

CHAPTER 205.

INSURANCE—WORKMEN'S COMPENSATION.

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205.01 Definitions. As used in this chapter, unless a different meaning is manifest, "company" means any insurer licensed by the department of insurance, to transact the business of workmen's compensation insurance; "bureau" means rating bureau; "commissioner" means commissioner of insurance; and "insurance" means workmen's compensation insurance, and insurance covering any part of the liability of an employer exempted from insuring his liability for compensation as provided in section 102.28. [1933 c. 487 s. 162; 1933 c. 489 s. 10; 1937 c. 329]

Note: Under chapter 205 the commissioner of insurance, in establishing a plan of experience rating for an industry and in making an experience rate for an employer must charge the employer for failure to

take precautions to protect his employes as well as credit him for precautions that he does take. Wisconsin Compensation R. & I. Bureau v. Mortensen, 227 W 335, 277 NW 679.

205.02 to 205.05 [Repealed by 1933 c. 353 s. 1; 1933 c. 489 s. 11]

205.06 Enforcement by commissioner of insurance. (1) This chapter shall be administered and enforced by the commissioner of insurance. In approving classifications, pure premiums, or rates, the commissioner shall in all cases consult with the industrial commission or some member of this commission designated by it. The commissioner may also consult with the industrial commission or its representative on any other matter arising under this chapter and he shall have access to all records of the industrial commission which he may wish to consult in the performance of his duties under this chapter.

(2) The commissioner may authorize any person to attend meetings of the rating bureau, hold hearings, make investigations and examinations with reference to any subject over which he has jurisdiction. The person so appointed shall have all the powers of the commissioner in relation to said hearing, investigation or examination and shall report in writing to the commissioner the result of such hearing, examination or investigation and any testimony taken by him. [1933 c. 353 s. 2; 1933 c. 487 s. 167; 1933 c. 489 s. 12]

205.07 Rates; pure premium; expense loading. The commissioner shall approve a minimum adequate pure premium for each classification under which workmen's compensation insurance is written. No company shall use a pure premium less than that approved by the commissioner. The commissioner shall establish maximum and minimum limits of expense to be included in the rates. Every company shall file with the commissioner a schedule of the expense loading to be collected by it on business affecting this state. Such loading and any change therein shall be approved by the commissioner before it shall be effective. The commissioner shall, after consultation with companies, approve a system of schedule or merit rating for use in this state. No system except the one so approved shall be used. In the approval of rates the commissioner shall take into account the fluctuation resulting from the use of schedule or merit rating. [1933 c. 230 s. 2; 1933 c. 353 s. 2; 1933 c. 487 s. 168; 1933 c. 489 s. 13]

Note: The plan for merit rating for compensation insurance and for experience rating for the employer must be uniform and apply to all those who are insured in the same class. The rating plan in effect when a contract of insurance is made becomes part of the contract and the commissioner may not revise the plan and make it retroactive to the beginning of the policy year. Where the insurer, before writing the policy, required the physical examination of

employees which resulted in the discharge of several and their filing of compensation claims, and the insurer set up reserves against the claims and settled and paid the claims pursuant to settlements approved by the commission the claims amounted to an incurred loss which was to be considered in determining the employer's experience rate. Wisconsin Compensation R. & I. Bureau v. Mortensen, 227 W 335, 277 NW 679.

205.08 Surveys, rates, classifications, experience rating. (1) The commissioner may at any time require a survey and report by the bureau of any risk regarding which complaint has been made. Approval of any rate or classification may be withdrawn upon ten days' notice to the parties interested. Rates or systems of schedule or merit rating shall

not take into account the physical impairment of employes.

(2) The commissioner may, on a proper showing relating to any employer, make an experience rate for such employer on a plan which shall be uniform for all insured in the same class, and may modify or revoke such rate as the facts may warrant. No such rate or modification thereof shall take effect until thirty days after the commissioner shall have given notice thereof to each rating bureau rating workmen's compensation risks in this state, and to each insurer effecting insurance upon workmen's compensation risks in this state.

