

CHAPTER 641

EMPLOYEE WELFARE FUNDS AND PLANS

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Cross-reference: See definitions in ss. 600.03 and 628.02.

641.02 Scope. This chapter applies to every employee welfare fund covering any person employed in this state, except:

(1) To the extent that applicable federal law excludes the operation of state law.

(2) Funds and plans with no benefits involving risks like those in insurance, as determined by the commissioner by rule.

History: 1977 c. 339.

NOTE: Chapter 339, laws of 1977, which created this section, contained an extensive note explaining this section.

641.06 Declaration of policy. It is declared to be the policy of this state that employee welfare funds are of great benefit to employees and their families and that their growth should be encouraged; that the establishment and management of such funds vitally affect the well-being of millions of people and are in the public interest; and that such funds should be supervised by the state to the extent necessary to protect the rights of employees and their families, without imposing burdens upon such funds which might discourage their orderly growth and without duplicating the supervisory responsibilities presently vested in any state agencies.

History: 1977 c. 339 s. 24; Stats. 1977 s. 641.06.

641.07 Definitions. As used in this chapter, unless the context requires otherwise:

(1) "Employee benefits" means one or more benefits or services for employees or their families or dependents, or for both, including, but not limited to, medical, surgical or hospital care or benefits, benefits in the event of sickness, accident, disability or death, benefits in the event of unemployment, or retirement benefits.

(2) "Employee welfare fund" means any trust fund or other fund established or maintained jointly by one or more employers together with one or more labor organizations, solely by any employer or labor organization or jointly by employers or jointly by labor organizations, whether directly or through trustees, to provide employee benefits, by the purchase of insurance or annuity contracts or otherwise, and to which is paid or contracted to be paid anything, other than income from investments of such fund, by or on behalf of any employer doing business in this state or for the benefit of any persons employed in this state.

(3) "Trustee" means any person, firm, association, organization, joint stock company or corporation, whether acting individually or jointly and whether designated by that name or any other, who or which is charged with or has the overall management of any employee welfare fund.

History: 1977 c. 339 s. 24; Stats. 1977 s. 641.07; 1983 a. 189.

Discussion of definition of "trust fund or other fund" under (2) as provided by Wis. Adm. Code sec. Ins. 8.02. Racine Education Ass'n v. Com'r of Ins., 158 W. (2d) 175, 462 NW (2d) 239 (Ct. App. 1990).

641.08 Registration. The trustee of every employee welfare fund which covers any person employed in this state shall register such fund with the commissioner within 3 months after it becomes subject to this chapter. The registration shall be in such form and shall contain such information relating to the organization, operations and affairs of such fund as is prescribed by the commissioner.

History: 1977 c. 339 s. 24; Stats. 1977 s. 641.08.

641.09 Examinations; authorization. (1) The commissioner may examine into the affairs and actuarial status of any employee welfare fund as often as he or she deems it necessary. To that end the commissioner may establish regular programs of examinations of funds at the intervals he or she determines.

(2) The trustees of every employee welfare fund shall be responsible for the maintenance of accurate records of its books and accounts in conformance with generally accepted accounting principles.

History: 1977 c. 339 s. 24; Stats. 1977 s. 641.09; 1979 c. 102.

641.10 Examinations; conduct. (1) Whenever, pursuant to this chapter, the commissioner determines to examine the affairs of any employee welfare fund the commissioner shall make an order indicating the scope of the examination and may, without regard to the classified service, appoint as examiners one or more competent persons not employed by the trustees of the fund or interested in the fund. A copy of the order shall, upon demand and before the examination begins, be exhibited to at least one of the trustees of the fund whose affairs are to be examined. Any examiner authorized by the commissioner shall have convenient access at all reasonable hours to the books, records, files, assets, securities, and other documents of the employee welfare fund including those of any affiliated or subsidiary fund thereof, which are relevant to the examination. The commissioner and anyone designated by the commissioner may administer oaths and examine under oath the trustees of the fund and their officers, agents and employees and any other persons regarding any matter relevant to the examination.

(2) In conducting an examination of any employee welfare fund, in lieu of the procedures otherwise required by this chapter, the commissioner may utilize any appropriate procedures which will safeguard the best interests of participating employees and will fulfill the policy of this chapter. To this end, the commissioner may require the trustees or sponsoring employer to furnish him or her with a report of examination of the fund by a certified public accountant and reports by fund consultants in the form the commissioner requires.

