

1975 Senate Bill 643

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CHAPTER 373, Laws of 1975

AN ACT to repeal 201.01, 201.065, 201.08, 201.09, 201.24 (4) and (8), 206.13, 206.25, 206.36, 206.39, 206.49, 206.54, 208.01 to 208.16, 208.161 (3), 208.162 to 208.40 and 625.03 (3); to renumber 208.161 (1) (a) to (d) and (f) to (m) and (2) (a) to (c); to renumber and amend 208.161 (1) (e) and (2) (intro.); to consolidate, renumber and amend 208.161 (intro.) and (1) (intro.); to amend 76.34 (intro.), 201.045 (1), 601.31 (25) and (26), 611.51 (2) (a), 645.02 (5) and 646.01 (1); to repeal and recreate 201.24 (7); and to create 610.21 (4), 610.23, 610.48, 610.49, 611.79, chapter 614, 618.14, 618.21 (5), 618.26, 623.15, 628.06, 631.07, subchapters V to VII of chapter 632, 645.41 (11) and 943.395 (4) of the statutes, relating to fraternal insurance enterprises, granting rule-making authority and providing a penalty.

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

INTRODUCTORY NOTE: This act provides a general legislative framework for the organization, operation and regulation of a class of insurance enterprises now generally known as "fraternal benefit societies". That term and "mutual benefit societies" are used interchangeably by ch. 208, which contains most of the provisions regulating them. Chapter 208 covers a heterogeneous group of divergent insurers that do not all belong together. It is difficult to draw a distinction between some mutual insurance corporations under ch. 611 on the one hand and some fraternal on the other. Section 208.01 (1) defines fraternal as follows:

208.01 (1) Any corporation, society, order or association, without capital stock, organized and carried on solely for the mutual benefit of its members or their beneficiaries and having a lodge system with ritualistic form of work and representative form of government, and which makes provision for the payment of death, disability, annuity or endowment benefits, or any combination of such benefits, is hereby declared to be a "Mutual Benefit Society", which shall be held to be synonymous with a "Fraternal Benefit Society".

This definition is essentially the same as that used in the Uniform Fraternal Code which is the joint product of the National Fraternal Congress of America and the National Association of Insurance Commissioners. This chapter is mainly concerned with fraternal societies "proper", i.e., that conform to the definition, which is continued in substance.

The typical fraternal is a combination of social organization and life insurance company. But extension to disability insurance is very common. In this law the proper focus of the fraternal has been considered to be life and disability insurance, and closely related activities, though under the proposed

s. 614.24 (1) it is possible for a fraternal to extend its range of activities substantially.

1. Historical Background.

Forerunners to mutual benefit and fraternal life societies have existed since ancient times. In Wisconsin, there have been mutual benefit societies since the state was first settled. These societies proliferated after the middle 1850's. Generally their charters were simple; frequently they were unincorporated. By 1872, some 80 special charters had been granted by the legislature; the peak years were 1868 and 1869, in each of which 17 special charters were enacted. These early charters did not spell out the method of operation, but provided only the barest framework for organization.

Most early fraternal societies were church or ethnic oriented, although some were primitive labor unions. They received legislative encouragement through tax exemption and freedom from insurance regulation.

Fraternal life societies developed 4 distinctive characteristics: (1) A social organization, the lodge; (2) a religious or quasi-religious ritual to further the ties of membership and attract new members; (3) welfare, benevolent and charitable purposes; and (4) insurance protection. Dues covered the first 3 purposes while assessments provided the insurance funds.

The lodge was the cornerstone of the organization. Smaller lodges might be grouped into intermediate lodges with a supreme lodge at the top. They were governed by representatives elected by each of the various lodges. Statutes generally required them to meet at least once every 4 years.

Initially, the insurance fund was financed through a uniform postmortem assessment plan. Uniform assessment made the plan actuarially unsound, and was also inefficient. To overcome these difficulties, many fraternal societies adopted graded assessment plans in which the premium rate was determined by the age of the members at the time of joining. The newer plan was still not actuarially sound. In Wisconsin and nationally the societies and the legislatures made continuing efforts to upgrade operations. Gradually the societies shifted to a sound actuarial basis. In 1907, the Wisconsin legislature required new societies to collect adequate rates as defined by statute. In 1911, all societies in Wisconsin were required to collect adequate rates from new members and all societies were required to segregate the funds of members paying adequate rates from the funds of old members who were not. In 1915, the legislature authorized formation of separate classes of members with separate funds for each class.

2. Present Status.

The process of upgrading eventually proceeded to the point that in size of operations and in the scope of management and organizational problems and even in marketing attitudes and practices the larger fraternal benefit societies became quite similar to the commercial mutual insurers. The largest fraternal of all, the Aid Association for Lutherans, had assets of over a billion dollars and over \$6 billion of insurance in force at the end of 1973. [1974 Wis. Ins. Report, at 281].

Presently, 58 fraternal societies, 10 of them domestic, do business in Wisconsin. In 1973, the Wisconsin fraternal life business produced premium income of over \$51 million with life insurance in force of nearly \$3 billion. This is an appreciable though not a major fraction of Wisconsin life insurance business, which totaled \$378 million in premiums and nearly \$24 billion in

force. Accident and health premiums totaled about \$8 million, a very small fraction of that line. [1974 Wis. Ins. Report, at 22, 24 and 70]

Side by side with these large organizations there exist some small societies that are exempt from regulation and do not report to the commissioner and about which almost nothing is known. Some of them may and some do not satisfy in even the most technical sense the fraternal definition in s. 208.01 (1).

Uniform legislation jointly produced by the National Fraternal Congress and the National Association of Insurance Commissioners in 1955 (revised in 1962) has been enacted in 22 jurisdictions, although few leading insurance regulatory states are among them. Of the 11 states with over 50 domestic fraternal each, only 3 had adopted the law at a recent date. New York, California, Pennsylvania, Illinois, Michigan, Texas and Wisconsin are notable absentees from the list, although the law has been proposed in Pennsylvania recently. The "nonuniform" states have similar laws, of course. Nevertheless, no case exists for enacting the Uniform Fraternal Code based on the supposed advantages of uniformity alone; if the Uniform Code was a thoroughly modernized law, a better case could be made. It is better to make the Wisconsin fraternal law fit other Wisconsin insurance law.

3. Characteristics of Fraternal.

The problems of dealing with modern fraternal become evident when one analyzes the definition established by s. 208.01 and by the similar ss. 1-3 of the Uniform Fraternal Code. In this definition, every element except one is also present in an ordinary commercial mutual insurance corporation:

Elements of the Definition

(a) A fraternal is a corporation under the Uniform Code, and usually though not invariably under Wisconsin law — a mutual is also incorporated.

(b) A fraternal has no capital stock — neither has a mutual.

(c) A fraternal is organized and carried on solely for the mutual benefit of its members or their beneficiaries — so is a mutual.

(d) A fraternal has a representative form of government [further defined in s. 208.01 (3)] — so has a mutual, whose supreme governing body (the board of directors) is composed of representatives elected by the members. The democratic or representative character of mutuals need not be significantly different from fraternal (though the fraternal as a class have in practice a clear edge in democratic character and involvement of members over mutuals as a class).

(e) The fraternal makes provision for the payment of death, disability, annuity or endowment benefits — so does a mutual life insurer, though the fraternal has been more restricted than mutuals in coverages and classes of beneficiaries.

(f) The fraternal has a lodge system with ritualistic form of work [further defined in s. 208.01 (2)]. This is an emphasized difference between the two.

(g) The fraternal has a maintenance of solvency provision in its laws [see s. 208.15 (3)]; a mutual may but need not have one [see s. 611.19 (5)]; traditionally it has not had one.

To justify separate and especially more favorable treatment of the fraternal, the unique features — the lodge system, a meaningful and working representative government, the maintenance of solvency provision, truly

benevolent and social purposes in addition to insurance operations — should be encouraged or even required. The Uniform Code recommended by the National Association of Insurance Commissioners and the National Fraternal Congress seeks to preserve as a reality the concept of representative government. If it can be maintained as an organization with real grass-roots control and participation, the fraternal can continue to contribute in a meaningful way to the richness and variety of American life. But increasing size and orientation toward insurance weakens the personal and social contact among the members and threatens fraternalism. Thus, measures to preserve the lodge system and bona fide representative government are indispensable to the continuance of true fraternalism.

Size is certainly an important factor. Democratic participation tends to be inversely related to size; strong religious, ethnic or geographical ties can counter the tendency of large fraternalism to become less democratic.

Despite the difficulties facing fraternalism in trying to preserve grass-roots democracy, the effort is important to justify separate legal treatment. Participation in the election process by large numbers of members is valuable, even if management is only occasionally turned out by dissident members.

A characteristic emphasized by fraternal representatives is that, through the lodge system, fraternalism have developed a “spirit of fraternalism” and perform acts of charity and benevolence that distinguish them from commercial insurers. It is claimed that “... their basic precept of Fraternalism can best be described as the actual practice of the teachings of the Brotherhood of Man.” [The Statistics of Fraternal Benefit Societies, 1969, at 7]. There is a large element of benevolence in some fraternalism, but not in all. If a majority of the persons who become members are exclusively interested in insurance, the fraternal should become an ordinary mutual; fraternalism should be encouraged to be charitable and benevolent institutions in fact as well as in name. Fraternal management should not be permitted to regard members as basically policyholders.

The lodge system and fraternalism in their proper senses will be manifested by significant benevolences or charities. The kinds and scope of these activities are in fact considerable, but they vary greatly in extent. Some organizations have formalized their support of benevolences and make it a major objective. Report on Lodge Activities and Fraternal Welfare Survey compiled by the Fraternal Activities Association of the National Fraternal Congress of America (Jan., 1961 — Feb., 1962).

One special characteristic emphasized by fraternal representatives is the “open” contract, which reflects the membership concept, with the member subject at least to some extent to subsequent changes made in the articles and bylaws of the fraternal. See s. 208.16 (3). A more important one is the mandatory “maintenance of solvency provision”. There must be a provision in the articles or bylaws requiring that whenever the reserves are impaired a special assessment is to be levied among the members to make up the deficiency; failure to pay it results in an indebtedness against the policy or a reduction in benefits. Section 208.15 (3); Uniform Fraternal Code s. 19 (5). This provision is a different approach to solvency and has been used as a successful argument for excluding fraternalism from guaranty fund laws.

Former law required only that the maintenance of solvency provisions be included in the fraternal’s “constitution or laws”; there was no requirement that it be included in the policy or certificate. [Sections 208.15 (3), 208.16 (3).] Most fraternalism have included the clause in their certificates. This law

requires it in order to give as much notice of its existence to members as possible.

One indisputable characteristic distinguishing fraternalists from mutuals is special tax treatment. Fraternalists argue that it is a natural and appropriate consequence of the other distinctive features of the fraternal, especially its benevolences. The tax exemption is on both federal and state taxes — it includes income and premium taxes. The state exemption is very broad. Section 208.35 provides for exemption “from all state, county, district, municipal and school taxes or fees, except the fees as required by s. 601.31 (25), but [it] shall be required to pay all taxes and special assessments on its real estate and office equipment, except as provided in s. 70.11 (4) and (8).” Section 70.11 (4) exempts real property up to certain amounts from general property taxation while sub. (8) apportions taxes if the property is used in part for pecuniary profit. Section 208.35 is continued in this act as s. 614.80.

The federal exemption is granted by s. 501 (c) (8) of the Internal Revenue Code (1954). It exempts:

S. 501 (c) (8) Fraternal beneficiary societies, orders, or associations —

(A) operating under the lodge system or for the exclusive benefit of the members of a fraternity itself operating under the lodge system, and

(B) providing for the payment of life, sick, accident or other benefits to the members of such society, order, or association or their dependents.

The federal tax regulations spell out more fully the conditions necessary to secure exempt status. Section 1.501 (c) (8)-(1) provides that:

(a) A fraternal beneficiary society is exempt from tax only if operated under the “lodge system” or for the exclusive benefit of the members so operating. “Operating under the lodge system” means carrying on its activities under a form of organization that comprises local branches, chartered by a parent organization and largely self-governing, called lodges, chapters or the like. In order to be exempt it is also necessary that the society have an established system for the payment to its members or their dependents of life, sick, accident or other benefits.

Tax treatment is not a matter of insurance law and is outside the scope of the insurance law revision. This law proposes no change, except in the strengthening of the laws concerning fraternal activities that make a fraternal live up to its purposes.

