

## CHAPTER 201.

## INSURANCE CORPORATIONS IN GENERAL.

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**201.01 Definitions.** (1) In statutes relating to insurance, unless the context indicates otherwise, "company" includes all corporations, associations, partnerships, and individuals engaged as principals in the business of insurance, except mutual benefit societies.

(2) "Mutual benefit society" has the meaning attributed to it by chapter 208.

(3) "Policy" includes every kind and form of contract of insurance.

(4) "Officers" include directors and trustees.

(5) "Department" means department of insurance. [1933 c. 487 s. 27]

**201.02 Organization; articles; amendments; name.** (1) An insurance corporation may be organized by fifteen or more residents of this state, except that the articles and amendments thereto shall be filed in the office of the commissioner.

(2) No insurance corporation shall increase its capital stock without the written consent of the holders of three-fourths of the capital stock outstanding. The amendment of its articles increasing its capital stock shall not be filed by the commissioner until after he shall have made an examination, as upon the organization or admission of a like corporation.

(3) Persons associating to form a mutual insurance company shall subscribe articles of incorporation which shall contain:

(a) The name of the company, which name must contain the word "mutual" and shall not be so similar to any name already in use as to mislead the public in any respect;

(b) The kinds of insurance to be transacted;

(c) The location of the principal office;

(d) The condition of membership which shall provide that each policyholder have one vote and shall be liable for a pro rata share of losses and expenses incurred during the time the policyholder has been a member of the company, unless the liability of all members is limited according to law;

(e) The manner in which the corporate powers are to be exercised; the number of directors, which shall not be less than three; the manner of electing the directors, the term,

how many shall constitute a quorum, and the manner of filling vacancies;

(f) The general officers and that the president, vice president and directors shall be members of the company;

(g) A provision that the articles may be amended by a vote of three-fourths of the members voting at a meeting after the proposed amendment has been filed with its secretary and the commissioner and a copy thereof with notice of time and place of meeting has been mailed to each member at least thirty days prior to such meeting.

(4) No mutual insurance company shall be reorganized into a stock company.

(5) The articles of a mutual insurance company may limit (but to be effective the limitation must be expressed in every policy): (a) The insurance to specified kinds or classes of property, lives, individuals or liabilities; (b) the territory within which insurance shall be granted; or (c) the liability of members, which liability shall be a specified number of times the annual premium. [*Stats. 1931 s. 201.06, 201.07, 201.28; 1933 c. 487 s. 28; 1935 c. 216*]

**Revisor's Note, 1933:** The law is not changed. Subsection (2) of 201.06 is a duplication of part of 180.02 (1) (b). Subsection (6) is from 201.13 (4). (Bill No. 50 S, s. 28) 201.02 (3) (d), created by ch. 216, laws of 1935, requiring that the articles of incorporation of a mutual insurance company contain certain provisions relating to the liability of policyholders for losses and expenses incurred, did not apply to the articles of incorporation of a company organized prior to the enactment thereof. In re Wisconsin Mut. Ins. Co., 241 W 394, 6 NW (2d) 330.

Association wherein members pay original membership fee and are assessed one dollar upon death of any member upon pain of forfeiture of membership, assessments so levied being paid to named beneficiary of deceased member, constitutes business of insurance and such association is subject to insurance laws of this state and must file its articles

with insurance commissioner. 20 Atty. Gen. 607.

Secretary of state may not accept articles of incorporation that contemplates transaction of insurance business. The articles of incorporation should be filed with insurance commissioner. 21 Atty. Gen. 284.

Policyholders of a mutual insurance company organized pursuant to 201.02, Stats. 1933, may not legally adopt a resolution at an annual meeting of policyholders providing for a refund or repayment to directors of the company of the amounts contributed by them to its surplus, there being no attempt by said directors to lend said amounts to the company and to take notes of the company payable out of surplus or notes which were general obligations of the company not payable out of surplus, as provided by 201.17. 33 Atty. Gen. 220.

**201.03 Incorporation of mutual insurance companies.** (1) After the articles of incorporation have been subscribed by the organizers, they shall be filed in the office of the commissioner and a copy thereof in the office of the register of deeds of the county where the principal office of the company is to be located. After the commissioner issues his certificate of incorporation, the company may open its books to receive applications for insurance. No such company hereafter organized shall issue any policies of insurance unless and until:

(a) It shall have not less than 400 bona fide applications for insurance on property or risks located in this state from not less than 400 persons and upon not less than 400 separate risks in this state on which the cash premiums, which shall be paid in full by each of the 400 applicants with their applications, plus cash contributions shall amount to at least \$50,000, which shall have been actually paid in, in cash, by the applicants and contributors, provided that such minimum amount shall be \$25,000 in the case of a company organized to write only the coverage authorized by subsection (1) of section 201.04.

(b) It shall be examined by the commissioner and he shall certify that the company has complied with all requirements of law and that it has on hand in cash or invested as permitted by law, the premiums and contributions amounting to said minimum amount.

(2) Contributions to the said minimum fund by some or all of the first applicants in excess of the actual premium on the first policy to any applicant shall be returnable 5 years from date of organization or at any time thereafter when the earned surplus of the company is equal to or in excess of said minimum fund. Such refund can be made only with the approval of the commissioner and must be returned to every applicant or his legal representative entitled thereto.

(3) No part of the premiums contributed upon organization shall be used for promotion expense.

(4) Persons making application in a proposed mutual insurance company, after filing the articles of incorporation, and until the corporation begins to transact insurance, shall be entitled to notice of and to participate in all meetings of the corporation.

(5) The proposed officers and directors of a mutual insurance company who shall first serve on completion of organization shall be responsible and shall possess a knowledge of insurance and shall file with the commissioner a statement showing their financial responsibility and net worth and their occupations for the past ten years.

(6) The charter of any mutual insurance company incorporated under special act and, unless otherwise provided therein, the articles of incorporation of any mutual

insurance company may be amended by a vote of three-fourths of the members voting at a meeting after the proposed amendment has been filed with its secretary and the commissioner and a copy thereof with notice of time and place of meeting has been mailed to each member. In lieu of the foregoing notification to each member, the company may publish a copy thereof in a newspaper of general state-wide circulation at least 30 days prior to such meeting.

(7) Ten members present in person shall constitute a quorum at any policyholders' meeting unless a greater number is required by the articles or by-laws. This subsection shall be applicable from and after May 3, 1945, to all mutual insurance companies organized under the laws of this state except town mutual insurance companies.

(8) Any mutual insurance corporation which has been or may be organized under the provisions of this chapter may be merged into, or consolidated with, or reinsured by any other such corporation, by action of the boards of directors of said corporations provided that the resolution providing therefor and for any transfer of assets and assumption of liabilities in connection therewith, shall be approved by the commissioner of insurance as reasonable and as fair and equitable to the policyholders.

(9) Any mutual insurance company after January 1, 1943 transacting automobile insurance authorized by subsection (15) of section 201.04 shall maintain a minimum surplus of \$50,000 and when such surplus falls below \$50,000, the commissioner shall order the surplus replaced and if not so replaced in 15 days, the commissioner may proceed against such company under section 200.08. [1933 c. 487 s. 29; 1937 c. 203; 1941 c. 127; 1945 c. 82, 101; 43.08 (3)]

**Note:** Section 201.03 (9), created by ch. 127, laws of 1941, applies to a mutual company organized and existing at the time of the enactment of (9), and not merely to companies organized thereafter. *Cheese Makers Mut. Casualty Co. v. Duel*, 243 W 406, 10 NW (2d) 125. (1) (a), Stats. 1939, does not require that

the applicants pay the required amount of premiums in cash without borrowing. 28 Atty. Gen. 541.

201.03 (1) and (2), Stats. 1937, are not applicable to mutual insurance companies organized before effective date of ch. 203, laws of 1937, which created 201.03, Stats. 1937. 33 Atty. Gen. 220.

**201.04 Purposes; classification.** An insurance corporation may be formed for the following purposes:

(1) Fire Insurance.—Against loss or damage to property, by fire, lightning, hail, tempest, explosion, and against any other loss or damage from any cause to property or in the use of, or income from property.

(2) Marine Insurance.—Vessels, freight, goods, moneys, effects and money loaned on bottomry and respondentia, against the perils of the seas and other perils usually insured against by marine insurance, including the risks of inland transportation and navigation.

(3) Life Insurance.—Upon the lives or health of persons, and every assurance pertaining thereto, and to grant, purchase or dispose of annuities and endowments.

(3a) Group Life Insurance.—Group life insurance is life insurance in any of the following forms:

(a) Life insurance covering not less than 50 employes with or without medical examination, written under a policy issued to the employer, the premium on which is to be paid by the employer or by the employer and employes jointly, and insuring only all of his employes, or all of any class or classes thereof determined by conditions pertaining to the employment, for amounts of insurance based upon some plan which will preclude individual selection, for the benefit of persons other than the employer; provided, however, that when the premium is to be paid by the employer and employe jointly and the benefits of the policy are offered to all eligible employes, not less than 75 per cent of such employes may be so insured. The group policy may provide that the term "employes" shall include the officers, managers and employes of the policyholder and of subsidiary or affiliated corporations, and the individual proprietors, partners and employes of affiliated individuals and firms, when the business of the policyholder and of such subsidiary or affiliated corporations, firms or individuals is under common control through stock ownership, contract or otherwise.

(b) Life insurance covering the members of any labor union, credit union, co-operatives or any association of public employes, written under a policy issued to such organization which shall be deemed to be the employer for the purposes of this chapter, the premium on which is to be paid by the organization or by the organization and its members jointly, and insuring all of its members for amounts of insurance based upon some plan which will preclude individual selection, for the benefit of persons other than the organization or its officials; provided that all members of a labor union, credit union, co-operatives or any association of public employes may be insured; provided also that when the premium is to be paid by the organization and its members jointly and the bene-

fits are offered to all eligible members, not less than seventy-five per centum of such members may be so insured.

(c) Life insurance covering the lives of members of a group of persons who become borrowers from one credit union under agreement to repay the sum borrowed in instalments over a period of not more than 10 years, to the extent of their indebtedness to said credit union but not to exceed \$5,000 on any one life, written under a policy which may be issued upon the application of and made payable to the credit union as beneficiary, the premium on such policy to be payable by the credit union, the borrower, or jointly by the credit union and borrower.

(d) Life insurance covering the members of a group of persons who become borrowers from one financial institution including subsidiary or affiliated institutions under agreement to repay the sum borrowed in instalments over a period of not more than twenty years to the extent of the indebtedness to said financial institution, but not to exceed ten thousand dollars upon any one life written under a policy which may be issued upon the application of, and made payable to, the financial institution as a beneficiary, the premium on which is to be paid by the financial institution, based upon some plan which will preclude individual selection, provided there are not less than one hundred new entrants to the group yearly, provided also that not less than seventy-five per cent of the eligible members of the group shall be insured at the time the plan becomes effective.

(3b) Industrial Life Insurance.—Industrial life insurance is defined as either that form of life insurance under which the premiums are payable weekly, or that under which the premiums are payable monthly or oftener if the face amount of insurance provided in the policy is less than \$1,000 and the words "industrial policy" are printed in prominent type on the face of the policy.

(4) Disability Insurance.—Against bodily injury or death by accident, and upon the health of persons.

(5) Liability Insurance.—Against loss or damage by the sickness, bodily injury, or death by accident of any person and against loss or damage to the property of any person by accident, for which loss or damage the insured is liable; and against expense (other than loss of time) arising out of sickness, bodily injury or death with respect to which the insurer assumes an obligation to pay to (a) persons other than the insured, or (b) to the insured and others, irrespective of the legal liability of the insured for such expense in any case where persons other than the insured are covered, but the provisions of section 204.31 shall not apply to such obligation to pay when assumed as a part of or as supplemental to bodily injury liability insurance.

(6) Steam Boiler Insurance.—Against loss or damage to the property of the insured or to the life, person or property of another, for which the insured is liable, caused by the explosion of steam boilers, pipes, engines, motors and machinery connected therewith or operated thereby.

(7) Fidelity Insurance.—Against the loss from the defaults of persons in positions of trust, public or private, and to guarantee the performance of contracts and obligations.

