

CHAPTER 616

MISCELLANEOUS INSURERS

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SUBCHAPTER I

SCHOOL BENEFIT PLANS

NOTE: Chapter 261, laws of 1979, which created this subchapter, contained extensive comments. See the 1979 session law volume.

616.03 Designation of a mutual insurer as a school benefit insurer. A mutual insurer engaged in no activities other than those specified in s. 616.06 may apply to the commissioner for designation as a school benefit insurer. If the commissioner finds that the insurer is engaged in no other activities, the commissioner shall declare it to be a school benefit insurer. As long as the insurer's activities are thus restricted and it uses the term "school benefit" or its equivalent in its name, it is deemed to be operating under this subchapter, within the meaning of s. 601.31 (25) and shall have the tax exemptions under s. 616.10.

History: 1979 c. 261.

616.06 Continuation of existing school benefit plans. A plan directed by schools or school authorities in this state, which was organized under s. 185.991, 1977 stats., prior to May 11, 1980 and is operating on a nonprofit basis without capital stock, may continue to operate under this subchapter, if its purpose is exclusively to provide benefits for accidental injury to or accidental death of pupils attending the school.

History: 1979 c. 261.

616.07 Certificate of authority. (1) ISSUANCE. Within 90 days after May 11, 1980, each plan authorized under s. 616.06 shall apply to the commissioner for a certificate of authority to continue the business it was doing on that date.

The commissioner shall issue the certificate unless the commissioner finds after a hearing that the plan is in substantial or wilful noncompliance with the law. No charge may be made for the initial issuance of the certificate under this subsection.

(2) TERMINATION. A license issued under sub. (1) remains in force until it is revoked after a hearing for a substantial violation of the insurance code.

History: 1979 c. 261

616.08 Organization of new insurers. (1) GENERAL. Except as provided in sub. (2), new insurers may be organized exclusively for the purposes stated in s. 616.06 pursuant to the procedures for mutual insurers specified in ch. 611.

(2) EXCEPTIONS. (a) Sections 611.24 to 611.26 do not apply to insurers organized under this section.

(b) After issuance of the certificate of authority, incorporators of an insurer under this section who have advanced money or incurred obligations for the reasonable and authorized expenses of organization may be reimbursed in cash from the proceeds of subscriptions for bonds and contribution notes, on itemized receipts audited by the commissioner. The total reimbursement may not exceed 5% of the amount received for the bonds and notes.

(c) Upon request by the incorporators, the commissioner may modify any requirements in the organizational process specified in ch. 611 if the commissioner considers the modification justified by the simplicity of the proposed operation or by the circumstances surrounding the organizational process.

History: 1979 c. 261.

616.09 Applicability of other statutes. (1)

EXISTING ORGANIZATIONS UNDER S. 616.06.

(a) 1. Except as provided in subd. 2, plans authorized under s. 616.06 are not subject to the insurance code.

2. Plans authorized under s. 616.06 are subject to chs. 600, 601, 620, 625, 627 and 645, to ss. 610.21, 610.55, 610.57 and 628.34 to 628.39, all as they exist in 1977 stats. and to this subchapter except s. 616.08.

(b) Plans authorized under s. 616.06 are subject to rules issued under s. 620.03 (3) which are applicable to life insurers.

(c) 1. Plans authorized under s. 616.06 are subject to ch. 185, except that ss. 185.03 (5) and (6), 185.05 (1) (c), 185.55, 185.61, 185.62, 185.63, 185.64, 185.71 to 185.76 and 185.81 and those provisions applicable to cooperatives with stock do not apply.

2. In all actions commenced after May 11, 1980, in those provisions of ch. 185 which apply under subd. 1 to plans authorized under s. 616.06, "secretary of state" shall be deemed to read "secretary of state and commissioner", except in s. 185.48, where "secretary of state" shall be deemed to read "commissioner".

(d) Each plan authorized under s. 616.06 shall:

1. File with the commissioner for approval its rules and regulations and schedules of the benefits contemplated, together with the forms of agreement entered into with students, parents, guardians or others;

2. File with the commissioner its constitution and bylaws; and

3. Maintain sufficient reserves to discharge its obligations and for any prepayment of dues or fees collected.

(2) CORPORATIONS ORGANIZED UNDER S. 616.08. (a) Except as provided in par. (b), corporations organized under s. 616.08 are subject to all applicable provisions of the insurance code.

(b) Corporations organized under s. 616.08 may elect to be subject to one or more of the following sections in place of corresponding provisions of ch. 611: s. 185.11, 185.12, 185.13, 185.14, 185.15, 185.38 or 185.45.

History: 1979 c. 261.

