

CHAPTER 209.

INSURANCE—MISCELLANEOUS PROVISIONS.

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209.01 **Deposits of insurers.** (1) **ACCEPTANCE AND APPROVAL.** The state treasurer shall accept, subject to the approval of the commissioner of insurance, deposits of securities by insurers as follows:

(a) Deposits in amount as required to be made as prerequisite to a certificate of authority to transact business in this state and other deposits required by the laws of this state.

(b) Deposits of domestic insurers or insurers of foreign countries in amount as required to be made by the laws of other states as prerequisite for authority to transact insurance in such other states.

(c) Deposits in amount as resulting from application of the retaliatory provisions of section 76.35.

(d) Deposits in other additional amounts permitted to be made by the laws of this state.

(2) **IN TRUST FOR POLICYHOLDERS.** Each such deposit except the deposits required under sections 200.04 (4) and 209.02 shall be held by the state treasurer in trust for the protection of all policyholders of the insurer making it; except that deposits of insurers of foreign countries shall be so held for the security of such insurers' obligations arising out of its transactions in the United States, and except as to deposits the purpose of which may be further limited pursuant to the retaliatory provisions of section 76.35.

(3) **SECURITIES ELIGIBLE FOR DEPOSIT.** All such deposits shall consist of bonds, notes or other evidences of indebtedness which are direct obligations of the United States or of any county, district or municipality of the state of Wisconsin with the proceeds to be available to the state treasurer.

(4) **VALUATION OF SECURITIES ON DEPOSIT.** Securities so deposited or held on deposit shall be valued at their market value in the same manner as like investments of domestic insurers.

(5) **RECEIPT AND RECORD OF DEPOSITS.** The state treasurer shall deliver to the insurer a receipt for all securities deposited and shall, on application of the insurer, issue such certificate of such deposit as may be required by any law of the United States or of any other state or foreign country or by the order of any court of competent jurisdiction. The commissioner shall keep a record in permanent form of securities deposited by insurers and of any transfers or withdrawals of such deposits.

(6) **TRANSFER OF SECURITIES.** No transfer of securities so held on deposit, whether voluntary or by operation of law, shall be valid unless approved in writing by the commissioner of insurance, and countersigned by the state treasurer or by their authorized deputies.

(7) **INTEREST AND SUBSTITUTIONS.** While solvent and complying with the provisions of the laws of this state an insurer shall be entitled:

(a) To receive interest and dividends accruing on the securities so held on deposit for its account, as provided in section 14.42;

(b) From time to time to exchange and substitute any of such securities for other securities eligible for deposit and of equal value.

(8) **RELEASE OF DEPOSIT.** (a) Any such required deposit shall be released in these instances only:

1. Upon extinguishment of all liabilities of the insurer for the security of which the deposit is held, by reinsurance contract or otherwise.

2. If any such deposit or portion thereof is no longer required under the laws of this state or of any other state or foreign country.

3. If the deposit has been made pursuant to the retaliatory provisions of section 76.35, it shall be released in whole or in part when no longer required.

4. Upon proper order of a court of competent jurisdiction, the deposit shall be released to the receiver, conservator, rehabilitator or liquidator of the insurer for whose account the deposit is held.

(b) No such release shall be made except on application to and written order of the commissioner of insurance made on proof satisfactory to him of the existence of one of such grounds therefor. The commissioner of insurance and the state treasurer shall have no personal liability for any release of any deposit or part thereof so made by them in good faith.

(c) All releases of deposits or any part thereof shall be made to the person then entitled thereto upon proof of title satisfactory to the commissioner of insurance and state treasurer.

(9) PARTIAL RELEASE OF DEPOSITS. Any part of any deposit of an insurer held by the state treasurer on May 17, 1947, which is in amount in excess of the deposit required or permitted to be made by such insurer under the laws of this state or of any other state or foreign country, shall, upon written order of the commissioner of insurance, be released. The provisions of subsection (8) (b) shall apply to such partial release.

(10) VOLUNTARY EXCESS DEPOSIT. An insurer may deposit and maintain on deposit with the state treasurer eligible securities in amount exceeding its required deposit for the purpose of absorbing fluctuations in the value of securities held in its required deposit, and to facilitate the exchange and substitution of such required securities. During the solvency of the insurer any such excess deposit or any part thereof shall be released to it upon request. During the insolvency of the insurer such excess deposit shall be released only as provided in section 209.01 (8).