(8) Title Insurance.—To examine titles to real and personal property, furnish information relative thereto and insure against loss or damage by reason of incumbrance and defects in titles and against nonpayment of principal and interest of bonds and mortgages.

(9) Credit Insurance.—Against loss from the failure of persons indebted to the assured to meet their liabilities, including the insurance or guarantee of depositors or deposits in banks or trust companies.

(10) Burglary Insurance.—Against loss or damage by burglary or theft, or both.

(11) Plate Glass Insurance.—Against the breakage of glass, located or in transit.

(12) Sprinkler Leakage Insurance.—Against loss or damage by water, caused by the breakage or leakage of sprinklers, pumps, water pipes or plumbing, or its fixtures, and against accidental injury to such sprinklers and other apparatus.

(13) Elevator Insurance.—Upon elevators and vehicles, and to inspect the same and issue certificates thereof.

(14) Live Stock Insurance.—Against loss or damage to domestic animals, except by fire, and to furnish the services of a veterinary surgeon for such animals.

(15) Automobile Insurance.—Against loss, expense and liability resulting from the ownership, maintenance or use of any automobile, aircraft or other vehicle; and against expense (other than loss of time) arising out of the ownership, maintenance or use of any automobile, aircraft or other vehicle with respect to which the insurer assumes an obligation to pay to (a) persons other than the insured, or (b) to the insured and others, irrespective of the legal liability of the insured for such expense in any case where persons other than the insured are covered, but the provisions of section 204.31 shall not

apply to such obligation to pay when assumed as a part of or as supplemental to automobile bodily injury liability insurance.

(16) Workmen's Compensation Insurance.—Against loss, damage or liability for or under workmen's compensation.

(17) Other Casualty Insurance.—Against loss or damage to property by any other casualty which may lawfully be the subject of insurance, and which shall be specified in the articles of organization, and for which no other provision is made by law. [1931 c. 151; 1931 c. 358; 1933 c. 487 s. 30; 1935 c. 203; 1937 c. 41, 209, 217; 1939 c. 246; 1943 c. 120, 143, 307; 1945 c. 289, 351]

**Note:** Prepayment at fixed yearly or does not constitute insurance. 25 Atty. Gen. monthly rate for future medical services 192.

**201.05 Stock or mutual plan; purposes; separate policies; automobile insurance.**

(1) Companies may be formed upon the stock or the mutual plan to transact any kind of insurance authorized by section 201.04.

(2) No company shall be formed for the purpose of engaging in any other kind of insurance than that specified in some one of the subsections of section 201.04, or more kinds of insurance than are specified in a single subsection, except that a company may be formed:

(a) For the purposes specified in subsections (1), (2), and (12); or

(b) For the purposes specified in subsections (3) and (4); or

(c) For any or all of the purposes specified in subsections (4) to (17);

(d) For the purpose specified in subsection (9);

(e) For any or all of the purposes specified in section 201.04, whether by retrocession, reinsurance, or direct insurance, provided there be maintained separate and distinct reserves in trust for each kind of insurance so written.

(3) Insurance under each subsection of section 201.04 shall be written in separate and distinct policies, except that the same policy may embrace risks specified in subsections (1) and (12), (7) and (10), or (4) and (5), with or without a separate premium charge, or a separate policy may embrace risks specified in one or more of subsections (5), (6), (10), (11), (12), (13), (14), (15) and (17), with separate premium charges, except that premium charges for insurance under subsection (15) when so combined need be shown separately only when written upon a specified automobile basis; and policies under subsection (3) may contain any provision operating to safeguard the insurance against lapse, or giving a special surrender value or an annuity providing for payments not exceeding one per cent per month of the face amount of the policy during the lifetime of the insured, with or without reduction of the sum insured, in the event that the insured shall become totally and permanently disabled from any cause.

(4) Insurance against damage by hail to crops shall be written in separate and distinct policies from other insurance mentioned in subsection (1) of section 201.04.

(5) Insurance in one policy may be effected, by any company licensed to transact the business mentioned in subsection (1), (2), (5), (10), or (15) of section 201.04, upon automobiles, aircraft, and vehicles and the accessories and other property transported upon and used in connection therewith, against loss by collision and against loss by legal liability for damage to property resulting from the maintenance and use of such automobiles, aircraft, or vehicles and against loss by burglary or theft, or both, and against any risk mentioned in said subsection (1), (2), (5), (10) or (15), which said company may assume under its license. For this purpose, a fire insurance company need not use the standard fire policy.

(6) When, in a mutual company or reciprocal exchange, paying no commission for the procurement of business and confining its business to a line of risks principally sprinklered, in course of being so sprinklered, or principally of noncombustible construction and occupancy; and allied properties of such risks under the same ownership and used in connection with the business operation and conduct of such risks, and which insurer receives from its members premium deposits in excess of the expected requirements, the unabsorbed portions of which are returned to the members, the same policy embraces more than one of the risks specified in subsections (1) and (12) of section 201.04, it may be with or without a separate premium charge. This specific provision shall not change the construction of provisions applicable to other risks. [1931 c. 358 s. 3; 1933 c. 145; 1933 c. 487 s. 31; 1945 c. 282]

**201.06** [Renumbered section 201.02 sub. (3) by 1933 c. 487 s. 28]

**201.07 Nonassessable policies by mutuals.** Any domestic mutual insurance company transacting the business of fire, marine, or casualty insurance, having accumulated a net surplus, exclusive of surplus notes, equal to the sum of fifty per cent of the capital and surplus required of a stock company to begin to transact the same kind of business

and while such surplus is so maintained as a distinct guarantee fund and so shown in its annual statement may issue a nonassessable policy; provided, that such company shall cease the issue of such policies when such guarantee fund falls below such sum, and during such period of impairment shall cease to make apportionment and declare refunds of overpayments or savings resulting from premium contributions until such guarantee fund deficiency has been made good, except where the company at a regular or called meeting of its policyholders has voted to discontinue the issuance of nonassessable policies. The conditions of such nonassessability shall be plainly stated in the policies so issued. No company shall issue a nonassessable policy until its policy form is submitted to and approved by the commissioner of insurance. [1933 c. 120 s. 3; 1933 c. 487 s. 28, 32]

**Note:** Nonassessable insurance policy issued under this section may not be assessed when surplus of company falls below amount required to be accumulated before issuance of such policies. 16 Atty. Gen. 716 confirmed. 24 Atty. Gen. 66. Domestic mutual insurance companies may issue nonassessable policies only by complying with provisions of this section. 26 Atty. Gen. 216.

**201.08 By-laws; filing; forfeiture.** Every insurance corporation and every mutual benefit society shall adopt by-laws and prescribe the manner in which the same may be amended. A copy of such by-laws and of any amendments thereto, accompanied by the certificate of the president and secretary stating that the same have been duly adopted and that such copy is true and complete, shall be filed with the commissioner of insurance within thirty days after such adoption, and in case of failure so to do each shall forfeit twenty-five dollars. [1933 c. 236 s. 2; 1933 c. 487 s. 33]

**201.09** [Repealed by 1937 c. 203 s. 1]

**201.09 Treasurer's bond.** The treasurer of any insurance company, including mutual benefit societies, shall be required to furnish a fidelity bond in an amount not less than \$5,000 in a surety company duly licensed to do business in the state of Wisconsin. [1945 c. 63]

**201.10 Stock companies; promotion; funds; commissions; literature; contracts.**

(1) No person shall, for the purpose of organizing or promoting any insurance corporation, domestic or foreign, or promoting the sale of stock of such corporation by it as principal or agent, sell or agree or attempt to sell within this state any stock in such insurance corporation, unless the contract shall be in writing and contain a provision in the following language: "No sum shall be used for commission, promotion and organization expenses on account of any share of stock in this corporation, in excess of . . . per cent of the amount actually paid upon separate subscriptions (or in lieu thereof there may be inserted, 'or \$. . . per share from every fully paid subscription'), for such stock, and the remainder of such payments shall be held or invested as authorized by the law governing such insurance corporation and held by the organizers (or trustees, as the case may be) and the directors and officers of such corporation after organization as bailees for the subscriber, to be used only in the conduct of the business of insurance by such corporation after having been licensed therefor by proper authority." The term "stock," as used in this section, shall include bonds and any other evidences of debt or of interest in the profits of any such corporation.

(2) Funds and securities held by such organizers, trustees, directors or officers as bailees shall be deposited with a bank or trust company of this state until such corporation has been licensed as aforesaid.

(3) Every contract within subsection (1) shall give the names of the organizers (or trustees as the case may be) and their residences, the par value of the shares, and the prices at which shares have been, are, or are to be sold, the number of shares at each price, the total number of shares, and be filled in with the percentage or amount which may be used for commission, promotion or organization expenses, which together shall not exceed fifteen per cent of the amount actually paid upon separate subscriptions for such stock.

(4) No person shall participate in, receive or accept any part or promise of any part of any of the commissions or rewards of any organizer, promotor or agent for the sale of any such stock, unless the name of such person and the fact of his interest in such commissions or reward shall appear upon such contract of subscription. The omission of such statement from any such contract shall, in addition to the penalty herein provided, make such person liable to the purchaser or his assignees for all sums paid by such purchaser with interest from date of payment upon the assignment or tender of assignment of the stock so purchased.

(5) No person receiving any commission or other profit or advantage as organizer, promotor or agent, selling or agreeing or attempting to sell any such stock, or in consideration of or in connection with any such sale or contract of subscription shall, directly or indirectly, make or offer to make any contract or agreement other than as plainly expressed therein, nor shall any such contract of subscription contain any agreement for em-

ployment or for any deposit or for any special advantage to the person purchasing or contracting for such stock.

(6) No person shall issue, deliver, circulate or publish in this state any advertisement in any newspaper or periodical published in this state or any circular or prospectus for the sale of stock of any insurance corporation, whether organized or proposed to be organized within or without this state, for the purpose of soliciting or securing subscriptions to or contracts for the purchase of stock in any such corporation, unless a copy of such circular, prospectus or other advertisement shall first have been filed in the office of the commissioner, and the same shall contain the name and address of the person issuing, delivering, circulating or publishing the same, with a consecutive serial number for each separate form of such circular, prospectus or other advertisement.

(7) Any person violating this section shall be punished by a fine of not less than twenty-five dollars nor more than one thousand dollars, or by imprisonment in the county jail not exceeding six months, or by both such fine and imprisonment.

(8) A contract for subscription to or the purchase of stock in any insurance corporation not conforming to the provisions of this section shall be valid and enforceable in favor of the subscriber or purchaser, but shall not be valid or enforceable in favor of the corporation or any person selling such stock, either as principal or agent. [1933 c. 487 s. 35]

**Revisor's Note, 1933:** Subsection (3) (b) Chapter 189 now makes specific reference to is obsolete. Section 201.10 antedates the securities law (Ch. 189, Stats.) which largely duplicates if it does not supersede the earlier law. There is strong reason for saying that 201.10 was impliedly repealed by the enactment of said chapter 189. In a long opinion and with difficulty and doubt the attorney-general concluded that chapter 189 did not repeal 201.10. IX Atty. Gen. 238.

**201.11 Stock companies' capital; surplus.** (1) No stock insurance company shall transact business unless it has capital, in cash or invested as provided by law, of at least two hundred thousand dollars for the insurance specified in any one subsection of section 201.04; with an additional one hundred thousand dollars for the insurance mentioned in any other subsection which may be transacted by such company, provided that no such company shall be subject to higher capital requirements than those in effect when it began to transact the business of insurance in this state. No additional capital shall be required for the insurance specified in subsection (17) of section 201.04.

(2) A company transacting the business mentioned in subsection (7) of section 201.04 shall have a capital of at least two hundred and fifty thousand dollars and a surplus of at least one hundred and twenty-five thousand dollars, in addition to the capital stock and surplus requirements for other classes of insurance being transacted by such corporation.