4. Making the law and the facts consistent.

Several approaches to revision of fraternal legislation emerge as possibilities.

(a) Preserving and enhancing the reality of fraternalism. One way — and the way adopted in this draft — is to aid the fraternalists to find their true identity and to preserve the “idea” of the fraternal society, encouraging — indeed even requiring — that the fraternalists live up to their purposes. This can be done within the insurance code. Compelling the fraternalists to live up to their ideals is not easy, of course. The lofty aims are honored in the breach as well as in the observance. Fraternal spokesmen themselves recognize and deplore that fact, and it is an objective of this chapter to encourage conformity to the goals of fraternalism by providing a climate that expects, encourages and monitors it. See proposed ss. 614.01 (2) (d) and 614.82, for example. Actually enforcing compliance with the stated ideals may not be

possible within the framework of a finance-oriented regulatory agency, but encouraging it is possible and desirable.

(b) Making fraternalism a condition for tax exemption. Since it is not clear why the insurance commissioner, as an insurance regulator, should care whether the fraternalists do the things that make them fraternalists, a second approach is to transfer the task of testing for fraternalism to the tax authorities, leaving only true insurance regulation to the insurance commissioner.

Though in theory there is much to commend this approach, it has not been adopted here. It would not be acceptable to the fraternalists, and splitting the regulatory duties between the insurance commissioner and the tax authorities also presents practical problems inherent in dual control. This law takes the first alternative and enlarges the commissioner's duties to include some concern for the preservation of true fraternalism. Thus, it requires reporting of benevolences and lodge activities (s. 614.82).

5. Exempt societies.

The discussion thus far has been of "true" fraternalists. Not all of the organizations satisfying the definition of s. 208.01 are subject to ch. 208, and conversely, some organizations that do not satisfy the definition are subjected to ch. 208. There are peripheral organizations that differ in one or more respects from the true fraternalists, yet are treated in much the same way. This is the result, in part, of a confusing list of exemptions that has accumulated through the gradual evolution of fraternal legislation and is contained in s. 208.03 (s. 42 of the Uniform Fraternal Code). The exemptions apply to a variety of different organizations and have quite different consequences.

(a) Completely exempt from any insurance law, by s. 208.03 (1), are:

(i) Societies which admit to membership only persons engaged in hazardous occupations, and their dependents; and

(ii) Firemen's associations organized for mutual aid, training and education in fire fighting and fire prevention. This exemption applies whether or not the "society" in question fits the definition of s. 208.01 (1), and especially whether or not it operates on a lodge system.

(b) Conditional exemption from any insurance law is provided in s. 208.03 (1) and (2) for:

(i) Associations of local lodges of societies doing business in this state on May 27, 1911, which provide death benefits not exceeding \$300 to any one person or disability benefits not exceeding \$300 in any one year to any one person or both, if:

a. They have no more than 500 members, and

b. Do not issue certificates providing for the payment of benefits;

(ii) Domestic societies which limit their membership to the employees of a particular municipality or one designated employer, and their dependents, if:

a. They do not have more than 500 members, and

b. Do not issue certificates providing for the payment of benefits;

(iii) Domestic lodges, orders or associations of a purely religious, charitable and benevolent description which do not provide for a death benefit exceeding \$300 or for disability benefits or more than \$150 to any one person

in any one year, if:

- a. They do not have more than 500 members, and
- b. Do not issue certificates providing for the payment of benefits;

(iv) Domestic benevolent societies organized prior to January 1, 1935 which maintain no lodges or ritualistic organization and which operate upon the plan of collecting an assessment upon the death of a member, provided benefits paid do not exceed \$2,000 upon the death of any member, if:

- a. They do not have more than 2,000 members, and
- b. Do not increase their membership beyond what they had in good standing on July 1, 1945.

It is not clear what consequences follow if the conditions for exemption are not met. Section 208.03 (1) provides that societies of the kinds specified under (b) (i) — (iii) should comply with all the requirements of the law relating to mutual benefit societies when they have more than 500 members or issued certificates. However, it is not clear what happens if one of those societies provides benefits exceeding the \$300 limit. If it fits into the definition of s. 208.01 (1) it would probably be subject to ch. 208. But if it does not conform to that definition, the applicable law is not specified. A similar uncertainty exists with respect to the societies exempted under s. 208.03 (2) when they exceed the limits established for their membership or benefits.

Several years ago the commissioner of insurance attempted to determine how many exempt societies there were in the state. Letters of inquiry were sent to 50 organizations and replies came from only 12. It is possible that most of the remainder were defunct, but they also may simply not respond to letters, even from the commissioner.

There were 2 exempt assessment societies of the kind specified in s. 208.03 (2) (those listed under (b) (iv) above). Some societies operated under the exceptions provided for societies limited to hazardous occupations or the employes of a single employer, although the situation is further confused by the election of some groups to establish employe welfare funds, and at least one organized under the cooperative law. Some associations claiming exemption might not have been entitled to it.

The various exemptions from regulation are difficult to rationalize and more difficult to justify. If the purpose of the insurance law and of administrative control of the insurance business is to ensure the financial soundness of insurance operations and to protect the rights of citizens who receive promises of future benefits, on which they rely in the event of adverse contingencies, then the organizations listed in s. 208.03 should be subject to control like other insurers. There is no reason why persons engaged in hazardous occupations or members of a society having fewer than 500 members should be entitled to less protection under the insurance laws of this state than those who purchase a policy in a commercial insurer. The hazards suggest more control rather than exemption.

However, the most effective or the least cumbersome way of bringing them under control is not clear. For those that already fit the definition of a fraternal, removal of the exemption would automatically subject them to the provisions applicable to fraternal; if they are unincorporated, they could incorporate. If compliance with some of the technical requirements established for fraternal should present undue difficulty, the commissioner could relax the requirements, at least temporarily.

A more delicate problem arises if an existing exempt organization does not fit the definition of a fraternal, as in the case of the societies exempted under s. 208.03 (2), which do not operate on a lodge system. Four principal options seem to exist for dealing with them:

(1) They could be forced to adopt a lodge system and the other attributes of fraternal;

(2) They could be forced to incorporate under ch. 611 as ordinary mutuals;

(3) They could be subjected to substantive control with respect to their financial affairs and business operations, without being labeled as either ordinary mutuals or fraternal, and perhaps without incorporation; or

(4) They could choose between being fraternal and mutuals at their option.

The first option is pointless, and the second unfair, for it would subject them to taxation even if they meet whatever tests are set for tax exempt status. The third option has no merit. The fourth option seems best. Fraternal are mutual corporations that meet certain additional criteria; and all these formerly exempt organizations should be required to adjust to the fraternal law if they want treatment as fraternal. If they do not, they can qualify as regular mutuals. They should have the option to be one or the other, but not be given a special status.

6. The proposed law.

This bill follows to a considerable extent ch. 208 of the statutes, entitled "Fraternal Benefit Societies"; to some extent provisions are borrowed from the Uniform Fraternal Code. Some provisions are new. Dissolution and delinquency provisions are governed generally by ch. 645. Fraternal are subject, too, to the general administrative jurisdiction of the commissioner of insurance, under ch. 601. Other insurance laws are made applicable, except as specified therein or in ch. 614. See s. 614.05 (2).

SECTION 1. 76.34 (intro.) of the statutes is amended to read:

76.34 Life insurance companies to pay annual license. (intro.) Every company, corporation or association transacting the business of life insurance within this state, ~~excepting only such fraternal societies as have lodge organizations and insure the lives of their own members, and no others~~ except fraternal as defined in s. 614.01, shall pay into the state treasury as an annual license fee for transacting such business the amounts following:

NOTE: This makes s. 76.34 consistent with proposed s. 614.80 (the present s. 208.35) and eliminates an existing ambiguity. It recognizes the de facto treatment of fraternal by the tax authorities.

SECTION 2. 201.01 of the statutes is repealed.

NOTE: This section is no longer needed with enactment of ch. 614.

SECTION 3. 201.045 (1) of the statutes, as affected by chapter _____ (Senate Bill 17), laws of 1975, is amended to read:

201.045 (1) SCOPE. This section applies to all insurers incorporated or organized under any law of this state except chs. 611, 612 ~~and~~ 613 and 614.

NOTE: The change here is made possible by enactment of ch. 614.

SECTION 4. 201.065 of the statutes is repealed.

SECTION 5. 201.08 and 201.09 of the statutes are repealed.

NOTE: Section 201.065 is replaced by s. 632.47 and s. 632.71. Section 201.08 is comprehended within new ch. 614; s. 201.09 requires a fidelity bond for treasurers so small as to be ludicrous as a protection to members. Its only remaining advantage is in the screening of treasurers that is effected by having a bonding requirement of any size. Any wisely managed fraternal would insist on a bond much larger than the statute requires. The commissioner's powers under chs. 601 and 645 are more than adequate to make it possible for him to insist on a bond, in a sufficient amount to provide real protection, whenever there is any question about the insurer's practices. On the whole, bonding practices of the fraternal should be regarded as an internal management matter.

SECTION 6. 201.24 (4) and (8) of the statutes are repealed.

SECTION 7. 201.24 (7) of the statutes is repealed and recreated to read:

201.24 (7) This section does not apply to fraternal nor to corporations organized or operating under ch. 611.

NOTE: Sub. (4) is replaced by new s. 610.23. Amended sub. (7) is replaced by the corresponding rules applicable to mutuals, as incorporated by s. 614.05 (2) (for subs. (1) to (3)) and s. 614.60 for the remainder.

SECTION 8. 206.13 of the statutes is repealed.

SECTION 9. 206.25 of the statutes is repealed.

SECTION 10. 206.36 of the statutes is repealed.

SECTION 11. 206.39 of the statutes is repealed.

SECTION 12. 206.49 of the statutes is repealed.

SECTION 13. 206.54 of the statutes is repealed.

NOTE: Sections 206.13 and 206.36 are replaced by s. 632.62. Sections 206.25 and 206.49 are replaced by s. 632.41. Section 206.39 is continued by s. 632.42. Section 206.54 is continued in substance by s. 632.46 (3).

SECTION 14. 208.01 to 208.16 of the statutes are repealed.

SECTION 15. 208.161 (intro.) and (1) (intro.) of the statutes are consolidated, renumbered 632.94 (3) (intro.) and amended to read:

632.94 (3) (title) LIFE INSURANCE CONTRACTS, REQUIRED PROVISIONS. (intro.) On and after January 1, 1966, no ~~life benefit~~ certificate ~~shall~~ of life insurance may be delivered or issued for delivery in this state unless a copy of the form has been filed with the commissioner ~~of insurance~~, and approved by him ~~as conforming to the requirements of this section and not inconsistent with any other provisions of law applicable thereto.~~ A certificate shall be deemed approved unless disapproved by the commissioner of insurance within 30 days from the date of such filing. (1) This certificate shall contain in substance the following standard provisions or, in lieu thereof, provisions which are more favorable to the member:

SECTION 16. 208.161 (1) (a) to (d) and (f) to (m) and (2) (a) to (c) of the statutes are renumbered 632.94 (3) (a) to (d) and (f) to (m) and (2) (a) to (c).

SECTION 17. 208.161 (1) (e) and (2) (intro.) of the statutes are renumbered 632.94 (3) (e) and (2) (intro.), respectively, and amended to read:

632.94 (2) (title) LIFE INSURANCE CONTRACTS, PROHIBITED PROVISIONS. (intro.) On and after January 1, 1966, no ~~life benefit~~ certificate ~~shall~~ of life insurance may be delivered or issued for delivery in this state containing in substance any of the following provisions:

(3) (e) Except in the case of pure endowment, annuity or reversionary annuity contracts, reducing term insurance contracts, or contracts of term insurance of uniform amount of 15 years or less expiring before age 66 a provision that, in the event of default in payment of any premium after 3 full years' premiums have been paid or after premiums for a lesser period have been paid if the contract so provides, the ~~society fraternal~~ will grant, upon proper request not later than 60 days after the due date of the premium in default, a paid-up nonforfeiture benefit on the plan stipulated in the certificate, effective as of such due date, of ~~such the value as specified in this chapter s. 206.181.~~ The certificate may provide, if the ~~society's fraternal's~~ laws so specify or if the member so elects prior to the expiration of the grace period of any overdue premium, that default shall not occur so long as premiums can be paid under the provisions of an arrangement for automatic premium loan as may be set forth in the certificate;

SECTION 18. 208.161 (3) of the statutes is repealed.