(11) NOT SUBJECT TO LEVY. No judgment creditor or other claimant of an insurer shall levy upon any deposit held pursuant to this section.

209.02 Insurance and benefit associations; advance deposit of fees. Any fraternal benefit society or other insurer required to pay fees to the state through the commissioner, may, subject to the approval of said commissioner, make a deposit with the state treasurer, from which any such fees shall be paid, as ordered by the commissioner, which shall not be less than twice each year. Any balance remaining from any such deposit at the end of any calendar year may, upon the certificate of said commissioner, be returned to the depositor.

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

209.039 Insurance agents advisory board. (1) COMPOSITION. There is created an insurance agents advisory board to consist of the commissioner or a member of his staff designated by him and 9 members, at least 6 of whom are experienced and licensed as resident insurance agents, appointed by the commissioner to the following terms: 3 for terms of one year, 3 for terms of 2 years, and 3 for terms of 3 years. All subsequent appointments shall be for 3 years, except that in the event of a vacancy the commissioner shall appoint a successor to serve for the remainder of the unexpired term. The board shall annually elect a chairman. The commissioner or his designee shall act as secretary and shall keep a record of all proceedings, transactions, communications and other official acts of the board. The files and records of the board shall be maintained in the insurance department.

(2) MEETINGS. The secretary shall call all meetings of the board as directed by the commissioner or the chairman, or as requested in writing by 2 or more members. Such meetings shall be at such times and places as the business of the board requires.

Sufficient notice shall be given as will permit members to attend all meetings. A majority vote of all members of the board shall be required for any action taken by the board.

(3) EXPENSES OF MEMBERS. Appointive members of the board shall receive no compensation, but shall receive their actual and necessary expenses in attending meetings or while performing other duties as directed by the board.

(4) RECOMMENDATIONS TO COMMISSIONER. The board shall make recommendations to the commissioner for the preparation and conduct of examinations pursuant to ss. 206.41 (4), 208.21 and 209.04 (2) (b). At the request of the commissioner it may advise the commissioner concerning the relevancy of the content of examinations to the types of licenses being sought by applicants.

(5) INSURANCE EDUCATION FOR AGENTS; COMMISSIONER'S DUTY. The commissioner may, with the assistance of the board, work with various educational institutions in the state in formulating, instituting and maintaining in such institutions courses of instruction in various fields of insurance for the education of agents and applicants for agents' licenses.

History: 1965 c. 461.

209.04 Licensing of agents other than life. (1) "AGENT" DEFINED. The term "agent", as used in this section, means any natural person who acts as an agent as defined in s. 209.047. It is unlawful for any person to act as an agent unless he holds an agent's license and a certificate of registration issued by the commissioner except as hereinafter provided.

(2) APPLICATION; EXAMINATION; CERTIFICATE OF REGISTRATION. (a) *Application.* Every natural person desiring to act as an agent for an authorized insurer in this state on or after June 1, 1962, shall apply to the commissioner for a certificate of registration as hereinafter prescribed. The applicant for such certificate shall submit to the commissioner his written application therefor and shall make a sworn statement on forms to be prepared by the commissioner giving his name, marital status, birth date, residence, place of business and occupation for the 5-year period immediately preceding the date of such application, and his contemplated insurance business address for the year to follow if a certificate is granted; whether he will devote all or part of his efforts to acting as an insurance agent, and, if part only, how much time he will devote to such work and in what business he is engaged or employed; whether he intends to comply with s. 201.53 (3) with reference to compensation for effecting insurance upon his own property or other risk; whether he has been refused or has had suspended or revoked a license to solicit insurance applications by the commissioner or other proper supervising officials of any state; what instruction in insurance, if any, he has had or expects to have; what insurance experience, if any, he has had; whether any insurer or general agent claims he is indebted to it or him under any agency contract or otherwise, and, if so, the name of the claimant, the nature of the claim and his defense thereto, if any; whether he has had an agency contract canceled and, if so, when, by what insurer or general agent and the reason for such action; whether if applicant is married, his or her spouse has ever applied for or held a license to solicit insurance in this state and whether any such license has been refused, suspended or revoked; and such other information and references as the commissioner in his discretion requires. Each agent shall promptly report to the commissioner any change in his business address.