(3) In connection with any examination, the commissioner may, without regard to the classified service, appoint one or more competent persons as appraisers with authority to appraise any real property or any interest therein which, as security or other-

wise, may constitute a part of the assets of any employee welfare fund. The report of such appraiser shall be a supplement to the report of the examiner or examiners in charge.

History: 1977 c. 339 s. 24; Stats. 1977 s. 641.10; 1979 c. 102.

641.11 Examinations; publication. (1) Pending or after an examination the commissioner shall neither make public nor permit to become public any financial statement, report or finding affecting the status, standing or rights of any such employee welfare fund, until a copy thereof has been served upon the employee welfare fund, nor until the employee welfare fund has been afforded a reasonable opportunity to answer any such financial statement, report or finding and to make such showing in connection therewith as it may desire.

(2) In any action or proceeding against the trustees of any employee welfare fund, required to register under this chapter, or against their officers, agents or employees, such report, or any part thereof, if published by the commissioner, shall be admissible in evidence.

(3) The commissioner may assemble and file for public inspection the information covering forms of trust indentures in use, commission and fee schedules adopted by insurers and compensation paid to trustees of employee welfare funds and other matters affecting the establishment and administration of such funds as, in the commissioner's opinion, are in the public interest.

History: 1977 c. 339 s. 24; Stats. 1977 s. 641.11; 1979 c. 102.

641.12 Expenses of examination; filing fees.

(1) The expenses of every examination of the affairs of any employee welfare fund required to register under this chapter, including any appraisal of real property, shall be borne and paid by the employee welfare fund so examined but the commissioner may in his or her discretion remit in whole or in part such charges upon showing of extreme financial hardship. For any such examination by the commissioner or a deputy commissioner personally, the charge made shall be only for necessary traveling expenses and other actual expenses. In all other cases the expenses of examination shall also include reimbursement for the compensation paid for the services of persons employed by the commissioner or by the commissioner's authority to make the examination or appraisal. All charges incurred by or on behalf of the commissioner, including necessary traveling and other actual expenses, as duly audited and paid to the person or persons making the examination or appraisal, shall be presented to the trustees of the employee welfare fund so examined in the form of a copy of the itemized bill therefor as certified and approved by the commissioner or a deputy commissioner. Upon receiving the certified copy the trustees shall pay the amount thereof to the commissioner to be paid by the commissioner into the state treasury.

(2) The commissioner shall annually determine filing fees to be paid by every employee welfare fund registered under this chapter, except as provided in s. 641.13. Such fee shall provide for the expenses, not otherwise provided for, of the welfare funds division of the office of the commissioner of insurance, including the general costs of the office of the commissioner of insurance which may appropriately be allocated to such division. The fee so assessed shall be paid with the filing and shall not exceed \$40 per employee welfare fund. In determining the amount of such fee the commissioner shall make allowance for any surplus collected in prior years.

History: 1977 c. 339 s. 24; Stats. 1977 s. 641.12; 1979 c. 102; 1989 a. 31.

641.13 Annual statement to commissioner. The trustees of every employee welfare fund which covers more than 25 persons employed in this state shall file in the office of the commissioner, annually within 5 months after the close of the fiscal year used in maintaining the records of the fund, a statement, to be known as the annual statement of the fund, verified by the oath of its trustee or, if there is more than one trustee, then by the oaths of at least 2 of the trustees, showing its condition and affairs during the fiscal year. The statement shall be in the form and contain sub-

stantiation by vouchers and otherwise and any other information the commissioner from time to time prescribes. The commissioner shall cause to be prepared and furnished to the trustees of every employee welfare fund, required by law to report under this section, printed forms of the required statements and schedules. For good cause, the commissioner may grant reasonable extensions of time for filing under this subsection, not to exceed 90 days. The commissioner may not collect a fee for filing an annual statement of an employee welfare fund if any employer maintaining the employee welfare fund is a county.

History: 1977 c. 339 s. 24; Stats. 1977 s. 641.13; 1979 c. 102; 1989 a. 31.

641.14 Special statements to commissioner. In addition to any other statements or reports required by this chapter, the commissioner may also address to the trustees of any employee welfare fund or to their officers, agents or employees any inquiry in relation to the transactions or condition of the fund or any matter connected therewith. Every person so addressed shall reply in writing to the inquiry promptly and truthfully, and the reply shall be verified, if required by the commissioner, by the individual or individuals the commissioner designates.

History: 1977 c. 339 s. 24; Stats. 1977 s. 641.14; 1979 c. 102.

