

CHAPTER 204

INSURANCE—SURETY, CREDIT, CASUALTY

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204.01 Definitions. The fidelity insurance specified in subsection (7) of section 201.04 shall be known as surety business, and the obligations connected therewith as suretyship obligations; and corporations organized or authorized to do surety business are designated surety corporations or companies.

204.03 Failure to file license. No instrument executed by a licensed surety company shall be held invalid or ineffective because such certificate or a certified copy thereof has not been filed; but the officer with whom any instrument so executed has been filed or any person who might claim the benefit thereof may require the person filing such instrument to file with such officer a certified copy of the surety's certificate of authority by giving him written notice so to do, and if he shall fail to file the same within eight days thereafter said instrument shall be of no effect for the purposes of the person filing the same unless he shall, before the expiration of such time, file such other bond, undertaking or instrument as was originally required.

204.04 Licenses. (1) **MAILING, FILING COPY.** Upon the request of any surety company that a certified copy of its certificate of authority be furnished to any designated officer in this state and upon the payment of the fee required by s. 601.31, the commissioner shall mail such copy to the designated officer who shall file the same. In case of revocation of the certificate of authority the commissioner shall immediately give notice thereof to each officer to whom a certified copy has been forwarded.

(2) **EFFECT OF FILING COPY.** Whenever a certified copy shall have been furnished to any public officer it shall be unnecessary, during the life of such certificate, to attach a copy thereof to any bond, undertaking or other instrument of suretyship filed with him.

(3) **NOTICE OF INSOLVENCY TO COURTS.** Whenever the commissioner shall learn that any licensed surety company has become financially embarrassed or unreasonably fails to carry out its contracts, or has filed a petition in bankruptcy, or is in the hands of a receiver, he shall immediately notify every county judge and the clerks of all courts of record in this state of said facts; and upon the receipt of such notice it shall be the duty of county judges and clerks of courts of record to notify and require every executor, administrator, guardian, trustee or other fiduciary that has filed a bond on which such company is surety, to forthwith file a new bond with new sureties.

204.06 Corporations deposit securities.

(1) No domestic corporation shall transact surety business unless it shall deposit and keep on deposit with the state treasurer securities specified in s. 601.13 (3) worth, at their market value, not less than \$100,000, and, in case such corporation transacts such business in other states, its total deposits shall be at least \$250,000.

(2) No additional deposit shall be required of an insurance company, transacting other classes of insurance, as a condition of its engaging in the surety business; provided, that the securities it has on deposit in this state or elsewhere satisfy the requirements of sub. (1), and are held in trust for the fulfillment by the depositor of its contracts, whether of insurance or of suretyship, within the United States.

(3) The securities deposited pursuant to this section shall be held, exchanged, withdrawn, disposed of and the interest therefrom be paid to the corporation making the deposit as provided in s. 601.13; provided, the total market value of the securities on deposit shall not fall below the minimum required by this section.

History: 1971 c. 40 s. 93; 1971 c. 260.

204.07 Suretyship obligations. A licensed surety corporation may guarantee the conditions of or execute any bond, undertaking or obligation which is required or permitted by law to be given for the security of any person, association, corporation, state, county, municipality or other organization, or conditioned for the doing or not doing of anything specified in any such instrument; and all public officers, boards and committees, and all courts and judges may accept and approve such instruments when executed or the conditions thereof are guaranteed by a licensed surety corporation. Such execution or guarantee shall be a full and complete compliance with all requirements as to how and by whom such instruments shall be executed or guaranteed. Such corporation may execute or guarantee any such instrument given under the laws of the United States or of any other state or country. Suretyship obligations need not be under seal unless the law specifically requires a seal and may be executed by any officer, attorney in fact or other authorized representative.

204.075 Obligations on surety bonds. A surety corporation is limited to recover from a personal endorser or cosigner of a corporate obligation or undertaking that amount in any one year which may be declared to be a nonbusiness bad debt by the federal bureau of internal revenue for federal income tax purposes unless the personal endorser or cosigner specifically waives in writing the provisions of this section.

204.08 Fidelity obligations specified. A surety corporation licensed to write the fidelity insurance specified in s. 201.04 (7) may guarantee the fidelity of or become surety for (a) persons holding positions of public or private trust, (b) the performance of any act, duty or obligation or the refraining from any act, (c) the performance of any contract, (d) bonds of insurance companies required by law as a condition of transacting business, (e) indemnifying banks, brokers and other financial or moneyed associations or corporations, against the loss of documents and money, except against loss caused by marine risks or risks of transportation or navigation, (f) indemnifying any federal land bank

against loss by reason of defective title to or incumbrances on real property on which such bank may have a mortgage.

204.09 Guarantee's protection of guarantor. Any surety corporation may contract for indemnity or security for any suretyship obligation incurred by it; and any fiduciary from whom a suretyship obligation is required or permitted by law may deposit any moneys and other property for which he is responsible with a bank, safe deposit or trust company, in such manner as to prevent the withdrawal or alienation thereof without the written consent of the surety or an order of a court or judge thereof having jurisdiction of such fiduciary, made on such notice to the surety as the court or judge may direct.

204.10 Limitation of risks; reinsurance.

(1) No corporation shall execute any suretyship obligation or expose itself to any loss on any one risk in an amount in excess of one-tenth of its capital and surplus, unless it shall be protected in the excess of that amount: (a) By reinsurance in a corporation authorized to transact surety business where the risk is located; provided, that such reinsurance is in such form as to enable the obligee in or beneficiary of such suretyship obligation to maintain an action thereon jointly against the company reinsured and such reinsurer and to have recovery against such reinsurer for payment to the extent in which it may be liable under such reinsurance; or (b) by the cosuretyship of a surety corporation likewise authorized; or (c) by deposit with it in pledge or conveyance to it in trust for its protection of property; or (d) by conveyance or mortgage for its protection; or (e) in case such suretyship obligation was made on behalf or on account of a fiduciary by deposit of a portion of the trust property under the conditions specified in section 204.09.

(2) But a surety corporation may execute transportation or warehousing bonds for United States internal revenue taxes to an amount equal to fifty per cent of its capital and surplus.

(3) When the penalty of the suretyship obligation exceeds the amount of a judgment described therein as appealed from and thereby secured, or exceeds the amount of the subject matter in controversy or of the estate in the hands of the fiduciary for the performance of whose duties it is conditioned, the suretyship obligation may be executed, if the actual amount of the judgment or the subject matter in controversy or estate not subject to supervision or control of the surety is not in excess of

the one-tenth limitation; and when the penalty of the suretyship obligation executed for the performance of a contract exceeds the contract price, the latter shall be taken as the basis for estimating the limit of risk.

(4) No such corporation shall guarantee the deposits of any single financial institution in an aggregate amount in excess of one-tenth of its capital and surplus unless it shall be protected in excess of that amount by credits in accordance with subsection (1).

204.11 Premium on bond allowed as expense. (1) Any fiduciary required to give a suretyship obligation may include as a part of the expense of executing the trust the lawful premium paid a surety corporation for executing such obligation. Any party entitled to recover costs or disbursements in an action or special proceeding may include in such disbursements the lawful premium paid to such corporation for a suretyship obligation. Any public officer, required by law to give a suretyship obligation, may pay the lawful premium for the execution of such obligation out of any moneys available for the payment of expenses of his office or department, unless such payment is otherwise provided for or is prohibited by law.

204.12 Surety company reserves. (1) Every surety corporation shall at all times keep and maintain: (a) An unearned premium reserve of fifty per cent of the current annual premiums upon all outstanding suretyship obligations; provided, that the commissioner, in estimating its condition, may charge it with a premium reserve equal to the unearned portions of the gross premiums charged; computed on each risk, from the date of the issuance of such suretyship obligation; and (b) a loss reserve at least equal to the aggregate estimated amount of all losses and claims of which the corporation has received notice, and the estimated liability on any known event which may result in a loss, and the estimated liability for all losses which have occurred but on which no notice has been received.

(3) Whenever, in the judgment of the commissioner, the loss reserves on the suretyship obligations of any corporation, calculated in accordance with this section, are inadequate he may require such corporation to maintain additional reserves.

204.14 Estoppel. Any corporation which shall execute any bond, recognizance, obligation, stipulation or undertaking as surety shall be estopped, in any proceeding to enforce the liability which it shall have assumed to incur, to

deny its power to execute the same or assume such liability.

204.23 Employer's liability policy. No casualty corporation issuing employer's liability policies shall condition the same upon compliance by the assured with "any law or ordinance respecting the safety of persons," but shall clearly and distinctly state what conditions and requirements are to be complied with by him.