(b) *Examination.* Each applicant for a certificate of registration or agent's license (if no such certificate is required) shall pay an examination fee as required by s. 200.13 (17) and submit to a personal written examination to determine his competence with respect to the kind of insurance contracts he intends to solicit, negotiate or effect and his familiarity with the pertinent laws of this state and passes the same to the satisfaction of the commissioner; except that no such examination or fee therefor shall be required of any person who makes application to solicit exclusively the kinds of insurance described in s. 203.32 (2) (b) 6 for domestic windstorm, cyclone and tornado insurance companies operating on an assessment plan or by any person who makes application to solicit, exclusively, the kind of insurance for which he held a license as a resident agent within the 5 years immediately preceding the date of filing his application unless during that period, renewal of his license was denied for cause. The commissioner may, upon showing just cause, require any applicant having previously held a certificate of registration to submit to a written examination and pass the same for any certificate before effecting the renewal of such certificate. The commissioner shall require further examination of a certificate holder whenever such person indicates intent to solicit, negotiate or effect kinds of insurance for which he has not been licensed for any insurer within the last 5 years. The commissioner shall establish rules with respect to the scope, frequency, grading of papers, announcements of the results of such written

examinations and the times and places within the state where they shall be held. The commissioner shall cause examinations to be conducted throughout the state at places reasonably accessible to applicants at no less frequency than once each month. In advance of such examinations the commissioner shall cause notice to be given to all applicants. The commissioner is authorized to appoint representatives deemed competent who shall conduct the examination and to pay a fee to each person conducting the examinations as his deputy.

(c) *Issuance or refusal of certificate of registration; fee.* If the commissioner is satisfied that the applicant for a certificate of registration is intending in good faith to act as an insurance agent, is trustworthy and worthy of a certificate, the annual fee required by s. 200.13 (16m) for such certificate has been paid or tendered with the application, and the applicant, if required, has passed a written examination, a certificate of registration shall be issued. If the applicant has not passed his written examination, the commissioner shall notify the applicant in writing that a certificate will not be issued for that reason.

(d) *Expiration and renewal of certificate.* The certificate of registration shall remain in force for one year or until the death of the holder thereof, or until revocation in accordance with this section, whichever occurs first. The commissioner may promulgate rules permitting the issuance of certificates for periods other than annually for the purpose of assigning the applicant to a group of certificate holders having a common renewal date. Certificates may be renewed annually on the filing of an application containing such information as the commissioner deems necessary and payment of the fee required by s. 200.13 (16m).

(3) APPLICATION AND FEE FOR AGENT'S LICENSE. (a) *Application.* Every natural person desiring to act as an agent for an authorized insurer in this state shall apply to the commissioner through the insurer for a license to do so as hereinafter prescribed. The applicant for such license shall submit to the commissioner through the insurer his written application therefor on forms prepared by the commissioner, which application shall include a notarized certificate signed by an officer or properly authorized representative of each insurer stating that the respective insurer has investigated the character and background of the applicant and is satisfied that he is trustworthy and qualified to act as its agent and tends to hold himself out in good faith to the general public as an insurance agent and that the respective insurer desires that the applicant be licensed as an agent to represent it in this state. The application for a license to act as an agent after June 1, 1962, shall include a sworn statement by the applicant that he holds a currently valid certificate of registration as required by this section unless exempt from such requirement by par. (c).

(b) *Issuance of license; fee.* If the commissioner is satisfied that the applicant is intending in good faith to act as an insurance agent, is trustworthy and worthy of a license and is a resident of this state, unless application is for a nonresident agent's license, the annual fee required by s. 200.13 (15) for such license has been paid or tendered with the application and the applicant, if required, has passed a written examination and holds a currently valid certificate of registration, a license shall be issued forthwith, limited to the insurer by whom the agent is to be appointed.

(c) *Nonresident agents.* 1. A person not a resident in this state may be licensed as an agent upon compliance with this section if the state in which such person resides will accord the same privilege to a resident of this state.

2. The commissioner may enter into reciprocal agreements with the appropriate official of any other state waiving the written examination, certificate of registration and fees therefor of any applicant resident in such other state, provided that if a written examination is required for the kind of insurance for which the applicant wishes to be licensed in this state, such other state also requires a written examination as a prerequisite for a license for the same kind of insurance and that such other state does not require a certificate of registration or similar form from residents of this state and that the appropriate official of such other state certifies on a form prepared by the commissioner that the applicant holds a currently valid license in such other state for the kind of insurance for which he makes application to be licensed in this state and either passed such written examination or was a holder of a license to act as an agent for such kind of insurance prior to the time such written examination was required.

