CHAPTER 204.
INSURANCE—SURETY, CREDIT, CASUALTY.

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. [*1933 c. 487 s. 131*]

Revisor's Note, 1933: Chapter 655, Laws 1919, created fourteen sections numbered 1966—33a to 1966—33n, which dealt with fidelity insurance. At that time there were in existence statutory provisions created by chapter 277, Laws 1897, and covering this same subject, which provisions had been revised and made 1966—33 to 1966—39, Stats. 1898. See Revisers' note to 1966—25, Stats. 1898. The fourteen sections created in 1919 were forced in between 1966—33 and 1966—34. Nothing was done to reconcile or harmonize the conflicting provisions in these two enactments. Although there was no express repeal, there certainly was some implied repeal; so far as there is conflict the act of 1919 is the law. There is conflict between 204.01 and 204.02; 204.09 and 204.19; 204.07 and 204.16; 204.11 and 204.18 and 204.20. Furthermore, the provisions of chapter 204 are not logically arranged and contain many repetitions of provisions elsewhere found in the statutes. These facts necessitate a thorough rearrangement, revision and renumbering of the provisions of the chapter. Section 204.01 is chiefly from the last sentence of old 204.02; 204.02 (1) is from 204.07 (1); subsection (2) is from the last sentence of old 204.02; 204.02 (1) is from 204.07 (1); (2) is from 204.14, created by chapter 655, Laws 1919 (1966—33m), which was approved on July 25, 1919; (3) is from (2) and (3) of 204.07; (4) is from 204.16; 204.03 and 204.04 are from 204.16. Subsection (4) of 204.07 deals with revocation of licenses and court reviews. Provisions for revocation of licenses are contained in 200.04, 200.14 and 201.40 (new 201.34). Rehearings and court review of the orders of the commission are covered by 200.11. (Bill No. 50 S. s. 131)

204.02 Surety companies. (1) LICENSE. When the commissioner shall be satisfied by the papers filed or by such examination as he shall make, that any surety company applying for a license has fully complied with and has the capital and surplus required by the statutes, he shall issue a certificate under his hand and official seal authorizing it to transact surety business. The certificate may also cover any other kinds of insurance which the company has power to transact.

(2) OLD COMPANIES. Any domestic corporation which on July 25, 1919, had power to transact surety business shall be entitled to such certificate if its capital, surplus and deposit at the time of the application for the certificate are not less than the sums respectively required of such corporation immediately prior to said date.

(3) LICENSE, DURATION, RENEWAL. The certificate shall expire on the thirtieth day of April next following its effective date and may be renewed from year to year; the commissioner shall have the same power to refuse to renew a certificate that he has to deny an original certificate.

(4) EVIDENCE, SOLVENCY. Such certificate and certified copies thereof shall be evidence of the qualification of the company named therein to do surety business and to be accepted as surety on all instruments as provided in this chapter, and of the solvency of such company and shall be equivalent to the justification required of sureties. [*1933 c. 487 s. 131*]

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 instru-

ment 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 originaly required. [*1933 c. 487 s. 131*]

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 law, 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 shall have 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. [*1933 c. 487 s. 131*]

204.041 Domestic corporations, capital and surplus required. No domestic corporation hereafter organized shall be authorized to commence the transaction of the surety business in this state unless it has a capital stock, if a stock corporation of at least two hundred and fifty thousand dollars and a surplus of at least one hundred and twenty-five thousand dollars, both fully paid in cash, or a surplus, if a mutual corporation, of at least three hundred and seventy-five thousand dollars. No domestic insurance corporation authorized in this state to transact other classes of insurance shall hereafter be authorized to transact the surety business unless in addition to the capital stock and surplus requirements for the classes of insurance being transacted by such corporation, it shall also have a capital of at least two hundred fifty thousand dollars and a surplus of at least one hundred and twenty-five thousand dollars, if a stock corporation, or a surplus of three hundred and seventy-five thousand dollars, if a mutual corporation. [*1933 c. 487 s. 132a*]

Note: See note to 201.11, citing 30 Atty. Gen. 65.

204.05 Foreign surety corporations, capital surplus. (1) No foreign corporation shall be authorized to transact surety business in this state unless at the time of its application for authority it has an unimpaired capital and surplus if a stock corporation, and a surplus, if a mutual corporation equal to that required of a similar domestic corporation. No corporation organized under the laws of a foreign country shall be authorized to transact surety business unless it shall satisfy the commissioner that it has on deposit with American trustees, or with the proper officers of states of the United States, or both, satisfactory securities equal in value to the total of the initial capital and surplus required of a similar domestic corporation, and that such securities are held in trust for the fulfillment by such company of all its obligations within the United States.

(2) A foreign corporation, applying for admission to transact surety business, shall before admission file with the commissioner, in addition to what is required by section 201.32, an agreement, properly signed, that it will not transact in this state any business which a similar domestic corporation is prohibited from transacting. [*1933 c. 487 s. 133*]

Revisor's Note, 1933: The duty of the commissioner upon service of process is covered by new 201.43. His appointment as attorney to admit service of process and summons and his duty are covered by 201.38, renumbered 201.32. See 204.06. (Bill No. 50 S, s. 133)

204.06 Corporations deposit securities. (1) No domestic corporation shall transact surety business unless it shall deposit and keep on deposit with the commissioner satisfactory securities worth, at their market value, not less than one hundred thousand dollars, and, in case such corporation transacts such business in other states, its total deposits shall be at least two hundred and fifty thousand dollars.

(2) No corporation incorporated under the laws of any other state or possession of the United States shall be authorized to transact surety business unless it shall satisfy the commissioner that it has on deposit with the proper officers of states or possessions of the United States, satisfactory securities worth, at their market value, at least two hundred and fifty thousand dollars. The securities so deposited in this state or elsewhere shall be held in trust for the fulfillment by the depositor of all of its obligations in the United States. No deposit shall be required of a surety corporation organized under the laws of a foreign country, other than the deposit required by section 204.05.

(3) 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 subsection (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.

(4) 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; provided, the total market value of the securities on deposit shall not fall below the minimum required by this section. [*1933 c. 487 s. 134*]

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, judges and magistrates 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. [*Stats. 1931 s. 204.01; 1933 c. 487 s. 135*]

204.08 Fidelity obligations specified. A surety corporation licensed to write the fidelity insurance specified in subsection (7) of section 201.04 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 againt loss by reason of defective title to or incumbrances on real property on which such bank may have a mortgage. [*Stats. 1931 s. 204.02; 1933 c. 487 s. 136; 1935 c. 203*]

Revisor's Note, 1933: The law is not changed. The attempt to enumerate all the kinds of documents which financial institutions may handle is sure to fail and if it were successful new kinds of documents would come into use or new names would be used, thus making the statute incomplete or somewhat obsolete. Reinsurance is authorize by 204.10. The definition of terms is transferred to new 204.01. (Bill No. 50 S, s. 136)

The rule of strict construction against the insurer cannot be invoked to modify the terms of the policy. A provision in an indemnity policy that the insurer shall not be liable "for loss sustained during the term of the policy and not discovered within eighteen months after the occurrence of loss" relates wholly to liability, and not to the time in which liability may be enforced. City Bank of Portage v. Bankers L. M. C. Co., 206 W 1, 238 NW 819.

