

1987 Senate Bill 201

Date of enactment: **March 17, 1988**
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1987 Wisconsin Act 167

AN ACT *to repeal* 617.11 (4), 617.12 and 617.21 (4) and (5); *to amend* 601.64 (3) (c), 611.24 (1) (a), 617.11 (5) and 617.21 (1) (a); *to repeal and recreate* 600.03 (19), 617.11 (1) and (2), 617.21 (1) (intro.) and 617.21 (2); and *to create* 611.24 (1) (am), 617.11 (2m), 617.11 (6), 617.21 (1) (c) and (d), 617.21 (3g), (3m), (3r) and (3t), 617.225 and 617.25 of the statutes, *relating to* insurance holding companies, forfeitures for violations of insurance laws and rules, segregated accounts for financial guaranty insurance and granting rule-making authority.

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

SECTION 1. 600.03 (19) of the statutes is repealed and recreated to read:

600.03 (19) "Extraordinary dividend" means any dividend or distribution of cash or other property, other than a proportional distribution of an insurer's stock, the fair market value of which, together with that of other dividends paid or credited and distributions made within the preceding 12 months, exceeds the lesser of the following:

(a) Ten percent of the insurer's surplus with regard to policyholders as of the preceding December 31.

(b) 1. With respect to a life insurer, the total net gain from operations of the insurer for the calendar year preceding the date of the dividend or distribution, minus realized capital gains for that calendar year.

2. With respect to an insurer other than a life insurer, the greater of the following:

a. The net income of the insurer for the calendar year preceding the date of the dividend or distribution, minus realized capital gains for that calendar year.

b. The aggregate of the net income of the insurer for the 3 calendar years preceding the date of the dividend or distribution, minus realized capital gains for

those calendar years and minus dividends paid or credited and distributions made within the first 2 of the preceding 3 calendar years.

SECTION 2. 601.64 (3) (c) of the statutes is amended to read:

601.64 (3) (c) *Forfeiture for violation of statute or rule.* Whoever violates an insurance statute or rule, intentionally aids a person in violating an insurance statute or rule or knowingly permits a person over whom he or she has authority to violate an insurance statute or rule shall forfeit to the state not more than \$1,000 for each violation. If the statute or rule imposes a duty to make a ~~periodic or recurring~~ report to the commissioner, each week of delay in complying with the duty is a new violation.

SECTION 3. 611.24 (1) (a) of the statutes is amended to read:

611.24 (1) (a) Mortgage guaranty insurance; ~~and~~

SECTION 4. 611.24 (1) (am) of the statutes is created to read:

611.24 (1) (am) Unless the corporation is exempted by the commissioner by rule or order, financial guaranty insurance, if the corporation commences this class of insurance business on or after the effective date of this paragraph [revisor inserts date], or if the corporation engages in this class of business on or after November 1, 1988; and

SECTION 5. 617.11 (1) and (2) of the statutes are repealed and recreated to read:

617.11 (1) INFORMATION. Except as provided under subs. (2) and (2m), an insurer authorized to do business in this state, and a person attempting to acquire or having control of an insurer authorized to do business in this state, shall report to the commissioner the information concerning the insurer and its affiliates that the commissioner requires by rule. The commissioner may promulgate rules prescribing the timing of reports under this subsection, including, but not limited to, requiring periodic reporting and the form and procedure for filing reports.

(2) EXEMPTION FOR CERTAIN INSURERS. Neither sub. (1) nor s. 617.21 (1) applies to a foreign insurer or an alien insurer, nor to a person attempting to acquire or having control of either, if the foreign insurer or alien insurer is subject to all of the following:

(a) Laws, rules or regulations of the jurisdiction of its domicile that are substantially similar to or more stringent than sub. (1) and rules promulgated under sub. (1).

(b) Beginning January 1, 1989, laws, rules or regulations of its domicile that are substantially similar to or more stringent than ss. 617.21 (1) and (3r) and 617.225 and rules promulgated under those sections.

(c) Beginning January 1, 1989, laws, rules or regulations of the jurisdiction of its domicile that either:

1. Require it to report to that jurisdiction a material change in or addition to a report required under laws, rules or regulations under par. (a) within 15 days after

the last day of the month during which it learns of the change or addition; or

2. Are substantially similar to or more stringent than s. 617.21 (2) to (3g) and rules promulgated under those subsections.

SECTION 6. 617.11 (2m) of the statutes is created to read:

617.11 (2m) EXEMPTION IF THE INSURER REPORTS. Subsection (1) does not apply to a person attempting to acquire or having control of an insurer, if the insurer reports as required under sub. (1) on behalf of the person.

SECTION 7. 617.11 (4) of the statutes is repealed.

SECTION 8. 617.11 (5) of the statutes is amended to read:

617.11 (5) CONSENT TO JURISDICTION. Every insurer authorized to do business in this state shall promptly submit to the commissioner a statement from each of its affiliates ~~which that~~ owns stock in the insurer either directly or through intermediaries, that controls the insurer or which that is a party to any transaction, dividend or distribution that the insurer has is required to report under s. 617.21, to the effect that the affiliate agrees to be subject to the jurisdiction of the commissioner and the courts of this state for the purposes of this chapter. The commissioner may by rule require that such statements be submitted for other classes of affiliates if he or she finds that the interests of policyholders or the public so require.

SECTION 9. 617.11 (6) of the statutes is created to read:

617.11 (6) INFORMATION ORDER. Notwithstanding subs. (2) and (2m), the commissioner may, by order, require any insurer authorized to do business in this state, or any person attempting to acquire or having control of the insurer, to report information under sub. (1) or other information to the commissioner.