(d) *Kinds of licenses.* The commissioner shall promulgate rules establishing the kinds of licenses which may be issued which shall be limited in scope to the kind of insurance defined by any subsection of s. 201.04 or any combination or division thereof.

(e) *Possession of licenses.* Each insurer shall forward the original copy of every license to the agent named thereon to act for such insurer and each agent shall retain possession of such license while it is in effect and shall return same to the company for

which it was issued at such time as his appointment is terminated by that company for the line of insurance shown on such license.

(f) *License term.* The fee shall continue the license in force until the following November 1 unless sooner revoked or terminated or until the holder thereof fails to maintain in force a certificate of registration as required herein.

(g) *Lists of agents.* License renewals may be effected from year to year without further action on the part of the agent provided that annually, prior to November 1 of each year, the insurer submits to the commissioner a list of all agents appointed by it to act within the state together with the required annual license fees as provided in s. 200.13 (15). Such list shall show the name, license numbers, kinds of licenses and birth date for each agent whose license is to remain in effect. The commissioner may require such list to include the residence address and business address of each agent. No license shall be renewed after June 1, 1961 for any agent who does not hold a currently valid certificate of registration at the time said renewal is to be effected.

(4) TEMPORARY LICENSES. (a) *Deceased or disabled agent.* The commissioner may issue a temporary agent's license without requiring the applicant to pass a written examination, to obtain a certificate of registration or to satisfy the requirements of subs. (2) and (3) except as to trustworthiness, to the surviving spouse or next of kin or to the administrator or executor of a deceased licensed agent or to the spouse, next of kin, employe or legal guardian of a licensed agent becoming disabled because of sickness, insanity or injury, if in the commissioner's opinion such temporary license is necessary for the continuation of the business of the agent thereby affected. Such license may be issued for a term not exceeding 3 months and the commissioner may in his discretion renew such license for additional terms of 3 months each, not exceeding in the aggregate 9 months.

(b) *Military service.* The commissioner may issue a temporary registration and agent's license without requiring the applicant to pass a written examination, to obtain a certificate of registration or to satisfy the requirements of subs. (2) and (3) except as to trustworthiness to the designee of a licensed agent where such agent has entered active duty in the armed forces of the United States, for such period of time as in the opinion of the commissioner may be necessary for the continuation of the business of the agent thereby affected.

(c) *Study and training.* The commissioner shall issue a temporary license without requiring a certificate of registration and examination to an applicant for a license as agent of an insurer while taking a preparatory course of study, instruction and field training for written examination under the supervision of his insurer who shall be responsible during such period of temporary license for all acts or omissions of such agent within the scope of his agency appointment. Such temporary license shall be valid until the last scheduled examination occurring within 60 days after the date of temporary license and for a period of 15 days following such examination or until he is advised of his failure of such examination, whichever is sooner.

(d) The fee for a temporary license shall be as required in s. 200.13 (16).

(5) AUTHORITY UNDER LICENSE; STATEMENT ON TERMINATION. Any license issued to an agent shall authorize him to act as such agent during the time for which the company appointing him is authorized to do an insurance business in this state and during the time for which the agent's license fee has been paid, a certificate of registration is maintained in force (if such certificate is required) and such agent is a bona fide resident of this state (if the license is for a resident agent). Every insurer shall, upon termination of the appointment of any insurance agent, promptly return such license, if available to such insurer, to the commissioner and immediately file with the commissioner a statement of the facts relative to the termination of the appointment and the date. The commissioner shall thereupon terminate the license of such agent to represent such insurer in this state.

(6) CORPORATIONS AND PARTNERSHIPS EXCLUDED AS AGENTS. No corporation or partnership shall be licensed as an agent of any insurance company.

(7) PENALTY. Any person or company violating this section may be fined not more than \$500 for each offense.

(8) EXCHANGE OF BUSINESS. Nothing in this section shall be construed to prevent the proper exchange of business between lawfully licensed resident agents of this state.

(9) REFUSAL, SUSPENSION OR REVOCATION OF LICENSE OR CERTIFICATE OF REGISTRATION.