204.28 Employers' liability reserves, computation, allocation, definitions. (1) The reserve for outstanding losses under insurance against loss or damage from accident or injuries to any person and for which the insured is liable shall be computed as follows as of the date of computation:

(a) For all liability suits being defended under policies written more than ten years prior to that date, one thousand five hundred dollars for each suit; and for more than five and less than ten years prior thereto, one thousand dollars for each suit; and for more than three and less than five years prior thereto, eight hundred and fifty dollars for each suit.

(b) For all liability policies written during the three years immediately preceding such date, such reserve shall be sixty per centum of the earned liability premiums of each of such three years less all loss and loss expense payments made under liability policies written in said years; but in any event, such reserve shall, for the first of such three years, be not less than seven hundred and fifty dollars for each pending suit on said year's policies.

(c) For all compensation claims under policies written more than three years prior to such date, the present values at four per centum interest of the determined and the estimated future payments

(d) For all compensation claims under policies written in the three years immediately preceding said date, such reserve shall be sixty-five per centum of the earned premiums of each of such three years, less all loss and loss expense payments made in connection with such claims under policies written in the corresponding years; but in any event, for the first year of such three-year period such reserve shall be not less than the present value at four per centum interest of the determined and the estimated claims under policies written during such year.

(2) (a) As used in this section, the term "earned premiums" shall include gross premiums charged on all policies, including all determined excess and additional premiums, less

return premiums other than premiums returned to policyholders as dividends and less reinsurance premiums and premiums on policies canceled and less unearned premiums on policies in force. But any participating company which has charged in its premium a loading in excess of its average expense requirements shall not be required to include such loading in its earned premiums; provided, the amount of such loading is approved by the commissioner.

(b) The term "compensation" relates to all insurance providing compensation to employees for personal injuries, irrespective of fault of the employer. The term "liability" relates to all insurance except compensation insurance against loss or damage from accident to or injuries suffered by an employe or other person and for which the insured is liable.

(c) The terms "loss payment" and "loss expense payments" include all payments to claimants, payments for medical and surgical attendance, legal expenses, salaries and expenses of investigators, adjusters and fieldmen, rents, stationery, telegraph and telephone charges, postage, salaries and expenses of office employes, home office expenses, and all other payments made on account of claims, whether such payments shall be allocated to specific claims or unallocated.

(3) All unallocated liability loss expense payments made in a given calendar year subsequent to the first four years in which an insurer has been issuing liability policies shall be distributed as follows: Thirty-five per centum shall be charged to the policies written in that year; forty per centum to the policies written in the preceding year; ten per centum to the policies written in the second year preceding; ten per centum to the policies written in the third year preceding; and five per centum to the policies written in the fourth year preceding, and such payments made in each of the first four calendar years in which an insurer issues liability policies shall be distributed as follows: In the first calendar year one hundred per centum shall be charged to the policies written in that year, in the second calendar year fifty per centum shall be charged to the policies written in that year and fifty per centum to the policies written in the preceding year, in the third calendar year forty per centum shall be charged to the policies written in that year, forty per centum to the policies written in the preceding year, and twenty per centum to the policies written in the second year preceding, and in the fourth calendar year thirty-five per centum shall be charged to the policies written in that year, forty per centum to

the policies written in the preceding year, fifteen per centum to the policies written in the second year preceding, and ten per centum to the policies written in the third year preceding, and a schedule showing such distribution shall be included in the annual statement.

(3a) All unallocated compensation loss expense payments made in a given calendar year subsequent to the first three years in which an insurer has been issuing compensation policies shall be distributed as follows: Forty per centum shall be charged to the policies written in that year, forty-five per centum to the policies written in the preceding year, ten per centum to the policies written in the second year preceding and five per centum to the policies written in the third year preceding, and such payments made in each of the first three calendar years in which an insurer issues compensation policies shall be distributed as follows: In the first calendar year one hundred per centum shall be charged to the policies written in that year, in the second calendar year fifty per centum shall be charged to the policies written in that year and fifty per centum to the policies written in the preceding year, in the third calendar year forty-five per centum shall be charged to the policies written in that year, forty-five per centum to the policies written in the preceding year, and ten per centum to the policies written in the second year preceding and a schedule showing such distribution shall be included in the annual statement.

(4) Whenever in the judgment of the commissioner the liability or compensation loss reserves of any insurer, calculated in accordance with the foregoing provisions, are either inadequate or excessive, he may, in his discretion require or permit such insurer to set up reserves based upon estimated individual claims or such other basis as he may approve.

204.29 Notice of injury; service. (1) No licensed accident or casualty insurance company in Wisconsin shall limit the time for the service of any notice of injury to less than twenty days, except as provided in section 204.31.

(3) The deposit in any post office by or for the insured of a registered, postage prepaid envelope, containing the proper notice of injury within twenty days after the injury addressed to the company, issuing the policy or certificate, shall be a sufficient service of notice of injury.

204.295 Aircraft insurance. No policy of insurance issued or delivered in this state covering any loss, expense or liability arising out of the ownership, maintenance or use of an air-

craft shall exclude or deny coverage because the aircraft is operated in violation of federal or civil air regulations, state law or local ordinance.

204.30 Accident insurance and highway traffic policy provisions. (1) **INSOLVENCY OF INSURED.** No policy of insurance against loss or damage resulting from accident or injury to a person, and for which the insured is liable, or against loss or damage to property caused by animals or by any motor vehicle, and for which the insured is liable, shall be issued or delivered in this state unless it shall contain a provision that the insolvency or bankruptcy of the insured shall not release the insurer from the payment of damages for injury sustained or loss occasioned, and that in case execution, in an action brought upon the policy against the insured, is returned unsatisfied, then an action may be maintained against such insurer for the amount due on the judgment not exceeding the amount of the policy.

(2) **NOTICE.** No such policy shall be issued or delivered in this state on or after September 1, 1925, by any company, unless there shall be contained within such policy a provision that notice given by or on behalf of the insured to any authorized agent of the insurer within this state, with particulars sufficient to identify the insured, shall be deemed to be notice to the insurer, and also a provision that failure to give any notice required to be given by such policy within the time specified therein shall not invalidate any claim made by the insured if it shall be shown not to have been reasonably possible to give such notice within the prescribed time and that notice was given as soon as reasonably possible.

(3) **COVERAGE.** No such policy shall be issued or delivered in this state to the owner of a motor vehicle, unless it contains a provision substantially as follows: The indemnity provided by this policy is extended to apply, in the same manner and under the same provisions as it is applicable to the named assured, to any person while riding in or operating any automobile described in this policy when such automobile is being used for purposes and in the manner described in the policy. Such indemnity shall also extend to any person legally responsible for the operation of such automobile. The insurance hereby afforded shall not apply unless the riding, use or operation is with the permission of the assured named in this policy, or if such assured is an individual, with the permission of an adult member of such assured's household other than a chauffeur or

domestic servant, such permission in both cases to be deemed permission without regard to s. 343.45 (2) or to whether the riding, use or operation is authorized by law; but any such policy issued to any automobile sales agency, repair shop, service station, storage garage or public parking place may provide that the coverage afforded to anyone other than the named assured, his agents or employes may be limited to the limits under s. 344.01 (2) (d) and shall apply only when there is no other valid and collectible insurance with at least those limits whether such other insurance be primary, excess or contingent. Any such policy issued to anyone other than an automobile sales agency, repair shop, service station, storage garage or public parking place may provide that the coverage afforded thereunder to any automobile sales agency, repair shop, service station, storage garage or public parking place or its agents or employes may be limited to the limits under s. 344.01 (2) (d) and shall apply only when there is no other valid and collectible insurance with at least those limits whether such other insurance is primary, excess or contingent. In the event an automobile covered by this policy is sold or transferred the purchaser or transferee shall not be an additional insured without consent of the company, endorsed hereon. No such policy issued to any automobile sales agency, repair shop, service station, storage garage or public parking place may provide any exclusion of coverage upon any of their officers, agents, or employes when said officers, agents, or employes are operating automobiles owned by customers doing business with said automobile sales agency, repair shop, service station, storage garages or public parking place.

(4) **LIABILITY OF INSURER.** Any bond or policy of insurance covering liability to others by reason of negligence shall be deemed and construed to contain the following conditions: That the insurer shall be liable to the persons entitled to recover for the death of any person, or for injury to person or property, irrespective of whether such liability be in praesenti or contingent and to become fixed or certain by final judgment against the insured, when caused by negligence, such liability not to exceed the amount named in said bond or policy. The right of direct action herein given against an insurer shall exist whether or not the policy or contract of insurance contains a provision forbidding such direct action.