SECTION 10. 617.12 of the statutes is repealed.

SECTION 11. 617.21 (1) (intro.) of the statutes is repealed and recreated to read:

617.21 (1) GENERAL REQUIREMENTS. (intro.) Except as provided under s. 617.11 (2), neither an insurer authorized to do business in this state nor an affiliate of the insurer may enter into a transaction between the insurer and affiliate unless all of the following apply:

SECTION 12. 617.21 (1) (a) of the statutes is amended to read:

617.21 (1) (a) The transaction at the time it is entered into is reasonable and fair to the interests of the insurer; ~~and~~

SECTION 13. 617.21 (1) (c) and (d) of the statutes are created to read:

617.21 (1) (c) The insurer's surplus following any dividends or distributions to shareholders or a person having control of the insurer is reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs.

(d) The transaction complies with any other standard that the commissioner prescribes by rule.

SECTION 14. 617.21 (2) of the statutes is repealed and recreated to read:

617.21 (2) TRANSACTIONS OF DOMESTIC INSURERS SUBJECT TO DISCLOSURE. (a) 1. Except as provided under sub. (3t), the commissioner may promulgate rules requiring a domestic insurer, a person attempting to acquire or having control of a domestic insurer and affiliates of a domestic insurer to report a transaction or a group or series of transactions, if all of the following are satisfied:

a. The transaction is between a domestic insurer and a person attempting to acquire or having control of the domestic insurer or an affiliate of the domestic insurer, or the transaction directly or indirectly benefits the person or affiliate.

b. The transaction is, or the group or series of transactions are, material to the domestic insurer.

2. Transactions which are material to a domestic insurer for the purposes of subd. 1 include, but are not limited to, management contracts, service contracts and cost-sharing arrangements.

(b) Except as provided under sub. (3t), no domestic insurer, person attempting to acquire or having control of a domestic insurer or affiliate of the domestic insurer may enter into a transaction required to be reported to the commissioner under this subsection unless the domestic insurer, person and affiliate report the transaction to the commissioner in the form and by the date before the effective date of the transaction that are prescribed by the commissioner by rule. The commissioner may not require the transaction to be reported earlier than at least 30 days before the effective date.

SECTION 15. 617.21 (3g), (3m), (3r) and (3t) of the statutes are created to read:

617.21 (3g) TRANSACTIONS PROHIBITED. Except as provided under sub. (3t), no domestic insurer, person attempting to acquire or having control of the insurer or affiliate of the insurer may enter into a transaction that is not reported as required under sub. (2) or that is disapproved by the commissioner under sub. (3).

(3m) VOIDABLE TRANSACTIONS. If a domestic insurer, person attempting to acquire or having control of the insurer or affiliate enters into a transaction in violation of this section, the insurer may void the transaction and obtain an injunction and recovery from the person or affiliate of the amount necessary to restore the insurer to its condition had the transaction not occurred. The commissioner may order an insurer to void the transaction, to commence an action against the person or affiliate or to take other action.

(3r) REQUIRED SURPLUS. The commissioner may promulgate rules for determining adequacy of surplus under this section.

(3t) EXEMPTION IF INSURER REPORTS. Section 617.21 (2) to (3g) does not apply to a person attempting to

acquire or having control of, or an affiliate of, an insurer, if the insurer reports as required under sub. (2) on behalf of the person or on behalf of the affiliate, and the transaction is not disapproved by the commissioner under sub. (3).

SECTION 16. 617.21 (4) and (5) of the statutes are repealed.

SECTION 17. 617.225 of the statutes is created to read:

617.225 Extraordinary dividends. (1) Except as provided under sub. (5), a domestic insurer may not pay an extraordinary dividend to its shareholders and an affiliate of the insurer may not accept an extraordinary dividend unless the insurer reports the extraordinary dividend to the commissioner at least 30 days before payment and the commissioner does not disapprove the extraordinary dividend within that period.

(2) The commissioner may promulgate rules under this section including, but not limited to, rules prescribing the form and content of and procedure for filing reports under this section.

(3) An insurer may declare an extraordinary dividend that is conditioned upon the insurer's compliance with sub. (1). A declaration of an extraordinary dividend under this subsection does not confer rights on a shareholder or affiliate unless sub. (1) is complied with and is void if the extraordinary dividend is disapproved by the commissioner.

(4) In addition to any remedies available under s. 617.23, an insurer may recover from an affiliate any extraordinary dividend paid in violation of this section.

(5) This section does not apply to any of the following:

(a) Extraordinary dividends paid to a domestic insurer.

(b) Extraordinary dividends paid by a domestic insurer that is a wholly owned subsidiary, directly or indirectly, of a domestic mutual insurer.

SECTION 18. 617.25 of the statutes is created to read:

617.25 Officers and directors. (1) No director or officer of an insurer or of an affiliate of an insurer may permit, participate in or assent to a transaction or payment or acceptance of a dividend or distribution prohibited under this chapter.

(2) An officer or director of an insurer or of an affiliate of an insurer who knows, or reasonably should know, that the insurer or affiliate has entered into a transaction or paid a dividend or distribution that violates this chapter shall report the transaction, dividend or distribution to the commissioner in writing within 30 days after attaining that knowledge. Section 601.42 (6) applies to a report under this section and the report is confidential unless the commissioner finds it necessary to disclose the report for the purpose of enforcing this chapter.