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CHAPTER 235

1969 Senate Bill 467

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**CHAPTER 235, LAWS OF 1969**

AN ACT to repeal 201.24 (4) (b); to renumber 201.24 (5); and to create 201.24 (5) and (6) of the statutes, relating to regulation of certain transactions between domestic insurance corporations and their directors or officers, and granting rule-making authority.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

SECTION 1. 201.24 (4) (b) of the statutes is repealed.

SECTION 2. 201.24 (5) of the statutes is renumbered 201.24 (7).

SECTION 3. 201.24 (5) and (6) of the statutes are created to read:

201.24 (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.

4. The term "controlling" as used in this section means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with the person. Control shall be presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing, 10% or more of the voting securities of any other person. This presumption may be rebutted by showing that control does not exist in fact. The commissioner, after furnishing all persons in interest notice and opportunity to be heard, may determine that control exists in fact, notwithstanding the absence of a presumption to that effect.

(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.

Approved November 13, 1969.

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