641.15 Reports to employers and employees. The annual statement and any other statements the commissioner requires shall be kept on file with the commissioner and at the principal office of the trustees. The statements or the portion thereof the commissioner deems appropriate and relevant shall be made available by the commissioner or by the trustees, or both, for inspection by any employer contributing to the fund, by any labor organization which is a party to an agreement establishing the fund, or by any employee covered by the fund. In addition to the extent that he or she deems it to be in the public interest, the commissioner may require the trustees to mail the statements, or the portions thereof the commissioner deems appropriate and relevant, to employees covered by the fund, to contributing employers or to any labor organization which is a party to an agreement establishing the fund.

History: 1977 c. 339 s. 24; Stats. 1977 s. 641.15; 1979 c. 102.

641.16 Annual statements by insurance companies, service plans and corporate trustees and agents.

Any insurance company, hospital, surgical or medical service plan providing benefits under an employee welfare fund as defined in this chapter, and any corporate trustee or agent holding or administering all or any part of an employee welfare fund as so defined shall, within 4 months after the end of each policy or fiscal year, furnish to the trustees of the fund a statement of account setting forth such information as the trustees of the fund may need from it in order to comply with the requirements of this chapter.

History: 1977 c. 339 s. 24; Stats. 1977 s. 641.16.

641.17 Employer payments to employee welfare funds.

If the trustees of any employee welfare fund have failed to register the fund in accordance with s. 641.08 or are otherwise failing to comply with any of the provisions of this chapter, the commissioner shall so notify the employer and the employer shall make no further payments to the trustees after receipt of such notification unless and until the employer receives further notification from the commissioner stating that the trustees have complied with this chapter.

History: 1977 c. 339 ss. 24, 44; Stats. 1977 s. 641.17.

641.18 Regulation under other laws. The commissioner may waive examination of any welfare fund which is not located in this state but which is required to register under this chapter, upon being furnished with a certified copy of a report of examination made under the jurisdiction of the proper supervisory official of another state or the federal government which indicates adequate compliance with all of the requirements of this state that would otherwise be determined by an examination directed by the commissioner. Application for the waiver shall be made in writ-

ing to the commissioner on the form the commissioner requires and any waiver issued by the commissioner shall be in writing and shall be of record in his or her office. No waiver bars the commissioner from investigating any matter not included within the scope of the examination or which is not reported upon to the commissioner's satisfaction to accomplish the purposes of this chapter in respect to the interests of the employes and employers in this state. The action of the commissioner pursuant to this section shall be subject to judicial review.

History: 1977 c. 339 s. 24; Stats. 1977 s. 641.18; 1979 c. 102

641.19 Compliance, enforcement and penalties.

(1) The trustees of every employe welfare fund required to register under this chapter shall be responsible in a fiduciary capacity for all money, property, or other assets received, managed or disbursed by them, or under their authority, on behalf of such fund. Trustees shall invest the funds of their trusts and shall manage fund affairs in accordance with provisions contained in the instruments under which they are acting, or in the absence of any such provisions, shall invest in accordance with ch. 881 and shall manage fund affairs in accordance with the judgment and care under the circumstances prevailing, which persons of prudence, discretion and intelligence exercise in the management of their own affairs. All payments due to or from every welfare fund subject to this chapter shall be by check, bank draft, share draft, other draft, postal money order or other recognized written method of transmitting money or its equivalent.

(2) (a) No trustee, employer or labor organization representing any employes eligible for benefits under an employe welfare plan provided by an employe welfare fund required to register under this chapter, and no officer, agent or employe of any such trustee, employer or labor organization may receive, directly or indirectly, any payment, commission, loan, service or any other thing of value from any insurance company, insurance agent, insurance broker or any hospital, surgical or medical service plan, in connection with the solicitation, sale, service or administration of a contract providing employe benefits for the fund, or receive any payment, commission, loan, service or any other thing of value from the employe welfare fund, or which is charged against the fund or would otherwise be payable to the fund either directly or indirectly, except that any such person may receive any benefits under an employe welfare plan to which he or she is otherwise entitled, and any such trustee, or his or her officer, agent or employe, may receive from the employe welfare fund reasonable compensation for necessary services and expenses rendered or incurred by him or her in connection with his or her official duties. Nothing in this section affects the payment of any dividend or rate credit or other adjustment due under the terms of any insurance or annuity contract to the policyholder or contract holder.