Where employe embezzles funds of his employer during term of one surety bond and later replaces same by further misappropriations during term of subsequent bond, liability for loss rests on sureties on bond during term of which first misappropriation occurred. 28 Atty. Gen. 100.

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. [*1933 c. 487 s. 137*]

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). [*1933 c. 487 s. 138*]

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. [*Stats. 1931 s. 204.20; 1933 c. 487 s. 139, 140; 1935 c. 275*]

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.

(2) The corporation shall keep an itemized record showing all losses and claims, and all notices received of any event which may result in a loss. Its annual statement to the commissioner shall show all losses and claims of which the corporation has received notice during the year which remain unpaid and undisposed of, and shall schedule all the losses and claims of the corporation unpaid on December thirty-first of the year next preceding, specifying whether the claims have been settled or remain unadjusted, and setting opposite each claim the amount of the reserve carried against it.

(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. [*1933 c. 487 s. 141*]

204.13 Rate makers, file articles, discriminations. (1) Every corporation, association or person who maintains a bureau or office for the purpose of making rates on suretyship obligations to be used in this state and by more than one corporation shall file with the commissioner a copy of the articles of agreement, association or incorporation, and the by-laws and all amendments thereto under which such person, corporation or association operates or proposes to operate, together with his or its business address and a list of members represented, and such other information as may be required by the commissioner.

(2) Surety corporations may jointly employ experts for computing or making schedules of rates and amendments thereto.

(3) No rate or schedule of rates or charge on suretyship obligations shall discriminate unfairly between risks in this state. Whenever it is made to appear to the satisfaction of the commissioner that such discrimination exists, he may, after a hearing, order such discrimination removed; and all persons, corporations or associations affected thereby shall immediately comply therewith; but shall not remove such discrimination by increasing any rate unless it is made to appear to the satisfaction of the commissioner that such increase is justifiable.

(4) No officer or agent of a surety corporation, and no surety broker or other person shall, as to any suretyship obligation in this state and as an inducement to securing the same, or after such an obligation has been executed, pay, allow or give, or offer to pay,

allow or give, any rebate, discount or reduction from the regular premium rate, nor any special favor or advantage in the terms, credits or allowances therein contained; nor promise or give, as an inducement to such suretyship obligation or in connection therewith, anything of value whatsoever other than stated in the obligation.

(5) This section shall not prevent any insurer, or its agents from paying commissions to a broker, who shall have negotiated for the suretyship obligation, nor prevent any broker from dividing commissions earned by him with any other broker who shall have aided him in earning them.

(6) Any person, association or corporation violating any of the provisions of this section shall be punished by a fine of not less than five hundred dollars or more than one thousand dollars, or by imprisonment for not more than three months, or by both such penalties. [*Stats. 1931 s. 204.08; 1933 c. 487 s. 4, 143*]

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. [*Stats. 1931 s. 204.21; 1933 c. 487 s. 144*]

204.15 [*Renumbered section 331.38 by 1933 c. 487 s. 145*]

204.16 [*Renumbered sections 204.02, 204.03 and 204.04 by 1933 c. 487 s. 131*]

204.17 to 204.19 [*Repealed by 1933 c. 487*]

204.20 [*Renumbered section 204.11 sub. (2) by 1933 c. 487 s. 140*]

204.21 [*Renumbered section 204.14 by 1933 c. 487 s. 144*]

204.22 Credit guarantee company. Any corporation licensed to do a credit guarantee business in this state may agree to pay to persons engaged in business and giving credit in the same, the debts owing to them, and indemnify them from credit losses, and may charge any consideration for such contract of indemnity which shall be agreed upon, buy and take an assignment of any claims, accounts and demands so guaranteed and enforce the collection thereof the same as the original owner could do; and may insure the payment of compensation for personal services under contracts of hiring. Any such corporation may use its capital or other funds to purchase any claim or demand the payment of which it has guaranteed. [*1933 c. 487 s. 149*]

Revisor's Note, 1933: "Capital stock" evidently means the capital or property or assets of the company; see section 16, chapter 277, Laws 1897. Insurance of wages is not mentioned in 201.04. (Bill No. 50 S, s. 149)

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. [*1933 c. 487 s. 150*]

204.24 Casualty and surety companies, dividends, reduction of capital, surplus. Domestic casualty and surety corporations shall declare dividends only out of their net surplus; and dividends in any fiscal year shall not exceed ten per cent of the capital unless and until the net surplus remaining thereafter shall equal fifty per cent of the capital stock. In estimating the net surplus there shall be deducted a sum equal to the unearned premiums; all sums due the corporation on bonds, mortgages, stocks and book accounts of which no part of the principal or the interest thereon had been paid during the last year, and for the collection of which no action has been commenced and on judgments more than two years old, and on which interest shall not have been paid; and all interest due to and all deposits for the special protection of policyholders of other states or of foreign countries. Any dividend made contrary to the provisions of this section shall be cause for the forfeiture of the charter of the corporation and each stockholder receiving such dividend shall be liable to its creditors to the extent of the dividend received. Any dividend declared or paid in violation of this section shall render the directors (except directors who were absent or whose dissent was entered in the minutes of the meeting which authorized the act) jointly and severally liable to the corporation and its creditors to the full amount paid out. [*1933 c. 487 s. 151*]

Revisor's Note, 1933: "Any such" in line 1 means and includes all the kinds of insurance mentioned in (4) to (11), (13) and (15), 201.04. See 1966—25 to 1966—44, Stats. 1898. See section 19, chapter 277, Laws 1897. Dividends can only be paid out of profits, 182.19. Surety companies are required to maintain a surplus of one hundred twenty-five thousand dollars by 204.04 and other insurance stock corporations of twenty-five per cent of the capital by 201.11 (2). This section seems practically worthless in view of other provisions which control corporations, and which were enacted later. Section 204.24 (1966—44) was created by chapter 277, Laws 1897, and never expressly amended. 204.04 was created by chapter 655, Laws 1919, and 201.11 was created by chapter 460, Laws 1909, and amended in 1911, 1915 and 1917. (Bill No. 50 S, s. 151)

204.25 Casualty and surety companies' stock dividend. Any domestic casualty insurance or surety corporation which shall have a surplus fund, in addition to the amount

of its capital stock and all liabilities, including reinsurance reserve in excess of one-half of the amount of all premiums on outstanding risks, may increase its capital stock from such fund and distribute the shares pro rata to its stockholders; provided, that such increase shall be equal to at least twenty-five per cent of the original capital stock and shall have been authorized by at least three-fourths of the directors and approved by the commissioner. [*1933 c. 487 s. 152*]

