

CHAPTER 205.

WORKMEN'S COMPENSATION INSURANCE.

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205.01 Definitions. As used in this chapter, unless a different meaning is manifest:

- (1) "Insurer" means any insurer licensed by the commissioner of insurance to transact the business of workmen's compensation insurance;
- (2) "Bureau" means the Wisconsin compensation rating bureau;
- (3) "Commissioner" means commissioner of insurance; and
- (4) "Insurance" means workmen's compensation insurance, employers' liability insurance when written in connection therewith, and insurance covering any part of the liability of an employer exempted from insuring his liability for compensation under s. 102.28.

History: 1961 c. 354.

Committee Note, 1961: The transaction of workmen's compensation insurance is regulated by chapter 205. The last major revision of this chapter was in 1933, and many sections are more than 30 years old. There have been several relatively minor amendments or repeal of certain sections which has resulted in a numbering of the sections and a presentation of material that is frequently not in proper sequence in the existing statute. The current practices of the Wisconsin compensation rating bureau, the industrial commission and the insurance department are in several respects quite different from the procedures described by statute. There has been a considerable evolution in the approach to insurance regulation since the enactment of P.L. 79-15. There are important considerations on which the present statute is silent which have been incorporated in the proposed new chapter. The chapter as proposed is intended to update the law consistent with current practices without effecting any significant changes from the essential elements of the present statute. (Bill 190-A)

205.02 Enforcement by commissioner. (1) This chapter shall be administered and enforced by the commissioner. The commissioner may consult with the industrial commission or its representative on any matter arising under this chapter and he shall have access to all records of the industrial commission which he may wish to consult in the performance of such duties.

(2) The commissioner may authorize any person to attend meetings of the bureau, hold hearings, and make investigations and examinations with reference to any subject over which he has jurisdiction. The person so appointed shall have all the powers of the commissioner in relation to the hearing, investigation or examination and shall report in writing to the commissioner the result of the hearing, examination or investigation and any testimony taken by him.

History: 1961 c. 354.

205.03 Rating bureau. (1) Every insurer shall be a member of the bureau maintained in this state for the following purposes:

- (a) Establish, maintain and administer rules, regulations, classifications, rates and rating plans to govern the transaction of insurance as defined in s. 205.01.
- (b) Co-operate with other rating organizations, advisory organizations and insurers in the development of rules, rates and rating plans and insurance policies and forms.
- (c) Secure and analyze statistical and other data required to accomplish the purposes herein defined.
- (d) Inspect and classify risks.
- (e) File with the commissioner on behalf of its members every manual of classifications, rules and rates, every rating plan and every modification of any of the foregoing which are proposed for use in this state.
- (f) Assist the commissioner and insurers in the promotion of safety in the industries and assist in any matter necessary for the accomplishment of the purposes herein defined.

(2) The bureau shall procure annually from the commissioner a license to carry on its business. The annual license fee shall be the amount required by s. 200.13 (3) (d) to be paid when filing application for license. The license year shall end on the last day of February. The commissioner shall prescribe blanks and make needed regulations governing the licensing of the bureau.

(3) The bureau shall, annually before June 1, file with the commissioner a report in such form as the commissioner prescribes covering its activities for the preceding calendar year. The report shall cover its financial transactions and other matters required by the commissioner.

History: 1961 c. 354, 624.

205.04 Bureau administration (1) The bureau shall make bylaws for its government and for the government of its members. The bylaws and amendments thereto shall be filed with and approved by the commissioner before they shall be effective. The bureau shall admit to membership every insurer.

(2) The charges and service of the bureau shall be equitable and nondiscriminatory between members. Each member of the bureau shall pay an equitable share of the cost of operating the bureau. If any member is aggrieved by an apportionment made by the bureau or by failure to make one it may, in writing, petition the commissioner for a review of the apportionment or failure to act. The commissioner shall, upon not less than 10 days' notice to the bureau, hold a hearing upon the petition to which the bureau and all members shall be entitled to be heard and shall determine the matter and mail a copy of his decision to the bureau and the petitioner. The decision of the commissioner shall be final.

(3) Stock insurers and nonstock insurers shall be represented in the bureau management and on committees. One-half the members of the governing or managing committee and of the rating committee shall be chosen by the stock insurers and one-half by the nonstock insurers. Each member shall be entitled to one vote. In case of a tie vote in any committee the commissioner shall decide the matter.

