

1979 Senate Bill 21

Date published: May 10, 1980

CHAPTER 261, Laws of 1979

AN ACT to repeal 185.991 to 185.996; to amend 71.01 (3) (a), 601.31 (25), 610.001 (intro.), 610.47 and 613.19 (5); to repeal and recreate 645.02 (7); and to create 611.19 (7) and subchapter I of chapter 616 of the statutes, relating to authorization of school benefit insurance plans and granting rule-making authority.

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

SECTION 1. 71.01 (3) (a) of the statutes is amended to read:

71.01 (3) (a) Income of mutual ~~insurance companies~~ insurers exempt from federal income taxation pursuant to section 501 (c) (15) of the internal revenue code, town ~~mutual insurance companies~~ mutuals organized under or subject to ch. 612, foreign ~~insurance companies~~ insurers, and domestic ~~life insurance companies~~ insurers engaged exclusively in life insurance business, domestic ~~insurance companies~~ insurers insuring against financial loss by reason of nonpayment of principal, interest and other sums agreed to be paid under the terms of any note or bond or other evidence of indebtedness secured by a mortgage, deed of trust or other instrument constituting a lien or charge on real estate, railroad corporations and sleeping car companies, of car line companies from operation of car line equipment as defined in s. 76.39, and corporations organized under ch. 185 or operating under subch. I of ch. 616 which are bona fide cooperatives operated without pecuniary profit to any shareholder or member, or operated on a cooperative plan pursuant to which they determine and distribute their proceeds in substantial compliance with s. 185.45, and of all religious, scientific, educational, benevolent or other corporations or associations of individuals not organized or conducted for pecuniary profit. This paragraph does not apply to the income of mutual savings banks, mutual loan corporations, savings and loan associations or credit unions except credit unions the membership of which is limited to groups having a common bond of occupation, or association, or to groups within a well-defined neighborhood, community or rural district. Beginning with calendar year 1972 and thereafter, this paragraph does not apply to the income of ~~societies, organizations or corporations~~ insurers under ch. 613 operating by virtue of s. 148.03, 447.13, 449.15, 450.13 or 613.80. Tax on the income of such ~~societies, organizations or corporations~~ insurers shall first be payable on or before March 15, 1973, and thereafter under s. 71.10 (1).

COMMENT: Most of the alterations made here are purely editorial. The one important change, adding language, preserves tax law intact despite the changes made by other parts of this bill. It should be noted that the tax exemption under this section requires substantial compliance with s. 185.45.

SECTION 2. 185.991 to 185.996 of the statutes are repealed.

COMMENT: For a general explanation, see the INTRODUCTORY COMMENT to ch. 616, subch. I, below. This COMMENT traces the specific provisions of the above-repealed sections.

Section 185.991 (1) is continued in s. 616.06, for existing plans. New plans may be organized pursuant to s. 616.08. Subsections (2) and (5) are unnecessary. Subsection (3) has the purpose of authorizing school boards to organize such plans. But the authorization belongs in the school law, not in the insurance code, and adequate authorization exists there already in ss. 120.13 (2), 120.49 (6) and 120.75.

Subsection (4) is continued in s. 616.14 (1), somewhat liberalized.

Section 185.992 is replaced by s. 616.09, except that sub. (7) is continued in generalized form in s. 616.14 (2). The second sentence of sub. (7) is unsound and is repealed.

Subsection (8) is unnecessary.

Section 185.993 is unsound and is repealed and not replaced. It permitted a plan to operate while insolvent.

The tax exemption portion of s. 185.995 is continued in s. 616.10. The merits of the tax exemption are not reexamined, although there is discussion in the PRELIMINARY COMMENT to ch. 616, subch. I, that leads to an extension of the tax exemption in s. 616.10. The unemployment compensation exemption is unjustified and is repealed.

Section 185.996 is replaced by s. 616.09.