Revisor's Note, 1933: The "preceding section" speaks for itself and the reference is mistaken. It originated in section 2, chapter 166, Laws 1899, and there referred to section 1 of that act which section became 1906a, Supl. of 1906, and was repealed in 1913. Increase of authorized capital is provided for by 180.07, 180.10, 201.02, 201.28, 201.29. This provision for increase of capital is a duplicate of 201.29, created by chapter 166, Laws 1899, and never amended, and superseded 204.25, created by chapter 277, Laws 1897. At any rate, 201.29 is the most complete as to procedure, and is sufficient. (Bill No. 50 S, s. 152)

204.26 Impairment of capital, how made good. (1) If in the opinion of the commissioner the reduction of capital authorized by section 200.06 will not be to the interest of the policyholders, or in the event of the refusal of the stockholders to consent thereto, he shall determine the amount of the impairment of the capital of the corporation and issue a requisition to the corporation to restore the capital within such period as he may designate, not less than thirty nor more than ninety days from the service of the requisition. Upon receipt of such requisition the directors shall forthwith call upon the stockholders ratably for such amounts as will make up such impairment.

(2) If any stockholder refuse or neglect to pay the amount called for after notice, given personally or by advertisement, in the time limited by the order of the commissioner, the directors may, by resolution, declare the stock of such person canceled; but such failure to pay shall not release the stockholder from any liability. The directors may issue new certificates of stock in lieu of the stock forfeited and dispose of the same at not less than par.

(3) For any losses accruing upon risks taken after the expiration of the period limited by the commissioner in such order and before such impairment shall be made up, the director shall be jointly and severally liable; and any transfer of stock, made during the pendency of any examination by the commissioner or after any such order shall have been made and before any impairment specified therein shall be made good, shall not release the transferor from his liability for loss accruing previous thereto.

(4) Every domestic corporation and every foreign corporation which shall purchase, own or in any manner control the voting of any stock in a domestic life, fire or casualty insurance company shall be liable for any assessment made against the stockholders of such insurance company as determined by the commissioner of insurance in the same manner as is provided for individual stockholders. In case the assessment against such corporation made as provided herein shall not be fully paid by such corporation, then the stockholders of such corporation shall be liable for an assessment sufficient to cover the full amount of the assessment against such corporation. [*1933 c. 487 s. 153; 1935 c. 324*]

Revisor's Note, 1933: Subsection (1) is a duplicate of 200.07, except that one says twenty-five per cent and the other twenty per cent, and (5) is a repetition of part of 200.08. In fact, the whole subject of 204.26 is covered by 200.06 to 200.08. There are minor differences in details. It would seem that 204.26 should be repealed, and the other sections amended to preserve anything which is not duplicated. (Bill No. 50 S, s. 153)

204.27 Reserve liability. In computing the reserve liability of casualty insurance and surety corporations the commissioner shall make such calculations as in his judgment are equitable and just to both policyholders and the company; provided, that such liability so determined shall not be less than fifty per cent of the premiums written in the company's policies. [*1933 c. 487 s. 154*]

Note: As to splitting the premium, see note to 201.18, citing Duel v. State Farm Mut. Auto Ins. Co., 240 W 161, 1 NW (2d) 887, 2 NW (2d) 871.

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 employes 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.

(5) Each insurer that writes liability or compensation policies shall include in the annual statement required by law a schedule of its experience thereunder in such form as the commissioner may prescribe. [*1933 c. 487 s. 155; 1937 c. 219*]

204.29 Notice of injury; time printed on policy; 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.

(2) The time allowed for serving a notice of injury as provided in this section, shall appear clearly and conspicuously upon the face of every accident or casualty insurance policy or certificate.

(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. [*1933 c. 487 s. 156*]

Revisor's Note, 1933: Section 204.29 extends to liability insurance. Corwin v. Salter, 194 W 333, 216 NW 653. It does not apply to policies issued under 204.31 which is a later enactment. In fact, a careful reading of 204.29 will lead to the conclusion that it was intended to cover only accident policies and was superseded by 204.31. (Bill No. 50 S, s. 156)

Where the indemnity policy requires the insured to give written notice as soon as practicable after an accident, he is not required to give notice within twenty days after the accident, because of the statutory provision. But after the expiration of that twenty-day period the insured is required to give the notice as soon as practicable and failure to give the notice raises the presumption that the insurer was prejudiced by such failure. Parrish v. Phillips, 229 W 439, 282 NW 551.

204.30 Accident insurance, highway traffic, policy provisions. (1) 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) 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) No such policy shall be issued or delivered in this state to the owner of a motor vehicle, unless it contains a provision reading 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 or persons 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 said policy. Such indemnity shall also extend to any person, firm or corporation legally responsible for the operation of such automobile. The insurance hereby afforded shall not apply unless the riding, use or operation above referred to be 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; provided, however, that no insurance afforded by this paragraph shall apply to a public automobile garage or an automobile repair shop, sales agency, service station and/or the agents or employes thereof. 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, indorsed hereon. [*1933 c. 487 s. 157; 1943 c. 275 s. 52*]

Note: In view of (3) it was error to permit the plaintiff to show or insinuate that a greater premium than necessary was paid for the policy in order to protect the car owner for injuries while others were driving the car. Christiansen v. Aetna C. & S. Co., 204 W 323, 236 NW 109.

The law imputes to an automobile liability policy the provision extending coverage to others than the named insured. The words of such provision limiting coverage to the insured or persons operating the automobile with "permission of the named assured" are construed as intended to cover persons using the insured automobile with the insured's consent in the first instance, regardless of use thereafter. The coverage afforded by the statute and the equivalent policy provision, existing only when the use is for purposes described in the policy, is not

greater when the automobile is used with the insured's permission than when used by the insured himself. Drewek v. Milwaukee A. Ins. Co., 207 W 445, 240 NW 881.

Automobile indemnity policy insuring B (a trucker) "and/or" S as the "named assured," and excluding from coverage accidents to employes of "assured" arising out of and in usual course of business of "assured," is held to indemnify B for injury to employe of S from operation of truck while same was being operated by B in his own business, as against contention that word "assured" in exclusion clause referred to both parties named in coverage clause and to employes of both, and that exclusion clause excluded accidents causing injury to employes of both or either regardless of which of parties named in coverage clause was operating truck. Employers M. L. Ins. Co. v. Tollefsen, 219 W 434, 263 NW 376.

Under an automobile owner's liability policy containing a provision that the policy should apply to any person legally responsible for the operation of the automobile except an automobile garage or repair shop or the agents or employes thereof, a garage employe, who was operating the automobile when it struck a pedestrian, was not an additional insured so as to entitle the garage's insurer, which was liable to the pedestrian, to recover a proportionate part of its liability from the automobile owner's insurer. Paine v. Finkler Motor Car Co., 220 W 9, 264 NW 477.

