CHAPTER 617

REGULATION OF INSURANCE HOLDING COMPANIES AND INTERCORPORATE TRANSACTIONS RELATING TO INSURERS

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Cross-reference: See definitions in ss. 600.03, 610.01 and 628.02.
Cross-reference: See also chs. Ins 40 and 41, Wis. adm. code.

617.01 Construction and purpose. (1) CONSTRUCTION. This chapter shall be liberally construed to achieve the purpose of sub. (2), which shall constitute an aid and guide to interpretation but not an independent source of power.

(2) PURPOSE. The purpose of this chapter is to protect the interests of insureds, stockholders and of the public against intercorporate transactions among affiliates that may affect the solidity of insurers authorized to do business in this state or otherwise be detrimental to protected interests.

617.03 Exemptions. The commissioner may exempt any specified person or class of persons from this chapter or any provisions thereof, when the commissioner deems such exemption consistent with the purposes of this chapter and in the public interest.

History: 1979 c. 102 s. 236 (6).

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

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

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

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

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

1. Require it to report to that jurisdiction a material change in or addition to a report required under laws, rules or regulations under par. (a) within 15 days after the last day of the month during which it learns of the change or addition; or

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

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

(3) REPORT FOR AFFILIATES. One insurer may report on behalf of all affiliated insurers if it provides all the information that would be required if each insurer reported separately.

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

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

History: 1979 c. 102 s. 236 (2), (5); 1987 a. 167.

617.12 Rules requiring enterprise risk reports. (1) In this section, "enterprise risk" means any activity, circumstance, event, or series of events involving one or more affiliates of an insurer that, if not remedied, is likely to have a material adverse effect on the financial condition or liquidity of the insurer or its insurance holding company system, as defined in s. 622.03 (2), as a whole, including anything that would cause the insurer's risk-based capital to fall into company action level as set forth in s. Ins 51.01 (4), Wis. Adm. Code, or that would cause the insurer to be in a hazardous financial condition as described in s. 623.11, 645.31, or 645.41.

(2) The commissioner shall promulgate rules requiring insurers to report their enterprise risk, including the form of the report and the manner and process for filing the report.

History: 2013 a. 279.

617.13 Rules requiring group capital calculations and liquidity stress tests. (1) The commissioner shall promulgate rules requiring certain insurers, as determined under the rules, to report their group capital calculations and liquidity stress tests, including the form of the reports and the manner and process for filing the reports.

(2) Sections 19.31 to 19.37 do not apply to the filings made under sub. (1) or to any information submitted to the commissioner in connection with the filings. The filings made under sub. (1) are not subject to subpoena or discovery and may not be admissible in evidence in any private civil action. The commissioner shall only share a filing made under sub. (1), and any information requested in connection with the filing, with the insurance regulatory authorities of states having statutes or regulations substantially similar to this section and who have agreed in writing not to disclose the information.

History: 2021 a. 114.

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

(a) The transaction at the time it is entered into is reasonable and fair to the interests of the insurer.

(b) The books, accounts and records of each party to the transaction are kept in a manner that clearly and accurately discloses the nature and details of the transaction and in accordance with generally accepted accounting principles permits ascertainment of charges relating to the transaction.

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

(cm) Any cost-sharing services or management agreements involved in the transaction include such provisions as the commissioner requires by rule.

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

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

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

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

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

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

(3) DISAPPROVAL. The commissioner may, within the period prescribed in sub. (2), disapprove any transaction reported under sub. (2) if the commissioner finds that it would violate the law or would be contrary to the interests of insureds, stockholders or the public.

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

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

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

(3t) EXEMPTION IF INSURER REPORTS. Section 617.21 (2) to (3g) does not apply to a person attempting to acquire or having control of, or an affiliate of, an insurer, if the insurer reports as required under sub. (2) on behalf of the person or on behalf of the affiliate, and the transaction is not disapproved by the commissioner under sub. (3).

History: 1977 c. 203 ss. 102, 104; 1979 c. 102 ss. 144, 236 (6), (20); 1983 a. 120; 1987 a. 167; 2013 a. 279.

617.215 Supervisory colleges. (1) DEFINITIONS. In this section:

(a) "Insurance holding company system" has the meaning given in s. 622.03 (2).

(b) "Supervisory college" means a temporary or permanent forum for communication and cooperation between the regulators charged with the supervision of an insurer that is part of an insurance holding company system with international operations.