(3) Any employer who shall apply or promote any oppressive plan of physical examination and rejection of employes or applicants for employment shall forfeit the right to the advantages of experience rating. If the industrial commission shall find that grounds exist for such forfeiture it shall file with the commissioner a certified copy of its findings, and such filing shall automatically suspend any experience rating credit which may accrue to such employer. Such determination shall be made in the same manner and shall be subject to court review as prescribed in sections 101.13 to 101.27 so far as such sections are applicable. Restoration of an employer to the advantages of experience rating shall be by like procedure. [1933 c. 353 s. 2; 1933 c. 487 s. 169; 1933 c. 489 s. 14; 1939 c. 513 s. 44]

205.09 Classification of risks. No classification for compensation insurance purposes shall be effective until approved by the commissioner. No rule or regulation with reference to compensation risks filed by any company or by the bureau shall be effective until approved by the commissioner. If at any time reasonable doubt exists on the part of the commissioner as to the proper classification or rate for any risk, such risk may be insured subject to rate and classification to be established therefor. [1933 c. 353 s. 2; 1933 c. 487 s. 170; 1933 c. 489 s. 15]

205.10 Pay roll audit. Pay roll audits by companies shall show division by classification, and shall be correct as to amount and as to such division, and shall be reported to the industrial commission through the insurance department. The commissioner may, on his own initiative, verify any pay roll audit; and upon written complaint stating facts sufficient to warrant action by him, he shall verify any pay roll audit. [1933 c. 353 s. 2; 1933 c. 487 s. 171; 1933 c. 489 s. 16]

205.11 Investigations; court review. (1) The commissioner may upon his own motion or upon the verified complaint of any person having a direct interest, to review the acts of any company, bureau or agent, subject to the provisions of this chapter, and after a hearing make findings and orders requiring compliance with the provisions thereof. A copy of such complaint shall be served upon the company, bureau or person against whom the complaint is directed, and each of the parties in interest shall be entitled to ten days' notice of any hearing pursuant to this section. Examination of any bureau shall be at its expense.

(2) Any finding or order made by the commissioner after hearing upon his own motion or upon complaint shall be subject to summary review by the circuit court of Dane county. The pendency of a court review shall suspend the operation of the commissioner's order, but in the event of a final determination against a company, any overcharge made during the pendency of such proceeding shall be refunded. [1933 c. 353 s. 2; 1933 c. 487 s. 172; 1933 c. 489 s. 17]

205.12 Bureau membership compulsory. Every company shall be a member of a bureau to be maintained in this state for the following purposes:

(1) To arrange the industries of this state into classes for compensation insurance; to make inspections of compensation risks and to apply thereto the schedule or merit rating system; to establish charges and credits under such system, and to make reports showing all facts affecting such risks.

(2) To assist the commissioner and companies in approving rates, determining hazards and other material facts in connection with compensation risks, and to assist in promoting safety in the industries, and in the administration of experience rating. [1933 c. 353 s. 2; 1933 c. 487 s. 173; 1933 c. 489 s. 18]

205.13 Bureau, organization, government, membership, charges. The bureau shall make by-laws for its government and for the government of its members. Such by-laws and amendments thereto shall be filed with and approved by the commissioner before they shall be effective. Such bureau shall admit to membership every company. The charges and service of such bureau shall be equitable and nondiscriminatory between members. [1933 c. 353 s. 2; 1933 c. 487 s. 174; 1933 c. 489 s. 19]

205.14 Bureau; assessment for operation. Each member of such bureau shall pay an equitable share of the cost of operating the bureau. If any member is aggrieved by an apportionment made by the bureau or by failure to make one it may, in writing, petition the commissioner for a review of such apportionment or failure to act. The commissioner

shall, upon not less than five days' notice to each member, hold a hearing upon such petition, at which all members shall be entitled to be heard, and shall determine the matter and mail a copy of his decision to each member. The decision of the commissioner shall be final. [1933 c. 353 s. 2; 1933 c. 487 s. 175; 1933 c. 489 s. 20]

205.15 Representation in bureau. Stock companies and nonstock companies shall be represented in the bureau management and on committees. One-half the members of the governing or managing committee and of the rating committee shall be chosen by the stock companies and one-half by the nonstock companies. Each member shall be entitled to one vote. In case of a tie vote in any committee the commissioner shall decide the matter. [1933 c. 353 s. 2; 1933 c. 487 s. 176; 1933 c. 489 s. 21]