SECTION 19. 208.162 to 208.40 of the statutes are repealed.

NOTE: The new fraternal law, ch. 614, is intended to be an integral part of the insurance code, which is made generally applicable to fraternal except as noted in ch. 614 or in particular provisions elsewhere in the code.

All organizations heretofore exempt must adjust to the new law within 2 years of its passage or obtain exemption therefrom. See s. 610.49. Mainly, ch. 208 is continued in or replaced by provisions in ch. 614. Some sections are placed elsewhere with appropriate cross-references. A few sections, notably grandfather clauses, are repealed altogether, with appropriate transition provisions in ss. 610.48 and 610.49.

Section 208.01 (1) is primarily replaced by s. 614.01 (1); the requirement of a ritual is abandoned and the last sentence is not continued. Sub. (2) is replaced by s. 614.01 (2); sub. (3) is replaced by s. 614.42; sub. (4) is continued by s. 614.51 (2). Changes of considerable importance are made in structure and some in content.

Section 208.02 is continued by s. 614.42 (1) and (3).

Section 208.03 (1), (2) and (4) are various grandfather clauses; they are not continued. A sufficiently long transition period is provided by ss. 610.48 and 610.49 to take care of any hardship problems created by the elimination of the grandfather clauses; it is doubtful if there are many, or possibly any, societies still in existence for which problems would be created. If there is a need and justification for an exemption for firemen's associations, it should be separately considered and adopted, probably elsewhere than in the fraternal chapter. Sub. (5) is continued by ss. 614.94 (1) and 614.24.

Section 208.06 is another grandfather clause; it too is discontinued, subject to the transition provisions of ss. 610.48 and 610.49.

Section 208.07 is replaced by s. 614.05 which reverses the rule as to general applicability.

Section 208.09 (1) and (2) (a) are reorganized and continued in s. 614.10, but in much more permissive terms. Sub. (2) (b) and (c) are continued in much more general terms (to be implemented by rules) in s. 623.15 (3). Sub. (2) (d) is comprehended within ss. 632.48 and 632.96.

Section 208.10 is replaced by s. 632.48.

Section 208.11 is replaced by s. 632.62.

Section 208.12 is replaced by s. 614.05 (2).

Section 208.13 is continued by s. 614.94 (2).

Section 208.14 is obsolete. It made sense only when fraternal operated on a quite different and less sophisticated basis than now, for it originally contemplated assessability. It is replaced by subch. II of ch. 614.

Section 208.15 (1) and (2) are continued in more general terms in s. 623.15 (2). Sub. (3) is continued in substance in s. 614.19 (3). Sub. (4) is not necessary, being comprehended within ch. 645, and to a lesser extent within s. 614.19 (3). Sub. (5) is continued in general terms in s. 623.15 (3).

Section 208.16 (1), (2), (3) and (4) are continued in substance in s. 632.93.

Section 208.161 (1) and (2) are continued in s. 632.94 (1) and (2); sub. (3) was already covered by s. 600.03 (38).

Section 208.162 is continued by s. 632.94 (4).

Section 208.17 is continued in s. 614.96.

Section 208.18 is continued in s. 623.15 (1).

Section 208.19 is obsolete and is discontinued.

Section 208.20 is a very old grandfather clause that is repealed, subject to the transition provisions of ss. 610.48 and 610.49.

Section 208.21 is continued in substance in s. 628.06.

Section 208.23 is replaced by s. 614.29.

Section 208.24 is made unnecessary by s. 610.11 and by general law.

Section 208.25 is replaced by s. 618.14.

Section 208.27 is replaced by s. 614.94 (1).

Section 208.28 (1) is unnecessary in view of s. 601.42, which should be implemented by a rule following s. 208.28 fairly closely. Subs. (2) and (3) are replaced by s. 623.15 and implementing rules. Sub. (4) is covered by s. 600.03 (24) (b). Sub. (5) is replaced by s. 614.43. Sub. (6) is repealed as an undesirable grandfather clause, subject to the transition provisions of ss. 610.48 and 610.49.

Section 208.29 is unnecessary in view of s. 601.42. To the extent that valuation on an accumulation basis is still desired, it can be authorized under that section by a rule promulgated by the commissioner.

Section 208.34 is unnecessary, being covered by s. 601.64 and ch. 645.

Section 208.35 is replaced by s. 614.80.

Section 208.38 is replaced by ss. 632.95 and 943.395 (4).

Section 208.39 is replaced by s. 614.76.

Section 208.40 is replaced by s. 614.73.

SECTION 20. 601.31 (25) and (26) of the statutes, as affected by chapter _____ (Senate Bill 17), laws of 1975, are amended to read:

601.31 (25) Town mutual insurance companies, voluntary nonprofit sickness care plans organized under s. 185.981 and interscholastic benefit plans organized under s. 185.991 are exempt from all provisions of this section except subs. (19) and (21). ~~Mutual benefit societies~~ Fraternals are subject to this section except they are exempt from subs. (2), (3), (10), ~~(11), (12)~~, to (13), (15), (16) and (17).

(26) For the purposes of this section "domestic company" means any authorized insurer incorporated or organized under any law of this state including ~~mutual benefit societies~~ fraternals and service insurance corporations under ch. 613; "foreign company" means any insurer incorporated or organized under the laws of any state

including ~~mutual benefit societies~~ fraternals; and "alien company" means any insurer incorporated or organized under the laws of any foreign nation, or of any province or territory not included under the definition of foreign company. "State" means any state of the United States, the government of Puerto Rico and the District of Columbia.

SECTION 21. 610.21 (4) of the statutes is created to read:

610.21 (4) ANNUITIES. For purposes of this section, "insurance" includes "annuities".

SECTION 22. 610.23 of the statutes is created to read:

610.23 Power to hold property in other than own name. An insurer shall hold all investments and deposits of its funds in its own name except that:

(1) CUSTODIAL OR TRUST ARRANGEMENTS. Securities kept under a custodial agreement or trust arrangement with a bank or banking and trust company may be issued in the name of a nominee of the bank or banking and trust company; and

(2) BEARER SECURITIES. Any insurer may acquire and hold securities in bearer form.

NOTE: This section continues s. 201.24 (4), made applicable to all insurers. The power certainly exists under ss. 180.04 (17) and 181.04 (16) as incorporated in ss. 611.07 (1), 612.03 and 614.07 (1), but this section places it beyond doubt for all insurers and permits the repeal of s. 201.24 (4).

SECTION 23. 610.48 and 610.49 of the statutes are created to read:

610.48 Transition provision for domestic fraternals. (1) EXISTING FRATERNALS.

(a) *Continuing authorization.* A mutual benefit society holding a valid license under s. 208.24, 1973 stats., on the effective date of this act (1975) shall continue to be authorized as a fraternal within the limits of its license; it shall comply with ch. 614 except under pars. (b) and (c).

(b) *Inapplicable provisions.* Sections 614.12 (1) (a), 614.13 to 614.18, 614.20 and 614.22 do not apply to fraternals under par. (a).

(c) *Delayed effect.* Section 614.12 (1) (b) to (h), (2) and (3) do not apply to fraternals under par. (a) until 2 years after the effective date of this act (1975) or until 6 months after the next meeting of the supreme governing body, whichever is later, except that in no event may the time of delayed effect be more than 5 years from the effective date of this act (1975). Any fraternal under par. (a) may elect to comply with such provisions at an earlier date. So far as such provisions do not yet apply to a fraternal, any corresponding provisions of the law applicable prior to the effective date of this act (1975) continue to apply.

(d) *Extension of business.* If a fraternal under par. (a) wishes to extend its business beyond the limits of the license it had on the effective date of this act (1975), it shall apply for a new certificate of authority which shall be issued upon substantial compliance with the requirements of s. 611.20 (4) as incorporated in s. 614.20.

(2) EXTENSION OF ADJUSTMENT PERIOD. If timely adjustment to the requirements of ch. 614 would cause a previously licensed fraternal hardship, disproportionate expense or serious inconvenience, the commissioner may, upon the fraternal's request, grant an additional delay for compliance with specified requirements if it does not endanger insureds or the public, but in no case for more than 2 years beyond the effective dates otherwise applicable.

610.49 Transition provision for residual unlicensed domestic insurers. (1) PERIOD FOR ADJUSTMENT. Every mutual benefit society which on the effective date of this act (1975) does not hold a valid certificate of authority or license under s. 208.24, 1973

stats., shall within 2 years after the effective date of this act (1975) complete one of the actions prescribed in subs. (2) to (5).

(2) INCORPORATION AND LICENSING. Any insurer under sub. (1) may be incorporated and apply or, if it is already incorporated, may apply, for a certificate of authority under one of chs. 611 to 614. The commissioner shall issue a certificate of authority and, if necessary, a certificate of incorporation, if he is satisfied that the insurer complies substantially with the requirements of the appropriate chapter that are necessary for the protection of insureds and the public.

(3) TOTAL REINSURANCE. Any insurer under sub. (1) may transfer all its obligations to a corporation authorized under the insurance code to assume them, pursuant to a plan approved by the commissioner. The commissioner may disapprove the plan if he finds, after a hearing, that it is contrary to law or to the interests of insureds or the public.

(4) RUNOFF OF BUSINESS. An insurer under sub. (1) may adopt a plan to run off existing obligations without accepting any new policyholders or new obligations. The commissioner may disapprove the plan if he finds, after a hearing, that it is contrary to law or to the interests of insureds or the public.

(5) EXEMPTION. The commissioner may by order exempt an insurer from the requirements of sub. (1) or extend the deadline under sub. (1) if he finds:

(a) That incorporation and licensing, reinsurance or runoff would cause disproportionate expense, loss or substantial hardship; and

(b) That the nature of the existing and prospective business, the assets or the business plan of the insurer are such that it can be reasonably expected to continue to operate in a sound manner and can be subjected to adequate regulatory controls.

(6) REGULATION OF EXEMPTED INSURERS. Whenever the commissioner grants an exemption under sub. (5), he shall issue to the insurer a certificate of authority, which he may amend from time to time, specifying the business that it may transact and specifying in detail the controls to which it shall be subject, which shall correspond as nearly as practicable to those applicable to corporations transacting a like business.

(7) LIQUIDATION. It is a ground for liquidation under s. 645.41 if an insurer has not completed action under one of subs. (2) to (4) and has not applied for and been granted exemption under sub. (5) prior to the end of the 2-year period specified in sub. (1).

NOTE: No new fraternal could be organized except under s. 611.79 or ch. 614. A few organizations now exist which would not conform to ch. 614, nor do they conform to ch. 208. They are mostly old, small and marginal groups paying small death and disability benefits to their members. Because both the number of persons and the amounts involved are small, they have not attracted much regulatory attention. They have been mentioned only in s. 208.03 where they are exempted from any insurance law. Some of these have been subjected to ch. 208 even though they do not necessarily fit the definition of a "mutual benefit society" or "fraternal benefit society" in s. 208.01. Several kinds of organizations with quite disparate characteristics are found in this neglected field. See Introductory Note. There is not even adequate information as to the number of such organizations still existing, not to speak of their business, their financial situations and their prospects for the future. Complete extinction in the immediate future has been predicted repeatedly but some exhibit remarkable tenacity.

The requirements of chs. 611 to 614 will be sufficiently flexible to accommodate most of these small groups, if they are sound financially; they seem mostly to be assessable mutuals. If some requirements should prove too

difficult or too costly, the commissioner can relax the requirements, if minimum solidity and surveillance standards can be satisfied, to bring them under minimal control rather than to leave them completely unsupervised.

Sub. (7) provides for liquidation under ch. 645 if timely action is not taken voluntarily. If the commissioner should find out that the failure to keep the deadline was due to inadvertence, he can postpone the deadline, or else seek rehabilitation and, as a rehabilitation measure, effect any one of the changes authorized in subs. (2) to (4).

There is precedent for refusal to allow new societies to form. See Ill. Ins. Code s. 930. Elimination of existing marginal societies is desirable though more drastic. The world has changed greatly since the days when informal and small mutual benefit societies made a real contribution to our society. Now more highly organized and sophisticated insurance organizations are readily available and are needed to provide the security people demand and need in even the most remote hamlet of this state. There may be exceptional circumstances under which the rigid application of this section should be avoided. If so, the exception in sub. (5) will take care of it. Even if they are neither converted nor dissolved, however, insurance societies should be subjected to supervision by the insurance commissioner, as provided in sub. (6). The goal of insurance regulation is to protect insureds and the public, not organizations.