(a) *Grounds.* A certificate of registration or license may be refused, suspended or revoked or the renewal thereof refused by the commissioner, if he finds that the applicant for, or holder:

1. Has wilfully violated any provision of the insurance laws of this state; or
2. Has intentionally made a material misstatement in the application for such certificate or license; or
3. Has obtained, or attempted to obtain, such certificate or license by fraud or misrepresentation; or
4. Has misappropriated or converted to his own use or illegally withheld money belonging to an insurer or an insured or beneficiary; or
5. Has otherwise demonstrated lack of trustworthiness or competence to act as an insurance agent; or
6. Has been guilty of fraudulent or dishonest practices; or
7. Has materially misrepresented the terms and conditions of insurance policies or contracts; or
8. Has made or issued, or caused to be made or issued, any statement misrepresenting or making misleading comparisons regarding the terms or conditions of any insurance or annuity contract legally issued by any insurer, for the purpose of inducing or attempting to induce the owner of such contract to forfeit or surrender such contract or allow it to lapse for the purpose of replacing such contract with another; or
9. Has obtained or attempted to obtain such certificate or license, not for the purpose of holding himself out to the general public as an insurance agent, but primarily for the purpose of soliciting, negotiating or procuring insurance contracts under which he or members of his family are insured, or under which are insured the officers, directors, stockholders, partners or employes of a partnership, association or corporation of which he or a member of his family is an officer, director, stockholder, partner or employe except that the soliciting of credit accident and health insurance by an officer or employe of 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 shall not constitute grounds under this section for refusal of such license; or
10. Has discounted a note taken in payment of a premium before the issuance and delivery of the policy to the insured; or
11. Has misrepresented the financial or other condition of the company; or
12. Has violated any of the provisions of s. 134.10 or 134.11.

(aa) *Suspension for unauthorized act.* The certificate of registration or license of any agent who does any unauthorized act of an insurance business as set forth in s. 201.42 (2) shall be suspended for a period of not less than 90 days and such agent shall not be permitted to do business until all liability for such violation is discharged. Whenever the commissioner receives notice of an unauthorized act of an insurance business he shall forthwith make an inspection of the books and records of such agent and upon his refusal to permit such inspection the commissioner shall revoke his license.

(b) *Commissioner's notice; procedure.* 1. Whenever the issuance of any certificate or license is refused (except for failure to pass a written examination) the commissioner shall give notice to the applicant and the insurer who desires that he be licensed, stating the reason such certificate or license is refused. Whenever any certificate or license is to be suspended or revoked or the renewal thereof is to be refused hereunder, the commissioner shall give notice to the holder and the insurer whom he represents expressing intent to suspend, revoke or refuse renewal thereof and stating the reason therefor at least 20 days prior to the effective date of such action. Such suspension, revocation or nonrenewal shall take effect on such specified date unless an aggrieved party proceeds as hereinafter provided.

2. Any insurer, agent or applicant for a certificate or license aggrieved by action of the commissioner hereunder may request in writing within 10 days after receipt of the notice hereinbefore mentioned a reconsideration by the commissioner of his action and shall state in such request the reason such action should not be taken. The commissioner shall reaffirm or reverse his action within 10 days after the receipt of such request. Failure by the commissioner to act within the appointed time shall serve to continue the certificate or license in force beyond the date established for such refused renewal, suspension or revocation but shall not preclude the establishment of a new effective date for such action.

3. Nothing contained herein shall preclude any right of an aggrieved party to require a public hearing and request in writing a review of the commissioner's action by proceeding in accordance with ch. 227 nor any right of the commissioner to call a public hearing under said chapter. Any certificate or license which is in force at the time such hearing is requested or called and which is the subject of such hearing shall remain in force during the time that proceedings under ch. 227 or any judicial review thereof is pending.

4. All notices, requests and decisions hereinbefore mentioned shall be transmitted by

giving a copy of such notice, request or decision personally to the addressee or by sending a copy of such notice, request or decision by prepaid registered mail and the mail service shall be complete upon the delivery or tender of the copy to such addressee by the postal authorities, and may be proved by the receipt of the addressee on the form used by the postal authorities or by their report thereon that tender or receipt has been refused.

(c) *Application subsequent to revocation, refusal of renewal or suspension.* 1. No person whose certificate or license has been revoked or the renewal thereof refused hereunder shall be entitled to file another application for a license within 2 years from the effective date of such revocation or refused renewal or if judicial review of such revocation or refused renewal is sought, within 2 years from the date of final court order or decree affirming such revocation or refusal of renewal. Such application, when filed, may be refused by the commissioner unless the applicant shows good cause why the revocation or refused renewal of his license shall not be deemed a bar to the issuance of a new license.