(2) POWERS OF COMMISSIONER. (a) In accordance with par. (b), the commissioner may participate in a supervisory college for any domestic insurer that is part of an insurance holding company system with international operations to determine the insurer's compliance with this chapter. The powers of the commissioner with respect to supervisory colleges include all of the following:

1. Initiating the establishment of a supervisory college.

2. Clarifying the membership and participation of other supervisors in the supervisory college.

3. Clarifying the functions of the supervisory college and the role of other regulators, including the establishment of a group-wide supervisor.

4. Coordinating the ongoing activities of the supervisory college, including planning meetings, supervisory activities, and processes for information sharing.

5. Establishing a crisis management plan.

(b) In order to assess the business strategy, financial position, legal and regulatory position, risk exposure, risk management, and governance processes of an insurer specified in par. (a), and as part of an examination of such an insurer under s. 601.43, the commissioner may participate in a supervisory college with other regulators charged with the supervision of the insurer or its affiliates, including other state, federal, and international regulatory agencies.

(c) The commissioner may enter into agreements for keeping information confidential in accordance with s. 601.465, providing the basis for cooperation between the commissioner and the other regulatory agencies and the activities of the supervisory college.

(3) PAYMENT OF EXPENSES. All insurers to which this section applies are liable for and shall pay the reasonable expenses related to the commissioner's participation in supervisory colleges, including reasonable travel expenses. The commissioner may impose a regular assessment on insurers to cover the expenses.

(4) NOT DELEGATION OF AUTHORITY. Nothing in this section delegates to a supervisory college the authority of the commissioner to regulate or supervise an insurer or its affiliates within the commissioner's jurisdiction.

History: 2013 a. 279.

617.22 Dividends and other distributions. (1) GENERAL. Any action by the board of a stock insurer authorized to do business in this state authorizing any distribution to shareholders

other than a stock dividend shall be reported to the commissioner in writing. No payment may be made until at least 30 days after such report.

(2) NEW CORPORATIONS. For 5 years after the initial issuance of a certificate of authority, no payment may be made under sub. (1) until at least 45 days after the report. The commissioner may extend the waiting period an additional 45 days by giving notice to the corporation not less than 5 days before expiration of the first 45-day period.

(3) EXEMPTIONS. If sub. (2) is inapplicable, no report need be made under sub. (1) of a distribution that is no more than 15 percent larger than for the corresponding period in the previous year.

(4) SPECIAL EXEMPTION FOR CERTAIN NONDOMESTIC INSURERS. A nondomestic insurer which does not have to report under s. 617.11 is only required to report dividends if so directed by the commissioner.

History: 1979 c. 102 ss. 145, 236 (2).

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

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

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

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

History: 1987 a. 167; 2003 a. 261.

617.23 Liability of affiliates. (1) RIGHT OF RECEIVER TO RECOVER DIVIDENDS PAID. If an order for the liquidation, rehabilitation or conservation of an insurer authorized to do business in this state is entered under ch. 645, the receiver appointed under the order shall have a right to recover on behalf of the insurer the amount of distributions other than stock dividends paid by the insurer on its capital stock at any time during the 5 years preceding the petition for liquidation, rehabilitation or conservation, subject to the limitations of subs. (2) to (4).

(2) DIVIDEND PAYMENTS RECOVERABLE. No such dividend shall be recoverable if the insurer shows that when paid the distribution was lawful and reasonable, and that the insurer did not know and could not reasonably have known that the distribution might adversely affect the ability of the insurer to fulfill the obligations to claimants under its insurance contracts.

(3) PERSONS LIABLE. (a) *Affiliates at time of payment.* Any person who was an affiliate of the insurer at the time the distributions were paid shall be liable up to the amount of distributions he or she received.

(b) *Affiliates at time of declaration of distribution.* Any person who was an affiliate of the insurer at the time the distributions were declared shall be liable up to the amount of distributions he or she would have received if they had been paid immediately.

(c) *Joint and several liability.* If under pars. (a) and (b) 2 persons are liable with respect to the same distributions, they shall be jointly and severally liable.

(4) AGGREGATE LIMITATION. The maximum amount recoverable under this section is:

(a) The amount needed in excess of all other available assets to pay all claims under the receivership.

(b) Reduced by any amount already paid to receivers under similar laws of other states.

(5) SECONDARY LIABILITY. If any person liable under sub. (3) is insolvent, all its affiliates that controlled it at the time the dividend was paid are jointly and severally liable for any resulting deficiency in the amount recovered from the insolvent affiliate.

History: 1977 c. 203 ss. 95, 103; 1979 c. 102 ss. 146, 236 (5); 1989 a. 359; 1997 a. 254.

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

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

History: 1987 a. 167.