An automobile owner's liability policy, containing the extended insurance coverage provision required by the statute, does not cover a situation where a garageman, after servicing the automobile, injured a pedestrian while returning the automobile to the insured customer. Ederer v. Milwaukee A. Ins. Co., 220 W 635, 265 NW 694.

In actions arising out of a collision of automobiles, one of which, covered by a liability policy, was being driven at the time of the accident by a friend of a son of the insured owner, evidence that to the knowledge of the insured her son and his friend had at times exchanged places as driver of the car, that on two other occasions the insured had given express permission to the friend to drive the car, and that on the night of the accident the insured had returned home early so that her son and his friend could use the car and had cautioned them to be careful, is held to support the jury's finding that the car was being driven by the friend with the permission of the insured, so as to render the insurer liable on the policy. Bushman v. Tomek, 222 W 562, 269 NW 289.

In order to render an insurer liable under an automobile liability policy containing an omnibus clause covering anyone using the automobile with the permission of the insured or an adult member of his household, express permission need not be proved; it being sufficient if the facts adduced reasonably tend to show that the automobile was being used with the implied permission of the insured; but in order to support an inference that one has the implied permission to use an automobile belonging to another for his own pleasure and purposes, there must be evidence tending to show a course of conduct or practice known to the owner and acquiesced in by him, or by someone having authority to give permission. Evidence that the insured's chauffeur, who was also handy man at the insured's summer home and had charge of the insured's several automobiles and in the performance of his duties made frequent trips to a near-by village for oil, gasoline, groceries, and supplies, was often seen in the village in the evening driving one of the insured's automobiles, and was several times late at night seen in a tavern and on such occasions was driving one of the insured's automobiles, is held, standing alone and in the absence of proof of other circumstances tending to show knowledge on the part of the insured that the chauffeur was using the automobiles for his own pleasure and purposes, insufficient to support a finding that the chauffeur was using the insured's automobile with the implied permission of the insured at the time of the collision, which occurred between one and two o'clock in the morning while the chauffeur was out on a trip of his own. Brochu v. Taylor, 223 W 90, 269 NW 711.

A public liability policy protecting the insured against liability for accidental injuries caused by employes of the insured in the line of their employment was "other insurance" within a provision in a policy excluding from the coverage of the policy the operation of loading and unloading trucks during the period covered by "other insurance" insuring against loss arising from such operation. Such excluding provisions are not prohibited by the standard policy regulations. Fitzgerald v. Milwaukee Automobile Ins. Co., 226 W 520, 277 NW 183.

A driver to whom an automobile had been intrusted by one who had permission to use it directly from the assured is not an "additional assured" under the omnibus coverage clause of an automobile liability policy. Locke v. General A. F. & L. Assur. Corp., 227 W 489, 279 NW 55.

Under an automobile liability policy excluding from coverage an employe of an insured in an action brought against him because of injury or death of another employe injured in an accident arising out of the use of the automobile in the insured's business, the insurer was not liable for the death of an employe of an additional insured resulting from the negligence of another employe with whom deceased employe was riding on the business of the insured. Brandt v. Employers' Liability Assur. Corporation, 228 W 328, 280 NW 403.

While the extended insurance clause under 204.34 excludes the insured from recovery for the death of a minor son killed by the wrongful act of another minor son while driving the automobile, still the wife of the insured was entitled to recover from the insurer one-half the sum allowed as pecuniary loss resulting from the death of the child and one-half of the compensation allowed, for loss of society and companionship. Munsert v. Farmers Mut. Automobile Ins. Co., 229 W 581, 281 NW 671.

The wrongful taking possession of personal property either by force or fraud generally amounts to a conversion. Under an automobile liability policy issued to a company engaged in the business of a public automobile garage and sales agency, extending coverage to any "customer" of the company against liability for injury to third persons, an unknown person who obtained a car from the company by false pretenses and who while making off with the car collided with another car, then immediately disappeared and could not be found, was not a "customer" of the company, hence the insurer was not subject to liability under the policy for injuries sustained by the driver of the other car in the collision. Potts v. Farmers M. A. Ins. Co., 233 W 313, 289 NW 606.

The coverage afforded by an automobile liability policy when a claim for damages is against a party who, although not the named insured, is one to whom the insurer's obligation to indemnify is extended by virtue of (3), is no greater than nor different from the coverage thereunder when the claim is against the named insured. A provision in an automobile liability policy that the extended indemnity did not apply "to any employee of an insured with respect to any action brought against said employee because of bodily injury to or death of another employee of the same insured injured in the course of such employment in an accident arising out of the maintenance or use of the automobile in the business of such insured," was void as in violation of the extended coverage requirements prescribed by (3). Narloch v. Church, 234 W 155, 290 NW 595.

With respect to personal injury sustained by him, an unemancipated minor may not bring an action against his parent's automobile liability insurer grounded on the parent's negligence, since the fact that the parent is insured does not give rise to a

cause of action based on the parent's negligence where no cause of action exists against the parent if not insured. Lasecki v. Kabara, 235 W 645, 294 NW 33.

An employe of a corporation engaged in selling replacement parts to dealers in automobiles who was sent to a dealer's for the purpose of adjusting a complaint of a purchaser of a defective car, and who injured a third person while driving the car on a test run, was not an employe of the dealer at the time and he was not an agent or employe of any person engaged in operating an automobile repair shop, public garage, or automobile sales agency so as to be excluded from the coverage otherwise afforded by a liability policy on the car. Tolsma v. Miller, 243 W 19, 9 NW (2d) 111.

Where a garage policy assumed to insure the named insured against liability arising out of the operation of any of his cars for pleasure, the policy, to the extent of such obligation, was in the nature of a privately owned car policy, required by operation of (3), to furnish omnibus coverage, so that a person involved in a collision, while permissively driving a car of the named insured on a trip unrelated to the garage business, was entitled to the coverage of the policy as an additional insured. Culver v. Webb, 244 W 478, 12 NW (2d) 731.

Except as otherwise permitted by (3), the extension of the insurer's obligation for indemnity to a person driving the automobile with the permission of the named insured must be as great as the insurer's obligation for indemnity to the named insured. Schenke v. State Farm Mut. Automobile Ins. Co. 246 W 301, 16 NW (2d) 817.

A provision in an automobile liability policy, that "the insurance with respect to any person other than the named insured does not apply to injury to or death of any person who is a named insured," is void as in violation of (3), and, specifically, is inoperative to relieve the insurer of obligation for indemnity to a person driving the automobile with the permission of the named insured and operating the automobile in such negligent manner as to result in injury to the named insured, riding therein. Schenke v. State Farm Mut. Automobile Ins. Co. 246 W 301, 16 NW (2d) 817.