(4) The bureau shall keep a record of its proceedings. It shall furnish upon demand to any employer upon whose risk a survey has been made full information as to such survey. The bureau shall provide means as approved by the commissioner whereby any insurer or any employer may be heard with reference to any matter affecting such risk. Any insurer or employer may appeal from a decision of the bureau to the commissioner. The commissioner shall make rules governing the appeals. The bureau shall file with the commissioner, whenever called for, such information as it may have.

History: 1961 c. 354.

205.05 Rate making. (1) All rates shall be made in accordance with the following:

(a) Due consideration shall be given to past and prospective loss experience within and outside this state, to catastrophe hazards, if any, to a reasonable margin for underwriting profit and contingencies, to dividends, savings or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members or subscribers, to past and prospective expenses both countrywide and those specially applicable to this state, and to all other relevant factors within and outside this state;

(b) Risks may be grouped by classifications for the establishment of rates and minimum premiums. Classification rates may be modified to produce rates for individual risks in accordance with rating plans which establish standards for measuring variations in hazards or expense provisions, or both. Such standards may measure any differences among risks that can be demonstrated to have a probable effect upon losses or expenses;

(c) Rates shall not be excessive, inadequate or unfairly discriminatory.

(2) The bureau shall assign each compensation risk and subdivision thereof to its proper class. Such classification shall be binding on all insurers. The bureau shall on behalf of all members inspect and make a written survey of compensation risks to determine their proper classification. It shall maintain a record of its classification of risks and the written surveys of all risks inspected by it showing such facts as are material in the writing of insurance thereon. The bureau shall make available to all insurers information as to classifications, rates, surveys and other pertinent facts in accordance with rules established by the bureau and approved by the commissioner.

(3) Rates or rating plans shall not take into account the physical impairment of employes. Any employer who applies or promotes any oppressive plan of physical examination and rejection of employes or applicants for employment shall forfeit the right to the advantages of experience rating. If the industrial commission finds that grounds exist for such forfeiture it shall file with the commissioner a certified copy of its findings;

which filing shall automatically suspend any experience rating credit which may accrue to such employer. The determination shall be made as prescribed in ss. 101.13 to 101.26, so far as such sections are applicable subject to review under ch. 227. Restoration of an employer to the advantages of experience rating shall be by like procedure.

(4) The commissioner shall approve a minimum adequate pure premium for each classification under which workmen's compensation insurance is written. No insurer shall use a pure premium less than that approved by the commissioner. The commissioner shall approve an expense loading to be included in the rates and rating plans.

(5) No insurer shall transact insurance on the basis of a rate, rating plan or classification other than that approved by the commissioner. No insurer shall make or charge any rate for insurance in this state which discriminates unfairly between risks or classes or which discriminates unfairly between risks in the application of rating plans and no insurer shall discriminate by granting to any employer insurance against other hazards except in accordance with its rates and rating plans filed and which are in effect for said insurer as provided in s. 203.32 or ss. 204.37 to 204.54 or at less than its legal rates for the insurance if said sections are inapplicable or otherwise.

History: 1961 c. 354.

205.06 Filing of rates and rating plans. The bureau shall file with the commissioner on behalf of its members every manual of classifications, rules and rates, every rating plan and every modification of any of the foregoing which are proposed for use in this state. The bureau shall file the information upon which it supports such filing. All filings shall comply with the requirements of law and shall not be effective or used until approved as to such compliance by the commissioner. Every such filing shall state the proposed effective date thereof. A filing that has been on file for a period of 30 days shall be deemed to meet the requirements of ss. 205.01 to 205.17 unless disapproved by the commissioner in accordance with s. 205.07.

History: 1961 c. 354.

205.07 Disapproval of filings. If the commissioner finds that a filing does not meet the requirements of ss. 205.01 to 205.17 he shall send to the bureau written notice of disapproval of the filing specifying therein in what respect he finds such filing fails to meet the requirements of said sections and stating that such filing shall not become effective.

History: 1961 c. 354.