(3) No stock insurance company shall begin business unless it has a surplus equal to one-fourth of its capital stock. [1931 c. 358 s. 3; 1933 c. 120, 142; 1933 c. 487 s. 36, 44; 1933 c. 489 s. 3, 4; 1933 c. 494 s. 8; 1935 c. 54, 478]

**Note:** Term "such company" as found in (1) refers to any stock insurance company. State v. Mortensen, 224 W 398, 272 NW 457. Insurance companies writing fidelity insurance in addition to other kinds of insurance are required under 201.11 (2) and 204.041 to have capital stock of \$250,000 in addition to capital stock which is required for transaction of other types of insurance business under provisions of 201.11 (1). Insurance companies transacting other kinds of insurance in addition to surety insurance must compute capital stock requirements upon basis of requirements for insurance other than surety insurance and must add requirements for surety insurance. 30 Atty. Gen. 65.

**201.12 Cessation of business; incorporators', directors' liability.** (1) No domestic insurance corporation shall transact business, other than the dissolution and winding up of its affairs, after its risks outstanding, for a period of one year, shall have been below two hundred.

(2) The incorporators during the first year after the filing of the articles and until the election of directors, and, thereafter, the directors, shall be jointly and severally liable for any losses incurred upon policies issued or delivered during any time when the risks outstanding shall be below said minimum, and for the excess of any policy above the maximum single risks prescribed by section 201.16 during the time such policy exceeds such maximum single risk. [1933 c. 487 s. 37]

**201.13 Mutuals; surplus safeguarded; dissolution; reorganization.** (1) After January 1, 1912, no domestic mutual insurance company shall pay to any member, for or on account of his membership in such company, upon dissolution, in dividends, or in any other manner, in addition to the insurance benefits promised in the policy, any sum in excess of the payments made by the member with interest at six per cent compounded annually.

(2) Upon dissolution of any such corporation any assets or property held by it in excess of its liability, and of the amounts which may be paid to its members under subsec-

tion (1), shall be paid into and belong to the school fund of the state, as a license fee charged to such corporation upon dissolution.

(3) Every such corporation having assets in excess of one per cent of the amount of its insurance in force shall, before being licensed to do business in this state, file with the application for such a license a resolution duly adopted by its board of directors and signed by its president and secretary, wherein it shall agree that its assets shall be distributed in accordance with subsections (1) and (2) of this section. And no license shall be issued to such company until after the adoption and filing of such resolution.

(4) No domestic mutual insurance company shall be reorganized in any manner into a corporation with capital stock. [1933 c. 487 s. 38]

**201.135 Dividends on mutual policies.** Any mutual company other than life may return on all policies savings or dividends in such amounts and such classifications as the board of directors shall determine is fair and reasonable, but such refund of savings or dividends shall in no case be made contingent upon the continuance of premium payments or maintenance of the policy. [1933 c. 487 s. 39]

**Revisor's Note, 1933:** There may be conflict between 201.135 and 206.36. Section 201.135 is last enacted. (Bill No. 50, s. 39.)

201.14, 201.15 [Repealed by 1937 c. 203 s. 1]

**201.16 Risk; maximum.** (1) Except as otherwise provided by law no single risk assumed by any insurance company shall exceed ten per centum of the admitted assets, except that in a mutual company it may be a greater amount not exceeding three times the average policy or one-fourth of one per centum of the insurance in force, whichever is the greater. Upon the business mentioned in subsection (14) of section 201.04, in a stock company, the maximum single risk shall not exceed one-twentieth of the paid-up capital. Any reinsurance taking effect simultaneously with the policy shall be deducted in determining the risk.

(2) In a mutual company organized for the insurance or guarantee of depositors or deposits in banks or trust companies, the maximum single risk may be fixed at a higher amount by the by-laws. Any such company may effect reinsurance in any authorized or unauthorized company, that complies with the provisions of subsection (1) of section 201.27, providing that insurance in any unauthorized company shall be reported annually and the same taxes paid upon the premiums as are paid by authorized companies. [1933 c. 487 s. 42]

**201.17 Mutuals, insure corporations; borrowing.** (1) Any mutual insurance company may issue policies to any public or private corporation, board or association in this state and elsewhere; and any public or private corporation, board or association of this state is authorized to make applications, enter into agreements for and hold policies in any mutual insurance company.

(2) Any mutual insurance company may borrow money from any officer, member or other person, for the purposes of its business or to enable it to comply with any requirement of law. No discount, commissions or promotion expenses shall be allowed or paid on such loan. Upon receiving the full amount of the principal to be used solely for such purposes, the company may issue its surplus notes, which shall fully recite the conditions of the loan; provided that no such notes shall be issued by any such company or be paid, discharged or retired in whole or in part without prior approval of the commissioner of insurance, and no surplus note or notes shall be issued by any mutual insurance company unless it accepts the requirements imposed by this subsection. Except as herein provided, such notes and indebtedness shall not be a liability or claim against any of the assets of the company. The principal and interest shall be payable only from the surplus over all other liabilities. The amount of principal and interest unpaid shall be reported in each annual statement. Surplus notes issued pursuant to the provisions of this section shall not be deemed a security within the meaning of the term as defined in chapter 189 and the provisions of said chapter shall not apply to such surplus notes.

(3) Nothing herein contained shall be construed to prevent a mutual insurance company from borrowing money on its own notes which are its general obligations and not merely payable out of surplus and the power of said companies so to do and to pledge any part of their assets to secure same is hereby declared and confirmed. [Stats. 1931 s. 201.11 (3), (4), (5); 1933 c. 142; 1933 c. 487 s. 44; 1933 c. 489 s. 4; 1943 c. 199]

**Note:** Holders of "surplus notes" of a mutual insurance company, executed pursuant to 201.17 (2), payable by their terms out of the "surplus earnings" of the company, and payable by the terms of the statute only from the "surplus over all other liabilities," are not entitled to be paid out of a fund constituted wholly of the excess of assessments collected by the commissioner of insurance, liquidating the defunct company, from policyholders for the payment of losses incurred while they were members and for expenses of liquidation. In re Mid-Continent Mut. Ins. Co. 246 W 460, 17 NW (2d) 602.



**201.18 Reserves, basis for.** (1) The unearned premium or reinsurance reserve for every insurance company when no other statutory provision is made therefor, shall be computed by the commissioner by setting up fifty per cent of the premiums received on all risks that have one year or less to run, and pro rata of all premiums on risks that have more than one year to run. In the case of perpetual risks or policies, the whole amount of premium paid shall be set up as a reserve. Every such company shall show its reserve, computed upon this basis, as a liability in the annual statement required by section 201.50.

(2) The requirements of this section as to unearned premium or reinsurance reserve shall not apply to town mutual insurance companies organized under chapter 202.

(3) The requirements of this section as to unearned premium or reinsurance reserve and the requirements of section 203.12 as to return premium shall not apply to a policy fee which is charged as such for the issuance of a policy of fire or windstorm insurance and is not in excess of \$2.50.

(4) Where no other provision is made therefor by law, the reserves of any insurance company shall be calculated upon such basis, method and plan as shall fully provide for all liabilities, and any basis, method and plan fixed by the order of the commissioner shall be prima facie just, reasonable and proper. [1933 c. 487 s. 45; 1945 c. 488]

**Note:** A plan whereby a foreign insurance company exacts from each insured, in addition to the lower-than-conference-rate charge which the company denominates a "premium," a nonreturnable so-called life membership fee for which the company purports to give no insurance but with which certain expenses customarily allocated to premium in the writing of insurance are defrayed, constitutes in fact a splitting of the "premium" as that term is used in the reserve statutes, 201.18 (1) and 204.27, and violates the statutory requirement that there shall be set up an "unearned premium" reserve computed on a percentage of "premiums," in that, not only is no unearned premium or any other reserve set up against the membership fee by the company, but also the calculation of proper reserves is made difficult because of the nature of the right or privilege given to the insured for the membership fee, namely, to reinstate or continue his insurance so long as he lives and remains a desirable risk. The reserve statutes do not permit insurance companies to allocate a portion of the expenses of doing business for some sort of privilege given by

a so-called membership fee and to designate the rest of the cost of insurance a "premium," since to do this would enable insurers to set their own reserve requirements by redefining "premium;" and the situation is not helped by so arranging the contract that the fee carries no insurance or other liability, since this destroys the statutory scheme for reserves quite as effectively as any other plan for splitting the premium. *Duel v. State Farm Mut. Auto Ins. Co.*, 240 W 161, 1 NW (2d) 887, 2 NW (2d) 371.

For the purposes of subsection (1), Stats. 1943, the "life membership fees" exacted from policyholders are a part of the "premiums" paid by them, so that, before the company may have a license to do business in this state, it must set aside an "unearned premium" reserve comprising a percentage of all such fees and hence the company's operating in this state on a basis excluding from the calculation its unearned-premium reserve membership fees exacted in other states, does not meet the requirements of the statute. *State Farm Mut. Automobile Ins. Co. v. Duel*, 244 W 429, 12 NW (2d) 696.

**201.19 Policy provisions; limitation of action; matter not incorporated by reference.** No policy shall contain any provision limiting the time for beginning an action on the policy to a time less than that prescribed, or specifically authorized by the statutes; or incorporate any matter not fully set forth therein, or in a copy of any application, or attached to and made a part of such policy at the time of its delivery; or prescribe in what court any action may be brought thereon or that no action shall be brought. [1933 c. 487 s. 46]

**Note:** Notwithstanding a one-year limitation in the policy, an action may be brought by the insured to recover the excess paid by him above the coverage in satisfaction of judgments for injuries obtained against the insured to recover from the insurer such excess on the ground that the insurer acted in bad faith toward the insured in failing to settle the claim for less than the coverage.

*Hilker v. Western A. Ins. Co.*, 204 W 1, 231 NW 257.

This section is inapplicable to a provision in an indemnity policy invalidating a claim not filed within three months after the expiration of the term covered by the policy. *Mutual B. & S. Ass'n v. American S. Co.*, 214 W 423, 253 NW 407.

**201.20 Loss, part borne by insured.** A policy may provide that the insured shall bear a part of any loss as provided therein. No such provision shall be valid unless the extent of the insured's participation in any loss is clearly indicated within the policy or by indorsement added to the policy. [1933 c. 487 s. 47; 1943 c. 396]

**Note:** This section and 203.22, Stats. 1931, are independent of each other, former providing for carrying of portion of risk by insured and latter for sharing of loss, and are not in conflict. 20 Atty. Gen. 605.

**201.21 Expenses; limitations; exceptions.** Except as otherwise provided by law, and excepting companies transacting only health and accident insurance, no mutual insurance company shall pay or incur in any year any expense, exclusive of investment expenses, taxes and fees, in excess of fifty per centum of the premiums and assessments collected during the year; or in excess of one-half of one per centum on the greatest amount of insurance in force at any time during the year, whichever is the greater. [1933 c. 487 s. 48]

**201.22** [Repealed by 1933 c. 487 s. 49]

**201.22 Mutual companies; risks; classification.** A mutual insurance company may classify the property or risks insured at time of insuring the same, under different rates corresponding as near as may be to the greater or less probability of loss which may be attached thereto. In case a mutual insurance company does classify the property or risks insured by it, said company may levy assessments or fix rates for each class of risks based upon the ascertained or estimated probability of loss involved in said class of risks. [1937 c. 223]

**201.23** [Renumbered section 203.02 sub. (2) by 1933 c. 487 s. 83]

**201.24 Domestic companies; trading prohibited; real estate investments.** (1) No domestic insurance company organized under any general law shall, directly or indirectly, deal in goods or commodities, excepting such as it may have insured and are claimed to be damaged by the risk insured against.

(2) No such company shall acquire or hold real estate except such as shall be necessary for the convenient transaction of its business, including with its offices other apartments to rent, the value of which shall not exceed twenty per cent of its admitted assets; and such as has been or shall be conveyed or mortgaged to it in good faith by way of security for loans or for debts or for money due in its business, or such as may have been purchased at sales upon judgments or mortgages obtained or made for such debts.

(3) All real estate except that needed for its business shall be disposed of within five years after the same shall have been acquired, unless the commissioner shall upon the application of the company showing that it will suffer materially from a forced sale thereof, authorize the postponement of such sale, not exceeding five years. Such authority may be renewed from time to time.

(4) All investments and deposits of the funds of any such company shall be made in its corporate name; and no director or other officer thereof, and no member of a committee having any authority in the investment or disposition of its funds, shall accept, or be the beneficiary, either directly or remotely, of any fee, brokerage, commission, gift or other consideration except their regular fixed compensation, for or on account of any loan, deposit, purchase, sale, payment or exchange made by or in behalf of such company, or be pecuniarily interested in any such purchase, sale or loan, either as borrower, principal, co-principal, agent or beneficiary, except that, if a policyholder, he shall be entitled to all the benefits accruing under the terms of his contract.