2. No agent whose license has been suspended shall be entitled to file another application for a license during such period of suspension.

(10) **EXCLUSIONS FROM PROVISIONS.** The provisions of this section requiring certificates of registration and licenses shall not apply to persons engaged in the following activities:

(a) *Town mutuals.* Except as otherwise provided in s. 202.06 (7), persons engaged in the business of soliciting insurance exclusively for town mutual insurance companies.

(b) *Clerical help.* A person employed by an insurance agent or insurer solely for the performance of clerical, stenographic or similar office duties who incidentally takes insurance applications and receives premiums if his compensation is not related to the volume of such applications, insurance or premiums.

(c) *Incidental transportation insurance.* The ticket-selling agent of a railroad or steamship company, carrier by air or public bus carrier, who acts as agent in the sale of accident insurance tickets to individuals, insurance on personal effects against loss or damages while being carried as baggage incident to the sale of a passenger's transportation ticket.

(d) *Fur storers.* Persons engaged in the business of fur storage who deliver to their storage customers certificates or policies providing insurance on specified furs, garments trimmed with fur or other garments accepted for storage and who collect the premium therefor, provided they receive no compensation for such service.

(e) *Newspaper accident insurance.* Newsboys and managers of newspaper distribution offices who incidentally take applications for so-called "Newspaper Accident Insurance" and receive premiums in connection therewith.

(f) *Retail jewelers.* Retail jewelers who incidentally and occasionally take applications for insurance on their merchandise as it is sold provided they receive no compensation for such service.

(11) **NONPROFIT SICKNESS CARE, HOSPITAL SERVICE, DENTAL CARE PLANS AND PREPAID PRESCRIPTION AND OPTOMETRIC PLANS.** For the purpose of regulating agents of non-profit sickness care plans as organized under ch. 148, hospital service plans as organized under s. 182.032, or dental care plans as organized under s. 152.53, or prepaid prescription plans as organized under s. 151.17, or optometric service plans as organized under s. 153.15:

(a) "Agents" as used in this section includes any sales representative soliciting, negotiating or effecting such contracts or sickness care as permitted by ch. 148 or hospital service as permitted by s. 182.032 but excludes any regular salaried officer or employe, who does not solicit, negotiate or effect such contracts. A regular salaried officer or employe of an authorized organization or corporation offering such contracts shall not be deemed to be an agent by reason of rendering assistance to, or on behalf of an agent, provided that such salaried officer or employe devotes substantially all of his time to activities other than the solicitation of applications for such contracts and receives no commission or other compensation directly dependent upon the amount of business obtained.

(b) "Insurer" as used in this section includes any organization or corporation established pursuant to ch. 148 or s. 182.032.

History: 1961 c. 397, 562, 624; 1963 c. 299, 314, 344, 459; 1965 c. 461; 1967 c. 73, 92, 254.

(3) (d) empowers the commissioner to issue regulations with respect to fidelity 130 NW (2d) 110, 200.

209.045 Insurance advisers. No person, firm or corporation acting in the capacity of an insurance adviser, counselor or analyst and as such serving any person, firm or corporation not engaged in the insurance business for compensation paid or to be paid by

the person served, shall directly or indirectly receive any part of commission or compensation paid by any insurer or agent of any insurer in connection with the sale or writing of any insurance which is within the subject matter of any such service. Any person violating the provisions of this section shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than \$50 nor more than \$500 or by imprisonment in the county jail not less than 30 days nor more than 90 days, or both.

209.047 Agent defined. Every person who solicits, negotiates or effects insurance of any kind, including annuities, on behalf of any insurance company, nonprofit service plan as defined by s. 200.26, or person desiring insurance, or transmits an application for a policy of insurance or an annuity contract, other than for himself, to and from any such company, or who makes or proposes to make any contract for insurance or annuities, or who collects any premium, assessment, fees or dues for insurance or annuities or in any manner aids or assists in doing either, or in transacting any business of like nature for any insurance company, or nonprofit service plan as defined by s. 200.26 or advertises to do any such thing, or who makes or proposes to make, as guarantors 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 shall be held to be an agent of such insurer to all intents and purposes, unless it can be shown that he receives no compensation for such services. The term "agent" shall not include any regular salaried officer or employe of a licensed insurer or of a licensed insurance agent who does not solicit or accept applications from the public for any such contract. A regular salaried officer or employe of an insurer authorized to do business in this state shall not be deemed to be an "agent" by reason of rendering assistance to or on behalf of a licensed agent, provided that such salaried officer or employe devotes substantially all of his time to activities other than the solicitation of applications for insurance or annuity contracts and receives no commission or other compensation directly dependent upon the amount of business obtained. The term "agent" shall not include the attorney in fact of a reciprocal or interinsurance exchange, nor the traveling salaried home office representatives of such an exchange operating on a salary basis and receiving no commissions, but shall include every person who solicits, negotiates or effects insurance on behalf of such an exchange as an appointed agent on a commission basis.