Indorsement on an automobile insurance policy for liability and property damage to effect that it is "named driver policy," thereby limiting protection to cases when car is being driven by person named in policy and excluding protection when it is driven by some person other than one named in policy, is in violation of (3). 19 Atty. Gen. 309.

Neither an indorsement on a garage liability policy, nor statutes relating to operation of automobile by consent of insured, which in effect added an omnibus clause, could extend the policy coverage to automobiles not therein included. Hardware Mut. Casualty Co. v. Wendlinger, 146 F (2d) 984.

204.31 Standard accident and health policy. (1) FORM, APPROVAL, USE. No policy of insurance against loss from the sickness or the bodily injury or death of the insured by accident shall be issued in this state until the form thereof and of the classification of risks and the premium rates pertaining thereto have been filed with the commissioner; nor until thirty days thereafter unless he shall sooner approve the form. If he shall notify the company that the form does not comply with the requirements of law, specifying the defect, it shall be unlawful to issue any policy in such form.

(2) CONDITIONS PRECEDENT TO ISSUE. No such policy shall be issued unless the entire money and other considerations therefor are expressed in the policy; nor unless the time at which the insurance thereunder takes effect and terminates is stated therein; nor which insures more than one person; nor unless every portion thereof and any indorsements or attached papers shall be plainly printed in type not smaller than ten-point; nor unless a brief description thereof be printed on its first page and on its filing back in type not smaller than fourteen-point; nor unless the exceptions of the policy be printed with the same prominence as the benefits to which they apply; nor unless any portion of such policy which (by reason of the circumstances under which a loss is incurred) reduces the indemnity below that provided for the same loss occurring under ordinary circumstances, shall be printed in bold-face type and with greater prominence than any other portion of the text of the policy.

(3) STANDARD PROVISIONS. Every such policy shall contain the following provisions, which shall be in the words and in the order hereinafter set forth and be preceded by the caption "Standard Provisions." For the word "insurer" where it occurs in said standard provisions, there may be substituted the word "company" or "corporation" or "association" or "society" or such other word as will designate the insurer:

STANDARD PROVISIONS.

1. This policy includes the indorsements and attached papers, if any, and contains the entire contract of insurance. No reduction shall be made in any indemnity herein provided by reason of change in the occupation of the insured or by reason of his doing any act or thing pertaining to any other occupation.

1. This policy includes the indorsements and attached papers, if any, and contains the entire contract of insurance except as it may be modified by the insurer's classification of risks and premium rates in the event that the insured is injured after having changed his occupation to one classified by the insurer as more hazardous than that stated in the policy, or while he is doing any act or thing pertaining to any occupation so classified, except ordinary duties about his residence or while engaged in recreation, in which event the insurer will pay only such portion of the indemnities provided in the policy as the premium paid would have purchased at the rate but within the limits so fixed by the insurer for such more hazardous occupation. If the law of the state in which the insured resides at the time this policy is issued requires that prior to its issue a statement of the premium rates and classification of risks pertaining to it shall be filed with the state official having supervision of insurance in such state then the premium rates and classification of risks

mentioned in this policy shall mean only such as have been last filed by the insurer in accordance with such law, but if such filing is not required by such law then they shall mean the insurer's premium rates and classification of risks last made effective by it in such state prior to the occurrence of the loss for which the insurer is liable.

(Explanation: Provisions numbered 1 are alternatives. If the second of them is used and the policy provides indemnity against loss from sickness, the words "or contracts sickness" may be inserted.)

2. No statement made by the applicant for insurance not included herein shall avoid the policy or be used in any legal proceeding hereunder. No agent has authority to change this policy or to waive any of its provisions. No change in this policy shall be valid unless approved by an executive officer of the insurer and such approval is indorsed hereon.

3. If default be made in the payment of the agreed premium for this policy, the subsequent acceptance of a premium by the insurer or by any of its duly authorized agents shall reinstate the policy, but only to cover (insert loss resulting from accidental injury thereafter sustained; or such sickness as may begin more than ten days after the date of such acceptance; or accidental injury thereafter sustained and such sickness as may begin more than ten days after the date of such acceptance, according to the indemnity provided).

4. Written notice of injury (or of sickness) on which claim may be based must be given to the insurer (insert within twenty days after the date of the accident causing such injury; or within ten days after the commencement of the disability from such sickness; or insert both depending on the indemnity provided).

(Explanation: The following language may be added to provision 4 at the option of the insurer: "In event of accidental death immediate notice thereof must be given to the insurer.")

5. Such notice given by or in behalf of the insured or beneficiary, as the case may be, to the insurer at (insert such office and its location) or to any authorized agent of the insurer, with particulars sufficient to identify the insured, shall be deemed to be notice to the insurer. Failure to give notice within the time provided in this policy shall not invalidate any claim if it shall be shown not to have been reasonably possible to give such notice and that notice was given as soon as was reasonably possible.

(Explanation: Provision 5 may be changed by inserting in lieu of the words "any authorized agent of the insurer," the following ".... ...., agent of the insurer at ....," and by filling the blank before the word "agent" with a designation or name of an agent, and by filling the blank after word "at" with a post-office address, both to be sufficient to assure the delivery of mail to such agent.)

6. The insurer upon receipt of such notice, will furnish to the claimant such forms as are usually furnished by it for filing proofs of loss. If such forms are not so furnished within fifteen days after the receipt 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, character and extent of the loss for which claim is made.

7. Affirmative proof of loss must be furnished to the insurer at its said office within ninety days after the date of the loss for which claim is made.

7. Affirmative proof of loss must be furnished to the insurer at its said office within ninety days after the termination of the period of disability for which the company is liable.

7. Affirmative proof of loss must be furnished to the insurer at its said office in case of claim for loss of time from disability within ninety days after the termination of the period for which the insurer is liable, and in case of claim for any other loss, within ninety days after the date of such loss.

(Explanation: Provisions numbered 7 are alternative forms and the one which is appropriate to the indemnity provided shall be used.)

8. The insurer shall have the right and opportunity to examine the person of the insured when and so often as it may reasonably require during the pendency of claim hereunder, and also the right and opportunity to make an autopsy in case of death where it is not forbidden by law.

9. All indemnities provided in this policy will be paid .... after receipt of due proof.

9. All indemnities provided in this policy for loss other than that of time on account of disability will be paid after receipt of proof.

(Explanation: Provisions number 9 are alternatives and which may be omitted from any policy providing indemnity for loss of time on account of disability. The insurer shall insert in the blank space the word "immediately" or a period of time not over sixty days.)

10. Upon request of the insured and subject to due proof of loss (insert the proportion of the accrued indemnity which is to be paid which part shall not be less than one-

half) accrued indemnity for loss of time on account of disability will be paid at the expiration of each (insert the period of time not exceeding sixty days) during the continuance of the period for which the insurer is liable, and any balance remaining unpaid at the termination of such period will be paid immediately upon receipt of due proof. (This provision may be omitted from a policy not providing for such indemnity.)