(5) This section shall apply to mutual benefit societies. [1933 c. 487 s. 50; 1937 c. 178; 1945 c. 517]

**201.25 Domestic companies; investments; capital.** (1) Except as otherwise provided by law, a domestic insurance corporation, except domestic life insurance corporations, may invest its assets as follows:

(a) In the lawfully authorized bonds or other evidences of indebtedness of the United States or of any state of the United States, or the District of Columbia, or of the Dominion of Canada or of any province thereof.

(b) In the lawfully authorized bonds or other evidences of indebtedness of any county, city, town, village, school district or other municipal district within the United States or the Dominion of Canada, which shall be a direct obligation of the county, city, town, village or district issuing the same, payable as to both principal and interest from general ad valorem taxes levied upon all taxable property therein; provided, that any such municipal district other than a county, city, town, village or school district shall have a population according to the last national or state census preceding the date of such investment of not less than 100,000.

(bn) In lawfully authorized bonds or other evidences of indebtedness payable from and adequately secured by revenues specifically pledged therefor of the United States or of any state of the United States, or of any county, city, village or town, or of a commission, board or other instrumentality of one or more of them and provided that such bonds or other evidences of indebtedness shall comply with the provisions of section 201.25 (1) (ff) 1.

(c) In loans upon improved and unincumbered real property in any state of the United States, and upon leasehold estates in improved real property for a term of years where twenty-five years or more of the term is unexpired, and where unincumbered except by rentals accruing therefrom to the owner of the fee, and where the mortgagee is entitled to be subrogated to all the rights under the leasehold; provided, that the fair market value of such real property or such leasehold estate at the time of the loan shall be at least fifty per centum more than the sum loaned thereon, exclusive of buildings unless such buildings are kept insured to an amount which, together with one-half the value of the land, shall equal or exceed the loan, and the policy or policies of insurance thereon be assigned to and held by said corporation as collateral to such loan.

(d) In the mortgage bonds of the farm loan banks authorized under the federal farm loan act and in obligations secured by mortgages or trust deeds authorized in paragraph (c) of this subsection.

(dm) In interest bearing notes of any building and loan association organized under the laws of this state.

(e) In the first mortgage bonds of any railroad or other public service corporation of any state or territory of the United States, or of the District of Columbia, or of any province of the Dominion of Canada.

(f) In the lawfully authorized bonds or other evidences of indebtedness of any foreign government other than the Dominion of Canada or any of its provinces in an amount not exceeding one per cent of the admitted assets of such corporation.

(ff) In the bonds or other evidences of indebtedness or stocks of any solvent corporation of any state or territory of the United States, of the District of Columbia, or of any province of the Dominion of Canada, excepting stock in its own corporation provided:

1. In the case of bonds or other evidences of indebtedness, the net earnings of the issuing corporations for a period of 3 fiscal years next preceding the date of investment shall have averaged per year not less than  $1\frac{1}{2}$  times its average annual fixed charges applicable to such period;

2. In the case of preferred stocks, the net earnings of the issuing corporation for a period of 3 fiscal years next preceding the date of investment shall have averaged per year not less than  $1\frac{1}{2}$  times the sum of such average annual fixed charges plus preferred dividend requirements for such period;

3. In the case of common stocks, the net earnings of the issuing corporation for a period of 3 fiscal years next preceding the date of investment shall have averaged per year not less than  $1\frac{1}{2}$  times the sum of such average annual fixed charges plus preferred dividend requirements for such period, and the issuing corporation shall have paid dividends upon such stocks in each of the 3 fiscal years next preceding the date of investment;

4. The issuing corporation has not defaulted in the payment of principal or interest upon any of its bonds or other evidences of indebtedness at any time during 5 years prior to the date of investment;

5. The owners or holders of such bonds or evidences of indebtedness or stocks shall not be or become liable on account thereof to any assessment except for taxes or laborers' liens.

(fg) "Net earnings" as used in paragraph (ff) shall mean net income after allowance for operating and maintenance expenses, depreciation and depletion, and taxes, other than federal and state income taxes, but excluding extraordinary nonrecurring items of expense appearing in the regular financial statement of the issuing company. "Fixed charges" as used in paragraph (ff) shall include interest on all bonds and other evidences of indebtedness, and amortization of debt discount. In applying tests of "net earnings" under paragraph (ff) to an issuing company, whether or not in legal existence during the whole of the test period, which has during the test period acquired the assets of any other company by purchase, merger, consolidation or otherwise substantially as an entirety, net earnings of such predecessor or constituent company for such portion of the test period as preceded acquisition, may be included in the net earnings of the issuing company, in accordance with consolidated earnings statement covering such period and giving effect to all fixed charges immediately after such acquisition.

(fh) In the stock or stocks of any solvent corporation or corporations of any state or territory of the United States or of the District of Columbia except stock in its own corporation which do not comply with the requirements of paragraphs (ff) and (fg) hereof provided that the total investment under this paragraph in all classes of stock shall not exceed 3 per cent of its admitted assets.

(g) In loans upon collateral security of any of the foregoing securities; provided, that the market value of such securities shall not, during the continuance of such loan, be less than the indebtedness thereon.

(h) In such real property as shall be necessary for the convenient transaction of its business, subject to other provisions of law.

(hm) In interest bearing notes of any mutual insurance company organized under the provisions of chapter 202 or 211.

(i) Every such domestic corporation doing business in any foreign country, may invest the funds required to meet its obligations incurred in such foreign country in conformity to the laws thereof in the kind of securities of such foreign country in which such corporation is authorized to invest in this state.

(j) In investment shares of building and loan associations to the extent that they are or may be insured or guaranteed by the United States government, or by the federal

savings and loan insurance corporation, or by any other agency of the United States government, or in shares of corporations chartered or incorporated under section 5 of the home owners' loan act of 1933. The restrictions imposed by subsection (2) shall not apply to any such shares to the extent that such shares are insured or guaranteed by the United States government or by the federal savings and loan insurance corporation or by any other agency of the United States government.

(k) In single premium endowment insurance policies and single premium life insurance policies of life insurance companies authorized to do business in Wisconsin.

(1) In such investments as are authorized by chapter 219.

(2) Before making any other investment, every domestic insurance corporation shall invest and keep invested an amount at least equal to the capital required of a stock corporation to transact the lines of business which it is authorized to transact, in any of the securities mentioned in subsection (1) (a), (b), (d) and (e), or in loans upon real estate located within this state, provided that any investments made prior to the effective date of this amendment (1945) and complying with all other subsections of this section shall not be deemed in violation of this subsection.

(3) No domestic insurance corporation, including any domestic insurer, shall make any investment not authorized by law.

(4) No such corporation shall invest more than 10 per cent of its admitted assets in the stock or securities of any one private or municipal corporation, and as to any investment made under the terms of section 201.25 (1) (fh) shall be further subject to the limitations contained therein.

(5) In determining the financial condition and valuing the investments of any domestic or foreign insurance corporation as of the end of the year 1932 and thereafter, the provisions of section 206.35 shall apply whether such company writes life, fire, casualty or other types of insurance. [1931 c. 30; 1933 c. 20, 321; 1933 c. 487 s. 51; 1939 c. 522; 1941 c. 50; 1943 c. 341; 1943 c. 553 s. 31; 1945 c. 163, 436]

**Note:** While domestic insurance company not use its surplus funds as capital for company invest its surplus funds in real estate deducting what is essentially real estate mortgages under 201.25 and 219.01, it may gage brokerage business. 28 Atty Gen. 49.

**201.26** [Repealed by 1933 c. 487 s. 52]

**201.27 Reinsurance.** (1) Any licensed insurance company may assume as a reinsurer the whole or any part of the liability of any other company upon such risks as it may insure direct; and may reinsure the whole or any part of its liability on risks assumed in any other responsible company, or companies, whose capital and surplus shall equal or exceed the minimum of capital and surplus required by domestic companies for the transaction of similar business; provided, such company is licensed to transact business in some state of the United States.

(2) The receiver of any insurance company, when authorized by the court, may reinsure all its risks in any corporation authorized to do a similar business in this state; if the assets are insufficient the receiver may reinsure pro rata each such risk to the extent of the assets available for that purpose. [1933 c. 487 s. 53, 96]

**201.28** [Renumbered section 201.02 sub. (2) by 1933 c. 487 s. 28]

**201.29 Increase of capital from surplus.** Any domestic stock insurance corporation which shall have a fund, in addition to its capital stock and all outstanding liabilities, in excess of one-half of the amount of all premiums on risks, such corporation may increase its capital stock from such fund, and distribute a stock dividend pro rata to its stockholders; provided, such increase shall equal twenty-five per centum of the original capital stock, and shall have been authorized by three-fourths of the directors and approved by the commissioner. [1933 c. 487 s. 54]

**201.30 Consolidation of corporations.** (1) Any domestic stock insurance corporation may consolidate with another stock corporation into a domestic corporation using the name of one or more of the corporations. In case of a consolidation with a foreign corporation compliance shall be had with the laws of the parent state.

(2) The agreement for consolidation shall be executed under their corporate seals by the presidents and secretaries, by the authority of the board of directors of each respectively; and shall recite the articles of organization of the new corporation which shall conform to the requirements for the articles of organization of like domestic corporations.

(3) The capital shall not be larger than the aggregate paid-up capital of the consolidating corporations unless such increase shall have been consented to in writing by the holders of three-fourths of the stock of each of the consolidating corporations. The same fee shall be paid for an increase of the capital above such aggregate paid-up capital, as in other cases on amendment of articles.

(4) Such agreement must be assented to by a majority of all the directors of each

corporation and must be approved by the votes of stockholders owning two-thirds of the stock of each corporation, at a meeting called separately for that purpose.

(5) A notice stating the time, place and object of the meeting, shall be served upon each stockholder personally or mailed to him at his last known post-office address at least thirty days prior to the date of holding such meeting, and shall be published at least once a week for four weeks successively in some newspaper printed in the city where each corporation has its principal office.

(6) Such agreement, with the certificate of the secretaries of the respective corporations under the seals thereof, reciting compliance with the provisions of this section, shall be filed with the commissioner and may be approved by him after such examination as he may order or require.

(7) The commissioner's approval shall be indorsed on the agreement and a duplicate of such agreement, with a certificate of the commissioner showing the date when such agreement was approved and filed by him, shall be recorded by the register of deeds of each county in this state wherein any of such consolidating companies is located.

(8) Such consolidation shall be deemed effective upon the filing of such duplicate for record in all such counties, and thereafter the articles of organization recited in such agreement shall stand as the articles of organization of the new corporation.

(9) The new corporation may require the surrender of the certificates of stock in each of the corporations consolidated, and upon such surrender shall issue new certificates for such number of shares of its own stock as the stockholders may be entitled to receive.

(10) All the rights, franchises and interests of the corporations consolidating, in and to every species of property and things in action, shall be deemed to be transferred to and vested in the new corporation, without any other deed or transfer, and the new corporation shall hold and enjoy the same to the same extent as did the old corporations.

(11) The new corporation shall succeed to all the obligations and liabilities of the old corporations, and shall be held liable to pay and discharge them in the same manner as if they had been incurred or contracted by it.

(12) The stockholders of the old corporations shall continue subject to the liabilities, claims and demands existing against them at or before consolidation.

(13) No action or proceeding pending at the time of the consolidation in which any of the old corporations may be a party shall abate by reason of the consolidation, but the same may be prosecuted to final judgment in the same manner as if the consolidation had not taken place, or the new corporation may be substituted in place of the old corporation.

