14 (2) (a) to (g) 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 department of industry, labor and human relations 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.

History: 1971 c. 185 s. 7.

201.63 Surplus lines insurance. (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.

(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.

History: 1971 c. 260, 307.

Legislative Council Note, 1971: S. 201.63 was the sur-

plus lines law. It has been largely incorporated in ch. 618 with much alteration. Following is a description of the way it has been disposed of.

S. 201.63 (1). So far as it is still necessary to describe them, the purposes provisions of sub. (1) have been incorporated in s. 618.01 (1). In large part it is an essay that does not need incorporation in the law since it has no operative provisions. It is inserted as a comment on s. 618.01 (1).

S. 201.63 (2), defining "surplus lines agent" and "surplus lines insurer" is omitted as unnecessary.

S. 201.63 (3) is partly incorporated in s. 618.41. Economic incentives (through taxation) related to the cost of surveillance have replaced the hard-to-enforce restrictions of s. 201.63 (3). These restrictions may be reinstated under s. 618.41 (6) (b), however, if the commissioner concludes that they are needed.

S. 201.63 (4) is replaced by s. 618.41 (7).

S. 201.63 (5) is deleted as not justifiable and in any event difficult to enforce. The tax incentive related to regulatory costs is a better kind of control over surplus lines placement than the ascertainment of availability of a market. This change frees up the market where needed without putting authorized insurers at a disadvantage. The tax rates can be adjusted as necessary and as justified to achieve the necessary control. As indicated the former kind of control can be reinstated under s. 618.41 (6) (b).

S. 201.63 (6) (a) is no longer needed because of the change in the approach to control; par. (b) is continued in s. 618.41 (10). Par. (c) is not necessary, since the commissioner may require the information under his general powers. Par. (d) is continued so far as necessary in s. 618.41 (10). Par. (e) is unnecessary.

S. 201.63 (7) has become s. 618.41 (9) (a).

S. 201.63 (8) has become s. 618.41 (8).

S. 201.63 (9) is covered by s. 618.44, but somewhat altered.

S. 201.63 (11) is unnecessary. It is covered by ss. 601.72 and 601.73 and should have been, but was inadvertently not, repealed by ch. 337, Laws of 1969.

S. 201.63 (12) is covered by s. 618.43, much modified.

S. 201.63 (13) is covered by s. 618.41 (3).

S. 201.63 (15) is to be handled by a rule.

S. 201.63 (16), (17) and (18) are repealed. They are unnecessary. [Bill 469-S]

201.71 Motor club service; definitions.

As used in ss. 201.71 to 201.82, 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.

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(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 201.82. 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 commissioner 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. 601.31 (2).

(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: 1971 c. 307.

201.76 Form of service contract. No service contract shall be executed, issued, or deliv-

ered 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 201.82.

201.80 Misrepresentations forbidden. 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 201.82 shall nevertheless be valid and binding on the company.

201.82 Persons exempted from act. Nothing in ss. 201.71 to 201.82 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.