SECTION 24. 611.51 (2) (a) of the statutes is amended to read:

611.51 (2) (a) *General.* Except under pars. (b) and (c), a corporation shall have at least ~~9~~ 5 directors if no more than one director is an employe or representative of the corporation, and shall have at least 9 directors in other cases.

NOTE: This amendment accommodates the needs of small corporations while continuing to satisfy the purposes for having large boards, as explained in the note to s. 611.51 (2) (a) in chapter 260, laws of 1971.

SECTION 25. 611.79 of the statutes is created to read:

611.79 Conversion of a domestic mutual life insurance company into a fraternal. A domestic mutual life insurance company may be converted into a fraternal under ch. 614, as follows:

(1) **CONVERSION PLAN.** The board of directors of the company shall adopt a plan of conversion stating:

- (a) The reasons for and the purposes of the proposed action;
- (b) The proposed articles and bylaws for the new fraternal; and
- (c) The proposed procedure and estimated expenses for implementing the conversion.

(2) **APPROVAL BY COMMISSIONER.** The plan shall be filed with the commissioner for his approval, together with so much of the information under s. 614.13 (2) as the commissioner reasonably requires. The commissioner shall approve the plan unless he finds, after a hearing, that it would be contrary to the law, that the new fraternal would not satisfy the requirements for a certificate of authority under s. 611.20 as incorporated by s. 614.20, or that the plan would be contrary to the interests of policyholders or the public.

(3) **APPROVAL BY MEMBERS.** After being approved by the commissioner, the plan shall be submitted to the policyholders for their approval.

(4) **REPORT TO COMMISSIONER.** A copy of the resolution adopted by the members shall be filed with the commissioner, indicating the number of policyholders voting, the method of voting and the number of votes cast in favor of the plan.

(5) **CERTIFICATE OF AUTHORITY.** If all requirements of the law are met, the commissioner shall issue a certificate of authority for the new fraternal. Thereupon the mutual shall cease its legal existence and the corporate existence of the new fraternal shall begin, but it shall be deemed to have been incorporated as of the date the converted mutual was incorporated. The new fraternal shall have all the assets and be liable for all of the obligations of the converted mutual. The commissioner may grant a period not exceeding one year for adjustment to the requirements of ch. 614, specifying the extent to which particular provisions of ch. 614 do not apply.

NOTE: This provision is not likely to be used often but it is desirable in order to enlarge the options open to legitimate organizations. If members of a mutual wish to accept the additional restrictions imposed by fraternal law in return for its benefits, they should be free to do so.

SECTION 26. Chapter 614 of the statutes is created to read:

**CHAPTER 614
FRATERNALS
SUBCHAPTER I
GENERAL PROVISIONS**

614.01 Definitions. In this chapter:

(1) A “fraternal”, also called a “fraternal benefit society” or “mutual benefit society” is a corporation organized or operating under this chapter that:

(a) Has no capital stock;

(b) Exists solely for:

1. The benefit of its members and their beneficiaries; and

2. Any lawful social, intellectual, educational, charitable, benevolent, moral, fraternal, patriotic or religious purposes for the benefit of its members or the public, carried on through voluntary activity of its members in their local lodges or through institutional programs of the fraternal or its local lodges;

(c) Has a lodge system;

(d) Has a representative form of government; and

(e) Provides insurance benefits authorized under this chapter.

(2) A “lodge system” exists if and only if:

(a) There is a supreme governing body;

(b) Subordinate to the supreme governing body there are local lodges (whatever they may be called) into which natural persons are admitted as members in accordance with the laws of the fraternal;

(c) The local lodges are required by the laws of the fraternal to hold regular meetings at least monthly; and

(d) The local lodges engage regularly in programs involving member participation to implement the purposes of sub. (1) (b) 2.

(3) A “representative form of government” exists if and only if the fraternal complies with s. 614.42.

(4) The “laws” of a fraternal include its articles of incorporation and bylaws, however designated.

(5) In any section of the statutes made applicable to fraternal by this chapter, the technical terms used in those statutes are applicable to fraternal despite the customary use of other parallel terms by fraternal.

NOTE: Sub. (1) continues s. 208.01 (1) with some changes. The last sentence of s. 208.01 is a grandfather clause which is not justified. If there are any mutual benefit societies that do not satisfy the requirements of this chapter, ss. 610.48 and 610.49 give them a period of time to make the necessary changes or be liquidated. All fraternal are required to be, or to become, corporate.

Sub. (2) is taken mainly from s. 208.01 (2), with the addition of the requirements of par. (d), which constitute a large part of the raison d'être for the existence of the fraternal.

The requirement of a ritual is omitted from par. (b) as anomalous in a secular and informal age. Ritual is still permitted, of course.

Sub. (3) refers to the section that spells out the meaning of "representative government".

Sub. (4) provides a convenient shorthand expression for use in this chapter.

614.02 Scope and purposes. (1) SCOPE. (a) *Domestic fraternal*. This chapter applies to all fraternal organized under the laws of this state.

(b) *Nondomestic fraternal*. Except as expressly provided in this chapter and in s. 618.26, this chapter does not apply to nondomestic fraternal.

(2) PURPOSES. The purposes of this chapter are:

(a) To provide a complete, self-contained procedure for the formation of fraternal.

(b) To assure the solidity of fraternal by providing an organizational framework to facilitate sound management, sound operation and sound regulation.

(c) To strengthen internal fraternal democracy through as much member participation as is practicable.

(d) To encourage the fulfillment of the special purposes of fraternal.

NOTE: This section is adapted from s. 611.02, but with the addition of sub. (2) (d), which recognizes the special characteristics of fraternal and their different role in the insurance business.

Sub. (1) (b) makes it clear that nondomestic fraternal are subject to ch. 614 only to the extent that s. 618.14 prescribes. The procedures for admission are the same as those in ss. 618.11 and 618.12 for other nondomestic insurers.

614.03 Orders imposing and relaxing restrictions. (1) IMPOSING RESTRICTIONS. The commissioner may subject any fraternal not otherwise subject thereto to some or all of the restrictions of s. 611.28 (1) as incorporated by s. 614.28, s. 611.33 (2) (a) 1 and 2 as incorporated by s. 614.33, and s. 611.54 (1) (b) as incorporated by s. 614.54, and s. 614.29 (2).

(2) ORDERS ELIMINATING RESTRICTIONS. The commissioner may free a new fraternal from any or all of the restrictions generally applicable only to new fraternal under the provisions enumerated in sub. (1) if he is satisfied that its financial condition, management or other circumstances give assurance that the interests of insureds and the public will not be endangered thereby.

NOTE: This follows closely s. 611.03, with only necessary changes.

614.05 Applicability of other insurance laws to fraternal. (1) CHAPTERS 611 AND 619. No section of chs. 611 or 619 applies to fraternal unless it is specifically made applicable by this chapter.

(2) **APPLICABLE PORTIONS OF THE CODE.** Each other section of the code that applies to mutuals subject to ch. 611 also applies to domestic and nondomestic fraternal unless:

(a) This chapter or the particular section provides otherwise; or

(b) The particular section is inconsistent with a provision applying explicitly to fraternal, in this chapter or elsewhere.

NOTE: This section reverses the rule of s. 208.07 respecting applicability of other provisions of the insurance code.

614.07 General corporate powers and procedures. (1) **POWERS.** Section 181.04 (1) to (14) and (16) applies to fraternal.

(2) **ULTRA VIRES.** Section 181.05 (1) and (2) applies to fraternal.

(3) **OMISSION OF SEAL.** Section 181.665 applies to fraternal.

(4) **WAIVER OF NOTICE AND INFORMAL ACTION.** Sections 181.70 and 181.72 apply to fraternal.

NOTE: This section closely parallels s. 611.07 as applied to mutuals.

SUBCHAPTER II

ORGANIZATION OF FRATERNALS

614.09 Reservation of corporate name. Section 181.07 applies to fraternal, except that "secretary of state" shall be read "commissioner".

NOTE: This section parallels s. 611.10.

614.10 Members and applicants in fraternal. (1) **MEMBERSHIP.** A fraternal may admit any natural person to membership under such conditions and for such insurance and other benefits as its laws prescribe, subject to this chapter and other applicable laws. Members not having insurance cease to be members if the fraternal is converted to a mutual.

(2) **APPLICANTS AUTHORIZED.** Subject to s. 631.07:

(a) *In general.* Fraternal may provide insurance benefits to their members and, on the application of members, to others; and

(b) *Children.* Fraternal may insure the lives or disability of children younger than the minimum age for membership in the fraternal but otherwise eligible for membership, on the application of some adult person.

(3) **CHILDREN'S LODGES.** A fraternal may organize lodges for children covered by insurance but not old enough for membership. Membership in local lodges is not required for such children, and they have no voting rights.

(4) **BENEFITS PENDING MEMBERSHIP.** A fraternal may extend temporary or conditional insurance coverage to a nonmember who has applied for membership in the fraternal.

NOTE: This section adapts s. 208.09 (1) with editorial changes, and sub. (2) (a) with substantive changes. Consent of a person whose life is insured is as necessary for fraternal as for commercial life insurers; the consent is required by s. 631.07.

Sub. (4) is new and permits to fraternal a desirable practice common in life insurance marketing.

614.11 Incorporators. Any number of corporate or adult natural persons may organize a fraternal under this chapter.

NOTE: This section parallels s. 611.11 (1) which permits any number of natural or corporate incorporators. No reason appears for any stricter

requirement for fraternal. This is more liberal than s. 4 (1) of the Uniform Fraternal Code, which would require 7 natural persons as incorporators. Ill. Ins. Code, ch. 73, s. 908 (1) sets the number of incorporators at 3.

614.12 Articles of incorporation and bylaws. (1) ARTICLES. The articles of incorporation shall set forth:

(a) The name of the corporation, which shall include the word "fraternal" or words of equivalent meaning.

(b) The location of the principal office of the fraternal, which shall be in this state.

(c) The purposes of the corporation, which shall include one or more of the purposes specified in s. 614.01 (1) (b) 2, but shall otherwise be restricted to those permitted by s. 610.21.

(d) The classes of members and the qualifications and rights of the members of each class.

(e) A description of the fraternal's representative form of government, conforming to s. 614.42.

(f) The manner in which local lodges or branches may be formed and the powers they shall have, or a statement that the formation and powers of local lodges or branches shall be provided for in the bylaws.

(g) A provision for fraternal bonds if any are to be authorized, which shall conform to s. 614.33.

(h) A provision for amendment of the articles, which shall conform to s. 614.29.

(2) POWERS NOT ENUMERATED. Section 181.31 (2) applies to fraternal.

(3) PRINCIPAL OFFICERS. Section 181.25 applies to fraternal. The articles of incorporation or the bylaws shall specifically designate 3 or more offices, the holders of which shall be the principal officers of the fraternal. Each principal office shall be held by a separate natural person.

(4) BYLAWS. The bylaws shall comply with the provisions of this chapter, and a copy of the bylaws and any amendments to them shall be filed with the commissioner promptly after adoption, and notice of amendments to the bylaws shall be given promptly to members. Subject to this chapter, s. 181.13 applies to fraternal.

NOTE: The provisions of this section are patterned after ss. 181.31 and 611.12. The parallel provision of the Uniform Fraternal Code is s. 4. This section applies only to the formation of new fraternal and does not directly affect existing ones. Certain parts are applied pursuant to s. 610.48 (1) (c) after a sufficient period of time has elapsed.

Sub. (1) (a) requires for new fraternal the use of the word "fraternal" or words of equivalent meaning. "Aid Association", "Brotherhood" and the like would qualify. It does not apply to existing fraternal. See s. 610.48 (1) (b).

Sub. (1) (d) requires, e.g., that the articles provide in detail for general or social members permitted under s. 614.10 (1).

Sub. (1) (g) gives a fraternal greater financial flexibility.

614.13 Organization permit and certificate of incorporation. (1) Section 611.13 applies to fraternal except that the word "mutual" shall be read "fraternal" and "s. 611.19" in s. 611.13 (4) shall be read "s. 614.19".

(2) The application for a permit shall include, in addition to those things required under s. 611.13 (2), a statement of the plan for fraternal activities and for the formation of a representative government under s. 614.42.