616.10 Exemption from taxation. Every mutual designated a school benefit insurer under s. 616.03, every plan authorized under s. 616.06, and every corporation organized under s. 616.08 is declared to be a charitable and benevolent corporation, and its property, real, personal and mixed, and its income and property transferred to it, are exempt from taxation as

provided in ss. 70.11, 71.01 (3), 72.15 and subch. IV of ch. 72.

History: 1979 c. 261.

616.14 Limitations applicable to plans under s. 616.06. (1) GOVERNING BODY.

The governing body of a plan shall be the same as the governing body of the sponsoring organization, but must have at least 3 members. If the governing body of the sponsoring organization consists of fewer than 3 members, the governing body of the sponsoring organization shall appoint to the governing body of the plan the number of persons necessary to comply with this subsection. Appointments under this subsection shall be made under rules adopted by the governing body of the sponsoring organization.

(2) SIZE. No plan under s. 616.03, 616.06 or 616.08 may operate unless the plan covers a number of students large enough to give stability to its loss experience.

History: 1979 c. 261.

616.18 Restrictions on transactions. (1)

VOIDABLE TRANSACTIONS. Any material transaction between a plan or corporation authorized under this subchapter and one or more of its management or members of its governing board, or with any person in a position to influence the vote of any member of its governing board or the decision of any of its management or with any person having power to control the plan or corporation is voidable by the plan or corporation unless:

(a) The transaction at the time it is entered into is reasonable and fair to the interests of the plan or corporation and its members;

(b) The transaction has, with full knowledge of its terms and of the interests involved, been approved in advance by the governing board or by the members; and

(c) The transaction has been reported to the commissioner immediately after approval under par. (b).

(2) EXCEPTED TRANSACTIONS. (a) This section does not apply to policies of insurance issued by the plan or corporation in the normal course of its business.

(b) The commissioner may by rule exempt other classes of transactions from the reporting requirement of sub. (1) (c), if the purposes of this section can be achieved without the report.

History: 1979 c. 261.

616.20 Conversion of plans under s. 616.06 to mutuals under ch. 611 or service insurance corporations under ch. 613. (1)

AUTHORIZATION. Under a proposal proposed by the officers of a plan operating under s. 616.06 and approved by the commissioner and by a

majority of the members voting, the plan may be converted to a mutual under ch. 611 or a service insurance corporation under ch. 613.

(2) **NOTICE AND VOTING RIGHTS.** Voting on the conversion is required only if the bylaws provide for it. Voting shall be as provided in the bylaws. If voting is required, but there is no notice provision in the bylaws, the officers shall give notice of the plan to convert under sub. (1) to all members entitled to vote on the conversion at least 30 days before the plan is submitted to the members for a vote. Whether or not voting is required, any member who feels aggrieved by the conversion plan may communicate objections to the commissioner who shall give them consideration before approving the plan. If voting is required by the bylaws, the commissioner may not approve the plan until at least 60 days after notice has been given to all members and 30 days after the voting on the plan. In all cases the commissioner may approve the plan only if the conversion plan protects the legitimate interests of the members.

(3) **MEMBERSHIP AND OWNERSHIP OF ASSETS.** Members of the plan shall be the members of the mutual or service insurance corporation created by conversion under this section. Assets of the plan shall become assets of the new corporation, and all existing contracts shall become the contracts of the new corporation.

(4) **LIABILITY OF OFFICERS.** If the commissioner approves a conversion under this section, no officer is liable to any member for losses suffered solely as a result of the conversion.

(5) **FEES.** A new corporation formed under this section is not subject to the fees under s. 601.31 (1) or (2).

History: 1979 c. 261.

SUBCHAPTER II

MOTOR CLUB SERVICE CONTRACTS

616.71 Motor club service; definitions. As used in this subchapter, 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.

History: 1977 c. 339 ss. 8, 44; 1979 c. 355 s. 236

616.72 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 this chapter. 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.

History: 1977 c. 339 ss. 8, 44

616.73 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.

History: 1977 c. 339 s. 8.

616.74 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 (1) (b).

(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; 1977 c. 339 s. 8; 1979 c. 102 s. 237.

616.76 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.

History: 1977 c. 339 s. 8.

616.77 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

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said company, and the other copy shall be delivered to the party purchasing the same.

History: 1977 c. 339 s. 8.

616.78 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.

History: 1977 c. 339 s. 8.

616.79 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 this subchapter.

History: 1977 c. 339 ss. 8, 44; 1979 c. 355 s. 236.

616.80 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.

History: 1977 c. 339 s. 8.

616.81 Company always bound by contract. Any service contract made, issued, or delivered contrary to any provision of this subchapter shall nevertheless be valid and binding on the company.

History: 1977 c. 339 ss. 8, 44; 1979 c. 355 s. 236.

616.82 Person exempted. Nothing in this subchapter applies to an authorized attorney at law acting in the usual course of the 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.

History: 1977 c. 339 ss. 8, 44; 1979 c. 89, 176; 1979 c. 355 s. 236.