11. Indemnity for loss of life of the insured is payable to the beneficiary if surviving the insured, and otherwise to the estate of the insured. All other indemnities of this policy are payable to the insured.

11. All the indemnities of this policy are payable to the insured.

(Explanation: Provisions numbered 11 are alternatives.)

12. If the insured shall at any time change his occupation to one classified by the insurer as less hazardous than that stated in the policy, the insurer, upon written request of the insured, and surrender of the policy, will cancel the same and will return to the insured the unearned premium.

13. Consent of the beneficiary shall not be requisite to surrender or assignment of this policy, or to change of beneficiary, or to any other changes in the policy. (Provision 13 may be omitted from policies which do not name a beneficiary.)

14. No action at law or in equity shall be brought to recover on this policy prior to the expiration of sixty days after proof of loss has been filed in accordance with the requirements of this policy, nor shall such action be brought at all unless brought within two years from the expiration of the time within which proof of loss is required by the policy.

15. If any time limitation of this policy with respect to giving notice of claim or furnishing proof of loss is less than that permitted by the law of the state in which the insured resides at the time this policy is issued, such limitation is hereby extended to agree with the minimum period permitted by such law.

(4) OPTIONAL STANDARD PROVISIONS. No such policy shall contain any provisions relative to cancellation at the instance of the insurer; or limiting the amount of indemnity to a sum less than the amount stated in the policy and for which the premium has been paid; or providing for the deduction of any premium from the amount paid in settlement of claim; or relative to other insurance by the same insurer; or relative to the age limits of the policy, unless such provisions (which are hereby designated as optional standard provisions) shall be in the words and in order in which they are hereinafter set forth, and are inserted in the policy immediately following the standard provisions provided in subsection (3).

16. The insurer may cancel this policy at any time by written notice delivered to the insured or mailed to his last address as shown by the records of the insurer together with cash or the insurer's check for the unearned portion of the premiums actually paid by the insured, and such cancellation shall be without prejudice to any claim originating prior thereto.

17. If the insured shall carry with another company, corporation, association or society other insurance covering the same loss without giving written notice to the insurer, then in that case the insurer shall be liable only for such portion of the indemnity promised as the said indemnity bears to the total amount of like indemnity in all policies covering such loss, and for the return of such part of the premium paid as shall exceed the pro rata for the indemnity thus determined.

18. Upon the payment of claim hereunder any premium then due and unpaid or covered by any note or written order may be deducted therefrom.

19. If a like policy or policies, previously issued by the insurer to the insured be in force concurrently herewith, making the aggregate indemnity in excess of $...., the excess insurance shall be void and all premiums paid for such excess shall be returned to the insured.

19. If a like policy or policies, previously issued by the insurer to the insured be in force concurrently herewith, making the aggregate indemnity for loss of time on account of disability in excess of $...., weekly, the excess insurance shall be void and all premiums paid for such excess shall be returned to the insured.

19. If a like policy or policies, previously issued by the insurer to the insured be in force concurrently herewith, making the aggregate indemnity for loss other than that of time on account of disability in excess of $...., or the aggregate indemnity for loss of time on account of disability in excess of $.... weekly (or substitute the word "monthly") the excess insurance of either kind shall be void and all premiums paid for such excess shall be returned to the insured.

(Explanation: Provisions numbered 19 are alternatives. The one which is appropriate to the indemnity provided may be used, and the insurer shall insert in the blank spaces its upward limits of indemnity as specified by its classification of risks.)

20. The insurance under this policy shall not cover any person under the age of (insert number) years nor over the age of (insert number) years. Any premium paid to the insurer for any period not covered by this policy will be returned upon request.

(5) CONTRARY PROVISIONS PROHIBITED. No policy nor any indorsements or attached papers shall vary, alter, extend, be used as a substitute for, or in any way conflict with any of said standard or said optional standard provisions; nor shall such policy purport to make any portion of the charter, constitution or by-laws of the insurer a part of the policy unless such portion shall be set forth in the policy, but this prohibition shall not apply to any statement of rates or classification of risks filed with the commissioner in accordance with law.

(6) WAIVER OF DEFENSES. 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 defense to any claim arising under such policy.

(7) ALTERATIONS. No alteration of any application for insurance shall be made by any person other than the applicant without his written consent, and the making of any such alteration without the consent of the applicant shall be a misdemeanor. If such alteration shall be made by any officer of the insurer, or by any employe of the insurer with the insurer's knowledge or consent, such act shall be deemed to have been performed by the insurer.

(8) IRREGULAR POLICIES. A policy issued in violation of this section shall be valid but shall be construed as though it did comply with it and the rights, duties and obligations of the insurer, the policyholder and the beneficiary shall be governed by the provisions of this section.

(9) DEVIATION PERMITTED. The policies of insurance against accidental bodily injury or sickness issued by a foreign insurer may contain any provision which is authorized by the law of the state of the United States under which it is organized, and such policies issued by a domestic insurer may contain, when issued or delivered without this state, any provision required by the laws of the state or country in which the same are issued.

(10) EXCEPTIONS. (a) This section shall not apply to liability or workmen's compensation insurance or any general or blanket policy of insurance, as defined in subsection (13) of this section.

(b) This section shall not apply to contracts of life or endowment insurance or contracts supplemental thereto, which contain no provisions relating to accident or health insurance except accidental death benefits and except such as operate to safeguard such insurance against lapse, or to give a special surrender value or an annuity providing for payments not exceeding one per cent per month of the face amount of the policy during the lifetime of the insured, with or without reduction of the sum insured, in the event that the insured shall be totally and permanently disabled from any cause; provided, that no such supplemental contract shall be issued in this state until the form thereof has been submitted to and approved by the commissioner, under such reasonable rules and regulations as he shall make concerning the provisions in such contracts and their submission and approval.

(c) The provision of subsection (2) which reads "nor unless a brief description thereof be printed on its first page and on its filing back in type not smaller than fourteen-point" and standard provisions 2, 3, 8 and 12 may be omitted from railroad ticket policies sold only at railroad stations or at railroad ticket offices by railroad employes, and from airplane ticket policies sold only at airports or at airplane ticket offices by the employes for passage on air lines licensed to carry passengers, and from motor bus ticket policies sold only at motor bus stations or ticket offices by the employes for passage on licensed bus lines.

(11) PENALTIES. Any insurer or any officer or agent thereof, who issues or delivers in this state any policy in wilful violation of the provisions of this section shall be fined not more than one hundred dollars, and the commissioner may revoke the license of any foreign insurer, or of the agent thereof, who wilfully violates any provisions of this section.

(12) INTERPRETATION. This revision of section 204.31 made in 1933 does not change the law. It permits the printing and use of policy forms which were in use at the time of said revision.