205.08 Rate administration. (1) The commissioner shall promulgate reasonable rules and a statistical plan, reasonably adapted to the rating system on file with him which may be modified from time to time and which shall be used thereafter by each insurer in the recording and reporting of its loss and countrywide expense experience in order that the experience of all insurers may be made available at least annually in such form and detail as may be necessary to aid him in determining whether the rating system complies with the standards set forth in s. 205.05. The rules and statistical plan may also provide for the recording and reporting of expense experience items which are specially applicable to this state and are not susceptible of determination by a prorating of countrywide expense experience. In promulgating the rules and statistical plan, the commissioner shall give due consideration to the rating system on file with him and in order that the rules and statistical plan may be as uniform as is practicable among the several states to the rules and to the form of the statistical plan used for such rating system in other states. The commissioner may designate one or more rating organizations or other agencies to assist him in gathering such experience and making compilations thereof, and the compilations shall be made available subject to reasonable rules promulgated by the commissioner to insurers and rating organizations.

(2) Reasonable rules and plans may be approved by the commissioner for the interchange of data necessary for the application of rating plans.

(3) In order to further uniform administration of rate regulatory laws, the commissioner and every insurer and rating organization may exchange information and experience data with insurance supervisory officials, insurers and rating organizations in other states and may consult with them with respect to rate making and the application of rates.

(4) Pay roll audits by insurers shall show division by classification and shall be correct as to amount and as to such division and shall be summarized and reported to the bureau. The commissioner or the bureau may on their own initiative verify any pay roll audit and upon written complaint stating facts sufficient to warrant action by either of them shall verify any pay roll audit.

(5) Every insurer shall report its insurance in this state to the bureau. The bureau

shall prescribe forms and rules for making such reports. A record of such reports shall be filed by the bureau with the industrial commission in accordance with its rules. No information regarding the writings of any insurer shall be made public by the bureau or any of its employes except as required by law and in accordance with its rules.

(6) Every insurer shall file with the commissioner such information regarding insurance written by it on risks located in this state as he requires.

(7) The commissioner may upon his own motion or upon the verified complaint of any person having a direct interest review the acts of an insurer, bureau or agent subject to this chapter and after a hearing make findings and orders requiring compliance with the provisions thereof. A copy of such complaint shall be served upon the insurer, bureau or persons against whom the complaint is directed, and each of the parties in interest shall be entitled to 10 days' notice of any hearing pursuant to this section.

(8) The commissioner may make reasonable rules in conformity with and necessary to enforce ss. 205.01 to 205.17.

History: 1961 c. 354.

205.09 Appeal by minority to commissioner. Any member of the bureau may appeal to the commissioner from the action or decision of the bureau in approving or rejecting any proposed change in or addition to the filings of the bureau and the commissioner shall, after a hearing held upon not less than 10 days' written notice to the appellant and to the bureau, issue an order approving the action or decision of the bureau or directing it to give further consideration to such proposal, or if such appeal is from the action or decision of the bureau in rejecting a proposed addition to its filings he may if he finds that the action or decision was unreasonable issue an order directing the bureau to make an addition to its findings on behalf of its members, in a manner consistent with his findings, within a reasonable time after the issuance of such order.

History: 1961 c. 354.

205.10 Information to be furnished insureds; hearings and appeals of insureds.

(1) The bureau shall, within a reasonable time after receiving written request therefor and upon payment of such reasonable charge as it may make, furnish to any insured affected by a rate made by it, or to the authorized representative of such insured, information as to the rate.

(2) The bureau shall provide within the state reasonable means whereby any person aggrieved by the application of its rating system may be heard in person or by his authorized representative on his written request to review the manner in which the rating system has been applied in connection with the insurance afforded him. If the bureau fails to grant or reject the request within 30 days after it is made, the applicant may proceed in the same manner as if his application had been rejected. Any party affected by the action of the bureau on the request may, within 30 days after written notice of the action, appeal to the commissioner, who after a hearing held upon not less than 10 days' written notice to the appellant and to the bureau may affirm or reverse the action.

History: 1961 c. 354.

205.11 Advisory organizations. (1) Every group, association or other organization of insurers, whether located within or outside this state, which assists the bureau in rate making by the collection and furnishing of loss or expense statistics or by the submission of recommendation shall be known as an advisory organization.

(2) Every advisory organization shall file with the commissioner:

(a) A copy of its constitution, its articles of agreement or association or its certificate of incorporation and of its bylaws, rules and regulations governing its activities,

(b) A list of its members,

(c) The name and address of a resident of this state upon whom notices or orders of the commissioner or process issued at his direction may be served, and

(d) An agreement that the commissioner may examine the advisory organization in accordance with s. 205.12.