614.14 Powers under organization permit and deposit of proceeds of subscriptions. Sections 611.14 (2) and 611.15 apply to fraternal, except that the word “mutual” shall be read “fraternal” and except that there are no qualifying insurance policies as referred to in s. 611.14 (2) (a).

614.16 Termination of organization permit and payment of organization expenses. Section 611.16, other than sub. (3) (c), applies to fraternal, except that the word “mutual” shall be read “fraternal” and “s. 611.20” shall be read “s. 614.20”.

614.18 Incorporators’ liability and organization expenses. Section 611.18 (1) and (2) (b) applies to fraternal, except that the word “mutual” shall be read “fraternal”.

NOTE: Sections 614.13 to 614.18 apply only to new fraternal. See s. 610.48 (1) (b).

614.19 Initial surplus requirements. (1) **MINIMUM PERMANENT SURPLUS.** The commissioner shall specify the minimum permanent surplus for a fraternal being organized under this chapter. It shall be sufficient, in accordance with sound business practices, to provide for the needs of the proposed business, but in no case shall it be less than \$200,000 nor more than \$2,000,000. In specifying the amount, the commissioner shall take into account all the information in the business plan, the projection supplied under s. 611.13 (2) (k), as incorporated by s. 614.13, the general economic situation, the reinsurance market available to the proposed corporation and any other factors relevant to its needs for capital and surplus.

(2) **INITIAL EXPENDABLE SURPLUS.** A corporation organized under this chapter shall have an initial expendable surplus, after payment of all organizational expenses, of at least 50% of the minimum permanent surplus specified under sub. (1), or such smaller percentage as the commissioner specifies by order.

(3) **MAINTENANCE OF SOLVENCY PROVISION.** Every fraternal shall contain in its laws and in each certificate of insurance it issues, a provision, to which every certificate of insurance issued by the fraternal shall be subject, that if the financial position of the fraternal becomes impaired, the board of directors or the supreme governing body may determine on an equitable basis the proportionate share of the deficiency of each member of the fraternal. The member may then either pay his share of the deficiency, or accept the imposition of a lien on the certificate of insurance, to bear interest at the rate charged on policy loans under the certificate, compounded annually until paid, or may accept a proportionate reduction in benefits under his certificate. The fraternal may specify the manner of the election and which alternative is to be presumed if no election is made.

NOTE: Subs. (1) and (2) parallel the corresponding provision of s. 611.19. No provision is made for assessable fraternal, which are forbidden by s. 632.41 (1). Elimination of assessment operations renders obsolete the organizational mechanism of former s. 208.14. A minimum permanent surplus is needed despite the existence of a maintenance of solvency provision under sub. (3), though it need not be so large as for insurers without such a provision. But without the surplus there is too much risk that the maintenance of solvency provision would have to be applied; it should be reserved for critical situations.

Instead of the requirement of large surpluses under ss. 623.11 and 623.12; the maintenance of solvency provision which is optional for mutuals generally is made mandatory by sub. (3) for fraternal. There is nothing inherent in the fraternal concept that demands a maintenance of solvency

provision as the approach to the solidity question, but it is required by s. 208.15 (3) and has come to be regarded widely as a hallmark of the fraternal. This provision thus, in effect, continues s. 208.15 (3), much edited. The maintenance of solvency provision is used as the basic argument for exempting fraternal from guaranty fund laws applicable to other life insurers. Without the requirement the guaranty fund laws would need to be changed throughout the country. The relationship among the maintenance of solvency provision, the definition of insolvency in ss. 600.03 (24) and 645.41 (2) is important. No change in the definition of insolvency in s. 600.03 (24) is appropriate despite sub. (3). But the maintenance of solvency provision permits the fraternal to reduce its liabilities and thus to avoid technical insolvency which should lead to action under s. 645.41 (2). If sub. (3) has not been utilized and insolvency exists in fact, there is no justification for failure to proceed under ch. 645. I.e., the choice between ss. 614.19 (3) and 645.41 (2) as a means for dealing with financial difficulty is in the supreme governing body of the fraternal provided it acts in a timely fashion; if it does not, there is no ground for complaint if the commissioner takes a hand.

614.20 Certificate of authority. Section 611.20 applies to fraternal, except that references to other sections in ch. 611 shall be read to refer to the corresponding sections in ch. 614.

614.22 Accelerated organization procedure. Section 611.22 applies to fraternal, except that the word "mutual" shall be read "fraternal".

NOTE: The shorter organization procedure available under this section would be especially useful if a fraternal in process of formation had a single sponsor that was supplying the funds needed for organization.

614.24 Segregated accounts and subsidiaries. (1) GENERAL. Sections 611.24 to 611.26 apply to fraternal.

(2) SPECIAL AFFILIATES. (a) *Local lodges.* A local lodge may incorporate under ch. 181 or the corresponding law of the state where it is located, to carry out the noninsurance activities of the local lodge.

(b) *Institutions for carrying out fraternal activities.* Corporations may be formed under ch. 181 to implement s. 614.82 (2).

NOTE: This section continues part of s. 208.03 (5). So far as the insurance regulator is concerned, there is no reason to restrict variable annuities and other segregated account business or the use of subsidiaries for fraternal any more than for similar mutuals. A fraternal will wish to exercise caution in the creation of subsidiaries as freely as sub. (1) would allow, since it might thus endanger its tax exemption, but insurance regulatory considerations do not require any greater limitation for fraternal than for mutuals.

614.28 Changes in business plan. Section 611.28 applies to fraternal.

614.29 Amendment of articles of incorporation. (1) RIGHT TO AMEND ARTICLES. The articles of a fraternal may provide for amendment by the supreme governing body or by the board of directors, and may provide also for amendment by the members by referendum. If amendment is by referendum, a majority of those members who vote must vote affirmatively. Votes cast within 6 months from the date of mailing of the first ballot by the fraternal shall be counted. The timeliness of a vote is determined by the date of its mailing as proved by its postmark or other suitable evidence.

(2) FILING. For 5 years after the initial issuance of a certificate of authority, proposed amendments of the articles which are not changes in the business plan shall be filed with the commissioner at least 30 days before the amendment is submitted for

approval to the members or to the supreme governing body, or if neither is required, at least 30 days before its effective date.

(3) **FILING OF ARTICLES OF AMENDMENT.** No amendment is effective until the articles of amendment are filed with the commissioner, together with a statement of the results of the voting on the amendment.

(4) **PUBLICATION TO MEMBERS.** Within 4 months after the filing of the articles of amendment with the commissioner, they shall be furnished to all members either by mail or under s. 614.41 (1).

NOTE: This follows in part s. 611.29, and in part s. 11 of the Uniform Fraternal Code.

SUBCHAPTER III SECURITIES OF FRATERNALS

614.31 Securities regulation. Section 611.31 applies to fraternal bonds but does not apply to contribution notes, as they are defined in s. 611.33 as incorporated by s. 614.33.

614.33 Authorized securities. Section 611.33 (2) applies to fraternal bonds, except that the words "mutual" and "nonassessable mutual" shall be read "fraternal".

NOTE: Fraternal bonds are hardly likely to be important securities in the market but should be permitted for flexibility of financing to meet all needs.

SUBCHAPTER IV MANAGEMENT OF FRATERNALS

614.41 Communications to members. (1) **OFFICIAL PUBLICATIONS.** A fraternal may provide in its laws for an official publication in which any notice, report, or statement required by law to be given to members, including notice of election, may be published. It shall be printed conspicuously in the publication.

(2) **COPIES TO COMMISSIONER.** The commissioner may by rule prescribe that copies of specified classes of communications published generally to members, including the official publication, shall be communicated to him at the same time they are sent to the members.

(3) **DUPLICATE PUBLICATIONS.** If the records of a fraternal show that 2 or more members have the same mailing address, an official publication mailed to one member is deemed to be mailed to all members at the same address unless a member requests a separate copy.

NOTE: This is similar to s. 611.41.

614.42 Representative form of government. (1) **SUPREME GOVERNING BODY.** The fraternal shall have a supreme governing body consisting either of:

(a) *Board of directors.* A board with some directors elected directly by the members or by their representatives in intermediate assemblies under sub. (2), and other directors prescribed in the fraternal's laws. The elected directors shall constitute a majority in number and not less than the number of votes required to amend those articles or bylaws of the fraternal that can be amended without consent of the members. The board shall meet at least quarterly to conduct the business of the fraternal. The elected directors shall be elected on a plan that ensures equal weight to each fraternal member's vote. Voting may be by mail.

(b) *Assembly.* Delegates elected directly by the members or at intermediate assemblies or conventions of members or their representatives, together with other delegates prescribed in the fraternal's laws. The elected delegates shall constitute a

majority in number and shall not have less than two-thirds of the votes and not less than the number of votes required to amend the articles or bylaws that can be amended without consent of the members. The assembly, whatever designated, shall meet at least once every 4 years and shall elect a board of directors to conduct the business of the fraternal between meetings of the assembly. The delegates making up the supreme governing body shall be elected on a plan that ensures equal weight to each fraternal member's vote.

(2) **INTERMEDIATE ASSEMBLIES.** The laws of a fraternal may provide that delegates to intermediate assemblies may represent geographical districts or lodges or represent the members in defined classes determined on a reasonable basis and that the vote of a representative to an intermediate assembly shall be treated as the vote of the members he represents.

(3) **VOTING PROCEDURE.** No votes may be cast by proxy.

NOTE: This section combines ss. 208.01 (3) and (4) and 611.42 (4), but with major changes. The meaning of "representative form of government" is not clear from s. 208.01 (3). The definition would suggest that the "supreme governing body" is something different from the board of directors of an ordinary corporation, especially that of a mutual. This is confirmed by s. 3 (e) of the Uniform Fraternal Code which provides for a board of directors in addition to and subject to control by the supreme governing body. But some fraternal, including the largest one of all, only have a board of directors elected directly by the members. Without a separate supreme governing body to control the directors, any such fraternal could not be regarded as a fraternal as defined in the Uniform Code. Such a consequence is absurd.

This section explicitly adds the equal vote principle to the notion of representativeness; implicitly that may already be a requirement. Provision is made for a working board of directors to act between meetings of any supreme governing body that is not a board of directors; it is not desirable for a fraternal to conduct its affairs merely through a quadrennial assembly without a more frequent check on the activities of the officers. These requirements may necessitate some changes in the laws of some fraternal; s. 610.48 provides time for the changes to be made.

For the election of directors, see s. 614.51.

Sub. (3) continues part of s. 208.02; the remainder is incorporated in sub. (1).

614.43 Annual report to members. (1) **REPORT TO BE MAILED.** Section 611.43 applies to fraternal, except that "mutual" shall be read "fraternal" and "policyholder" shall be read "member".

(2) **REPORT TO BE PUBLISHED.** The report of sub. (1) shall be mailed to each member having insurance or published in the official publication under s. 614.41 (1).

614.51 Board of directors. (1) **GENERAL.** Section 181.18 applies to fraternal, except that the supreme governing body may act as the board of directors if it meets at least quarterly. Section 611.51 (2) to (9) applies to fraternal, except that the word "mutual" shall be read "fraternal" and the references to other sections of ch. 611 shall be to the corresponding sections of this chapter.

(2) **TERMS OF DIRECTORS AND OFFICERS.** The terms of directors and officers may not exceed 4 years.

NOTE: In general, fraternal boards should be similar to mutual boards, but with the possibility that a fraternal operating on a "grass-roots" basis

may do without a board separate from its supreme governing body. Sub. (2) continues the substance of s. 208.01 (4).

614.53 Removal of directors and officers and filling of vacancies. A director may be removed from office for cause by an affirmative vote of a majority of the full board at a meeting of the board called for that purpose. Subject to the previous sentence, ss. 181.21 and 181.26 apply to fraternal.

614.54 Supervision of management changes. Section 611.54 applies to fraternal.

614.55 Continuity of management in emergencies. Section 611.55 applies to fraternal.

614.56 Committees of directors. Section 611.56 applies to fraternal, except that reference therein to other sections of ch. 611 shall be to the corresponding sections of this chapter.

614.57 Interlocking directorates and other relationships. Section 611.57 applies to fraternal.

614.60 Transactions in which directors and others are interested. Section 611.60 applies to fraternal.

614.62 Directors' liability and indemnification. Section 611.62 applies to fraternal, except that the word "mutual" shall be read "fraternal".