(b) No trustee shall invest any employe welfare fund moneys in any security, obligation, or other property from which the individual trustees of the fund, the employer company contributing to the fund or any of its officers or directors, any corporation controlled by the employer company or by its officers or directors through ownership of more than 50% of the outstanding stock, or the labor organization representing employes covered by the fund or any of its affiliates, or officers or employes of either, receive any part of the moneys invested unless the purchase price of such security, obligation or other property is reasonable, and unless an investment in any obligation is adequately secured. Adequate security shall be deemed to have been given if such obligation is registered on a national securities exchange or pursuant to the securities and exchange commission regulations or is of senior or substantially equal rank to a security registered on a national securities exchange or pursuant to the securities and exchange commission regulations. Nothing herein shall foreclose other means of providing adequate security.

(3) No political contributions shall be made directly or indirectly by or from any employe welfare fund.

(4) (a) Any person who wilfully violates or fails to comply with any provision of this chapter or the rules promulgated thereunder or who, knowingly, makes a false statement, a false representation of a material fact, or who fails to disclose a material fact in any registration, examination, statement or report required under this chapter or the rules promulgated thereunder, may be fined not more than \$5,000 or imprisoned not more than 5 years or both.

(b) Any person who embezzles, steals, or unlawfully and wilfully abstracts or converts to his or her own use or to the use of another, any of the moneys, funds, securities, premiums, credits, property, or other assets of any employe welfare fund, or of any fund connected therewith, shall be fined not more than \$10,000 or imprisoned not more than 5 years, or both.

(5) In any case where, after notice and a hearing, the commissioner finds that any employe welfare fund has been depleted by reason of any wrongful or negligent act or omission of a trustee or of any other person, the commissioner may transmit a copy of the findings to the attorney general, who may bring an action in the name of the people of the state, or intervene in an action brought by or on behalf of an employe, for the recovery of the fund for the benefit of the employes and other persons who have an interest in the fund.

(6) If any trustee, agent or employe of an employe welfare fund fails or refuses to register the fund or to file the annual statement or any special statement required under this chapter, within the time prescribed for the filing, after 20 days' notice from the commissioner he or she shall be subject, at the discretion of the commissioner, to a forfeiture of \$5 per day for each and every day of default, but not to exceed \$500 for any default, and the commissioner may maintain an action in the name of the state to recover the forfeiture, and the forfeiture shall be paid into the state treasury. No forfeiture imposed under this section upon any trustee may be recovered from the fund.

History: 1971 c. 41 s. 12; 1975 c. 94 s. 91 (9); 1977 c. 339 s. 24; Stats. 1977 s. 641.19; 1979 c. 32; 1979 c. 102 ss. 194, 236 (13); 1979 c. 177; 1983 a. 368.

Cross-reference: See s. 103.86 for provision for penalty for employers who default in payments to a welfare fund.

641.20 Injunctions. (1) The commissioner may maintain and prosecute an action against any trustee or any other person or persons subject to any provisions of this chapter, for the purpose of obtaining an injunction restraining such persons from doing any acts in violation of this chapter. If the court finds that a defendant is threatening or is likely to do any act in violation of this chapter, and that such violation will cause irreparable injury to the interests of the people of this state or the beneficiaries of the employe welfare fund involved or any employer contributing to such fund, the court may grant an injunction restraining such violation. The court may, on motion and affidavits, grant a preliminary injunction ex parte and an interlocutory injunction, upon such terms as may be just; but the commissioner shall not be required to give security before the issuance of any such injunction.

(2) In any case where an employer doing business in the state continues to make payments to trustees of an employe welfare fund after receipt of notification from the commissioner pursuant to s. 641.17 that the trustees have failed to register the fund or are otherwise failing to comply with the provisions of this chapter, the commissioner shall forthwith apply for an injunction, as provided in sub. (1), to restrain the employer from making any further payments to the trustee or trustees pending further order of the court; and if the court finds that the trustees have failed to register the fund or are otherwise failing to comply with any of the provisions of this chapter, the court may permanently enjoin such payments and make such further orders as may be necessary to protect the interests of the employes or the employers in this state with respect to any further payments to the fund from the employer.

(3) Either the commissioner or the employer or the trustees or any trustee may apply to the court at any time to have an injunction issued under this chapter vacated.

History: 1977 c 339 ss. 24, 44; Stats. 1977 s. 641.20.

641.25 Construction. (1) Nothing in this chapter shall be construed to relieve the trustees of any employe welfare fund from compliance with any other provision of this chapter or any

other applicable laws of this state:

(2) In order to carry out the objectives of this chapter to protect the interests of the employes or the employers in this state from fraud and mismanagement of employe welfare funds and to assure the faithful discharge of the responsibilities of the trustees and fiduciaries of such funds, the provisions of this chapter are to be liberally construed.

History: 1977 c 339 s. 24; Stats. 1977 s. 641.25.