History: 1963 c. 344, 459.

209.05 Vending machines for sale of insurance. (1) No insurance shall be offered for sale, issued or sold by or from any vending machine or appliance or any other medium, device or object designed or used for vending purposes, herein called a device, except as provided in this section.

(2) Resident insurance agents licensed under s. 209.04 to solicit applications for and to sell policies of personal travel accident insurance providing benefits for accidental bodily injury or accidental death may also solicit applications for and issue or sell such insurance by means of devices supervised by them and placed in locations for convenience of the traveling public, upon the following conditions only:

(a) That each policy to be sold by or from a device is reasonably suited for sale and issuance through a device, and that the use of such device therefor in a particular proposed location would be of material convenience to the traveling public.

(b) That the type of device proposed to be used is reasonably suitable and practical for the purpose.

(c) That there is prominently displayed a copy of such policy informing the prospective purchaser of the benefits, limitations and exclusions of the policy, the premium rates for such policy, the name and address of the agent and the name and home office address of the insuring company.

(d) That such device is so constructed and operated that it retains or has a suitable place for deposit and safe keeping of a copy of the application, which shall show the date of the application, name and address of the applicant and the beneficiary, and the amount of insurance.

(e) That no policy of insurance sold by or from such a device shall be for a period of time longer than the duration of a specified one-way trip or round trip of not to exceed 180 days.

(f) That such device has on it or immediately adjacent thereto, in a prominent location, adequate envelopes for use of purchasers in mailing policies vended through such device, or that the policy itself, if designed to permit such procedure, may be mailed without an envelope. The commissioner may by written notice to the agent, modify or waive these requirements.

(g) That each such device is supervised, inspected and tested by the agent with such frequency as is reasonably necessary or as required by the commissioner, and if any device is not in good working condition the agent shall promptly cause a notice to be displayed thereon that the same is out of order, and cause said device to be promptly removed from service until it is in proper working order.

(h) That the agent promptly refunds to each applicant or prospective applicant money deposited in any defective device and for which no insurance, or a less amount than paid for, is actually received.

(i) That the agent hold a special vending machine license for each such device.

(3) The commissioner may establish such other rules for types and locations of devices authorized hereunder, their maintenance and operation and the methods to be used by the agent in the solicitation and sale of insurance by means of such devices as is reasonable and necessary.

(4) The application for a license for each device to be used shall be made by the agent in such form and with such information as is prescribed by the commissioner. A fee of \$3 for each device shall be paid at the time of making application. Upon approval of the application, the commissioner shall issue to the agent a special vending machine license. The license shall apply to a specific device or to any device of identical type which, after written notice by the agent to the commissioner, is substituted for it. The license shall specify the name and address of the agent, the name and home office address of the insuring company, the name or other identifying information of the policies to be sold, the serial number or other identification of the device and the address, including the location on the premises, where the device is to be in operation. A device for which a license has been issued for operation at a specific address may be transferred to a different address during the license year upon written notice to the commissioner at the time of such transfer. The license for each device shall expire on September 1 of each year, but may be renewed from year to year by the commissioner upon approval of the application by the agent and the furnishing of such information as shall be requested by the commissioner, and the payment of \$3 for each license year or part thereof for each device. Proof of the existence of a subsisting license shall be displayed on or about each such device in use in such manner as the commissioner requires.

(5) The license for each device shall be subject to expiration, suspension or revocation coincidentally with that of the agent or the insuring company. The commissioner may also suspend or revoke the license as to any device concerning which he finds any conditions upon which the device was licensed as referred to in sub. (2) have been violated, or no longer exist, or that the device is being used or operated by the agent in violation of the laws of this state. Before suspending or revoking a license for a device, the commissioner shall conduct a hearing in the prescribed manner and shall make his determination upon the basis of the standards, conditions and requirements of this section.