SECTION 3. 601.31 (25) of the statutes is 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~~ mutuals and insurers operating under subch. I of ch. 616 are exempt from all provisions of this section except subs. ~~(19) and (21). Fraternal are subject to this section except they are exempt from subs. (2), (3), (10) to (13), (15), (16) and (17) (19) and (21).~~

COMMENT: In addition to some editorial corrections, this provision has been amended to apply s. 601.31 (2) and (3) to former ch. 185 insurers, now operating under subch. I of ch. 616. It also applies s. 601.31 (2) and (3) to town mutuals. The exemption of fraternal in sub. (25) from certain fees is not justified and is deleted.

SECTION 4. 610.001 (intro.) of the statutes is amended to read:

610.001 Purposes. (intro.) The purposes of chs. 611 to ~~614~~ 616 are:

SECTION 5. 610.47 of the statutes is amended to read:

610.47 Transition provisions for miscellaneous unincorporated insurers. Except for associations organized under ss. s. 185.981 and or under s. 185.991, 1977 stats., and except as otherwise provided in this code, all unincorporated domestic insurance associations, societies or organizations shall be reorganized as corporations under ch. 611, 612, 613 or 614 before January 1, 1973, or the commissioner shall thereupon petition for and the court shall forthwith issue an order for liquidation under s. 645.42 on the ground of failure to incorporate as here required.

SECTION 6. 611.19 (7) of the statutes is created to read:

611.19 (7) **REDUCTION OF MINIMUM SURPLUS.** The commissioner may by order reduce the minimum amounts of surplus required under subs. (1) and (2) if in the commissioner's opinion the extent and nature of providers' contracts under sub. (6), financial guarantees and other support by financially sound private or public corporations, a pressing social need in a particular community for the formation of a mutual insurance corporation to provide needed insurance coverage, or other special circumstances, justify the proposed reduction in the required surplus. A person who will directly compete with the proposed insurer is aggrieved within the meaning of s. 601.62 (3) (a).

COMMENT: There may be special circumstances under which a special kind of health insurance corporation is badly needed in a community and the most suitable form is a mutual (a cooperative) under ch. 611 rather than a service insurance corporation under ch. 613. This subsection parallels s. 613.19 (5), which provides the necessary relaxation of capital requirements for comparable service organizations.

SECTION 7. 613.19 (5) of the statutes is amended to read:

613.19 (5) **REDUCTION OF MINIMUM SURPLUS.** The commissioner may by order reduce the minimum amounts of surplus required under subs. (1) and (2) ~~if the commissioner finds, after a hearing under s. 601.62, that in the commissioner's opinion~~ the extent and nature of providers' contracts under sub. (3), financial guarantees and other support by financially sound private or public corporations, a pressing social need in a particular community for the formation of a service insurance corporation, or other special circumstances, justify the proposed reduction in the required surplus. A person who will directly compete with the proposed insurer is aggrieved within the meaning of s. 601.62 (3) (a).

SECTION 8. Subchapter I of chapter 616 of the statutes is created to read:

CHAPTER 616

SUBCHAPTER I

SCHOOL BENEFIT PLANS

INTRODUCTORY COMMENT: Sections 185.991 to 185.996 authorized the creation of interscholastic benefit plans to provide benefits for injuries to or accidental death of students, especially in connection with athletic events. One organization, Wisconsin Interscholastic Athletic Association (WIAA), has formed a benefit plan under these sections.

These sections of ch. 185 are in direct conflict with s. 185.02, which provided that insurance is not a proper purpose of a cooperative under the chapter. They were added to ch. 185 by ch. 406, laws of 1951, without due regard for proper structure in the statutes. Logic and clarity urge that this ch. 185 insurer and others like it that may develop later should be transferred to a special chapter within the insurance code, with regulation under the code modified as appropriate to govern these specialized insurers.