614.63 Executive compensation. Section 611.63 applies to fraternal, except that the word "mutual" shall be read "fraternal".

614.66 Exclusive agency contracts and management contracts. Sections 611.66 and 611.67 apply to fraternal, except that the reference in s. 611.66 to s. 611.26 (1) is to that section as incorporated by s. 614.24.

SUBCHAPTER V

CORPORATE REORGANIZATION

614.73 Merger and consolidation of fraternal. (1) AUTHORIZATION, DOMESTIC FRATERNALS. Any 2 or more domestic fraternal may merge or consolidate under the provisions of subs. (3) and (4).

(2) AUTHORIZATION, DOMESTIC AND NONDOMESTIC FRATERNALS. Any 2 or more domestic and nondomestic fraternal may merge or consolidate under the provisions of sub. (5).

(3) PROCEDURE FOR DOMESTIC FRATERNALS. The supreme governing body of each domestic fraternal proposing to merge or consolidate shall:

(a) At least 60 days prior to the proposed action submit the text of the proposed contract to its members in the manner provided by s. 614.29 (4);

(b) Approve the proposed consolidation or merger by a two-thirds vote; and

(c) File with the commissioner a certified copy of the written contract containing in full the terms and conditions of the consolidation or merger, a sworn statement by the president and secretary or corresponding officers of each fraternal showing the financial condition of each on a date to be fixed by the commissioner but no earlier than the December 31 of the year preceding the proposed contract, and evidence of compliance with pars. (a) and (b).

(4) ISSUANCE OF CERTIFICATE BY COMMISSIONER. The commissioner shall issue a certificate approving the merger or consolidation, if he finds that:

(a) The contract conforms to the provisions of this chapter;

(b) The parties to the proposed contract have complied with the provisions of sub. (3); and

(c) The proposed contract is just and equitable to the members of the fraternal.

(5) **PROCEDURE FOR NONDOMESTIC FRATERNALS.** Where a nondomestic fraternal is a party to the proposed contract, the parties shall follow the procedure for domestic fraternal under subs. (3) and (4), but the commissioner may not issue a certificate of compliance until the parties file a certificate that the proposed contract has been approved in the manner provided by the laws of the jurisdiction under which the fraternal is incorporated, or, if such laws contain no procedure for approval, that the proposed contract has been approved by the commissioner of insurance for that jurisdiction.

(6) **EFFECTIVE DATE.** The merger or consolidation is effective when the commissioner issues his certificate of approval.

(7) **EFFECT OF CONSOLIDATION OR MERGER.** When the merger or consolidation is effective, the surviving or new fraternal shall have all the assets and be liable for all of the obligations of each of the participating fraternal.

NOTE: This section continues s. 208.40 with some simplification and modernization of language. The provisions for commissioner approval under this section are somewhat wider than under s. 611.72 to reflect the greater necessity of protecting member interests in the merger or consolidation than of protecting shareholder interests. This results from the fact that, realistically speaking, members may not be participants in the corporate processes in meaningful numbers and thus may not be in a position to protect themselves.

614.74 Voluntary dissolution of solvent domestic fraternal. (1) **PLAN OF DISSOLUTION.** At least 60 days prior to the submission to the supreme governing body or the members of any proposed voluntary dissolution, the proposal shall be filed with the commissioner. The commissioner may require the submission of additional information necessary to establish the financial condition of the fraternal or other facts relevant to the proposed dissolution. If the supreme governing body or the members adopt the resolution to dissolve by a majority of those voting or such larger number as the laws of the fraternal require, the commissioner shall, within 30 days after the adoption of the resolution, examine the fraternal. He shall approve the dissolution unless he finds, after a hearing, that it is insolvent or may become insolvent in the process of dissolution. Upon approval, the fraternal may dissolve under ss. 181.51 to 181.555, except that the last sentence of s. 181.555 does not apply. Upon disapproval, the commissioner shall petition the court for liquidation under s. 645.41 (10).

(2) **CONVERSION TO INVOLUNTARY LIQUIDATION.** The fraternal may at any time during the liquidation under ss. 181.51 to 181.555 apply to the commissioner to have the liquidation continued under his supervision; thereupon the commissioner shall apply to the court for liquidation under s. 645.41 (10).

(3) **REVOCATION OF VOLUNTARY DISSOLUTION.** If the fraternal revokes the voluntary dissolution proceedings under s. 181.53, a copy of the revocation of voluntary dissolution proceedings shall be filed with the commissioner.

614.76 Voluntary conversion of fraternal to mutuals. A domestic fraternal may be converted into a mutual, as follows:

(1) **ACTION BY BOARD OR SUPREME GOVERNING BODY.** The board or the supreme governing body shall adopt a plan of conversion stating:

- (a) The reasons for and the purposes of the proposed action;
- (b) The proposed terms, conditions and procedures and the estimated expenses of implementing the conversion;
- (c) The proposed name of the corporation; and
- (d) The proposed articles and bylaws.

(2) **DISAGREEMENT.** If the board and the supreme governing body disagree on the conversion plan, the decision of the latter shall govern.

(3) **APPROVAL BY COMMISSIONER.** The plan shall be filed with the commissioner for his approval, together with so much of the information under s. 611.13 (2) as the commissioner reasonably requires. The commissioner shall approve the plan unless he finds, after a hearing, that it would be contrary to the law, that the new mutual would not satisfy the requirements for a certificate of authority under s. 611.20 or that the plan would be contrary to the interests of members or the public.

(4) **APPROVAL BY MEMBERS.** After being approved by the commissioner, the plan shall be submitted for approval to the persons who were voting members on the date of the commissioner's approval under sub. (3). At least a majority of the votes cast must be in favor of the plan, or a larger number if required by the laws of the fraternal.

(5) **OFFICERS AND DIRECTORS.** The officers and directors of the fraternal shall be the initial officers and directors of the mutual.

(6) **REPORT TO COMMISSIONER.** A copy of the resolution adopted under sub. (4) shall be filed with the commissioner, stating the number of members entitled to vote, the number voting, the method of voting and the number of votes cast in favor of the plan, stating separately the mail votes and the votes cast in person.

(7) **CERTIFICATE OF AUTHORITY.** If the requirements of the law are met, the commissioner shall issue a certificate of authority to the new mutual. Thereupon the fraternal shall cease its legal existence and the corporate existence of the new mutual shall begin, but it shall be deemed to have been incorporated as of the date the converted fraternal was incorporated. The new mutual shall have all the assets and be liable for all of the obligations of the converted fraternal. The commissioner may grant a period not exceeding one year for adjustment to the requirements of ch. 611, specifying the extent to which particular provisions of ch. 611 shall not apply.

(8) **EXPENSES.** The corporation may not pay compensation of any kind to existing personnel, in connection with the proposed conversion, other than regular salaries. With the commissioner's approval, payment may be made at reasonable rates for printing costs and for legal and other professional fees for services actually rendered. All expenses of the conversion, including the expenses incurred by the commissioner and the prorated salaries of any insurance office staff members involved, shall be borne by the corporation being converted.

NOTE: This provision closely parallels s. 612.23, for the conversion of town mutuals. The problems and the procedures are the same. Where representative assemblies exist, their approval would replace the members' direct approval under sub. (4). See s. 614.42 (2) (c).

614.77 Rehabilitation or involuntary conversion. If the commissioner believes that a fraternal does not satisfy the requirements of this chapter, he shall call a hearing and if he finds that the fraternal does not satisfy the requirements, he shall petition for rehabilitation under s. 645.31, for the purpose of rehabilitating the fraternal or, if that is not possible, of converting the fraternal to a mutual.

NOTE: An insurer should not be entitled to organize as a fraternal and thereafter operate as if it were an ordinary mutual. If that should happen, rehabilitation is the proper path by which the commissioner may either bring the fraternal into compliance with the law, or change its legal nature.

SUBCHAPTER VI

MISCELLANEOUS PROVISIONS

614.80 Tax exemption. Every domestic and nondomestic fraternal is exempt from all state, county, district, municipal and school taxes or fees, except the fees required

by s. 601.31 (25), but is required to pay all taxes and special assessments on its real estate and office equipment, except as provided in s. 70.11 (4) and (8).

NOTE: This provision follows exactly the law in s. 208.35. The question under what conditions fraternal should be tax exempt is not for this revision process. The working assumption of the insurance revision project has been that the tax law should be retained intact, except to the extent that the tax exemption depends on a fraternal actually being a fraternal in fact, and that the requirements for being a fraternal have been somewhat tightened by this chapter. See e.g., s. 614.82. See also comment on s. 76.34 (intro.).

614.82 Fraternal expenditures and activities. (1) REPORTS. Every fraternal shall report to the commissioner such information as he may require concerning expenditures made by the fraternal and other activities and programs of the fraternal or its members in fulfillment of the purposes of s. 614.01 (1) (b) 2 or in maintaining its fraternal character.

(2) INSTITUTIONS FOR CARRYING OUT FRATERNAL ACTIVITIES. A fraternal may create, maintain and operate social, intellectual, educational, charitable, benevolent, moral, fraternal, patriotic or religious institutions for the benefit of its members or their families or dependents or for children insured by the fraternal. For that purpose, it may own, hold or lease real or personal property within or outside of this state. No funeral or undertaking establishment may be owned or operated by the fraternal. All such property shall be reported in the annual statement or an appendix thereto but shall be given only nominal value in the statement. No profit may be made on such institutions, but the income and expenditures shall be reported separately in or as an appendix to the annual statement. Any such institution may be separately incorporated under ch. 181 and ownership of its stock shall be reported at nominal value.

NOTE: Sub. (1) requires reporting of the kind of expenditures that justify regarding it as a fraternal. To support continuance of the tax-exempt and any other preferred positions of fraternal, detailed information about such activities and expenditures should be generated by the regulatory process. This can more easily be done by the commissioner than by tax authorities or others, since reporting to the insurance commissioner is normal and regular. If the reports to the commissioner were to show negligible programs in certain fraternal, the legislature could then consider appropriate corrective legislation.

It is especially important to learn of expenditures from premium revenues, but that is a matter the commissioner can decide in developing reporting forms. It is important to distinguish corporate gifts and programs, and individual activities, from gifts made by individuals through the organization, for which the individual took a personal tax deduction. Almost every profit-seeking enterprise urges its employees to give generously to Community Chest and other drives, and in addition profit-seeking enterprises also contribute, sometimes generously, to charitable and benevolent activities. The tax exemption of the fraternal arguably should rest on a strikingly greater or different pattern of activities.

It is appropriate, of course, for the fraternal to report also any other types of expenditures it believes illuminates its activities as a fraternal society rather than as an insurer.

Sub. (2) authorizes establishment and operation of the kinds of institutions that may assist in supporting tax-exempt status.

614.94 Fraternal as fundholder. (1) TRUSTEE OF PROCEEDS. Section 632.42 applies to fraternal.

(2) RELATIONSHIP TO GENERAL ASSETS. All assets shall be held, invested and disbursed for the use and benefit of the fraternal and no member or beneficiary shall have or acquire individual rights therein or become entitled to any apportionment or the surrender of any part thereof, except as provided in the contract. A fraternal may create, maintain, invest, disburse and apply any special fund or funds necessary to carry out any purpose permitted by the laws of the fraternal.

NOTE: Sub. (1) continues part of former ss. 208.03 (5) and 208.27.

Sub. (2) continues s. 208.13, which probably stated general law. To avoid possible negative implications from merely repealing it and to keep the law certain, it is continued in the statutes.

614.96 Exemption of fraternal benefits. No money or other benefit, charity, relief or aid to be paid, provided or rendered by any domestic or nondomestic fraternal is liable to attachment, garnishment or other process, or to be seized, taken, appropriated or applied by any legal or equitable process or operation of law to pay any debt or liability of a member or beneficiary, or any other person who may have a right thereunder, either before or after payment by the fraternal.

NOTE: This section continues s. 208.17 intact except for minor editorial changes.

SECTION 27. 618.14 of the statutes is created to read:

618.14 Admission of nondomestic fraternal. (1) APPLICATION. A nondomestic fraternal may apply for authorization to transact business in this state, by filing with the commissioner:

- (a) A certified copy of its articles and bylaws;
- (b) A power of attorney to the commissioner to receive service of process and other papers;
- (c) A certificate from the proper official in its home jurisdiction that the fraternal is authorized to transact business therein;
- (d) Each of its forms of contracts;
- (e) A statement of its business in the form required by the commissioner, showing that the business of the fraternal substantially complies with all the provisions of law relating to like domestic fraternal; and
- (f) Such other information as the commissioner may deem necessary.