(13) GROUP ACCIDENT AND HEALTH INSURANCE. (a) Group accident and health insurance is declared to be that form of accident and health insurance covering not less than 10 employes or members and which may include the employe's or member's dependents, written under a master policy issued to any governmental corporation, unit, agency or department thereof, or to any corporation, copartnership, individual employer, or to any association, including a labor union, upon application of an executive officer or trustee

of such association or labor union having a constitution or by-laws, and formed in good faith for purposes other than that of obtaining insurance, where the officers, members, employes or classes or department thereof, may be insured for their individual benefit and which may include the individual's dependents. If the master policy is issued to an employer, it may provide that the term "employes" shall include the officers, managers and employes of the policyholder and of subsidiary or affiliated corporations, and the individual proprietors, partners and employes of affiliated individuals and firms, when the business of the policyholder and of such subsidiary or affiliated corporations, firms or individuals is under common control through stock ownership, contract or otherwise. Any insurance company authorized to write accident and health insurance in this state shall have power to issue group accident and health policies.

(b) No policy of group accident and health insurance may be issued or delivered in this state until a copy of the form thereof shall have been filed with the commissioner, nor until 30 days thereafter unless he approves the form sooner. If he notifies the company that the form does not comply with the requirements of law, specifying the defect, it is unlawful to issue any policy in such form. No such policy shall be issued or delivered in this state unless a schedule of the premium rates pertaining to such form also has been filed with the commissioner. No such policy shall be issued unless it contains in substance those provisions contained in subsection (3) of this section which may be applicable to group accident and health insurance, nor unless the policy contains these provisions:

1. The application of the employer, or executive officer or trustee of any association, and the individual applications, if any, of the employes or members insured shall constitute the entire contract between the parties, and all statements made by the employer, or the executive officer or trustee, or by the individual employes or members shall in the absence of fraud, be deemed representations and not warranties, and no such statement shall be used in defense to a claim under the policy, unless it is contained in the written application.

2. The insurer will issue to the employer, or to the executive officer or trustee of the association, for delivery to the employe or member, who is insured under such policy, an individual certificate setting forth a statement as to the insurance protection to which he is entitled, and to whom payable.

3. The group or class thereof originally insured may be added to from time to time so as to include all new employes of the employer or members of the association eligible to and applying for insurance in such group or class.

(c) Family expense accident and health insurance is declared to be that form of accident and health insurance covering the members of any one family including husband, wife and children, written under a master policy issued to the head of such family. Any insurance company authorized to write accident and health insurance in this state shall have the power to issue family expense accident and health insurance. No policy of family expense accident and health insurance may be issued or delivered in this state until a copy of the form thereof shall have been filed with the commissioner, nor until 30 days thereafter unless he approves the form sooner. If he notifies the company that the form does not comply with the requirements of law, specifying the defect, it is unlawful to issue any policy in such form. No such policy shall be issued or delivered in this state unless a schedule of the premium rates pertaining to such form also has been filed with the commissioner.

(d) No policy of family expense accident and health insurance shall be issued unless it contains in substance those provisions contained in subsection (3) of this section which may be applicable to family expense accident and health insurance, nor unless the policy contains these provisions:

1. The policy and the application of the head of the family shall constitute the entire contract between the parties, and all statements made by the head of the family shall in the absence of fraud, be deemed representations and not warranties, and no statement shall be used in defense to a claim under the policy, unless it is contained in the written application.

2. The family group originally insured may be added to from time to time so as to include all new members of the family eligible for insurance in such family group.

(14) FRANCHISE GROUP ACCIDENT AND HEALTH INSURANCE. Franchise group accident and health insurance is declared to be that form of accident and health insurance covering 3 or more employes or members of any governmental corporation, unit, agency or department thereof, or of any corporation, co-partnership or individual employer, or of any association, including a labor union, having a constitution or by-laws, and formed in good faith for purposes other than that of obtaining insurance, where such employes or members and 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 or members. Any insurance company authorized to write accident and health insurance in this state shall have power to issue franchise group accident and health policies. Notwithstanding any provision contained in the statutes of this state, insurers may be permitted to file, for use in connection with franchise group health and accident 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 discriminate between franchise groups. [*1933 c. 487 s. 158; 1937 c. 77; 1939 c. 44; 1941 c. 176; 1943 c. 119; 1945 c. 346, 351, 356, 586*]

Note: Within an accident policy insuring against injuries sustained while engaged in "operating" an automobile, the insured who drove his car onto an obstruction in a street and was injured when the car skidded while he was pushing it to assist a wrecker in removing it from the obstruction, sustained his injuries while "operating" the car. Merklein v. Indemnity Ins. Co. of N. A., 214 W 23, 252 NW 280.

An injury to a theatre patron from an assault by an employe of the operator of the theatre, for which such operator was held liable under the rule of respondeat superior, was "accidentally sustained" within a public liability policy indemnifying such operator against loss by reason of liability imposed upon it by law for damages because of bodily injuries "accidentally sustained" by persons other than its employes, under facts showing that the injury to the patron came to him through force not of his own provocation. Fox Wisconsin Corp. v. Century Ind. Co., 219 W 549, 263 NW 567.

Physical exertion in pulling a boat from a lake and up into a yard, causing a strain on the insured's heart, as a result of which the insured died of heart failure, did not constitute the sole cause of the heart injury that resulted in his death, within an accident policy, where the insured would not have suffered any considerable injury had he not been afflicted at the time with a diseased condition of the heart. Herthel v. Time Ins. Co., 221 W 208, 265 NW 575.

Under a policy which required, to set a premium-waiver clause in operation, that the insured furnish proof of disability where the discharge of the insured's duty to comply with such condition was rendered impossible by his mental incompetency and furnishing proof was no material part of the consideration to be paid in exchange for the insurer's promised performance, and the discharge of the insurer would operate in effect as a forfeiture, the impossibility of compliance by the insured with such condition excused his compliance therewith. Schlintz v. Equitable Life Assur. Soc., 226 W 255, 276 NW 336.

The standard provisions required in an accident policy by subsection (3) are obligatory on the insured as well as on the insurer. A provision of an accident policy requiring payment of the renewal premium in advance, which was not one of the standard provisions required, may be changed or waived by the parties. Jones v. Preferred Accident Ins. Co., 226 W 423, 275 NW 897.

Under an accident policy providing indemnity for loss of life from bodily injuries effected by the wrecking or disablement of any automobile or truck "in which the insured is riding or driving," the death of the insured from the explosion of a tire, while the insured was outside the truck removing a wheel at a garage in order to repair a flat tire on the inner rear wheel, was not within the coverage of the policy, although the tire about to be repaired had become deflated while the insured was driving the truck, and such deflation, necessitating repairs in order to place the truck in as good condition as before, could be considered a "wrecking or disablement" of the truck within a definition clause of the policy. Miller v. Washington Nat. Ins. Co., 237 W 475, 297 NW 359.