There is a cogent argument that such an insurer should no longer be permitted as a separate form, and that ch. 611 is flexible enough for the purpose. If in special situations the capital requirements of s. 611.19 are too stringent or certain organizational requirements are more cumbersome than such a limited purpose organization requires, s. 611.19 (7) (see SECTION 6 of this bill) provides it for mutuals (cooperatives). That is better than creating new insurance organizations almost entirely outside the protection of the insurance laws.

For reasons that appear more fully below, this bill not only permits continuation of WIAA, it authorizes the formation of new insurers on similar terms, and in addition extends the principal benefits of the ch. 185 provisions — tax exemption of a rather sweeping character — to mutual insurers that can comply with the defining characteristics. See s. 616.03.

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

COMMENT: This section proceeds on the assumption that favorable tax treatment is justified under s. 616.10 if a mutual insurer 1) uses "school benefit" or a term of equivalent meaning in its name, and 2) limits its activities to those favored under this subchapter. If a ch. 611 mutual can qualify, there is no reason it should not have the advantage of the favorable cooperative tax treatment. The WIAA is not subject to the special name requirement. It qualifies for the tax exemption without it.

Nor is there any reason a multiline mutual should not spin off the favored activities into a specialized affiliate, and get the favored tax treatment for them in that way. Such an affiliate could be created under this subchapter and would not need to be designated under this section.

616.06 Continuation of existing school benefit plans. A plan directed by schools or school authorities in this state, which was organized under s. 185.991, 1977 stats., prior to the effective date of this act (1979) and is operating on a nonprofit basis without capital stock, may continue to operate under this subchapter, if its purpose is exclusively to provide benefits for accidental injury to or accidental death of pupils attending the school.

COMMENT: This section authorizes continuation of existing plans with the specified purpose. They continue the same membership and the same members' rights, and continue subject to the same corporation law (ch. 185), with excep-

tions specified in s. 616.09. New corporations with similar purposes can be formed under ch. 611 as appropriate, or in some instances under s. 616.08.

616.07 Certificate of authority. (1) **ISSUANCE.** Within 90 days after the effective date of this act (1979), each plan authorized under s. 616.06 shall apply to the commissioner for a certificate of authority to continue the business it was doing on that date. The commissioner shall issue the certificate unless the commissioner finds after a hearing that the plan is in substantial or wilful noncompliance with the law. No charge may be made for the initial issuance of the certificate under this subsection.

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

COMMENT: Once licensed, plans under this subchapter are presumptively permanently authorized to continue doing business, like other insurers, subject to the sanctions that are possible under chs. 601 and 645, both of which would be applicable. Like other insurers, they would pay a nominal annual fee under s. 601.31 (3) for continuation of the certificate of authority.

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

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

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

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

COMMENT: The limited purposes of corporations organized under this section call for the modifications found in sub. (2) (a), (b) and (c). The narrow scope and possibly small size of the proposed organization may justify further relaxation of the procedural requirements. The capital requirements may be relaxed under provisions contained in s. 611.19 (7) created in this bill. Par. (c) parallels the requirements for mutuals under s. 611.18 (2) (b).

616.09 Applicability of other statutes. (1) **EXISTING ORGANIZATIONS UNDER S. 616.06.** (a) 1. Except as provided in subd. 2, plans authorized under s. 616.06 are not subject to the insurance code.

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

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

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

2. In all actions commenced after the effective date of this act (1979), in those provisions of ch. 185 which apply under subd. 1 to plans authorized under s. 616.06, "secretary of state" shall be deemed to read "secretary of state and commissioner", except in s. 185.48, where "secretary of state" shall be deemed to read "commissioner".

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

1. File with the commissioner for approval its rules and regulations and schedules of the benefits contemplated, together with the forms of agreement entered into with students, parents, guardians or others;
2. File with the commissioner its constitution and bylaws; and
3. Maintain sufficient reserves to discharge its obligations and for any prepayment of dues or fees collected.