(2) EXAMINATION. The commissioner shall examine the applicant fraternal.

(3) CERTIFICATE OF AUTHORITY. The commissioner shall grant a certificate of authority to do business in this state if the fraternal's condition and practices protect the interests of potential insureds, creditors and the public.

NOTE: This section is an edited version of s. 208.25; it achieves the same objectives.

SECTION 28. 618.21 (5) of the statutes is created to read:

618.21 (5) FRATERNALS. This section does not apply to fraternal.

NOTE: A special section applies to fraternal. See s. 618.26. In contrast, s. 618.22 does apply to fraternal.

SECTION 29. 618.26 of the statutes is created to read:

618.26 Requirements for nondomestic fraternal. (1) STRICT COMPLIANCE. No nondomestic fraternal may be authorized to do business in this state unless it complies strictly with the following requirements:

(a) *Financial requirements.* The financial requirements of ss. 614.19 and 623.11;

(b) *Other requirements.* The requirements of ss. 180.809, 180.811, 611.54 (1) (a) as incorporated by s. 614.54, the reporting requirement of s. 611.54 (2) as incorporated by s. 614.54 whenever removal is made involuntarily under the laws of the domicile, s. 611.57 as incorporated by s. 614.57, and ss. 614.10, 614.12 (1) (c), 614.41 (2) and 614.82 (1).

(c) *Requirements applicable to new fraternal.* For 5 years after the initial issuance of a certificate of authority in its domiciliary jurisdiction, the requirements of s. 614.29 (2); and if the fraternal has transacted an insurance business for less than 5 years or has not paid in full all organizational and promotional expenses, it must still have initial expendable surplus considered by the commissioner to be adequate, subject to the limits of s. 614.19.

(2) **SUBSTANTIAL COMPLIANCE.** (a) *General.* No nondomestic fraternal may be authorized to do business in this state unless it everywhere complies substantially with ss. 611.24 to 611.26 as incorporated by s. 614.24, except that the approval requirement of s. 611.25 (2) does not apply.

(b) *Corporate reorganization or transformation.* When any corporate reorganization, transformation or liquidation of a nondomestic fraternal, or any levy to cover a deficiency under a law comparable to s. 614.19 (3), is proposed by it or approved by the domiciliary commissioner or by another official act, notice shall be given to the commissioner promptly.

(3) **ORDERS IMPOSING AND ELIMINATING RESTRICTIONS.** The commissioner may issue orders under s. 614.03 that are applicable to nondomestic fraternal.

(4) **OTHER REQUIREMENTS.** After a hearing, the commissioner may by order apply any provision of ch. 614 to a nondomestic fraternal if he finds that it is necessary for the protection of the interests of its members, creditors or the public in this state.

NOTE: This section closely parallels s. 618.21.

SECTION 30. 623.15 of the statutes is created to read:

623.15 Fraternal rates and reserves. (1) **NONRESERVE FRATERNALS.** A fraternal may be organized for the transaction of business on a plan set forth in the contract which provides for sufficient contributions by each member in each year to pay his share of the actual death claims of the year through advance payments graded according to any mortality table approved by the commissioner, without any reserve, or with such reserve as may accumulate from overpayments of individual members, in which case each member shall each year be informed of his credit and of the cost of his insurance.

(2) **RATES.** Every fraternal shall collect regular premiums for each coverage it provides at adequate rates that are approved by the commissioner or conform to standards set in rules promulgated by him.

(3) **RESERVES.** The reserves of a fraternal are subject to the same requirements as those of ch. 611 insurers writing the same coverages except that the commissioner may authorize the use of suitable fraternal mortality tables or other appropriate tables instead of the tables used by ch. 611 insurers.

NOTE: Sub. (1) continues s. 208.18 with a change from a specified mortality table to one approved by the commissioner. A nonreserve society can be perfectly sound actuarially and should be permitted if it is. The natural premium basis contemplated by this section is sound but not very attractive in the market.

Sub. (2) continues in simplified form the provisions of s. 208.15 (1) and (2).

Sub. (3) much simplifies ss. 208.09 (2) (b) and (c) and 208.15 (4) and (5).

SECTION 31. 625.03 (3) of the statutes is repealed.

NOTE: Fraternal should be subjected to rate regulation to the same extent as and no farther than other insurers.

SECTION 32. 628.06 of the statutes is created to read:

628.06 Licensing of fraternal agents. (1) **GENERAL PROVISION.** Subject to sub. (2), an agent of a fraternal is subject to the same licensing requirements as an agent for any other insurer doing the same lines of business, unless the agent was an agent for a fraternal immediately prior to October 2, 1963, and is still such an agent on the effective date of this act (1975). His authority under this exception ceases if at any time he ceases, for however short a period, to be an agent for a fraternal.

(2) **PART-TIME FRATERNAL AGENTS.** An agent for one or more fraternal who devotes or intends to devote less than half-time to the solicitation of insurance business is not subject to the requirements of sub. (1). A person is presumed to have devoted half-time to the solicitation of insurance business if in the preceding calendar year he procured life insurance contracts in a face amount in excess of \$50,000, or, in the case of other kinds of insurance, on the persons of more than 25 individuals, and if he received compensation therefor.

NOTE: These subsections continue the general thrust of s. 208.21. The grandfather clause is considerably restricted. The part-time exception in sub. (2) reflects the informal and nonprofessional nature of some of the marketing methods of the smaller fraternal; some question may be raised about the merits of the exception, but it reflects strongly held views. It clearly permits nonprofessional solicitation of new members by existing members, when no compensation is involved.

SECTION 33. 631.07 of the statutes is created to read:

631.07 Insurable interest and consent. (1) **INSURABLE INTEREST.** No insurer may knowingly issue a policy to a person without an insurable interest in the subject of the insurance.

(2) **CONSENT IN LIFE AND DISABILITY INSURANCE.** Except under sub. (3), no insurer may knowingly issue an individual life or disability insurance policy to a person other than the one whose life or health is at risk unless the latter has given written consent to the issuance of the policy. Consent may be expressed by knowingly signing the application for the insurance with knowledge of the nature of the document, or in any other reasonable way.

(3) **CASES WHERE CONSENT IS UNNECESSARY OR MAY BE GIVEN BY ANOTHER.** (a) *Consent unnecessary.* A life or disability insurance policy may be taken out without consent in the following cases:

1. A person may obtain insurance on his dependent who does not have legal capacity;
2. A creditor may at the expense of the debtor obtain life or disability insurance on the debtor in an amount reasonably related to the amount of the debt;
3. A person may obtain a life or disability insurance policy on members of his family living with or dependent on him;
4. A person may obtain a disability insurance policy on others that would merely indemnify against expenses the policyholder would be legally or morally obligated to pay; and

5. The commissioner may promulgate rules permitting issuance of insurance for a limited term on the life or health of a person serving outside the continental United States in the public service of the United States, if the policyholder is closely related by blood or by marriage to the person whose life or health is insured.

(b) *Consent given by another.* Consent may be given by another in the following cases:

1. A parent, a guardian of the person, or a person having legal custody as defined in s. 48.02 (10) may consent to the issuance of a policy on a dependent child.

2. A grandparent may consent to the issuance of life or disability insurance on a grandchild.

3. A court of general jurisdiction may give consent on ex parte application on the showing of any facts the court considers sufficient to justify such insurance.

(4) **EFFECT OF LACK OF INSURABLE INTEREST OR CONSENT.** No insurance policy is invalid merely because the policyholder lacks insurable interest or because consent has not been given, but a court with appropriate jurisdiction may order the proceeds to be paid to someone other than the person to whom the policy is designated to be payable, who is equitably entitled thereto, or may create a constructive trust in the proceeds or a part thereof, subject to terms and conditions of the policy other than those relating to insurable interest or consent.

NOTE: Insurable interest makes sense as an underwriting restriction but not as a prerequisite to the validity of an insurance policy. If viewed as a disincentive to deliberate loss-causing, it is largely ineffective; most known cases of homicide or of arson for insurance proceeds were committed by persons with a clear insurable interest. If viewed as a disincentive to gambling, it need only be pointed out that the house's cut is smaller in Las Vegas or at the local racetrack. The best way to discourage insurers from issuing insurance policies to persons without insurable interest is to make them pay if they do, not to permit them freely to issue such policies knowing that they have a good public policy defense that lets them off the hook whenever a loss occurs. The court should have power to order the proceeds paid as justice dictates.

Consent of the person at risk is the preferable device for protecting him in personal insurance. Some exceptions are necessary. It should be noted that lack of consent, too, does not invalidate the policy but makes it possible for a court to decide that the proceeds should go to someone other than as provided by the contract.

This section is primarily concerned with problems heretofore governed by case law; it incidentally also replaces s. 204.31 (3) (e).

SECTION 34. Subchapters V to VII of chapter 632 of the statutes are created to read:

CHAPTER 632

SUBCHAPTER V

LIFE INSURANCE AND ANNUITIES

632.41 Prohibited provisions in life insurance. (1) **ASSESSABLE POLICIES.** No insurer may issue assessable life insurance policies under which assessments or calls may be made upon policyholders or others.

(2) **BURIAL INSURANCE.** No contract in which the insurer agrees to pay for any of the incidents of burial may provide that the benefits are payable to an undertaker or any other person doing business related to burials.

(3) DEATH PRESUMED FROM ABSENCE. Section 813.22 (1) applies to all life insurance policies.

NOTE: Sub. (1) continues the substance of s. 206.25.

Sub. (2) continues the essential part of s. 206.49 in substance. It is not the provision of burial services that is objectionable, but the tie-in arrangement between an insurer and an undertaker.

Sub. (3) provides a needed cross reference.

632.42 Trustee and deposit agreements in life insurance. (1) TRUSTEE AND OTHER AGREEMENTS. An insurer may hold as a part of its general assets the proceeds of any policy subject to this subchapter under a trust or other agreement upon such terms and restrictions as to revocation by the policyholder and control by the beneficiary and with such exemptions from the claims of creditors of the beneficiary as the insurer and the policyholder agree to in writing. An insurer may also receive funds in such amounts and upon such conditions, including the right of the policyholder to withdraw unused portions thereof, as the insurer and the policyholder agree to in writing:

(a) *Advance premiums.* As premiums in advance upon policies or annuities subject to this subchapter; or

(b) *New policies.* To accumulate for the purchase of future policies or annuities subject to this subchapter.

(2) ACCUMULATION OF FUNDS. Any insurer may, in connection with life insurance or annuity contracts, accept funds remitted to it under an agreement for an accumulation of the funds for the purpose of providing annuities or other benefits, under such reasonable rules as are prescribed by the commissioner.

NOTE: Sub. (1) continues s. 206.39 (1), substantially edited. Sub.

(2) continues s. 206.39 (2).

632.46 Incontestability and misstated age. (1) INCONTESTABILITY OF INDIVIDUAL POLICIES. Except under sub. (3) or (4) or for nonpayment of premiums, no individual life insurance policy may be contested after it has been in force from the date of issue for 2 years during the lifetime of the person whose life is at risk.

(2) INCONTESTABILITY OF GROUP POLICIES. Except under sub. (3) or (4) or for nonpayment of premiums, no group life insurance policy may be contested after it has been in force for 2 years from its date of issue and no coverage of any insured thereunder may be contested on the basis of a statement made by him relative to his insurability after the coverage has been in force on the insured for 2 years during the lifetime of the insured. No such statement may be used to contest coverage unless contained in a written instrument signed by the insured person.

(3) MISSTATED AGE. (a) Subject to par. (b), if the age of the person whose life is at risk is misstated in an application for a policy of life insurance and the error is not adjusted during his lifetime the amount payable under the policy is what the premium paid would have purchased if the age had been stated correctly.

(b) If the person whose life is at risk was, at the time the insurance was applied for, beyond the maximum age limit designated by the insurer, the insurer shall refund at least the amount of the premiums collected under the policy.

(4) DISABILITY COVERAGES AND ADDITIONAL ACCIDENT BENEFITS. Despite subs. (1) and (2), disability coverages and additional accident benefits may be contested at any time on the ground of fraudulent misrepresentation.

NOTE: Sub. (1) is new; it provides for incontestability of individual life insurance.

Sub. (2) continues s. 206.61 (2). In both subs. (1) and (2) the 2-year period is tolled by death.