(5) **UNINSURED MOTORIST COVERAGE.** (a) No automobile liability or motor vehicle liability policy of insurance insuring against loss re-

sulting from liability imposed by law for bodily injury or death suffered by any person arising out of the ownership, maintenance or use of a motor vehicle shall be delivered or issued for delivery in this state with respect to any motor vehicle registered or principally garaged in this state unless coverage is provided therein or supplemental thereto in limits for bodily injury or death in the amount of at least \$15,000 per person and \$30,000 per accident under provisions approved by the commissioner of insurance, for the protection of persons injured thereunder who are legally entitled to recover damages from owners or operators of uninsured motor vehicles because of bodily injury, sickness or disease, including death resulting therefrom. The uninsured motorist bodily injury coverage limits provided in an automobile liability or motor vehicle liability policy of insurance may be made available to the insured up to the bodily injury coverage limits provided in the remaining portions of the policy.

(b) For purposes of this coverage, "uninsured motor vehicle" includes an insured motor vehicle if before or after the accident the liability insurer of the motor vehicle is declared insolvent by a court of competent jurisdiction. In such case, the insurer making payment under the uninsured motorists' coverage shall, to the extent of the payment, be subrogated to the rights of its insured. This extension of coverage shall apply only with respect to accidents occurring after July 1, 1966.

(6) **MEDICAL PAYMENTS COVERAGE.** No motor vehicle liability policy insuring losses arising from liability for death or bodily injury of a person as a result of the ownership, maintenance or use of a motor vehicle shall be delivered or issued with respect to any motor vehicle registered or principally garaged in this state, unless medical payments or chiropractic payments, or both in the amount of at least \$1,000 per person are provided therein or supplemental thereto, under provisions approved by the commissioner of insurance for protection of all persons operating or riding in the insured vehicle from losses resulting from bodily injury or death. The named insured has the right to reject such coverage. In the case of a renewal, such coverage need not be provided where the named insured has rejected the coverage in connection with a policy previously issued to him by the same insurer, unless requested by the insured in writing. The insurer making payment under the medical or chiropractic payments coverage shall, to the extent of the payment, be subrogated to the rights of its insured.

(7) **CANCELLATION OF POLICIES.** The cancellation of or the failure to renew any policy for lack of cooperation on the part of the insured is not effective against a 3rd party or parties injured while the policy was in effect unless the insurer can show actual collusion between the 3rd party or parties and the insured resulting in actual financial prejudice to the insurance company.

History: 1971 c. 26, 28, 132.

Cross References: As to insurers being joined as defendants, see 260.11.

See 204.34 for other requirements of automobile insurance policies.

Owners of bulk storage tanks which were defective were not additional insureds under the policy of the trucker delivering gas where the owners were not participating in the delivery other than passively. *Amery Motor Co v. Corey*, 46 W (2d) 291, 174 NW (2d) 540.

The question of whether a man who lives apart under a decree of legal separation may still be considered a member of the household should not be determined on affidavits on motion for summary judgment. *Herbst v. Hansen*, 46 W (2d) 697, 176 NW (2d) 380.

Where insured told his company conflicting stories as to whether he was driving, the company cannot claim prejudice where the physical facts prove he was the driver. *McDonnell v. Hestnes*, 47 W (2d) 553, 177 NW (2d) 845.

The proposition that the driver of an automobile who is an additional insured under the policy cannot recover for his own negligence (because he cannot sue himself for liability and the policy only insures his liability to others) is inapplicable where the owner's action in using the car is also a substantial factor in the chain of causation, for being an additional insured does not bar one from recovery from the insurer for the negligence of the insured, albeit whatever contributory negligence is found on the insured driver would not be a basis for recovery, but would operate to deny his recovery in part or in total. *Blashaski v. Classified Risk Ins. Corp.* 48 W (2d) 169, 179 NW (2d) 924.

A close family relationship may reduce the practical burden of proof as to whether consent to operate the car was given. *Derusha v. Iowa National Mut. Ins. Co.* 49 W (2d) 220, 181 NW (2d) 481.

Where the jury found material misrepresentation in applying for insurance, a delay of 6 weeks between first learning of the possible misrepresentation and rescission did not show laches. *Ryder v. State Farm Mut. Auto Ins. Co.* 51 W (2d) 318, 187 NW (2d) 176.

A clause in a policy excluding liability to fellow employees while engaged in the business of the employer is valid. *Pyykola v. Woody*, 52 W (2d) 342, 190 NW (2d) 534.

Nothing in 204.30 (5) (a), Stats. 1967, affected the validity of the "reducing clause" found in the uninsured motorist protection afforded the plaintiff. *Scherr v. Drobac*, 53 W (2d) 308, 193 NW (2d) 14.

Symposium: the uninsured motorist endorsement. 53 MLR 319.

204.31 Accident and sickness insurance policy. (1) **DEFINITION.** "Policy of accident and sickness insurance" as used in this section includes any policy or contract covering the kind or kinds of insurance described in section 201.04 (4).

(2) **FORM OF POLICY.** (a) No policy of accident and sickness insurance shall be delivered or issued for delivery to any person in this state unless:

1. The entire money and other considerations therefor are expressed therein;

2. The time at which the insurance takes effect and terminates is expressed therein;

3. It purports to insure only one person, except that a policy may insure, originally or by subsequent amendment, upon the application of an adult member of a family who shall be deemed the policyholder, any 2 or more eligible members of that family, including husband, wife, dependent children or any children under a specified age which shall not exceed 19 years and any other person dependent upon the policyholder;

4. The style, arrangement and over-all appearance of the policy give no undue prominence to any portion of the text, and unless every printed portion of the text of the policy and of any endorsements or attached papers is plainly printed in light-faced type of a style in general use, the size of which shall be uniform and not less than 10-point with a lower-case unspaced alphabet length not less than 120-point (the "text" includes all printed matter except the name and address of the insurer, name or title of the policy, the brief description, if any, and captions and subcaptions);

5. The exceptions and reductions of indemnity are set forth in the policy and, except those which are set forth in subsection (3), are printed, at the insurer's option, either included with the benefit provision to which they apply, or under an appropriate caption such as "EXCEPTIONS", or "EXCEPTIONS AND REDUCTIONS", provided that if an exception or reduction specifically applies only to a particular benefit of the policy, a statement of such exception or reduction shall be included with the benefit provisions to which it applies;

6. Each such form, including riders and endorsements, is identified by a form number in the lower left-hand corner of the first page thereof;

7. It contains no provision purporting to make any portion of the charter, rules, constitution, or bylaws of the insurer a part of the policy unless such portion is set forth in full in the policy, except in the case of the incorporation of, or reference to, a statement of rates or classification of risks, or short-rate table filed with the commissioner;

8. There is printed on the first page thereof an appropriately captioned provision or there is attached thereto an appropriately titled notice to the effect that the person to whom the policy is issued shall be permitted to return the policy within 10 days from the date he received it and to have the premium paid, in-

cluding any policy fee or other charge, refunded if, after examination of the policy, he is not satisfied with it for any reason. If such person returns such policy to the insurer at its home or branch office or to the agent through whom it was purchased, such policy shall be void and the parties shall be in the same position as if no policy had been issued. This subdivision shall not apply to single premium nonrenewable policies issued for terms not greater than 6 months or single premium nonrenewable policies insuring against accidents only or accidental bodily injuries only.

(b) If any policy is issued by an insurer domiciled in this state for delivery to a person residing in another state, and if the official having responsibility for the administration of the insurance laws of such other state has advised the commissioner that any such policy is not subject to approval or disapproval by such official, the commissioner may by ruling require that such policy meet the standards set forth in paragraph (a) and in subsection (3).

(3) ACCIDENT AND SICKNESS POLICY PROVISIONS. (a) *Required provisions.* Except as provided in paragraph (c) each such policy delivered or issued for delivery to any person in this state shall contain the provisions specified in this subsection in the words in which the same appear; provided, however, that the insurer may, at its option, substitute for one or more of such provisions corresponding provisions of different wording approved by the commissioner which are in each instance not less favorable in any respect to the insured or the beneficiary. Such provisions shall be preceded individually by the caption to such provision appearing in this subsection or, at the option of the insurer, by such appropriate individual or group captions or subcaptions as the commissioner may approve.

1. Entire Contract; Changes: This policy, including the endorsements and the attached papers, if any, constitutes the entire contract of insurance. No change in this policy shall be valid until approved by an executive officer of the insurer and unless such approval be endorsed hereon or attached hereto. No agent has authority to change this policy or to waive any of its provisions.