[1933 c. 487 s. 55]

**Revisor's Note, 1933:** Section 201.30 was created by chapter 66, Laws 1911. The reference there in (6) was to chapters 86 and 89, Stats. At that time chapter 89 contained all the provisions relating to insurance corporations. The present reference to chapter 200 is misleading. It better be to chapter 201 and better still not made at all. The new company is merely a domestic capital stock insurance corporation. That goes without (6). See 207.06 to 207.12. (Bill No. 50 S, s. 55)

**201.31 Reinsurance companies; organization; admission; fees; taxes.** Corporations may be formed for the purpose of transacting the business of reinsurance; such reinsurance companies shall transact business only with authorized insurance companies and not through agents, and such reinsurance may include all classes and kinds of insurance permitted by the statutes, but every reinsurance company shall have capital equal to the capital required of other insurance companies, and shall hold reserves in the same amount and manner as required of other companies for each kind or class of insurance. Reinsurance companies may be incorporated, and foreign reinsurance companies may be admitted to transact business in this state, in the same manner as fire, life, casualty and surety corporations are, and shall comply with the laws regulating such corporations so far as the same may be applicable. Reinsurance companies shall pay the same fees and taxes required to be paid by fire insurance companies. [Stats. 1931 s. 201.37; 1933 c. 487 s. 56]

**201.32 Foreign companies; admission.** (1) No foreign insurance company shall directly or indirectly transact any insurance business in this state except upon compliance with the requirements of this section.

(2) A stock company shall be possessed of capital equal to that required of like domestic companies.

(3) A mutual company shall satisfy the requirements as to solvency and the limitations as to expenses exacted of like domestic companies.

(4) The foreign company shall file a declaration that it desires to transact insurance in this state, and that it will accept a license therefor to terminate in case it shall violate or fail to comply with any provision of law, or in case its capital shall be impaired to the extent of twenty per cent, and shall not be made good within such time as the commissioner shall require, if such commissioner shall declare its license revoked therefor.

(5) The applicant shall file in the office of said commissioner a copy of its charter or articles of organization duly certified by its secretary, together with a statement verified by the oath of the president, vice president or other chief officer and of the secretary giving the place where located, amount of capital stock, and its assets in detail, showing the amount of cash on hand and in banks, the amount of real estate, and how much the same is incumbered, the shares of stock owned by it, the par and market value of the same, the amount loaned on securities, the kinds and amounts loaned on each, the estimated value of such securities and all its other assets and the value thereof; also showing the amount of its debts, the amount of losses adjusted and unpaid, the amount in process of adjustment, the amount resisted as illegal, and all other claims existing against it; and a copy of the last report made under any law of the state or country by which it was incorporated.

(6) (a) No corporation organized under the laws of a foreign country shall be licensed unless it has a cash capital of two hundred thousand dollars, and a deposit with the treasurer of this state or with the proper officer of some other state of the United States of not less than two hundred thousand dollars in securities authorized by law for investments of fire insurance corporations, in trust for the benefit of its policyholders in the United States; and shall furnish the certificate of the trustee of said deposit stating the manner in which it is invested and the purposes for which it is held; and it shall furnish annually to the commissioner a statement of the condition of its affairs in the United States in such form as he shall require.

(b) The capital of such foreign insurance company shall, for the purposes of the insurance laws of this state, be the aggregate of its deposit as aforesaid, and all lawful real estate loans in the United States and all other assets in the United States invested in property in which fire insurance companies may legally invest; and such capital shall be held in the United States for the benefit of its policyholders and creditors in the United States after making the same deduction from such aggregate value for losses and liabilities in the United States, and for unearned premiums upon risks therein as is authorized or required with respect to domestic insurance companies.

(c) Such capital, aside from said deposit, shall be held by trustees who are citizens of the United States, to be appointed by the directors of such company and approved by the commissioner; and a certified copy of the resolution by which they are appointed and of the deed of trust shall be filed in the office of the commissioner; and he may examine such trustees or their agents under oath and their assets, books and accounts in the same manner as he may examine the officers, agents, assets, books and accounts of any domestic insurance company. [*Stats. 1931 s. 201.38; 1933 c. 487 s. 57*]

**Revisor's Note, 1933:** Subsection (1) (c) 201.40, new 201.34. The manner of service on is made 201.33. Subsection (1) (d) is consolidated with 201.39 (14); (2) (b) is in 201.43. (Bill No. 50 S. s. 57)

The provision requiring the company to surrender its right to remove actions from the state to the United States courts is omitted because it is unconstitutional. It does not bind the company. *Wisconsin v. Philadelphia & R. C. & I. Co.*, 241 US 329; *Terral v. Burke Cons. Co.*, 257 US 529; *Frost Trucking Co. v. Railroad Com.*, 271 US 583. The appointment of an attorney to make service on is new 200.03 (16). The examination of foreign companies is covered by old 27 Atty. Gen. 714.

**201.33 Lloyd's association.** Lloyd's association may be admitted to transact insurance other than life insurance upon the same terms and conditions as insurance companies of other states of the United States. No capital stock shall be required, but there shall be on deposit by each alien associate underwriter at all times with the attorney in fact for such Lloyd's association a sum in cash or in securities mentioned in section 201.25, equal to three times the maximum insurance by such alien associate on any single risk, or in lieu thereof the Lloyd's association may comply with subsection (6) of section 201.32. No underwriter shall assume any single risk (exclusive of lawful reinsurance) in excess of ten per cent of the underwriter's net worth. A statement of such limit of single risk and of liability and of such net worth with the names, addresses and occupations of all individual underwriters shall be filed with the application for admission and with each annual statement and oftener as required by the commissioner. [*Stats. 1931 s. 201.38 (1) (c); 1933 c. 487 s. 58*]

**201.34 License; visitation; foreign companies.** (1) The commissioner shall upon being satisfied by investigation that any insurance company applying for license or relicensure has fully complied with all provisions of law, and that its methods and practices in the conduct of its business and the character and value of its assets are such as to safeguard the interests of its policyholders and the people of the state, issue to such company

a license to transact business in this state, and shall renew the same from year to year so long as such company shall meet all requirements of law; and shall give to every agent of such company a certificate that such company has complied with all the provisions of law and is authorized to transact business in this state, which license to the company and certificate to agents shall continue in force until the first day of May next after the effective date thereof, unless sooner revoked.

(2) The commissioner shall have the same supervision and make the same examination of the business and affairs of every licensed foreign insurance corporation as of domestic corporations doing the same kind of business, and of its assets, books, accounts and general condition. Every such foreign corporation and its agents and officers shall be required to make the same statements and answer the same inquiries and be subject to the same examinations, and, in case of default therein, to the same penalties and liabilities as domestic corporations doing the same kind of business, and the agents or officers thereof may be liable to.

(3) A licensed foreign insurance corporation may transact in this state only such kinds of business as, under the laws of this state, a like domestic insurance corporation is authorized to transact.

(4) No such corporation shall transact any business in this state not specified in the license granted by the commissioner. [*Stats. 1931 s. 201.40; 1933 c. 34; 1933 c. 487 s. 4, 59*]

**Revisor's Note, 1933:** Revocation of license and certificates are provided for in 201.41 (2); (3) is made (4) of 200.03. (Bill No. 50 S, s. 59) insurance company in any case where it has failed to comply with all provisions of the law, and particularly where its practices and methods are definitely illegal under the statutes. *Duel v. State Farm Mut. Auto Ins. Co., 240 W 161, 1 NW (2d) 887, 2 NW (2d) 871.*

201.35 [*Renumbered section 203.16 sub. (5) by 1933 c. 487 s. 97*]

201.36 [*Renumbered section 201.61 by 1933 c. 487 s. 77*]

201.37 [*Renumbered section 201.31 by 1933 c. 487 s. 56*]

**201.37 Insurance on goods conditionally.** No person, firm or corporation shall include as a part of the consideration in any agreement of sale of personal property in this state on the instalment or conditional sales contract plan any charge for insurance on such property not effected through an insurance company authorized to do business in this state, and any policies issued on such property so sold shall be issued and countersigned by a resident agent. [*1939 c. 38*]

201.38 [*Renumbered section 200.03 sub. (15) by 1933 c. 487 s. 4; section 201.32 by 1933 c. 487 s. 57; section 201.33 by 1933 c. 487 s. 58; section 201.39 sub. (14) by 1933 c. 487 s. 60*]

201.385 [*Repealed by 1933 c. 487 s. 63a*]

**201.39 Interinsurance.** (1) Individuals, partnerships, and corporations of this state, hereby designated subscribers, are authorized to exchange reciprocal or interinsurance contracts with each other, or with the individuals, partnerships, and corporations of other states and countries, providing indemnity among themselves from any loss which may be insured against under other provisions of the laws excepting life insurance.

(2) Such contracts may be executed by an attorney, agent or other representative herein designated attorney duly authorized and acting for such subscribers. A corporation duly authorized by its charter so to do may act as such attorney.

(3) Such subscribers so contracting among themselves shall, through their attorney, file with the commissioner of insurance a declaration verified by the oath of such attorney, or where such attorney is a corporation, by the oath of its duly authorized officers, setting forth:

(a) The name of the attorney and the name or designation under which such contracts are issued which name or designation shall not be so similar to any name or designation adopted by any attorney or by an insurance organization in the United States prior to the adoption of such name or designation by the attorney, as to confuse or deceive.

(b) The location of the principal office.

(c) The kind or kinds of insurance to be effected.

(d) A copy of each form of policy, contract or agreement under or by which insurance is to be effected.

(e) A copy of the form of power of attorney under which such insurance is to be effected.

(f) That applications have been made for indemnity or insurance upon at least one hundred separate risks aggregating not less than one and one-half million dollars represented by executed contracts or bona fide applications to become concurrently effective; or in case of employers' liability or workmen's compensation insurance, covering a total pay roll of not less than two and one-half million dollars.

(g) That there is in the possession of such attorney assets amounting to not less than the sum required by subsection (6) of this section.

(h) A financial statement in form prescribed for the annual statement.

(i) The instrument authorizing service of process as provided for in this section.

(4) Concurrently with the filing of the declaration provided for by the terms of subsection (3) of this section, the attorney shall file with the commissioner of insurance an instrument in writing executed by him for said subscribers, conditioned that upon the issuance of certificate of authority provided for in subsection (10) of this section, service of process may be had upon the commissioner of insurance in all suits in this state arising out of such policies, contracts, or agreements, which service shall be valid and binding upon all subscribers exchanging at any time reciprocal or interinsurance contracts through such attorney. Three copies of such process shall be served and the commissioner of insurance shall file one copy, forward one copy to said attorney, and return one copy with his admission of service.

(5) There shall be filed with the commissioner of insurance, by such attorney, a statement, under the oath of such attorney, showing the maximum amount of indemnity upon any single risk, and such attorney shall, whenever and as often as the same shall be required, file with the commissioner of insurance a statement verified by his oath to the effect that he has examined the commercial rating of such subscribers as shown by the reference book of a commercial agency having at least one hundred thousand subscribers, and that from such examination, or from other information in his possession, it appears that no subscriber has assumed on any single risk an amount greater than ten per cent of the net worth of such subscriber.

(6) The attorney in fact shall have on hand at all times assets in cash or securities authorized by the laws of the state in which the principal office of the exchange is located for the investment of funds of insurance companies doing the same kind of business an amount equal to one hundred per cent of the net unearned premiums or deposit collected and credited to the account of subscribers, or fifty per cent of the net annual advance premium or deposits collected and credited to the account of subscribers on policies having one year or less to run, and pro rata on those for a longer period. In addition to the foregoing there shall be maintained in cash or such securities assets sufficient to discharge all liabilities on all outstanding losses arising under policies issued, the same to be calculated in accordance with the laws of the state relating to similar reserves for companies insuring similar risks. Net premiums or deposits as used in this section shall be construed to mean the advance payments made by subscribers before deducting therefrom the amount provided in the subscriber's agreement for expenses, provided, however, that insurance organizations subject to the provisions of this section collecting expense funds separate from other premiums or deposits shall carry such a reasonable reserve on such expense items as may be required by the commissioner of insurance in accordance with section 201.18. In no case shall the reserves required be less than the reserves required of other insurers by the statutes of this state, including the provisions of sections 201.18, 204.27 and 204.28 and any membership fee, policy fee or application fee shall be included in the deposit and charges against which reserves must be carried as provided herein. If at any time the assets on hand are less than the foregoing requirements or less than one hundred thousand dollars, whichever is the greater when the attorney in fact is exchanging contracts covering employers' liability or workmen's compensation, or automobile insurance, the subscribers, or their attorney in fact for them shall make up the deficiency within thirty days after notice from the commissioner of insurance so to do. Whenever such assets are less than the amount above required, or less than fifty thousand dollars, whichever is the greater, if the attorney in fact is exchanging contracts other than those covering employers' liability or workmen's compensation or automobile insurance, the subscribers, or their attorney in fact for them shall make up the deficiency within thirty days after notice from the commissioner of insurance so to do. No obligation for borrowed money shall be incurred on behalf of any exchange.