(3) If after a hearing the commissioner finds that the furnishing of information or assistance involves any act or practice which is unfair or unreasonable or otherwise inconsistent with ss. 205.01 to 205.17 he may issue a written order specifying in what respects the act or practice is unfair or unreasonable or otherwise inconsistent with said sections and requiring the discontinuance of the act or practice.

(4) The bureau shall not support its filings by statistics or adopt rate making recommendations furnished to it by an advisory organization which has not complied with this section or with an order of the commissioner involving statistics or recommendations

issued under sub. (3). If the commissioner finds the bureau to be in violation of this subsection he may issue an order requiring the discontinuance of the violation.

History: 1961 c. 354.

205.12 Bureau examination. The commissioner shall at least once in 5 years make or cause to be made an examination of the bureau, and he may as often as he deems it expedient make or cause to be made an examination of each advisory organization referred to in s. 205.11. The reasonable cost of any examination shall be paid by the bureau or advisory organization examined upon presentation to it of a detailed account of the cost. The officers, manager, agents and employes of the bureau or advisory organization may be examined at any time under oath and shall exhibit all books, records, accounts, documents, or agreements governing its method of operation. The commissioner shall furnish 2 copies of the examination report to the bureau or advisory organization examined and shall notify the bureau or advisory organization that it may, within 20 days thereafter, request a hearing on the report or any facts or recommendations therein. Before filing any such report for public inspection the commissioner shall grant a hearing to the bureau or advisory organization examined. The report of any such examination when filed for public inspection shall be admissible in evidence in any action or proceeding and shall be prima facie evidence of the facts stated therein. In lieu of any such examination the commissioner may accept the report of an examination made by the insurance supervisory official of another state, pursuant to the laws of that state.

History: 1961 c. 354.

205.13 Penalty. Any insurer, rating bureau, agent, or other representative or employe of any insurer or bureau, failing to comply with or violating this chapter, or any order or ruling of the commissioner made hereunder, shall be fined not less than \$50 nor more than \$500. The license of any insurer or agent guilty of such violation may be revoked or suspended by the commissioner.

History: 1961 c. 354.

205.14 Scope of chapter. This chapter shall not apply to contractor's class mutual insurers where the premiums are fixed, assessed and collected on the basis of the contract price of construction, building or repairing.

History: 1961 c. 354.

205.15 Insurance of rejected workmen's compensation risks. (1) The members of the workmen's compensation bureau, established pursuant to s. 205.03 shall accept any workmen's compensation risk tendered to and rejected by any member of said bureau, in the manner herein provided.

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

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

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

History: 1961 c. 354.

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

(2) This section is designated emergency legislation, necessitated by the emergency of national defense, and shall expire when the emergency ceases, which shall be proclaimed by the commissioner.

History: 1961 c. 354, 562, 624.

205.17 Hearing procedure and judicial review. (1) Any insurer or rating organization aggrieved by any order or decision of the commissioner under ss. 205.01 to 205.17 made without a hearing, may within 30 days after notice of such order or decision to the insurer or organization make written request to the commissioner for a hearing thereon. The commissioner shall hear the party or parties within 20 days after receipt of the request and shall give not less than 10 days' written notice of the time and place of the hearing. Within 10 days after the hearing the commissioner shall affirm, reverse or modify his previous action, specifying his reasons therefor. Pending the hearing and decision thereon the commissioner may suspend or postpone the effective date of his previous action.

(2) Any approval, disapproval, order or decision of the commissioner under ss. 205.01 to 205.17 made after a hearing shall be subject to review under ch. 227.

(3) The procedure in the conduct of hearings and making of approvals, disapprovals and any other orders by the commissioner under ss. 205.01 to 205.17 and the review thereof in court shall be governed by ch. 227, except as far as they may be inconsistent with specific provisions of said sections. No application for rehearing or any rehearing shall be a condition precedent to review in court of any approval, disapproval or other order of the commissioner made under said sections. In event of an application for rehearing before the commissioner, he shall stay his action in question pending the rehearing upon such reasonable terms and conditions as he may impose. The action of the commissioner shall not become effective for a period of 10 days provided review proceedings are commenced within said period. The pendency of a review of any disapproval or other order of the commissioner made under ss. 205.01 to 205.17 shall suspend such disapproval or order on such reasonable terms and conditions as may be imposed by the court. The aggrieved party shall make application to the court for an order fixing such terms and conditions within 10 days after the commencement of the proceedings.

History: 1961 c. 354.