2. Time Limit On Certain Defenses: a. After 2 years from the date of issue of this policy no misstatements, except fraudulent misstatements, made by the applicant in the application for such policy shall be used to void the policy or to deny a claim for loss incurred or disability (as defined in the policy) commencing after the expiration of such 2-year period.

(The foregoing policy provision shall not be so construed as to affect any legal requirement for avoidance of a policy or denial of a claim during such initial 2-year period, nor to limit the application of par. (b) 1, 2, 3, 4 and 5 in the event of misstatement with respect to age or occupation or other insurance.)

am. A policy which the insured has the right to continue in force subject to its terms by the timely payment of premium until at least age 50 or, in the case of a policy issued after age 44, for at least 5 years from its date of issue, may contain in lieu of the provisions in subd. 2 a. the following provision (from which the clause in parentheses may be omitted at the insurer's option) under the caption "INCONTESTABLE": After this policy has been in force for a period of 2 years during the lifetime of the insured (excluding any period during which the insured is disabled), it shall become incontestable as to the statements contained in the application.

b. No claim for loss incurred or disability (as defined in the policy) commencing after 2 years from the date of issue of this policy shall be reduced or denied on the ground that a disease or physical condition not excluded from coverage by name or specific description effective on the date of loss had existed prior to the effective date of coverage of this policy.

3. Grace Period. a. A grace period of (insert a number not less than 7 for weekly premium policies, 10 for monthly premium policies and 31 for all other policies) days will be granted for the payment of each premium falling due after the first premium, during which grace period the policy shall continue in force.

b. A policy in which the insurer reserves the right to refuse renewal shall have, at the beginning of the above provision: unless not less than 30 days prior to the premium due date the insurer has delivered to the insured or has mailed to his last address as shown by the records of the insurer written notice of its intention not to renew this policy beyond the period for which the premium has been accepted.

c. Each such policy in which the insurer reserves the right to refuse renewal on an individual basis shall provide, in substance, in a provision thereof or in an endorsement thereon or in a rider attached thereto, that subject to the right to terminate the policy upon nonpayment of premium when due, such right to refuse renewal shall not be exercised before the renewal date occurring on, or after and nearest, each anniversary, or in the case of lapse and reinstatement at the renewal date occurring on, or after and nearest, each anniversary

of the last reinstatement, and that any refusal of renewal shall be without prejudice to any claim originating while the policy is in force. The preceding sentence shall not apply to accident insurance only policies.

4. Reinstatement: a. If any renewal premium is not paid within the time granted the insured for payment, a subsequent acceptance of premium by the insurer or by any agent duly authorized by the insurer to accept such premium, without requiring in connection therewith an application for reinstatement, shall reinstate the policy; provided, however, that if the insurer or such agent requires an application for reinstatement and issues a conditional receipt for the premium tendered, the policy will be reinstated upon approval of such application by the insurer or, lacking such approval, upon the forty-fifth day following the date of such conditional receipt unless the insurer has previously notified the insured in writing of its disapproval of such application. The reinstated policy shall cover only loss resulting from such accidental injury as may be sustained after the date of reinstatement and loss due to such sickness as may begin more than 10 days after such date. In all other respects the insured and insurer shall have the same rights thereunder as they had under the policy immediately before the due date of the defaulted premium, subject to any provisions endorsed hereon or attached hereto in connection with the reinstatement. Any premium accepted in connection with a reinstatement shall be applied to a period for which premium has not been previously paid, but not to any period more than 60 days prior to the date of reinstatement.

b. The last sentence of the above provision may be omitted from any policy which the insured has the right to continue in force subject to its terms by the timely payment of premiums until at least age 50 or, in the case of a policy issued after age 44, for at least 5 years from its date of issue.

5. Notice Of Claim: a. Written notice of claim must be given to the insurer within 20 days after the occurrence or commencement of any loss covered by the policy, or as soon thereafter as is reasonably possible. Notice given by or on behalf of the insured or the beneficiary to the insurer at (insert the location of such office as the insurer may designate for the purpose), or to any authorized agent of the insurer, with information sufficient to identify the insured, shall be deemed notice to the insurer.

b. In a policy providing a loss-of-time benefit which may be payable for at least 2 years, an insurer may at its option insert the following between the first and second sentences of the above provision: subject to the qualifications set forth below, if the insured suffers loss of time on account of disability for which indemnity may be payable for at least 2 years, he shall, at least once in every 6 months after having given notice of claim, give to the insurer notice of continuance of said disability, except in the event of legal incapacity. The period of 6 months following any filing of proof by the insured or any payment by the insurer on account of such claim or any denial of liability in whole or in part by the insurer shall be excluded in applying this provision. Delay in the giving of such notice shall not impair the insured's right to any indemnity which would otherwise have accrued during the period of 6 months preceding the date on which such notice is actually given.

6. Claim Forms: The insurer, upon receipt of a notice of claim, will furnish to the claimant such forms as are usually furnished by it for filing proofs of loss. If such forms are not furnished within 15 days after the giving of such notice the claimant shall be deemed to have complied with the requirements of this policy as to proof of loss upon submitting, within the time fixed in the policy for filing proofs of loss, written proof covering the occurrence, the character and the extent of the loss for which claim is made.

7. Proofs Of Loss: Written proof of loss must be furnished to the insurer at its said office in case of claim for loss for which this policy provides any periodic payment contingent upon continuing loss within 90 days after the termination of the period for which the insurer is liable and in case of claim for any other loss within 90 days after the date of such loss. Failure to furnish such proof within the time required shall not invalidate nor reduce any claim if it was not reasonably possible to give proof within such time, provided such proof is furnished as soon as reasonably possible and in no event, except in the absence of legal capacity, later than one year from the time proof is otherwise required.

8. Time Of Payment Of Claims: Indemnities payable under this policy for any loss other than loss for which this policy provides any periodic payment will be paid immediately upon receipt of due written proof of such loss. Subject to due written proof of loss, all accrued indemnities for loss for which this policy provides periodic payment will be paid (insert

period for payment which must not be less frequently than monthly) and any balance remaining unpaid upon the termination of liability will be paid immediately upon receipt of due written proof.

9. Payment Of Claims: a. Indemnity for loss of life will be payable in accordance with the beneficiary designation and the provisions respecting such payment which may be prescribed herein and effective at the time of payment. If no such designation or provision is then effective, such indemnity shall be payable to the estate of the insured. Any other accrued indemnities unpaid at the insured's death may, at the option of the insurer, be paid either to such beneficiary or to such estate. All other indemnities will be payable to the insured.

b. The following provisions, or either of them, may be included with the foregoing provision at the option of the insurer:

If any indemnity of this policy shall be payable to the estate of the insured, or to an insured or beneficiary who is a minor or otherwise not competent to give a valid release, the insurer may pay such indemnity, up to an amount not exceeding \$.... (insert an amount which shall not exceed \$1,000), to any relative by blood or connection by marriage of the insured or beneficiary who is deemed by the insurer to be equitably entitled thereto. Any payment made by the insurer in good faith pursuant to this provision shall fully discharge the insurer to the extent of such payment.

Subject to any written direction of the insured in the application or otherwise all or a portion of any indemnities provided by this policy on account of hospital, nursing, medical, or surgical services may, at the insurer's option and unless the insured requests otherwise in writing not later than the time of filing proofs of such loss, be paid directly to the hospital or person rendering such services; but it is not required that the service be rendered by a particular hospital or person.

c. Notwithstanding the provisions of this section regarding payment of claims provisions, a policy otherwise written in accordance with this section which includes benefits payable on account of hospital, nursing, medical or surgical services rendered to or for an insured person may contain a provision, in lieu of the provision contained in the last paragraph of subd. 9. b., providing for the direct payment of such benefits as permitted in s. 204.33.

10. Physical Examinations And Autopsy: The insurer at its own expense shall have the right and opportunity to examine the person of the insured when and as often as it may rea-

sonably require during the pendency of a claim hereunder and to make an autopsy in case of death where it is not forbidden by law

11. **Legal Actions:** No action at law or in equity shall be brought to recover on this policy prior to the expiration of 60 days after written proof of loss has been furnished in accordance with the requirements of this policy. No such action shall be brought after the expiration of 3 years after the time written proof of loss is required to be furnished.

12. **Change Of Beneficiary:** a. Unless the insured makes an irrevocable designation of beneficiary, the right to change of beneficiary is reserved to the insured and the consent of the beneficiary or beneficiaries shall not be requisite to surrender or assignment of this policy or to any change of beneficiary or beneficiaries, or to any other changes in this policy.

b. The first clause of this provision, relating to the irrevocable designation of beneficiary, may be omitted at the insurer's option.