History: 1963 c. 196, 459.

209.06 Insurance; application; effect. (1) No oral or written statement, representation or warranty made by the insured or in his behalf in the negotiation of a contract of insurance shall be deemed material or defeat or avoid the policy, unless such statement, representation or warranty was false and made with intent to deceive, or unless the matter misrepresented or made a warranty increased the risk or contributed to the loss.

(2) No breach of a warranty in a policy shall defeat or avoid such policy unless the breach of such warranty increased the risk at the time of the loss, or contributed to the loss, or existed at the time of the loss.

(3) This section applies to fraternal benefit societies.

Evidence and instructions to jury considered in action where defense was increase of risk because of inaccurate answer to question as to previous cancellation by another insurer. *Polar Mfg. Co. v. Integrity Mut. Ins. Co.* 11 W (2d) 105, 104 NW (2d) 164.

Incorrect statements in application for automobile insurance discussed. *Martell v. Klingman*, 11 W (2d) 296, 105 NW (2d) 446.

Where an application for a collision policy, filled out by the agent, stated that no male under 25 would drive the car, and the applicant looked over the application before he signed it and the policy when he received it, there could be no recovery for damages resulting when the car was driven by applicant's 19 year old son. *Stockinger v. Central National Ins. Co.* 24 W (2d) 245, 128 NW (2d) 433.

Applicant's failure to list 12 of 14 hospitalizations constituted an increase of the risk as a matter of law, particularly where defense testimony was to the effect that the policy would not have been issued if all had been listed. *Delaney v. Prudential Ins. Co.* 29 W (2d) 345, 139 NW (2d) 48.

Where insured, who was unable to obtain a driver's license, represented that he was his deceased brother and showed the brother's license, the statement was material to the risk. *Bade v. Badger Mut. Ins. Co.* 31 W (2d) 38, 142 NW (2d) 218.

See note to 204.34, citing *Zepczyk v. Nelson*, 35 W (2d) 140, 150 NW (2d) 413.

209.07 Estoppel by report of medical examiner, effect of fraud. If the medical examiner of any life or disability insurance company shall issue a certificate of health, or

declare the applicant a fit subject for insurance, or so report to the company or its agent under the rules and regulations of such company, it shall thereby be estopped from setting up in defense of an action on a policy issued thereon that the insured was not in the condition of health required by the policy at the time of the issue or delivery thereof, unless the same was procured by or through the fraud or deceit of the insured. This section shall apply to fraternal benefit societies.

In order to qualify as a certificate of health or a declaration of fitness, the report of the medical examiner need not be couched in those precise terms, and no special verbiage is required to constitute the certificate or declaration contemplated. *Platke v. John Hancock Mut. Life Ins. Co.* 27 W (2d) 1, 133 NW (2d) 277. Medical certificates of health and statutory estoppel. 49 MLR 785.

209.09 Percentages paid to agents. Every company shall at or prior to the filing of its application for license or any renewal thereof file a schedule of percentages or kinds of commissions paid to its agents within this state; provided, that the amount of any fixed salary need not be specified.

209.12 Action to collect assessments, limitation. No action shall be brought by a receiver or trustee to recover any assessment made by or on behalf of a foreign mutual fire, life or accident insurance company, or for dues or fees on account of insurance therein, unless begun within six months after such assessment is made or the liability to pay such dues or fees accrued.

209.13 Saving provisions relating to old companies. (1) When no other provision is made for the amendment of the bylaws of any domestic insurance corporation, doing business on June 20, 1909, such bylaws may be amended in the manner provided in s. 201.02 (3) (g).

(2) Every such insurance corporation then doing business is continued without any limitation whatever upon the duration of its corporate existence, notwithstanding any limitation theretofore imposed by law or incorporated into its articles of organization.

209.14 False statements by insurance companies. Any officer, director, attorney in fact, manager or employe of any insurance corporation, Lloyd's association, interinsurer, fraternal or mutual benefit society or other insurer, who shall wilfully and knowingly subscribe to, make or cause to be made, any false entry in the books thereof, or shall knowingly subscribe to or exhibit false papers, or shall knowingly make, state or publish any false report or statement of any such insurance corporation, Lloyd's association, interinsurer, fraternal or mutual benefit society or other insurer, shall be punished by a fine of not less than \$100 nor more than \$5,000 or by imprisonment in the state penitentiary not less than one nor more than 10 years, or by both such fine and imprisonment.