Sub. (3) continues s. 206.54, in substance. There is an argument for addition of interest to the insurer's refund, under par. (b), in any case when the misstatement was an honest mistake. Much more often, one would suppose, the misstatement was a plain lie, and not having to pay interest is compensation (probably only partial, not complete) to the insurer to cover its expenses in connection with the abortive transaction. Separation of innocent misstatements from lies would cost more than it would be worth.

632.47 Assignment of life insurance rights. (1) **GENERAL.** Except as provided in sub. (3), the owner of any rights under a life insurance policy or annuity contract may assign any of those rights, including any right to designate a beneficiary and the rights secured under any other statute. An assignment valid under general contract law vests the assigned rights in the assignee subject, so far as reasonably necessary for the protection of the insurer, to any provisions in the insurance policy or annuity contract inserted to protect the insurer against double payment or obligation.

(2) **RELATIVE RIGHTS OF ASSIGNEE AND BENEFICIARY.** The rights of a beneficiary under a life insurance policy or annuity contract are subordinate to those of an assignee, unless the beneficiary was effectively designated as an irrevocable beneficiary prior to the assignment.

(3) **GROUP ANNUITIES.** Assignment may be expressly prohibited by a group contract providing annuities as retirement benefits.

NOTE: The section continues the basic thrust of s. 201.065, but with substantial modifications in language and some in content. No sound principle of insurance practice requires any limitations on the assignability of rights under a life insurance contract except such as are reasonably necessary to protect the insurer against the risk of double payment. Thus provisions in the policy that require some formal act by the owner to effectuate the assignment are permitted to have effect only to protect the insurer and then only if they are reasonable; they are ineffective to alter the general contract law of assignment as between assignor and assignee.

One exception exists. Group annuities designed to provide retirement benefits have a social purpose that makes it appropriate to restrict assignment as well as premature claiming of cash values. That is provided in sub. (3).

One other change made from s. 201.065 results from its peculiar phraseology. It appears to be written to preclude any future legislature from changing the enacted rule. That can surely not have been intended; if it was, it is ineffective and should not be expressed.

The breadth of this section is sufficient to make it clear that Wisconsin residents may avail themselves of the provisions of IRS Ruling 68-334 which states that irrevocable assignment of rights under a group life insurance policy may be made for the purpose of excluding the proceeds from the gross estate of the deceased for federal or state tax purposes. Such a specific provision may not be necessary in view of the case law of this state, but is inserted to eliminate any doubt.

632.48 Designation of beneficiary. (1) **POWERS OF POLICYHOLDERS.** Subject to s. 632.47 (2), no life insurance policy or annuity contract may restrict the right of a policyholder or certificate holder:

(a) *Irrevocable designation of beneficiary.* To make at any time an irrevocable designation of beneficiary effective at once or at some subsequent time; or

(b) *Change of beneficiary.* If the designation of beneficiary is not explicitly irrevocable, to change the beneficiary without the consent of the previously designated beneficiary. Subject to s. 853.17, as between the beneficiaries, any act that unequivocally indicates an intention to make the change is sufficient to effect it.

(2) PROTECTION OF INSURER. An insurer may prescribe formalities to be complied with for the change of beneficiaries, which may be only for its own protection. The insurer discharges its obligation under the insurance policy or certificate of insurance if it pays a properly designated beneficiary unless it has actual notice of either an assignment or a change in beneficiary designation made pursuant to sub. (1) (b). It has actual notice if the prescribed formalities are complied with.

NOTE: This provision states the preferable common law positions on a variety of problems, although it is not followed in all details in every jurisdiction. It is not intended to declare Wisconsin common law but to state a new point of departure for case law.

The insurer is protected from the risk of double payment if it pays the properly designated beneficiary before it has notice of a change under sub. (1) (b).

632.55 Limitations on group life insurance. (1) NATURE OF GROUP. No group life insurance policy may be issued on any group unless the group is formed in good faith for purposes other than to obtain insurance.

(2) SIZE OF POLICIES. No policy of group term life insurance may be issued on any group which, together with any other term life insurance policy on the same group, provides insurance on any one insured life in excess of \$100,000. This limitation of amount does not apply to any such group policy existing on July 15, 1949, or to any amount thereafter written under the policy or any amendments or substitution thereof.

NOTE: This section continues those limitations on the issuance of group life insurance that are widely felt to be necessary.

632.62 Participating and nonparticipating policies. (1) AUTHORIZATION. (a) *Stock insurers.* A stock insurer may issue both participating and nonparticipating life insurance policies, subject to this section.

(b) *Fraternal and mutual insurers.* A fraternal or mutual insurer issuing life insurance policies may issue only participating policies, except for the following situations in which it may issue nonparticipating policies:

1. Paid-up, temporary, pure endowment insurance and annuity settlements provided in exchange for lapsed, surrendered or matured policies;
2. Annuities beginning within one year of the making of the contract; and
3. Such term insurance policies as the commissioner may exempt by rule.

(2) PARTICIPATION. Every participating policy shall by its terms give its holder full right to participate annually in the part of the surplus accumulations from the participating business of the insurer that are to be distributed.

(3) ACCOUNTING. Every insurer issuing both participating and nonparticipating policies shall separately account for the 2 classes of business and no part of the amounts accumulated or credited to the participating class may be voluntarily transferred to the nonparticipating class.

(3) DIVIDEND PAYMENTS. (a) *Deferred dividends.* No life insurance policy or certificate may be issued in which the accounting, apportionment and distribution of surplus is deferred for a period longer than one year.

(b) *Payment.* Every insurer doing a participating business shall annually ascertain the surplus over required reserves and other liabilities. After setting aside

such contingency reserves as may be considered necessary and be lawful, such reasonable nondistributable surplus as is needed to permit orderly growth, making provision for the payment of reasonable dividends upon capital stock and such sums as are required by prior contracts to be held on account of deferred dividend policies, the remaining surplus shall be equitably apportioned and returned as a dividend to the participating policyholders or certificate holders entitled to share therein. A dividend may be conditioned on the payment of the succeeding year's premium only on the first and second anniversaries of the policy.

NOTE: This section continues and combines ss. 206.13, 206.36 and 208.11, considerably reorganized. An exception is omitted that is stated in s. 206.13 (3) and would go in sub. (3), viz., "except such as the existing charter of the company may require". The words are believed to be inconsistent with the remainder of the section. If the funds have been accumulated from or belong to the participating policyholders, their rights could hardly be affected by the company's charter. This section does not prevent the payment of lawful dividends to shareholders.

The use of "reasonable" as a modifier of "dividends" in the second sentence of par. (b) recognizes the propriety of such limitations on profits to stockholders as are stated in Wis. Adm. Code Ins. 2.02.

SUBCHAPTER VI

DISABILITY INSURANCE

632.71 Estoppel from medical examination, assignability and change of beneficiary. Sections 632.47 and 632.48 apply to disability insurance policies.

NOTE: This continues a portion of ss. 201.065 and 204.31 (3) (a) 12a.

SUBCHAPTER VII

FRATERNAL INSURANCE

632.93 The fraternal contract. (1) **ISSUANCE OF CERTIFICATE.** A fraternal shall issue to each benefit member a policy or certificate specifying the benefits provided. The policy or certificate, any riders or endorsements attached thereto, the laws of the fraternal, and the application and declarations made in connection therewith and signed by the applicant, constitute the agreement between the fraternal and the member, and the policy or certificate shall so state. A copy of the application and the declarations shall be endorsed upon or attached to the policy or certificate and may not be used in defense against a claim under the policy or certificate unless so endorsed or attached.

(2) **REPRESENTATIONS.** All statements purporting to be made by the member shall be representations and not warranties. Any waiver of this provision is void and has no effect.

(3) **CHANGES IN LAWS OF FRATERNALS.** Any changes in the laws of a fraternal made subsequent to the issuance of a policy or certificate bind the member and beneficiary as if they had been in force at the time of the application, so long as they do not destroy or diminish benefits promised in the policy or certificate.

(4) **PROOF OF TERMS.** Copies of any documents mentioned in subs. (1) to (3), certified by the secretary or corresponding officer of the fraternal, are evidence of the terms and conditions of the contract.

NOTE: Sub. (1) continues, with much editing and some substantial changes, former s. 208.16 (1); subs. (2), (3) and (4) do the same for s. 208.16 (2), (3) and (4), respectively.

632.94 Contents of the fraternal contract. (1) DEFINITION. In this section “certificate” means the document specifying the benefits provided for by the contract or policy together with any riders or endorsements attached thereto.

(4) DISABILITY CONTRACTS. No domestic or nondomestic fraternal authorized to do business in this state may issue or deliver in this state any certificate of accident insurance or health insurance or of any total and permanent disability insurance contract unless and until the form has been filed with the commissioner and approved by him.

NOTE: These provisions carry forward, slightly edited to conform to the new terminology adopted by this code, ss. 208.161 and 208.162 dealing with required and prohibited provisions in life insurance and disability insurance contracts. “Certificate” has been defined for the purpose of this section to carry out the meaning commonly used by the fraternal and to distinguish it from the general use throughout this code as referring to individual contracts under a group insurance policy.

No substantive changes have been made. Therefore, the grace period remains at 30 days in contrast to the 31-day period for life insurance generally and the effect of misstatement is tied to both age and sex in contrast to the limitation of misstatement to age only for life insurance generally (s. 632.46 (3)).

The definition of “premium” in s. 208.161 (3) is no longer necessary because of the general definition contained in s. 600.03 (38).

632.95 Fraud in obtaining membership. Subject to s. 632.46, any certificate of membership secured by misrepresentation in or with reference to any application for membership or documentary or other proof for the purpose of obtaining membership in or noninsurance benefit from the fraternal is void, if the fraternal relied on it and it is either material or fraudulent.

NOTE: This section continues the contractual portion of s. 208.38, edited with a change in meaning, to include nonfraudulent but material misrepresentation, and also to subject the provision to the rule of incontestability provided in s. 632.46.

632.96 Beneficiaries in fraternal contracts. (1) Any member may designate as his beneficiary any person permitted by the laws of the fraternal. Those laws shall authorize the designation of the member’s estate as beneficiary.

(2) Subject to sub. (1), s. 632.48 applies.

NOTE: Sub. (1) states a rule slightly more restrictive of the range of permitted beneficiaries than for commercial life insurance; this reflects the nature of the fraternal. Sub. (2) applies the general provision for life insurance, subject to sub. (1).

SECTION 35. 645.02 (5) of the statutes, as affected by chapter _____ (Senate Bill 17), laws of 1975, is amended to read:

645.02 (5) All service insurance corporations under ch. 613 and all ~~fraternal benefit and mutual benefit societies~~ fraternals as defined in s. ~~208.01 (1)~~ 614.01.

SECTION 36. 645.41 (11) of the statutes is created to read:

645.41 (11) That an unlicensed domestic mutual benefit society has not complied with s. 610.49.

SECTION 37. 646.01 (1) of the statutes is amended to read:

646.01 (1) SCOPE. This chapter shall apply to all kinds and lines of direct insurance, except variable annuities and variable value life insurance contracts, and to

all insurers authorized to do business in this state except ~~fraternal benefit societies~~ fraternals, assessable mutual corporations including town ~~mutual insurance corporations~~ mutuals, ~~nonprofit service plans~~ service insurance corporations under ch. 613, the state insurance fund, and the Wisconsin indemnity fund.

SECTION 38. 943.395 (4) of the statutes is created to read:

943.395 (4) Makes any misrepresentation in or with reference to any application for membership or documentary or other proof for the purpose of obtaining membership in or noninsurance benefit from any fraternal subject to Title XLI, for himself or any other person.

NOTE: The criminal offense created by s. 208.38 is transferred by this section to the criminal code, where it belongs.

SECTION 39. **Term changes.** Wherever in the following paragraphs of section 632.94 (3) of the statutes, as renumbered by this act, the terms "society" or "society's" are found, substitute the terms "fraternal" or "fraternal's": (c), (d) and (i) to (L).

SECTION 40. **Cross reference changes.** In the sections listed below in column A, the cross references shown in column B are changed to the cross references shown in column C:

A	B	C
Statute Sections	Old cross references	New cross references
108.02 (4) (a)	208.01	614.01 (1)
206.01 (3)	208.01	614.01 (1)
610.47	ch. 208	ch. 614
611.07 (6)	206.39	632.42