205.16 License of bureau. The bureau shall procure annually from the commissioner a license to carry on its business. The license year shall end on the last day of February. The bureau shall pay to the commissioner an annual license fee of one hundred dollars, at the time of filing application for license. The commissioner shall prescribe blanks and make needed regulations governing the licensing of the bureau. [1933 c. 487 s. 177]

205.17 Report of bureau; supervision. The bureau shall annually before March first, file with the commissioner a report in such form as the commissioner shall prescribe covering its activities for the preceding calendar year. Such report shall cover its financial transactions and other matters required by the commissioner. [1933 c. 353 s. 2; 1933 c. 487 s. 178; 1933 c. 489 s. 22]

205.18 Classification and survey of risks. The bureau shall assign each compensation risk and subdivision thereof to its proper class. Such classification shall be subject to the approval of the commissioner, and shall bind all companies when approved. The bureau shall on behalf of all members inspect and make a written survey of each risk. It shall file with the commissioner its classification of risks and the written surveys of all risks inspected by it, showing charges and credits, and such other facts as are material in the writing of insurance thereon. It shall file any subsequent proposed classification or later survey and all rules and regulations which may affect the writing of such risks. The commissioner and the bureau and its representatives shall give all information as to classifications, rates, surveys and other facts collected and intended for the common use to all companies at the same time. [1933 c. 353 s. 2; 1933 c. 487 s. 179; 1933 c. 489 s. 23]

205.19 Bureau records; hearings; appeals to board. The bureau shall keep a record of its proceedings. It shall furnish, upon demand, to any employer upon whose risk a survey has been made, full information as to such survey, including the charges and credits fixed thereby. The bureau shall provide means as approved by the commissioner, whereby any company or any employer whose risk has been inspected may be heard, with reference to any matter affecting such risk. Any company or employer may appeal from a decision of the bureau to the commissioner. The commissioner shall make rules governing such appeals. The bureau shall file with the commissioner, whenever called for, such information as it may have. [1933 c. 353 s. 2; 1933 c. 487 s. 180; 1933 c. 489 s. 24]

205.20 Discrimination prohibited. No company shall make or charge any rate for workmen's compensation insurance in this state which discriminates unfairly between risks or classes, or which discriminates unfairly between risks in the application of like charges and credits in the plan of schedule or merit rating in use; and no company shall discriminate by granting to any employer insurance against other hazards at less than its regular rates for such insurance, or otherwise. [1933 c. 487 s. 181]

Note: "Rejected" compensation insurance risks are allotted among bureau companies in rotation. Mutual company may not require of such risk rider waiving dividends of company applicable to its compensation insurance. Merit rating schedule may not classify "rejected risks" as such, but must base its merit rating upon actual conditions affecting hazard. 21 Atty. Gen. 472.

205.21 Filing of rates. Every company writing workmen's compensation insurance in this state shall file with the commissioner of insurance its rates for such insurance and all additions thereto or changes therein. All rates so filed shall comply with the requirements of law and shall not be effective or used until approved as to such compliance by the commissioner of insurance. A rate which is filed and approved shall not be changed until the substituted rate has been filed for at least fifteen days and has been approved by the commissioner. [1933 c. 353 s. 2; 1933 c. 487 s. 182; 1933 c. 489 s. 25]

205.22 Filing schedule of expense loading. Every company writing workmen's compensation insurance in this state shall file with the commissioner of insurance a schedule of the expense loading to be collected by it on workmen's compensation business written in this state. Such loading shall be approved by the commissioner as to adequacy and as to compliance with the orders of the commissioner, and it shall not be effective until so approved. All modifications or changes in such loading shall also be filed with and approved by the commissioner before becoming effective. [1933 c. 230 s. 1; 1933 c. 353

s. 2; 1933 c. 487 s. 182; 1933 c. 489 s. 25; 1939 c. 513 s. 44]

205.23 Minimum pure premium. In fixing its rates no company shall use a pure premium less than that approved as adequate by the commissioner of insurance. Any company in fixing its rates may use a pure premium higher than that established by the commissioner of insurance. [1933 c. 230 s. 1; 1933 c. 353 s. 2; 1933 c. 487 s. 182; 1933 c. 489 s. 25]