(b) **Other Provisions.** Except as provided in paragraph (c), no such policy delivered or issued for delivery to any person in this state shall contain provisions respecting the matters set forth below unless such provisions are in the words in which the same appear in this paragraph; provided, however, that the insurer may, at its option, use in lieu of any such provision a corresponding provision of different wording approved by the commissioner which is not less favorable in any respect to the insured or the beneficiary. Any such provision contained in the policy shall be preceded individually by the appropriate caption appearing in this subsection or, at the option of the insurer, by such appropriate individual or group captions or subcaptions as the commissioner may approve.

1. **Change Of Occupation:** If the insured be injured or contract sickness after having changed his occupation to one classified by the insurer as more hazardous than that stated in this policy or while doing for compensation anything pertaining to an occupation so classified, the insurer will pay only such portion of the indemnities provided in this policy as the premium paid would have purchased at the rates and within the limits fixed by the insurer for such more hazardous occupation. If the insured changes his occupation to one classified by the insurer as less hazardous than that stated in this policy, the insurer, upon receipt of proof of such change of occupation, will reduce the premium rate accordingly, and will return the excess pro-rata unearned premium from the date of change of occupation or from

the policy anniversary date immediately preceding receipt of such proof, whichever is the more recent. In applying this provision, the classification of occupational risk and the premium rates shall be such as have been last filed by the insurer prior to the occurrence of the loss for which the insurer is liable or prior to date of proof of change in occupation with the state official having supervision of insurance in the state where the insured resided at the time this policy was issued; but if such filing was not required, then the classification of occupational risk and the premium rates shall be those last made effective by the insurer in such state prior to the occurrence of the loss or prior to the date of proof of change in occupation.

2. **Misstatement Of Age:** If the age of the insured has been misstated, all amounts payable under this policy shall be such as the premium paid would have purchased at the correct age.

3. **Other Insurance In This Insurer:** a. If an accident or sickness or accident and sickness policy or policies previously issued by the insurer to the insured be in force concurrently herewith, making the aggregate indemnity for (insert type of coverage or coverages) in excess of \$ (insert maximum limit of indemnity or indemnities) the excess insurance shall be void and all premiums paid for such excess shall be returned to the insured or to his estate.

b. In lieu of the provisions in subsection (3) (b) 3. a. the following may be used: insurance effective at any time on the insured under a like policy or policies in this insurer is limited to the one such policy elected by the insured, his beneficiary or his estate, as the case may be, and the insurer will return all premiums paid for all other such policies.

4. **Insurance With Other Insurers:** a. If there is other valid coverage, not with this insurer, providing benefits for the same loss on a provision of service basis or on an expense incurred basis and of which this insurer has not been given written notice prior to the occurrence or commencement of loss, the only liability under any expense incurred coverage of this policy shall be for such proportion of the loss as the amount which would otherwise have been payable hereunder plus the total of the like amounts under all such other valid coverages for the same loss of which this insurer had notice bears to the total like amounts under all valid coverages for such loss, and for the return of such portion of the premiums paid as shall exceed the pro-rata portion for the amount so determined. For the purpose of applying this provision when other coverage is on

a provision of service basis, the "like amount" of such other coverage shall be taken as the amount which the services rendered would have cost in the absence of such coverage.

b. If the foregoing policy provision is included in a policy which also contains the next following policy provision there shall be added to the caption of the foregoing provision the phrase "**— EXPENSE INCURRED BENEFITS**". The insurer may, at its option, include in this provision a definition of "other valid coverage", approved as to form by the commissioner, which definition shall be limited in subject matter to coverage provided by organizations subject to regulation by insurance law or by insurance authorities of this or any other state of the United States or any province of Canada, and by hospital or medical service organizations, and to any other coverage the inclusion of which may be approved by the commissioner. In the absence of such definition such term shall not include group insurance, automobile medical payments insurance, or coverage provided by hospital or medical service organizations or by union welfare plans or employer or employe benefit organizations. For the purpose of applying the foregoing policy provision with respect to any insured, any amount of benefit provided for such insured pursuant to any compulsory benefit statute (including any workmen's compensation or employer's liability statute) whether provided by a governmental agency or otherwise shall in all cases be deemed to be "other valid coverage" of which the insurer has had notice. In applying the foregoing policy provision no third party liability coverage shall be included as "other valid coverage".

5. Insurance With Other Insurers: a. If there be other valid coverage, not with this insurer, providing benefits for the same loss on other than an expense incurred basis and of which this insurer has not been given written notice prior to the occurrence or commencement of loss, the only liability for such benefits under this policy shall be for such proportion of the indemnities otherwise provided hereunder for such loss as the like indemnities of which the insurer had notice (including the indemnities under this policy) bear to the total amount of all like indemnities for such loss, and for the return of such portion of the premium paid as shall exceed the pro-rata portion for the indemnities thus determined.

b. If the foregoing policy provision is included in a policy which also contains the next preceding policy provision there shall be added to the caption of the foregoing provision the

phrase "**—OTHER BENEFITS**". The insurer may, at its option, include in this provision a definition of "other valid coverage", approved as to form by the commissioner, which definition shall be limited in subject matter to coverage provided by organizations subject to regulation by insurance law or by insurance authorities of this or any other state of the United States or any province of Canada, and to any other coverage the inclusion of which may be approved by the commissioner. In the absence of such definition such term shall not include group insurance, or benefits provided by union welfare plans or by employer or employe benefit organizations. For the purpose of applying the foregoing policy provision with respect to any insured, any amount of benefit provided for such insured pursuant to any compulsory benefit statute (including any workmen's compensation or employer's liability statute) whether provided by a governmental agency or otherwise shall in all cases be deemed to be "other valid coverage" of which the insurer has had notice. In applying the foregoing policy provision no third party liability coverage shall be included as "other valid coverage".

6. Relation Of Earnings To Insurance: a. If the total monthly amount of loss-of-time benefits promised for the same loss under all valid loss-of-time coverage upon the insured, whether payable on a weekly or monthly basis, shall exceed the monthly earnings of the insured at the time disability commenced or his average monthly earnings for the period of 2 years immediately preceding a disability for which claim is made, whichever is the greater, the insurer will be liable only for such proportionate amount of such benefits under this policy as the amount of such monthly earnings or such average monthly earnings of the insured bears to the total amount of monthly benefits for the same loss under all such coverage upon the insured at the time such disability commences and for the return of such part of the premiums paid during such 2 years as shall exceed the pro-rata amount of the premiums for the benefits actually paid hereunder; but this shall not operate to reduce the total monthly amount of benefits payable under all such coverage upon the insured below the sum of \$200 or the sum of the monthly benefit specified in such coverages, whichever is the lesser, nor shall it operate to reduce benefits other than those payable for loss of time.

b. The foregoing policy provision may be inserted only in a policy which the insured has the right to continue in force subject to its

terms by the timely payment of premiums until at least age 50 or, in the case of a policy issued after age 44, for at least 5 years from its date of issue. The insurer may, at its option, include in this provision a definition of "valid loss-of-time coverage", approved as to form by the commissioner, which definition shall be limited in subject matter to coverage provided by governmental agencies or by organizations subject to regulation by insurance law or by insurance authorities of this or any other state of the United States or any province of Canada, or to any other coverage the inclusion of which may be approved by the commissioner or any combination of such coverages. In the absence of such definition such term shall not include any coverage provided for such insured pursuant to any compulsory benefit statute (including any workmen's compensation or employer's liability statute), or benefits provided by union welfare plans or by employer or employee benefit organizations.

7. Unpaid Premium: Upon the payment of a claim under this policy, any premium then due and unpaid or covered by any note or written order may be deducted therefrom.

9. Conformity With State Statutes: Any provision of this policy which, on its effective date, is in conflict with the statutes of the state in which the insured resides on such date is hereby amended to conform to the minimum requirements of such statutes.

10. Illegal Occupation: The insurer shall not be liable for any loss to which a contributing cause was the insured's commission of or attempt to commit a felony or to which a contributing cause was the insured's being engaged in an illegal occupation.

11. Intoxicants And Narcotics: The insurer shall not be liable for any loss sustained or contracted in consequence of the insured's being intoxicated or under the influence of any narcotic unless administered on the advice of a physician.

(c) *Inapplicable or inconsistent provisions.* If any provision of this subsection is in whole or in part inapplicable to or inconsistent with the coverage provided by a particular form of policy the insurer, with the approval of the commissioner, shall omit from such policy any inapplicable provision or part of a provision, and shall modify any inconsistent provision or part of the provision in such manner as to make the provision as contained in the policy consistent with the coverage provided by the policy.