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

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

COMMENT: In large part, sub. (1) is a grandfather clause, preserving the applicability of much of ch. 185 to existing cooperatives. This is intended to relieve any concern about the changing of law applicable to existing organizations. They are subjected, however, to the appropriate regulatory provisions of the insurance code.

Subsection (2), applying to new corporations organized under this chapter, basically subjects them to the full range of insurance law. An exception is made in par. (b), to permit those corporations that wish to adhere to the cooperative rules about voting and proprietary relations to do so.

616.10 Exemption from taxation. Every mutual designated a school benefit insurer under s. 616.03, every plan authorized under s. 616.06, and every corporation organized under s. 616.08 is declared to be a charitable and benevolent corporation, and its property, real, personal and mixed, and its income and property transferred to it, are exempt from taxation as provided in ss. 70.11, 71.01 (3), 72.15 and subch. IV of ch. 72.

COMMENT: This continues the tax exemption provision of s. 185.995. Continuation of the tax exemption does not represent a considered judgment by the Insurance Laws Revision Committee but a position consistently adhered to by the Committee that its mandate does not extend to reviewing the tax laws applicable to insurance. Those concerned with equity of taxation should review the justification for this exemption. If the exemption is considered justified by the nature of these organizations, it is equally justified for other comparable organizations and this section extends the exemption accordingly.

Exemption from application of the unemployment compensation law is not justified, and is omitted. The position taken here parallels that taken with certain service insurance corporations. See ss. 613.80 (1) and 613.81.

616.14 Limitations applicable to plans under s. 616.06. (1) GOVERNING BODY. The governing body of a plan shall be the same as the governing body of the sponsoring organization, but must have at least 3 members. If the governing body of the sponsoring organization consists of fewer than 3 members, the governing body of the sponsoring organization shall appoint to the governing body of the plan the number of persons necessary to comply with this subsection. Appointments under this subsection shall be made under rules adopted by the governing body of the sponsoring organization.

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

COMMENT: Subsection (1) continues former s. 185.991 (4) with some liberalization as to size; sub. (2) continues former s. 185.992 (7) considerably generalized. Rules may be promulgated to provide more specification as that is needed.

616.18 Restrictions on transactions. (1) **VOIDABLE TRANSACTIONS.** Any material transaction between a plan or corporation authorized under this subchapter and one or more of its management or members of its governing board, or with any person in a position to influence the vote of any member of its governing board or the decision of any of its management or with any person having power to control the plan or corporation is voidable by the plan or corporation unless:

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

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

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

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

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

COMMENT: There is no reason the members and participants in these arrangements should not have full protection from unfair insider contracts; this section adapts s. 611.61 to the special situation of these arrangements by simplifying its provisions without altering its basic thrust.

616.20 Conversion of plans under s. 616.06 to mutuals under ch. 611 or service insurance corporations under ch. 613. (1) **AUTHORIZATION.** Under a proposal proposed by the officers of a plan operating under s. 616.06 and approved by the commissioner and by a majority of the members voting, the plan may be converted to a mutual under ch. 611 or a service insurance corporation under ch. 613.

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

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

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

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

COMMENT: This section is designed to make the conversion process simple and inexpensive. In particular, under sub. (5), the fees usually charged in the formation of a new corporation are not charged. After conversion, the regular fees under s. 601.31 applicable to continuing corporations would have to be paid, of course.

There is no need for conversion of a corporation under s. 616.03 or 616.08. Such a corporation is already organized subject to ch. 611 and may qualify for a broader range of business merely by conforming in full to those chapters and applying to the commissioner for an enlarged certificate of authorization.

SECTION 9. 645.02 (7) of the statutes is repealed and recreated to read:

645.02 (7) All licensees under ch. 616.

SECTION 10. **Program responsibilities.** In the list of program responsibilities specified for the office of the commissioner of insurance in section 15.731 of the statutes, reference to section "185.992" is deleted.