(7) Such attorney shall, within the time limited for filing the annual statement by insurance companies transacting the same kind of business, make a report to the commissioner of insurance for each calendar year showing the financial condition of affairs at the office where such contracts are issued, and shall furnish such additional information and reports as may be required; provided, however, that such attorney shall not be required to furnish the names and addresses of any subscribers. The business affairs and assets of such organizations shall be subject to examination by the commissioner of insurance in the same manner as in the case of other insurance carriers, and such exchanges shall also be subject to any antidiscrimination or antirebating laws applicable to other fire and casualty insurance carriers, except that any such antirebating law shall not be construed to include or apply to savings or dividends paid to subscribers or credited to their account.



(8) Any corporation now or hereafter organized under the laws of this state shall, in addition to the rights, powers, and franchises specified in its articles of incorporation, have full power and authority to exchange insurance contracts of the kind and character herein mentioned. The right to exchange such contracts is hereby declared to be incidental to the purposes for which such corporations are organized and as much granted as the rights and powers expressly conferred.

(9) Any attorney who shall, except for the purpose of applying for a certificate of authority as herein provided, exchange any contracts of indemnity of the kind and character specified in this section, or directly or indirectly solicit or negotiate any applications for same without first complying with the foregoing provisions, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be subject to a fine of not less than one hundred dollars, nor more than one thousand dollars.

(10) Each attorney, by or through whom are issued any policies of or contracts for indemnity of the character referred to in this section, shall procure from the commissioner of insurance annually a certificate of authority stating that all the requirements of this section have been complied with, and upon such compliance and the payment of the fees required by this section, the commissioner of insurance shall issue such certificate. In case of a breach of any of the conditions imposed by law, the commissioner of insurance may revoke the certificate of authority issued hereunder.

(11) In lieu of all other taxes, licenses, or fees whatever, state or local, such attorney shall pay annually on account of the transaction of such business in this state, a filing fee of twenty-five dollars, and a license fee of two per cent upon the gross premiums or deposits during the preceding calendar year, deducting all amounts returned to subscribers or credited to their accounts other than for losses, except that the fee shall be at the rate of two and three-eighths per cent upon the same basis for the insurance mentioned in subsection (1) of section 201.04, and that from such latter fees there shall be set apart the fire department dues mentioned in section 201.59.

(12) The attorney in fact may purchase reinsurance upon the risk of any subscriber at the exchange. No attorney in fact shall, however, grant reinsurance upon any risk or risks insured by any other insurance carrier. Any exchange operating in this state may however consolidate with or reinsure its entire business in another exchange. If the principal office of any exchange entering into such contract of consolidation or reinsurance is located in this state the contract for such consolidation or reinsurance shall be submitted to and approved by the commissioner of insurance of this state before being effective.

(13) Failure of the attorney to file the appointment required in subsection (4) of section 201.39 or failure on the part of any subscriber to authorize the attorney to do so shall not invalidate any service made by serving upon the commissioner of insurance. By accepting a license to transact business in this state every such attorney in fact and each of the subscribers shall be held to have appointed the commissioner of insurance the agent and attorney for each of them to accept service of summons or other process and such authority shall continue so long as any liability remains unsatisfied against any of such members on any contract or contracts issued by such attorney. Any judgment recovered in any action where the summons or other process has been served upon the commissioner of insurance shall be binding upon each of the subscribers at such exchange the same as if personal service was had upon each of such subscribers.

(14) Individual firms and corporations who make contracts of insurance among themselves on their own property or risks on the reciprocal or interinsurance plan, shall not be required to act through a resident agent or use the standard fire policy, but any contract or policy insuring against loss by fire shall contain in substance the provisions of the standard fire policy.

(15) Except as herein provided, no law relating to fire insurance shall apply to reciprocal or interinsurance contracts or the execution thereof. [*Stats. 1931 s. 201.38 (1) (d); 1933 c. 429; 1933 c. 487 s. 60*]

**201.40** [*Remembered section 200.03 sub. (4) by 1933 c. 487 s. 4; section 201.34 by 1933 c. 487 s. 59*]

**201.41 License; conditions; revocation.** (1) No insurance company shall transact insurance business in this state without first having paid the license fees and obtained the license therefor required by law.

(2) If any such company shall violate any provision of law applicable thereto or if its capital shall be impaired to the extent of twenty per cent and shall not be made good within such time as the commissioner shall require, the commissioner shall revoke its license, and no such corporation or agent thereof shall thereafter transact any business of insurance in this state until again licensed.

(3) If an insurance company shall hold a license to transact more than one kind of insurance, the commissioner may revoke such license as to one or more kinds of insurance authorized therein for the same cause and in the same manner that he is authorized to revoke such license for all kinds of insurance authorized therein. [1933 c. 487 s. 4, 61]

**Revisor's Note, 1933:** The provisions in (2) and (3) against companies going into federal courts are omitted because they are unconstitutional. See note to old 201.38 (2), new 201.32. The law is not changed. Subsection (4) is made 200.03 (5). (Bill No. 50 S, s. 61)

The order was not invalid as assessing for premiums collected during a period when

the company was unlawfully operating without a license, the company being a domestic mutual liability insurance company, and 76.30 (1), (2), 76.32 and 201.41 (1), not requiring such a company to procure a license and pay a license fee. [Northwestern Nat. Ins. Co. v. Freedy, 201 W 51.] In re Wisconsin Mut. Ins. Co., 241 W 394, 6 NW (2d) 330.

**201.42 Withdrawal of securities.** When any foreign insurance corporation shall elect to discontinue business in this state it shall, before withdrawing its securities deposited with the treasurer, reinsure all its risks on property in this state to the satisfaction of the insured and the commissioner, and when so reinsured the said commissioner shall certify the fact or that no such risks exist to the treasurer, who shall thereupon, and not otherwise, surrender its securities. [1933 c. 487 s. 62]

**201.43 Service of process; proof.** (1) Service of summons or other legal process upon the commissioner as attorney for any insurance company shall be deemed personal service, and shall be made by delivering two copies thereof to him or at his office and paying him a fee of two dollars. A certificate by the commissioner showing such service shall be proof of service.

(2) The commissioner shall immediately forward by mail one copy to the secretary or attorney in fact of the company, or, in case of an insurer from a foreign country, the copy shall be forwarded to its resident manager or attorney in fact in this country, but any company may in writing filed with the commissioner designate some other person to whom the copy shall be forwarded. The commissioner shall file the other copy and shall make a record of the day and hour of service upon him.

(3) If the license of any foreign insurance company shall be revoked or it shall cease to transact business in this state, process for commencing actions upon any policy or liability incurred in this state while it transacted business herein may nevertheless be served upon the commissioner and the agents last designated as acting for it so long as any such liability shall exist. [1933 c. 487 s. 63]

**Revisor's Note, 1933:** The matter of service on foreign companies is covered by new 200.03 (15) which makes the commissioner the attorney of every licensed foreign company, and 201.43 tells how service on such attorney shall be made. See 262.09. (Bill No. 50 S, s. 63)

**201.44 Policies issued through resident agents; exceptions; penalty.** (1) No policy of insurance shall be solicited, issued or delivered in this state, except through an agent who resides in this state, and holds a certificate of such authority under section 209.04, for the kind of insurance effected by such policy; provided that the commissioner of insurance may license nonresident brokers to solicit in this state applications for life insurance.

(2) In case of fire insurance, the agent shall countersign and enter the policy in a permanent record to be kept by him. Such agent shall be paid the commission on the policy.

(3) The books of every insurance agent shall be open to the inspection of the commissioner, his deputy or examiners.

(4) This section shall not invalidate any insurance placed in violation thereof.

(5) Any company or person soliciting or placing insurance without complying with this section shall be liable upon the policy to the same extent as the company issuing the same.

(6) This section shall not apply to policies issued directly from the home office of any domestic company, or to policies covering property in transit while in the possession or custody of any common carrier, or the property of a common carrier used by it as such, or to policies or contracts issued directly, by any mutual company or any association doing business on the interinsurance or reciprocal plan, on which no commissions are paid, except to a home office manager or an attorney in fact for such company or association, as specifically authorized by the insured.

(7) Any company or agent violating this section shall be subject to the penalty provided by subsection (10) of section 201.53.

(8) Any insurance company which has lawfully issued a policy of insurance upon property within this state, may reinsure said risk or any portion thereof, without having said policy of reinsurance signed by a local agent. [1933 c. 236 s. 2; 1933 c. 487 s. 64; 1933 c. 489 s. 6; 1935 c. 130]

**Revisor's Note, 1933:** Subsection (8) is from 201.48. (Bill No. 50 S, s. 64)

**201.45 False representation.** (1) AS TO CAPITAL AND SURPLUS. Every advertisement or public announcement and every sign, circular or card made or issued by any in-

insurance company, or any officer, agent, manager or representative thereof, within this state, which shall purport to make known its financial standing, shall exhibit the capital actually paid in, and the amount of its net surplus over all liabilities actually available for the payment of losses and held for the protection of its policyholders, including in such liabilities capital actually paid in and the fund reserved for reinsurance; and shall correspond with the last verified statement made by the company to the insurance department of this state. In policies or renewals thereof there may be stated a single item showing the amount of authorized capital.

(2) AS TO ASSETS. It shall be unlawful for any company to represent in any form any funds as assets in its possession when not so actually possessed and available for the payment of losses and held for the protection of the policyholders.

(3) PENALTY. Any company or individual violating this section or section 201.46 shall, for the first offense, forfeit five hundred dollars, and for each subsequent violation shall forfeit not less than one thousand dollars. [*Stats. 1931 s. 203.09, 203.10; 1933 c. 487 s. 65, 66*]

**201.46 Misrepresentation as to risks; revocation of licenses.** It shall be unlawful for any insurance company to publish or permit any of its agents to publish any statement which shall represent said company as writing risks different in nature or class from those actually written by it, or shall falsely represent said company as confining its business to a particular class of risks. The distribution of any cards or other documents by any agent containing such false representations, or the existence of any sign exposed to public view containing them and belonging to such company, or any agent thereof, or the existence of any advertisement or statement containing any such false representations in any newspaper published in any town, village or city in which the company has an agent soliciting insurance shall be prima facie evidence of the violation of this section by the company. The commissioner shall revoke the license of any company convicted of violating this section, and the licenses of all its agents immediately upon the filing of a certified copy of the record of such conviction with the commissioner. Whenever there shall be filed with him an affidavit indicating a violation of this section by any company, the commissioner shall immediately notify it of such filing and require it to show cause before him, within thirty days from such notification, why its license should not be revoked; and if it shall fail within the time specified to establish, to the satisfaction of the commissioner, that it has not violated this section in the manner alleged in such affidavit he shall immediately revoke its license and the license of all its agents. No license shall be granted to any company or to any agent thereof within one year from the date its license was revoked. [*Stats. 1931 s. 203.11; 1933 c. 487 s. 67*]

**201.47 Company not to conceal identity.** (1) No insurance company or its officers or agents shall issue any false or misleading advertisements or representations tending to conceal or misrepresent the identity of the company issuing any policy.

(2) No company or person shall issue any policy, advertisement or representation giving the appearance of a separate or independent insuring organization to any department, underwriters' agency or general agency of a company; every company issuing a policy under the title of an underwriters' agency shall register with the commissioner the name or title under which its policy will be issued and before it commences to issue policies under the name or title of an underwriters' agency it shall file a copy of the policy with the commissioner; and the type used in any policy, advertisement or representation shall set forth the name of the company assuming the risk more conspicuously than that of any department, underwriters' agency or general agency.