(d) *Order of certain policy provisions.* The provisions which are subject to paragraphs (a) and (b), or any corresponding provisions which

are used in lieu thereof under this subsection, shall be printed in the consecutive order of the provisions in this subsection or, at the option of the insurer, any such provision may appear as a unit in any part of the policy, with other provisions to which it may be logically related, provided the resulting policy shall not be in whole or in part unintelligible, uncertain, ambiguous, abstruse, or likely to mislead a person to whom the policy is offered, delivered or issued.

(e) *Third party ownership.* The word "insured", as used in this section, shall not be construed as preventing a person other than the insured with a proper insurable interest from making an application for and owning a policy covering the insured or from being entitled under such a policy to any indemnities, benefits and rights provided therein.

(f) *Requirements of other jurisdictions.* 1. Any policy of a foreign or alien insurer, when delivered or issued for delivery to any person in this state, may contain any provision which is not less favorable to the insured or the beneficiary than the provisions of this section and which is prescribed or required by the law of the state under which the insurer is organized.

2. Any policy of a domestic insurer may, when issued for delivery in any other state or country, contain any provision permitted or required by the law of such other state or country.

(g) *Filing procedure.* 2. No such policy shall be issued, nor shall any application, rider or endorsement be used in connection therewith until the expiration of 30 days after it has been so filed unless the commissioner shall sooner give his written approval thereto.

3. The commissioner may within 30 days after the filing of any such form disapprove such form if the benefits provided therein are unreasonable in relation to the premium charged, or if it contains a provision which is unjust, unfair, inequitable, misleading, deceptive or encourages misrepresentation of such policy. If the commissioner notifies the insurer that the form does not comply with this subsection, it is unlawful thereafter for such insurer to issue or use such form. In such notice the commissioner shall specify the reason for his disapproval and state that a hearing will be granted within 20 days after request in writing by the insurer.

4. The commissioner may at any time, after a hearing on not less than 20 days' written notice to the insurer, withdraw his approval of any such form on any of such grounds. It is unlawful for the insurer to issue such form or

use it after the effective date of such withdrawal of approval.

(h) *Other policy provisions.* No policy provision which is not subject to subsection (3) shall make a policy, or any portion thereof, less favorable in any respect to the insured or the beneficiary than the provisions thereof which are subject to this section.

(i) *Conflicting policy.* A policy delivered or issued for delivery to any person in this state in violation of this section shall be held valid but shall be construed as provided in this section. When any provision in a policy subject to this section is in conflict with any provision of this section, the rights, duties and obligations of the insurer, the insured and the beneficiary shall be governed by the provisions of this section.

(3m) *CONSTRUCTION.* Every policy of accident and sickness insurance shall be construed according to the entirety of its terms and conditions as set forth in the policy and as amplified, extended or modified by any rider, endorsement or application attached to and made a part of the policy. The word "physician" when used in any accident and sickness policy issued or renewed on or after 90 days after January 11, 1970, shall be construed to include a dentist performing procedures within the scope of his professional license.

(4) *APPLICATION.* (a) The insured shall not be bound by any statement made in an application for a policy unless a copy of such application is attached to or endorsed on the policy when issued as a part thereof. If any such policy delivered or issued for delivery to any person in this state shall be reinstated or renewed, and the insured or the beneficiary or assignee of such policy shall make written request to the insurer for a copy of the application, if any, for such reinstatement or renewal, the insurer shall within 15 days after the receipt of such request at its home office or any branch office of the insurer, deliver or mail to the person making such request, a copy of such application. If such copy shall not be so delivered or mailed, the insurer shall be precluded from introducing such application as evidence in any action or proceeding based upon or involving such policy or its reinstatement or renewal.

(b) No alteration of any written application for any such policy shall be made by any person other than the applicant without his written consent, except that insertions may be made by the insurer, for administrative purposes only, in such manner as to indicate clearly that such insertions are not to be ascribed to the applicant.

(c) The falsity of any statement in the application for any policy covered by this section may not bar the right to recovery thereunder unless such false statement materially affected either the acceptance of the risk or the hazard assumed by the insurer.

(5) *NOTICE, WAIVER.* The acknowledgment by any insurer of the receipt of notice given under any policy covered by this section, or the furnishing of forms for filing proofs of loss, or the acceptance of such proofs, or the investigation of any claim thereunder shall not operate as a waiver of any of the rights of the insurer in defense of any claim arising under such policy.

(6) *AGE LIMIT.* If any such policy contains a provision establishing, as an age limit or otherwise, a date after which the coverage provided by the policy will not be effective, and if such date falls within a period for which premium is accepted by the insurer or if the insurer accepts a premium after such date, the coverage provided by the policy will continue in force subject to any right of cancellation by the insured until the end of the period for which premium has been accepted. If the age of the insured has been misstated and if, according to the correct age of the insured, the coverage provided by the policy would not have become effective, or would have ceased prior to the acceptance of such premium, then the liability of the insurer shall be limited to the refund, upon request, of all premiums paid for the period not covered by the policy.

(7) *NONAPPLICATION TO CERTAIN POLICIES.* Nothing in this section shall apply to or affect:

(a) Any policy of workmen's compensation insurance or of liability insurance with or without supplementary expense coverage therein; or

(b) Any policy or contract of reinsurance; or

(c) Any blanket or group policy of insurance, except for the requirements of ss. 204.321 (2) (b) and (4) (b) and 204.322 (2) (b) and (c); or

(d) Life insurance, endowment or annuity contracts, or contracts supplemental thereto, which contain only such provisions relating to accident and sickness insurance as provide additional benefits in case of death or dismemberment or loss of sight by accident, or operate to safeguard such contracts against lapse, or to give a special surrender value or special benefit or an annuity if the insured or annuitant becomes totally and permanently disabled, as defined by the contract or supplemental contract.

204.315 Policy extension for handicapped children. An individual or franchise hospital or medical expense insurance policy or hospital service plan contract or medical service plan contract, delivered or issued for delivery in this state more than 120 days after May 7, 1972 or on any contract renewal, which provides that coverage of a dependent child shall terminate upon attainment of the limiting age for dependent children specified in the policy or contract shall also provide in substance that attainment of such limiting age shall not operate to terminate the coverage of such child while the child is and continues to be both 1) incapable of self-sustaining employment by reason of mental retardation or physical handicap, and 2) chiefly dependent upon the policyholder or subscriber for support and maintenance, provided proof of such incapacity and dependency is furnished to the insurer or hospital service plan corporation or medical service plan corporation by the policyholder or subscriber within 31 days of the child's attainment of the limiting age and subsequently as the insurer or corporation requires, but not more frequently than annually after the 2-year period following the child's attainment of the limiting age.

History: 1971 c. 284

204.32 Franchise accident and sickness insurance. (1) Franchise accident and sickness insurance is declared to be that form of accident and sickness insurance described in s. 201.04 (4) covering 3 or more employes or members of any governmental corporation, unit, agency or department thereof, or of any corporation, copartnership or individual employer, or of any association, including a labor union, having a constitution or bylaws, and formed in good faith for purposes other than that of obtaining insurance, or individuals supplying raw materials to a single processing plant, where such employes, members, employes of members or suppliers, with or without their dependents, are covered under individual policies of insurance, under an arrangement whereby the premiums on such policies are to be paid to the insurer periodically by the employer, with or without pay roll deductions, or by the association, as the case may be, or by some designated person acting on behalf of such employer or association or of such employes, members or suppliers. The term "employes" as used herein includes the officers, managers and employes of the employer and the individual proprietor or partners if the employer is an individual proprietor or partnership.

(2) Any insurance company authorized to write accident and sickness insurance in this state may issue franchise accident and sickness policies.

(3) Notwithstanding any provision in the statutes in conflict herewith, insurers may be permitted to file, for use in connection with franchise accident and sickness insurance, rate schedules which reflect a differential from the rates charged for identical policies issued on the individual basis, provided the rates charged under such rate schedules do not unfairly discriminate between franchise groups.

(4) Policy, application, rider and endorsement forms and premium schedules to be used in connection with franchise accident and sickness insurance shall be subject to the requirements of s. 204.31.