Exceptions which were evasively designated as conditions and were printed in type smaller than the text of the policy constituted a violation of this section, notwithstanding the form of the policy had been approved by the insurance department. Where the insured died as a result of taking a violent poison which caused vomiting, swelling of the lips and tongue, general paleness and paralysis and rigidity of the body it was held that these manifestations constituted wounds. Mutual L. Ins. Co. v. Schenkat, 62 F (2d) 236.

204.32 Liability insurance. (1) DISCRIMINATION PROHIBITED. No company or other insurer licensed in this state to write liability insurance shall unfairly discriminate between risks or classes of risks, nor shall it use any schedule or other system of rating or classifying which results in discrimination. No company shall grant insurance against hazards other than those covered by this section at rates lower than its regular rates for such hazards for the purpose of evading this section. No company shall charge or collect unjust or unreasonable rates for liability insurance.

(2) RATES AND CLASSIFICATION FILED. Every company writing liability insurance shall file with the commissioner its rates and manual of classification of risks for each kind of liability insurance written by it and amendments thereto before they are effective in this state.

(3) SAME; INVESTIGATION; CHANGE ORDERED. Every schedule or other system of rating and classifying risks shall be filed with the commissioner before it shall be used. The commissioner may investigate the results produced by the application of such schedule or system, and if he shall find that it produces unfair or discriminatory results, he shall order the company to modify the schedule or system as directed in such order.

(4) PROPER RATE AND CLASS REQUIRED. No company shall in this state use a rate or classification other than that properly applicable to the risk.

(5) REMEDY FOR DISCRIMINATION; ORDER; COURT REVIEW. The commissioner may upon the written complaint of any person having a direct financial interest or upon his own motion review any rate for the purpose of determining whether the same is unreasonable or discriminatory. If he shall find that the rate is discriminatory, he shall order a nondiscriminatory rate substituted. If he shall find that the rate is unreasonable, he shall

establish a reasonable rate and order the company to make a rate for such risk or class which shall not be higher than the rate established by him. Any review of rates before the commissioner shall be upon notice to the parties interested and his findings or orders shall be made after a hearing before him and shall be subject to review by the circuit court of Dane county. If the investigation is upon the commissioner's own motion and results in a finding which materially affects the interest of a company, a copy of such finding shall be served upon the company and it shall be entitled to a hearing before him upon a request therefor made within ten days from such service. No order or finding made as a result of an investigation on his own motion shall be effective until the expiration of the time within which a request for a hearing may be made.

(6) WORKMEN'S COMPENSATION ACT NOT AFFECTED. This section shall not apply to risks under the workmen's compensation act. [*Stats. 1931 s. 201.52 to 201.56, 201.58; 1933 c. 487 s. 159*]

Revisor's Note, 1933: "This act" is chapter 136, Laws 1919, creating 201.52 to 201.58 (1921—30 to 1921—36), which have not been amended. Section 201.54 prohibits use of rates or classification unless filed. Sections 201.52 to 201.57 are consolidated for clearness and brevity. (Bill No. 50 S, s. 159)

204.33 [*Repealed by 1939 c. 513 s. 43*]

204.34 Provisions of auto liability 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. [*1931 c. 477; Stats. 1931 s. 204.33; 1933 c. 487 s. 160a*]

Note: Wife is entitled to recover from insurer on judgment against her husband for injuries sustained in automobile accident, although policy was issued in name of both parties. Archer v. General C. Co., 219 W 100, 261 NW 9, 262 NW 257.

Under an automobile liability policy issued to the owner of a truck, which extended the coverage to persons operating the truck with the permission of the insured, the insurer was liable for the negligence of a driver operating the truck with the permission of the insured, although the doctrine of respondeat superior was inapplicable to the insured because he was a minor. Hoefer v. Last, 221 W 102, 266 NW 196.

Statute providing that no policy of insurance or agreement of indemnity shall exclude from coverage afforded or provisions as to benefits therein provided persons related by blood or marriage to assured held not to amplify liability policy so as to entitle unemancipated minors, in action against insurer of their father, to recover damages for injuries sustained because of negligence of father in operation of automobile. Sections 204.33 and 204.34 are so similar in wording and purpose that the construction applicable to one may suffice for the other. Segall v. Ohio Casualty Co., 224 W 379, 272 NW 665.

In action on automobile indemnity policy for injuries received at night in collision with insured automobile driven by minor licensed under statute to drive in the daytime but too young to secure permit to drive at night, provision of policy excluding coverage if automobile was driven in violation of law as to age was operative. Witzko v. Koenig, 224 W 674, 272 NW 864.

Failure of the insured to give timely notice of an accident creates a presumption that the insurer was thereby prejudiced or damaged. Parrish v. Phillips, 229 W 439, 282 NW 551.

The extended insurance clause making a policy inure to one driving the automobile with the insured's consent but excluding any obligation to the insured did not authorize the insured to recover for the killing of his minor son by the use of the automobile by another son. Munsert v. Farmers Mut. Automobile Ins. Co., 229 W 581, 281 NW 671.

204.35 Deposits by accident societies. (1) In case of an accident association before license is issued it shall deposit with the state treasurer for the payment of claims against it in case of dissolution interest-bearing securities to be approved by the commissioner of the par value (exclusive of interest) of not less than one thousand dollars; such securities shall be retained by the state treasurer so long as said corporation shall continue to do business. Said corporation may at any time upon the approval of the commissioner substitute other securities of equal value. The interest on said securities shall be payable

to the corporation and in case of dissolution the securities shall be delivered to the receiver or to the corporation itself, upon the certificate of the commissioner.

(2) When any foreign mutual benefit society doing an accident or health business is required by the laws of its home state to keep on deposit with an officer of its home state securities for the protection of policyholders generally, and such society shall furnish to the commissioner of this state the certificate of said officer of such other state, showing the securities so deposited with him, and it shall appear therefrom that the said securities are equal in market value to one thousand dollars, and that said securities would be legal investments for a domestic mutual benefit society and the securities so deposited are available to satisfy judgments of policyholders in any manner corresponding to that provided by the laws of this state, the commissioner may issue to such society a license to transact accident and health insurance in this state, without depositing securities with the treasurer of this state.

(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 assured, than one-tenth of its assets reported to the commissioner and in existence at the time of the last annual report. [*Stats. 1931 s. 208.03 (4) to (6); 1933 c. 344 s. 22*]

Revisor's Note, 1933: Transferred to chapter 204 for better arrangement. The law which specifies the legal investments for domestic fraternal benefit societies is extended to foreign societies seeking a license. This makes the rule more certain and simple. The change probably adds to the kinds of investments which such foreign societies may make. Subsection (6) was 1955a—1, renumbered by chapter 639, Laws 1913, (7) was 1955b—5 created by chapter 158, Laws 1909; (8) was created by chapter 639, Laws 1913. The limitation on insurance companies (other than fraternal benefit societies) is in 201.16. (Bill No. 51 S, s. 22)

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 deducted 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. [*1941 c. 240*]