(3) Any violation of this section shall be punished by a fine not exceeding five hundred dollars. [*Stats. 1931 s. 203.14; 1933 c. 487 s. 68; 1941 c. 241*]

**201.48** [*Repealed by 1933 c. 487 s. 69*]

**201.49** [*Renumbered section 200.03 sub. (6) by 1933 c. 487 s. 4; section 203.55 by 1933 c. 487 s. 129*]

**201.50 Reports to commissioner, forms, contents, penalties.** (1) Every insurance company shall annually by March first file with the commissioner a sworn statement concerning its affairs for the preceding calendar year, upon such forms and including such information as shall be prescribed by him. The statement of any company organized under the laws of any foreign country shall set forth its business and affairs in the United States, verified by its resident manager in the United States. The commissioner shall prepare forms of annual statement for the various kinds and classes of insurance companies and societies, suitable for eliciting a true and complete exhibit of the financial condition, character and methods of each company or society, and he shall include in such forms, requisition for information upon all important elements of business transacted in each kind and class of insurance, including gain and loss, and any matter, condition or re-

quirement imposed by law and tending to a strict accountability of the management. The commissioner shall furnish annual statement blanks to the insurance companies and societies, and shall cause the information contained in the annual statements to be arranged in convenient form and published in his annual report.

(2) No company or society shall be relicensed until such annual statement has been so filed and all other provisions of the law complied with; provided, the commissioner may extend the time for filing such annual statement to March thirty-first. For failure to deposit such annual statement or to promptly reply in writing to any inquiry by the commissioner in relation to the business of any company, or for wilfully making any false statement therein, every company or society shall forfeit five hundred dollars, and for neglecting to file the annual statement an additional five hundred dollars for every month that such company or society shall continue to transact business in this state until such statement be filed. [1933 c. 487 s. 70]

**Note:** A foreign insurance company whose license has expired is not entitled to blank forms on which to make an annual report, since the company cannot be lawfully doing business in this state. State ex rel. Progress v. A. Co. v. Freedy, 205 W 243, 237 NW 92.

**201.51 Receivers, reports.** All receivers and trustees of insurance companies shall make and file annual and other statements of their assets and liabilities and of their income and expenditures in the same manner and form and time as the officers of such corporations are required by law to do and under the same penalties for a failure or neglect so to do. [1933 c. 487 s. 71]

**201.52** [Renumbered section 204.32 sub. (1) by 1933 c. 487 s. 159]

**201.53 Regulations, limitations, prohibitions.** (1) No insurance company shall make any agreement of insurance other than as plainly expressed in the policy.

(2) No insurance company, nor any officer, agent or employe thereof, shall pay, allow or give or offer to pay, allow or give, nor shall any person receive, any rebate of premium, or any special favor or advantage whatever in the dividends or other benefits to accrue, or any valuable consideration or inducement whatever not specified in the policy.

(3) No agent shall receive any compensation for effecting insurance upon his own property, life or other risk, unless during the twelve months preceding, as agent for the company assuming such risk, he shall have effected other insurance therein, the premium on which shall exceed the premium on the insurance on his own risk.

(4) It is not unlawful to pay the whole or any part of any commission to a domestic corporation, of which the agent writing the insurance shall be an officer or salaried employe, but no commission shall be so paid where any officer or stockholder of such corporation shall be interested in the property or risk insured, otherwise than as an agent authorized under section 209.04, nor unlawful for the corporation of which such agent is an officer or salaried employe to collect and remit premiums and keep account thereof; provided, that every such corporation other than those required to report to some other state department shall on or before the twentieth day of February of each year report in writing to the commissioner the amount of insurance premiums on which such commission is based, and the names of the officers and employes licensed as insurance agents.

(5) Any agent may pay the whole or any part of his commission to: (a) An insurance agent, other than a life agent, for writing the kind of insurance for which such commissions are paid; (b) a nonresident insurance agent, or any insurance company authorized in this state, as to insurance upon property owned by nonresidents or located wholly outside of this state; (c) or a nonresident agent of the fidelity or surety company paying such commissions. Except as aforesaid, no agent shall pay any part of his commissions to any person.

(6) Furnishing information, advice or service by any company, officer, agent or employe, with regard to any risk or for the purpose of reducing the loss or liability to loss, shall not be a violation of this section.

(7) The extension of credit to the insured upon a premium without interest for not exceeding sixty days from the time the insurance is written, or thereafter with interest at not less than the legal rate, as agreed upon in writing, is permissible.

(8) No insurance company nor any agent thereof shall in consideration of or in connection with a policy issued or proposed to be issued, make or offer to make any agreement for any deduction from any premium or any addition to any dividend or other benefit, on account of services rendered or to be rendered by the applicant for the policy or any person interested therein in any capacity or manner; nor contract for, sell or offer for sale any stock of such insurance company or any stocks, bonds or other certificates representing any interest in any company which shall at the time have any agreement with such insurance company, or own or control any of the stock thereof, or in any case where any part of the stocks, bonds or certificates of indebtedness of such company shall be

owned or held by such insurance company. No person shall so contract with any such company or agent, or receive any such favor, privilege or advantage.

(9) Violations of this section shall not invalidate the policy, but if the insured wilfully violated any provision of this section, he shall be entitled to recover only such proportion of the amount otherwise payable under the policy as the remainder of the premiums which have become payable, after deducting any rebate and the value of any special favor or advantage or consideration or inducement in violation of this section, bears to the amount of such premiums. Any company, officer, agent or employe thereof violating this section and any other person wilfully violating this section shall be punished by a fine of not less than fifty dollars nor more than three hundred dollars, or by imprisonment in the county jail for a term not exceeding six months, or by both such fine and imprisonment.

(10) Whenever it shall appear to the commissioner after a hearing upon notice, that any company, officer, agent, subagent, helper's agent, broker or solicitor has violated any provision of this section, he shall revoke the license of such company or person to transact business in this state, and no other license shall be issued to such company or person within three years after such revocation, unless the commissioner shall in his order of revocation fix a less time, which shall not be less than six months.

(11) No person and no officer or agent of any insurance company shall be excused from producing books, papers, contracts, agreements or documents or be privileged from testifying in relation to anything by this section prohibited, on the ground that the testimony or evidence required of him may tend to criminate him or subject him to a penalty or forfeiture.

(12) But no person shall be liable in any suit or prosecution, civil or criminal, for or on account of any transaction, matter or thing concerning which he may so testify or procure evidence, but no person so testifying or producing evidence shall be exempt from punishment for perjury committed in testifying.

(13) No insurance company, association or society, or any officer, or agent or deputy thereof shall make any misrepresentation to any person for the purpose of inducing such person to take out a policy or for the purpose of inducing a policyholder in any other company, association or society, to lapse, forfeit, cancel or surrender his policy of insurance therein. [Stats. 1931 s. 207.01; 1933 c. 487 s. 72; 1935 c. 214 s. 6]

**Note:** An agreement of an insurance agent to waive his commission on a fire policy was no more than a "reduction of the premium," and his agreement to remit to the company an amount which he owed to the insured was no more than a "special favor or advantage" not specified in the policy, so that, under 201.53 (2) and (9), the policy was not rendered void by such agreements, but the insured could recover only such portion of a loss under the policy as the premium actually paid bore to the premium payable. *Fry v. Integrity Mut. Ins. Co.*, 237 W 292, 296 NW 608. Co-operative insurance agency organized and operating under co-operative statutes, chapter 185, does not thereby violate anti-rebating provisions of 201.53. 26 Atty. Gen. 261. Deduction of agents' commissions upon sale of insurance on property of delinquent building and loan associations by insurance agencies constitutes violation of this section, prohibiting rebates. 29 Atty. Gen. 374.

**201.54 Dividends.** Any company may make distribution of savings, earnings or surplus to any class of policyholders, without having specified such dividends or distribution in the policy, where a schedule thereof has been filed with the commissioner. [Stats. 1931 s. 207.01 (2) (f); 1933 c. 487 s. 73]

**201.55** [Renumbered section 204.32 sub. (4) by 1933 c. 487 s. 159]

**201.56** [Renumbered section 204.32 sub. (5) by 1933 c. 487 s. 159]

**201.57** [Repealed by 1933 c. 487 s. 74]

**201.58 Violations, insurance law; general penalty.** Any corporation violating any law of this state relating to insurance shall, where no other penalty is prescribed, be fined not more than five thousand dollars, and any person violating any such law shall, where no other penalty is prescribed, be fined not more than one thousand dollars, or imprisoned in the county jail not exceeding one year, or so fined and imprisoned. [Stats. 1931 s. 207.02; 1933 c. 487 s. 75]

**201.59 Dues, fire departments; liability of insured.** (1) (a) Every city, village or town maintaining a fire department, as herein provided, shall be entitled, for the support thereof, to two per centum upon the amount of all premiums which, during the preceding calendar year, shall have been received by, or shall have been agreed to be paid to any company, for insurance, including property exempt from taxation, against loss by fire in such city, village or town.

(b) Every such city, village or town which furnishes fire protection under contract to another city, village or town or any part thereof shall be entitled to the dues specified in paragraph (a) from the premiums for fire insurance on property in such other city, village or town or part thereof, provided, that a certified copy of the contract, ordinances or resolutions constituting the agreement shall be filed with the commissioner, together with a

certificate of the industrial commission that the fire department furnishing the protection has sufficient equipment to and can afford the agreed protection without endangering property within its own limits. All such contracts, ordinances or resolutions shall describe the territory protected by township or section lines.

(d) Any city, village or town, not maintaining a fire department, which purchases not less than the minimum fire fighting equipment required for eligibility under subsection (3), and which for the purpose of obtaining fire protection for itself enters into an agreement with another city, village or town for the fire department of such other municipality to house and operate such equipment, shall be entitled to the dues specified in paragraph (a) from the premiums for fire insurance on property in the territory obtaining fire protection, if such municipality by agreement shall assume responsibility for the repair, maintenance and replacement of such fire fighting equipment. A certified copy of the contract constituting the agreement, containing a complete description of the fire fighting equipment purchased by the municipality receiving protection, and a description of the territory protected by township or section lines, shall be filed with the commissioner, together with a certificate of the industrial commission that such equipment meets the requirements of subsection (3). Two or more municipalities which together have purchased not less than the minimum fire fighting equipment as provided in this paragraph may enter into a fire protection agreement in the herein prescribed manner and shall under such conditions be jointly entitled to the dues as required by this subsection, provided such municipalities obtaining protection under the contract shall jointly and severally assume the responsibility for the repair, maintenance and replacement of the fire fighting equipment required. Such 2 per cent as required by this subsection shall be used for the operation, maintenance, repair or replacement of such equipment as described in subsection (3).

(2) Whenever a city or village shall contract to provide fire protection and the services of its fire department outside of its boundaries, it shall be subject to the same liability for property damage and personal injury when responding to calls and providing such services as when providing the same services within its limits.

(3) No city, village or town shall be entitled to such dues unless it shall have a voluntary fire department with not less than twenty-two active members, having at least one good pumper or one chemical fire truck with a capacity of fifty gallons and not less than five hundred feet of sound hose for a pumper or not less than one hundred fifty feet of sound hose for a chemical fire truck, housed and fit and ready at all times for actual service, and with at least one good hook and ladder truck, which may be combined with the pumper or chemical truck. Each volunteer fire department shall hold a meeting at least once a month. In case of paid or partly paid fire department, the buildings, machinery and materials hereinbefore enumerated and the necessary men and equipment to constitute an active and properly equipped department, ready for service at all times, shall entitle the city, village or town to such dues. The industrial commission shall from time to time notify the insurance commissioner of changes in the list of departments eligible to receive such fire department dues.

(4) In case any city, village or town shall maintain a system of waterworks with sufficient pressure for fire fighting purposes, with one or more hose trucks or carts, each having not less than five hundred feet of sound hose, kept fit and ready at all times for actual service, it shall not be required to maintain a pumper.

(5) No city, village or town shall be paid any fire department dues for any year unless the industrial commission shall have certified to the commissioner of insurance that the requirements of section 101.29 have been complied with as to such city, village or town. Any fire department dues paid into the state treasury for any city, village or town not entitled to receive the same may be expended by the industrial commission for making the necessary inspections within such city, village or town. In case such dues shall be withheld, where the same shall be payable into any firemen's pension fund or other special funds for the benefit of disabled or superannuated firemen, an amount equal to the fire department dues so withheld shall be paid into such pension fund from any fund of such city, village or town available therefor, and if no such fund be so available, the same shall be included in and paid out of the next taxes levied and collected for such city, village or town.