204.321 Group accident and sickness insurance. (1) **DEFINITION.** Group accident and sickness insurance is hereby declared to be that form of accident and sickness insurance described in s. 201.04 (4) covering groups of persons as defined below, with or without one or more members of their families or one or more of their dependents, or covering one or more members of the families or one or more dependents of such groups of persons, and issued under a policy issued to:

(a) An employer or trustees of a fund established by an employer, who shall be deemed the policyholder, insuring at least 10 employes of such employer for the benefit of persons other than the employer. The term "employes" as used herein shall be deemed to include the officers, managers and employes of the employer, the individual proprietor or partner if the employer is an individual proprietor or partnership, the officers, managers and employes of subsidiary or affiliated corporations, the individual proprietors, partners and employes of individuals and firms, if the business of the employer and such individual or firm is under common control through stock ownership, contract or otherwise. The term "employes" as used herein may include retired employes. A policy issued to insure employes of a public body may provide that the term "employes" includes elected or appointed officials; or

(b) An association, including a labor union, which has a constitution and bylaws and which has been organized and is maintained in good faith for purposes other than that of obtaining insurance, insuring at least 25 members, employes, or employes of members of the association for the benefit of persons other

than the association or its officers or trustees. The term "employees" as used herein may include retired employees; or

(c) The trustees of a fund established by 2 or more employers in the same industry or by one or more labor unions or by one or more employers and one or more labor unions or by an association as defined in par. (b), which trustees shall be deemed the policyholder, to insure employes of the employers or members of the unions or such association for the benefit of persons other than the employers or the unions or such association. The term "employees" as used herein may include the officers, managers and employes of the employer, and the individual proprietor or partners if the employer is an individual proprietor or partnership. The term "employees" as used herein may include retired employes. The policy may provide that the term "employees" includes the trustees or their employes, or both, if their duties are principally connected with such trusteeship; or

(d) Any person or organization to which a policy of group life insurance may be issued or delivered under s. 206.60 (2), (5) or (6), to insure any class or classes of individuals that could be insured under such group life policy; or

(e) Groups of individuals supplying raw materials to a single processing plant; or

(f) Cover any other substantially similar group which, in the discretion of the commissioner, may be subject to the issuance of a group accident and sickness policy or contract.

(2) POLICY PROVISIONS. (a) Each group accident and sickness policy shall contain in substance the following provisions, or provisions which in the opinion of the commissioner are more favorable to the persons insured or the beneficiaries, or at least as favorable to the persons insured or the beneficiaries and the policyholder:

1. That, in the absence of fraud, all statements made by any applicant or applicants or the policyholder or by an insured person shall be deemed representations and not warranties, and that no statement made for the purpose of effecting insurance shall avoid such insurance or reduce benefits unless contained in a written instrument signed by the policyholder or the insured person, a copy of which has been furnished to such policyholder or to such person or his beneficiary; and

2. That no change in the policy shall be valid until approved by an executive officer of the insurer and unless such approval is endorsed on or attached to the policy and that no agent has authority to change the policy or to waive any of its provisions; and

3. That the insurer will furnish to the policyholder, for delivery to each employe or member of the insured group, an individual certificate setting forth a summary of the essential features of the insurance coverage of such employe or member. If dependents are included in the coverage, only one certificate need be issued for each family unit; and

4. That to the group originally insured may be added from time to time eligible new employes or members or dependents, as the case may be, in accordance with the terms of the policy; and

5. That the policyholder is entitled to a grace period of 31 days for the payment of any premium due except the first, during which grace period the coverage shall continue in force, unless the policyholder has given the insurer written notice of discontinuance in advance of the date of discontinuance and in accordance with the terms of the policy. The policy may provide that the policyholder shall be liable to the insurer for the payment of a pro-rata premium for the time the policy was in force during such grace period; and

6. That no statement, except fraudulent misstatements, made by any person insured under the policy relating to his insurability shall be used in contesting the validity of the insurance with respect to which such statement was made after such insurance has been in force prior to the contest for a period of 2 years during such person's lifetime; and

7. The renewal terms applicable to the policy; and

8. The conditions, if any, under which the insurer reserves the right to require a person eligible for insurance to furnish evidence of individual insurability satisfactory to the insurer as a condition to part or all of his coverage; and

9. The applicable requirements regarding an individual's eligibility for coverage under the policy; and

10. The conditions under which an individual's coverage terminates under the policy.

(b) Each group accident and sickness policy shall, subject to s. 204.31 (3) (a) (intro. par.), except for the caption requirement, and to s. 204.31 (3) (c), contain the provisions set forth in s. 204.31 (3) (a) 5, 7, 8, 9, 11 and 12.

(c) Any group accident and sickness policy may also provide that all or any portion of any indemnities provided by such policy on account of hospital, nursing, medical or surgical services may, at the insurer's option, be paid directly to the hospital, physician or other institution or person rendering such services; but

the policy may not require that the service be rendered by a particular hospital or person. Payment so made shall discharge the insurer's obligation with respect to the amount of insurance so paid.

(d) 1. Each group accident and sickness policy shall provide coverage for hospital treatment and [of] alcoholism.

2. In this subsection "hospital" has the meaning set forth in s. 200.26 (6) (b).

Note: Ch. 325, laws of 1971, which created par. (d) also provided that the paragraph applies to all policies issued or renewed on or after September 8, 1972.

(3) **FILING PROCEDURE.** (a) No group accident and sickness policy shall be issued or delivered in this state, nor shall any application, rider, endorsement or certificate be used in connection therewith, until a copy of the form thereof has been filed with the commissioner, nor until the expiration of 30 days after it has been so filed, unless the commissioner shall sooner give his written approval thereto.

(b) The commissioner may, within 30 days after the filing of such form, disapprove such form if it does not comply with the requirements of law or if it contains a provision which is unjust, unfair, inequitable, misleading, or deceptive, or encourages misrepresentation of such policy. If the commissioner notifies the insurer that the form does not comply with this subsection, it is unlawful thereafter for such insurer to issue or use such form. In such notice, the commissioner shall specify the reason for his disapproval and state that a hearing will be granted within 20 days after request in writing by the insurer.

(c) The commissioner may at any time, after a hearing on not less than 20 days' written notice to the insurer, withdraw his approval of any such form or any of such grounds. It is unlawful for the insurer to issue such form or use it after the effective date of such withdrawal of approval.

(e) No such policy shall be issued or delivered in this state unless a schedule of the premium rates pertaining to such form has been filed with the commissioner.

(4) **GROUP CREDIT ACCIDENT AND SICKNESS INSURANCE.** (a) A master policy for credit accident and sickness insurance, as defined in s. 201.04 (4a), may be issued to a creditor, subject to the requirements of subs. (1) (d) and (f), (2) (a) and (b), and (3) (e), to cover a class or classes of debtors who become indebted to said creditor. References to an employer or association shall apply to a creditor; and references to an employe or member shall apply to a debtor.

(b) Group credit accident and sickness policies shall also be subject to the requirements of s. 204.31 (3) (g).

History: 1971 c. 325.

204.322 Blanket accident and sickness insurance. (1) **DEFINITION.** Blanket accident and sickness insurance is hereby declared to be that form of accident and sickness insurance described in s. 201.04 (4) covering groups of persons under a policy or contract issued:

(a) To any common carrier or to any operator, owner or lessee of a means of transportation, who or which shall be deemed the policyholder, covering a group defined as all persons or all persons of a class who may become passengers on such common carrier or such means of transportation; or

(b) To an employer, who shall be deemed the policyholder, covering all employes, dependents or guests, defined by reference to specified hazards incident to the activities or operations of the employer, or any class of employes, dependents or guests similarly defined; or

(c) To a school, or other institution of learning, camp or sponsor thereof, or to the head or principal thereof, who or which shall be deemed the policyholder, covering students or campers. Supervisors and employes may be included; or

(d) In the name of any religious, charitable, recreational, educational, or civic organization, which shall be deemed the policyholder, covering participants in activities sponsored by the organization; or

(e) To a sports team or sponsors thereof, which shall be deemed the policyholder, covering members, officials and supervisors; or

(f) To cover any other risk or class of risks which, in the discretion of the commissioner, may be properly eligible for blanket accident and sickness insurance. The discretion of the commissioner may be exercised on an individual risk basis or class of risks, or both.