205.24 Minimum rate. No company shall write insurance at a rate other than that approved for it as adequate by the commissioner of insurance; provided, however, that a rate may be reduced or increased by the application to individual risks of the system of schedule or merit rating which has been approved by the commissioner. Such reduction or increase shall be set forth in the policy or by an indorsement thereon. [1933 c. 230 s. 2; 1933 c. 353 s. 2; 1933 c. 487 s. 182; 1933 c. 489 s. 25]

205.25 Insurance reported to board. Every company shall report its insurance in this state to the commissioner. The commissioner shall prescribe forms and rules for making such reports. Such reports if found by the commissioner to comply with the law, shall be filed with the industrial commission. No information regarding the writings of any company shall be made public by said commissioner or any of its employes except as required by law. [1933 c. 353 s. 2; 1933 c. 487 s. 186; 1933 c. 489 s. 26]

205.26 Information concerning insurance. Every company shall file with the commissioner such information regarding insurance written by it on risks located in this state as he may require. [1933 c. 353 s. 2; 1933 c. 487 s. 187; 1933 c. 489 s. 27]

205.27 [Repealed by 1933 c. 487 s. 188]

205.28 Penalty. Any company, rating bureau, agent, or other representative or employe of any company or bureau, failing to comply with or guilty of a violation of any of the provisions of this chapter, or of any order or ruling of the commissioner made hereunder, shall be fined not less than fifty nor more than five hundred dollars. The license of any company, agent or broker guilty of such violation may be revoked or suspended by the commissioner. [1933 c. 353 s. 2; 1933 c. 487 s. 189; 1933 c. 489 s. 28]

205.29 Scope of chapter. This chapter shall not apply to contractor's class mutual companies where the premiums are fixed, assessed and collected on the basis of the contract price of construction, building or repairing. [1933 c. 487 s. 190]

205.30 Insurance of rejected workmen's compensation risks. (1) It shall be the duty of insurers carrying workmen's compensation insurance in this state, and members of the workmen's compensation bureau, established pursuant to sections 205.12 and 205.13, to accept any workmen's compensation risk which shall have been tendered to and rejected by any member of said bureau, in the manner herein provided.

(2) When any such rejected risk is called to the attention of said bureau and it appears that said risk is in good faith entitled to coverage, said bureau shall fix the initial premium therefor, and, upon payment thereto, it shall designate a member whose duty it shall be to issue a policy containing the usual and customary provisions found in such policies therefor, but for which undertaking all members of said bureau shall be reinsurers as among themselves in the amount which the compensation insurance written in this state during the preceding calendar year by such member bears to the total compensation insurance written in this state during the preceding year by all members of said bureau.

(3) The bureau shall within thirty days after the taking effect of this section make and adopt such rules as may be necessary to carry this section into effect, subject to an appeal to the commissioner of insurance as in all other cases. Any decision of such bureau under this section shall be subject to review on appeal to the commissioner of insurance.

(4) As a prerequisite to the transaction of workmen's compensation insurance in this state, every insurance carrier shall file with the commissioner of insurance written authority permitting said bureau to act in its behalf, as provided in this section.

(5) If any part of this section shall be held unconstitutional, the balance shall be deemed independent and separable and shall not be affected by such determination. [1931 c. 327; 1933 c. 353 s. 2; 1933 c. 487 s. 190a; 1937 c. 180]

205.31 Insurance on emergency national defense projects. (1) Notwithstanding any of the provisions of this chapter, the commissioner of insurance shall have power to approve special rates or rating plans applicable only to the insurance of national defense projects in connection with which the cost of insurance is a direct item of expense to the United States or a defense agency thereof by reason of a specific agreement by the United States government or such defense agency to pay such cost, or reimburse the insured therefor, as a separate item of expense, or similar plans submitted by the United States government or agency thereof.

(2) This section is designated emergency legislation, necessitated by the emergency of national defense, and shall expire when the emergency ceases, which shall be proclaimed by the commissioner, and in any event not later than June 1, 1949. [1941 c. 196]