(6) The owner of property situated in any city, village or town within this section who shall insure the same in any company which has not complied with the provisions of law in regard to the payment of fire department dues shall be liable to the state for the percentage of premiums on the insurance on such property, and such percentage may be recovered in a civil action, and when recovered it shall be payable to such city, village or town. [1933 c. 168; 1933 c. 487 s. 78; 1933 c. 489 s. 7; 1935 c. 495; 1937 c. 188; 1939 c. 309; 1945 c. 390]

**Note:** Where a city contracted with a town to provide fire protection and the services of its fire department outside of its boundaries the city was not liable for the loss of a farmer's property because of negligence on the part of the city's firemen, responding to a call, in not remaining at the fire until it was definitely determined that the fire had been extinguished, nor was the city liable apart from the statute because of its contract with the town or because of de-

riving benefits thereunder. *Eulrich v. Clintonville*, 233 W 481, 300 NW 219.

Actual cost of fire inspections made by industrial commission under (4) (Stats. 1931) is to be paid from fire department dues accumulated under that subsection, and balance of such funds may be used for fire marshal in investigation of fires, under 200.19. 21 Atty. Gen. 230.

See note to 62.13, citing 25 Atty. Gen. 102.

201.595 [Renumbered section 201.62 by 1933 c. 487 s. 78a]

**201.60 Insurance, rating organization.** (1) No licensed insurance company shall be a member or subscriber of, or shall contribute to or financially aid any rating organization or any organization furnishing any services in connection with the making of rates for insurance in this state, unless such organization shall furnish its services without discrimination to all insurers licensed in this state that apply therefor; and shall file with the commissioner a copy of its charter or articles of organization and by-laws and plan of operation, including a brief statement of the services rendered and the conditions and charges imposed upon members or subscribers for such services, and such other information as the commissioner may require, and shall from time to time file with the commissioner copies of any changes made in the papers so filed.

(2) Any insurance company violating the provisions of this section shall forfeit not exceeding one hundred dollars per day for each day of violation. [1933 c. 487 s. 76]

**201.61 Special charter companies.** All fire or fire and inland navigation or transportation insurance companies organized under any special law shall be subject to all the provisions applicable to like corporations organized under the general law, except that their capitals may continue of the amount and character provided by their respective charters during the term authorized by such charters, and their investments may remain as prescribed by their charters, and they shall enjoy any peculiar privileges and powers given in their charters not inconsistent with said general law. [Stats. 1931 s. 201.36; 1933 c. 487 s. 77]

**201.62 Property owner report to insurance commissioner, unauthorized insurance.** (1) The owner of property situated in this state including property exempt from taxation shall, upon demand of the commissioner, furnish him a sworn statement showing the description and location of the property, the amount of insurance he has effected against loss by fire, the number of each policy, the name and location of the company issuing such policy, and the premiums paid, or if he has not insured his property the amount paid into or credited to any insurance fund or other reserve against loss or damage by fire. If any such statement shall not be made as required, said commissioner shall cause a demand in writing to be served on the owner so failing to make such sworn statement. Every person who shall wilfully make false statement or who shall, for thirty days after such demand, neglect to render such statement shall forfeit fifty dollars and an additional fifty dollars for each day's neglect after the expiration of said thirty days.

(2) If such insurance has been effected in any company not authorized to do business in this state, or that such owner carried his own insurance, the commissioner shall collect from such property owner an amount equal to two per centum of the annual premium which authorized insurance companies would have charged for insuring such property and may maintain a civil action therefor in the name of the state, and when recovered it shall be payable as fire department dues as provided in section 201.59 to the respective cities, villages and towns entitled to the same.

(3) This section shall not be applicable to the property of any city, village or other unit of government which maintains a public fire department and furnishes full fire protection for such property. [1931 c. 309; Stats. 1931 s. 201.595; 1933 c. 168; 1933 c. 487 s. 78 a; 1933 c. 489 s. 8; 1945 c. 144]

**201.71 Motor club service; definitions.** As used in sections 201.71 to 201.84, unless the context or subject matter otherwise requires:

(1) "Commissioner" means the commissioner of insurance, or his assistants or deputies, or other persons authorized to act for him.

(2) "Company" means any person, firm, copartnership, company, association or corporation engaged in selling, furnishing or procuring, either as principal or agent, for a consideration, motor club service as herein defined.

(3) "Agent" means one who solicits the purchase of service contracts, as herein defined, or transmits for another any such contract, or application therefor, to or from the company, or acts or aids in any manner in the delivery or negotiation of any such contract, or in the renewal or continuance thereof.

(4) "Towing service" means any act by a company, as herein defined, consisting of the drafting or moving of a motor vehicle from one place to another under other than its own power.

(5) "Emergency road service" means any act by a company, as herein defined, consisting of the adjustment, repair or replacement of the equipment, tires or mechanical parts of an automobile so as to permit it to be operated under its own power.

(6) "Insurance service" means any act by a company, as herein defined, consisting of the selling or giving with a service contract, as herein defined, or as a result of membership in or affiliation with a company, as herein defined, a policy of insurance covering liability or loss by the holder of a service contract with any such company as the result of injury to the person of such service contract holder following an accident resulting from the ownership, maintenance, operation or use of a motor vehicle.

(7) "Bail bond service" means any act by a company, as herein defined, the purpose of which is to furnish to, or procure for, any person accused of violation of any law of this state a cash deposit, bond or other undertaking required by law in order that the accused might enjoy his personal freedom pending trial.

(8) "Legal service" means any act by a company, as herein defined, consisting of the hiring, retaining, engaging or appointing of an attorney or other person to give professional advice to, or represent, holders of service contracts with any such company, in any court, as the result of liability incurred by the right of action accruing to the holder of a service contract as a result of the ownership, operation, use or maintenance of a motor vehicle.

(9) "Discount service" means any act by a company, as herein defined, resulting in the giving of special discounts, rebates or reductions of price on gasoline, oil repairs, parts, accessories or service for motor vehicles, to holders of service contracts with any such company.

(10) "Financial service" means any act by a company, as herein defined, whereby loans or other advances of money, with or without security, are made to holders of service contracts with any such company.

(11) "Buying and selling service" means any act by a company, as herein defined, whereby the holder of a service contract with any such company is aided in any way in the purchase or sale of an automobile.

(12) "Theft service" means any act by a company, as herein defined, the purpose of which is to locate, identify or recover a motor vehicle, owned or controlled by the holder of a service contract with any such company, which has been, or may be, stolen, or to detect or apprehend the person guilty of such theft.

(13) "Map service" means any act by a company, as herein defined, by which road maps are furnished without cost to holders of service contracts with any such company.

(14) "Touring service" means any act by a company, as herein defined, by which touring information is furnished without cost to holders of service contracts with any such company.

(15) "Motor club service" means the rendering, furnishing or procuring of towing service, emergency road service, insurance service, bail bond service, legal service, discount service, financial service, buying and selling service, theft service, map service and touring service, or any three or more thereof, as herein defined, to any person, in connection with the ownership, operation, use, or maintenance of a motor vehicle by such person, in consideration of such other person being or becoming a member of any company rendering, procuring or furnishing the same, or being or becoming in any manner affiliated therewith, or being or becoming entitled to receive membership or other motor club service therefrom by virtue of any agreement or understanding with any such company.

(16) "Service contract" means any written agreement whereby any company, as herein defined, for a consideration, promises to render, furnish, or procure for any other person, whether he is a member of such company or otherwise, motor club service, as herein defined. [1933 c. 155; 1935 c. 96]

**201.72 License to sell motor club service.** No company shall sell or offer for sale any motor club service without first having deposited with the commissioner the sum of twenty-five thousand dollars, in cash or securities approved by the commissioner, or, in lieu thereof, a bond in the form prescribed by the commissioner, payable to the state of Wisconsin, in the sum of fifty thousand dollars, with corporate surety approved by the commissioner, conditioned upon the faithful performance in the sale or rendering of motor club service and payment of any fines or penalties levied against it for failure to comply with sections 201.71 to 201.84. Upon the depositing of such security with the commissioner, it shall be the duty of said commissioner to issue a certificate of authority to said company. The provisions of this section shall not affect or apply to any company



heretofore organized which has been in continuous operation in this state for a period of more than three years immediately prior to the effective date of this section and has a fully paid annual membership of more than five hundred members within this state. The foregoing cash deposit or bond is not required in any instance as a penalty, but for the protection of the public only. [1933 c. 155]

**201.73 Agent's license.** No agent, doing business in this state, shall execute, issue or deliver any service contract as herein defined to any person owning or operating a motor vehicle without first having obtained a license from the commissioner; nor shall any agent collect or receive from any person, in advance of the execution, issuance or delivery of any such service contract, any money or other thing of value upon any promise or agreement to execute, issue or deliver any such service contract, without first having obtained a license from said commissioner. [1933 c. 155]

**201.74 Manner of obtaining company license; fee.** (1) No certificate of authority shall be issued by the commissioner until the company has filed with him the following:

(a) A formal application in such form and detail as the commissioner may require, executed under oath by its president or other principal officer;

(b) A certified copy of its charter or articles of incorporation and its by-laws, if any;

(c) A certificate from the secretary of state, in the event it be a nonprofit corporation, that it has complied with the corporation laws of this state; in the event that it be a corporation the stock of which has been or is being sold to the general public, a certificate from the public service commission that it has complied with the requirements of the securities law of this state.

(2) No certificate of authority shall be issued by the commissioner until the company has paid to the commissioner ten dollars as an annual license fee.

(3) Every certificate of authority issued hereunder shall expire annually on July 1, of each year, unless sooner revoked or suspended, as hereinafter provided. [1933 c. 155]

**201.75 Revocation or suspension of company license.** If the commissioner, at any time for cause shown and after a hearing, shall determine that a company has violated any provision of sections 201.71 to 201.84, or that it is insolvent, or that its assets are less than its liabilities, or that it or its officers refuse to submit to an examination, or that it is transacting business fraudulently, he shall thereupon revoke or suspend its certificate of authority and shall give notice thereof to the public in such manner as he may deem proper. [1933 c. 155]

**201.76 Form of service contract.** No service contract shall be executed, issued, or delivered in this state until the form thereof has been approved in writing by the commissioner. [1933 c. 155]

**201.77 Execution of service contract.** Every service contract, executed, issued, or delivered in this state shall be made in duplicate, and shall be dated and signed by the company issuing the same, and countersigned by its duly authorized agent, and by the party purchasing the same, and one copy thereof shall be kept by said company, and the other copy shall be delivered to the party purchasing the same. [1933 c. 155]

**201.78 Contents of contract.** No service contract shall be executed, issued, or delivered in this state unless it contains the following:

(1) The exact corporate or other name of the company.

(2) The exact location of its home office and of its usual place of business in this state, giving street number and city. [1933 c. 155]

**201.79 Only agents to solicit business.** No person shall solicit, or aid in the solicitation of, another person to purchase a service contract issued by a company not duly licensed under sections 201.71 to 201.84. [1933 c. 155]

**201.80 Misrepresentations forbid.** No company, and no officer or agent thereof, shall orally, or in writing, misrepresent the terms, benefits, or privileges of any service contract issued, or to be issued, by it. [1933 c. 155]

**201.81 Company always bound by contract.** Any service contract made, issued, or delivered contrary to any provision of sections 201.71 to 201.84 shall nevertheless be valid and binding on the company. [1933 c. 155]

**201.82 Persons exempted from act.** Nothing in sections 201.71 to 201.84 shall apply to a duly authorized attorney at law acting in the usual course of his profession, nor to any insurance company, bonding company, or surety company now or hereafter duly and regularly licensed and doing business as such under the laws of this state. [1933 c. 155]

**201.83 Penalties.** Any person violating any provision of sections 201.71 to 201.84, shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be punished

by a fine of not more than five hundred dollars, or by imprisonment in the county jail for not more than six months, or by both such fine and imprisonment. [1933 c. 155]

**201.84 Severability of provisions.** If any section, subsection, or paragraph of sections 201.71 to 201.83, or its application to any person or circumstance, shall be held unconstitutional, such decision shall not affect the constitutionality of any other section, subsection, or paragraph, or its application to other persons or circumstances. [1933 c. 155]