(2) **POLICY PROVISIONS.** (a) Each blanket accident and sickness policy shall contain in substance the following provisions, or provisions which in the opinion of the commissioner are more favorable to the persons insured or the beneficiaries; or at least as favorable to the persons insured or the beneficiaries and the policyholder:

1. That the policy, including the endorsements and the attached papers, if any, and the application of the policyholder shall constitute the entire contract between the parties, and that all statements made by the policyholder

shall, in the absence of fraud, be deemed representations and not warranties, and that no such statement shall be used in defense to a claim under the policy unless it is contained in a written application, a copy of which is attached to the policy; and

2. That no change in the policy shall be valid until approved by an executive officer of the insurer and unless such approval is endorsed on or attached to the policy and that no agent has authority to change the policy or to waive any of its provisions; and

3. That to the group originally insured may be added from time to time eligible new employees or members or dependents, as the case may be, in accordance with the terms of the policy; and

4. That the policyholder is entitled to a grace period of 31 days for the payment of any premium due except the first, during which grace period the coverage shall continue in force, unless the policyholder has given the insurer written notice of discontinuance in advance of the date of discontinuance and in accordance with the terms of the policy. The policy may provide that the policyholder shall be liable to the insurer for the payment of a pro-rata premium for the time the policy was in force during such grace period; and

5. The renewal terms applicable to the policy; and

6. The applicable requirements regarding an individual's eligibility for coverage under the policy; and

7. The conditions under which an individual's coverage terminates under the policy.

(b) Each blanket accident and sickness policy shall, subject to s. 204.31 (3) (a) (intro. par.), except for the caption requirement, and to s. 204.31 (3) (c), contain the provisions set forth in s. 204.31 (3) (a) 5, 6, 7, 8, 9, 10, 11 and 12.

(c) All benefits under a blanket accident and sickness policy shall be payable in accordance with the payment of claims provision contained in s. 204.31 (3) (a) 9 except: if the person insured is a minor or mental incompetent, such benefits may be made payable to his parent, guardian, or other person actually supporting him; or, if the entire cost of the insurance has been borne by the employer, such benefits may be made payable to the employer. The policy may also provide that all or any portion of any indemnities provided by any such policy on account of hospital, nursing, medical or surgical services may, at the insurer's option, be paid directly to the hospital,

physician, or other institution or person rendering such services; but the policy may not require that the service be rendered by a particular hospital or person. Payment so made shall discharge the insurer's obligation with respect to the amount of insurance so paid.

(3) **INDIVIDUAL APPLICATION.** An individual application shall not be required from a person to be covered under a blanket accident and sickness policy, except that an individual enrollment form which would not be subject to underwriting by the insurer may be used in connection with such a policy.

(4) **CERTIFICATE.** It is not necessary for an insurer to furnish each person insured under a blanket accident and sickness policy with an individual certificate of insurance. In the event certificates are to be issued in connection with such policy, each such certificate shall set forth a summary of the essential features of the insurance coverage of such person.

(5) **FILING PROCEDURE.** (a) No blanket accident and sickness policy shall be issued or delivered in this state, nor shall any application, rider, endorsement or certificate be used in connection therewith, until a copy of the form thereof has been filed with the commissioner, nor until the expiration of 30 days after it has been so filed, unless the commissioner shall sooner give his written approval thereto.

(b) The commissioner may, within 30 days after the filing of such form, disapprove such form if it does not comply with the requirements of law or if it contains a provision which is unjust, unfair, inequitable, misleading, or deceptive, or encourages misrepresentation of such policy. If the commissioner notifies the insurer that the form does not comply with this subsection, it is unlawful thereafter for such insurer to issue or use such form. In such notice, the commissioner shall specify the reason for his disapproval and state that a hearing will be granted within 20 days after request in writing by the insurer.

(c) The commissioner may at any time, after a hearing on not less than 20 days' written notice to the insurer, withdraw his approval of any such form on any of such grounds. It is unlawful for the insurer to issue such form or use it after the effective date of such withdrawal of approval.

(e) No such policy shall be issued or delivered in this state unless a schedule of the premium rates pertaining to such form has been filed with the commissioner.

204.33 Direct payment. Any policy providing accident and sickness insurance which

includes benefits payable on account of hospital, nursing, medical or surgical services rendered to or for an insured, including an employe or other member of any group insured by such policy, his or her spouse, child or children, or other dependents, may also provide that any such benefits be paid by the insurer directly to the hospital, physician, or other institution or person furnishing services covered by such provisions of the policy; but the policy may not require that the service be rendered by a particular hospital or person.

204.335 Policy extension for handicapped children. A group or blanket hospital or medical expense insurance policy issued under ss. 204.321 and 204.322, or hospital service plan contract or medical service plan contract, delivered or issued for delivery in this state more than 120 days after May 7, 1972 or on any contract renewal, which provides that coverage of a dependent child of an employe or other member of the covered group shall terminate upon attainment of the limiting age for dependent children specified in the policy or contract shall also provide in substance that such limiting age shall not operate to terminate the coverage of such child while the child is and continues to be both 1) incapable of self-sustaining employment by reason of mental retardation or physical handicap, and 2) chiefly dependent upon the employe or member for support and maintenance, provided proof of such incapacity and dependency is furnished to the insurer or hospital service plan corporation or medical service plan corporation by the employe or member within 31 days of the child's attainment of the limiting age and subsequently as the insurer or corporation requires, but not more frequently than annually after the 2-year period following the child's attainment of the limiting age.

History: 1971 c. 284.

204.34 Provisions of motor vehicle policies. (1) No policy of insurance, agreement of indemnity or bond covering liability or loss arising by reason of the ownership, maintenance or use of a motor vehicle issued in this state shall exclude from the coverage afforded or provisions as to benefits therein any of the following:

(a) Persons while driving or manipulating a motor vehicle, who shall be of an age authorized by law so to do;

(b) The operation, manipulation or use of such motor vehicle for unlawful purposes;

(c) The operation, manipulation or use of such motor vehicle while the driver is under the influence of intoxicating liquors or narcotics; while such motor vehicle is engaged in the transportation of liquor in violation of law, or while such motor vehicle is operated in a reckless manner.

(2) No policy of insurance, agreement of indemnity or bond referred to in subsection (1) shall exclude from the coverage afforded or the provisions as to the benefits therein provided persons related by blood or marriage to the assured.

(3) No policy of insurance, agreement of indemnity or bond as provided in subsection (1) shall limit the time for the giving of notice of any accident or casualty covered thereby to a period less than that provided in subsection (1) of section 204.29. Failure to give such notice shall not bar liability under such policy of insurance, agreement of indemnity or bond as provided in subsection (1) if the insurer was not prejudiced or damaged by such failure, but the burden of proof to so show shall be upon the person claiming such liability.

(4) No policy of insurance, agreement of indemnity, or bond referred to in sub. (1) shall exclude from the coverage afforded or provisions as to benefits therein, liability on account of bodily injury, sickness or disease, including death resulting therefrom, sustained by any person who is a named insured.

(5) Every policy of insurance, agreement of indemnity or bond referred to in sub. (1) shall afford coverage in respect to liability on account of bodily injury, sickness or disease, including death resulting therefrom, sustained by any person who is a passenger in or on the insured vehicle, or it shall state prominently on its face in contrasting color that such coverage is not afforded.

A family exclusion clause in a policy issued in Wisconsin to Minnesota residents, where the car was to be used in both states and where the accident occurred in Wisconsin, is invalid, although then permitted under Minnesota law. *Haines v. Mid-Century Ins. Co.* 47 W (2d) 442, 177 NW (2d) 328.

Failure to notify the insurer for 15 months after the accident bars the claim where insured knew he had been in an accident and where the injured party claimed to be unable to remember details on adverse examination, since the company could no longer protect itself by prompt investigation. *Resseguie v. American Mut Liability Ins. Co.* 51 W (2d) 92, 186 NW (2d) 236.

A serviceman can recover, under a medical payments clause, the value of medical services rendered without charge by the government. *Smith v. United Services Auto. Asso.* 52 W (2d) 672, 190 NW (2d) 873.

204.35 Limitation on risk. (3) No casualty or accident insurance company or mutual benefit society shall assume a greater risk on any one person payable in case of death of the as-

sured than one-tenth of its assets reported to the commissioner and in existence at the time of the last annual report.

204.36 Auto insurance on autos purchased on finance plan. Any insurance company or its agent writing a policy of insurance for the benefit of the seller, finance company, or any person retaining an interest in any automobile purchased on a finance plan, or on a conditional sales contract or under any other plan which requires the purchaser of such automobile to maintain insurance, whether premiums for such insurance are paid directly to the insurance company by such purchaser or deduct-

ed from the payments made under such contract or plan or howsoever such premiums are paid, shall deliver to such purchaser a substantial copy of each and every policy written; and if any such policy is cancelled before the purchaser has fully paid for such automobile and is rewritten in the same insurance company or an affiliate thereof or any other insurance company because the original finance or purchasing plan is altered or a new plan or agreement of payment entered into, the unearned premium of any such policy shall be returned to or applied to the credit of the purchaser on a pro rata basis. Any insurance company or individual violating this section shall, for any offense, forfeit \$500.