

to make exemptions is a necessary correlative to the broadly stated requirements of this chapter. The usual procedure for establishing an exemption would be a rule under s. 227.014. An individual insurer or group of insurers could be exempted by an order. The exemption could be terminated in the same way it was created. (Bill 600-S)

617.11 History: 1969 c. 398; Stats. 1969 s. 617.11.

617.12 History: 1969 c. 398; Stats. 1969 s. 617.12.

Legislative Council Note, 1969: This section has been drafted broadly to impose a duty on persons not otherwise subject to the jurisdiction of this state, to provide information to the commissioner. It reflects the view that there are sufficient contacts with the state to give Wisconsin legislative jurisdiction over persons attempting to acquire control of domestic insurers even though all affected transactions may be carried on entirely outside the state by persons having no other connection with the state. This conclusion is based on the notion that the combination of powers of the state and federal government flowing from enactment of the McCarran-Ferguson Act, 15 USC s. 1012 (b) (1964) extends the reach of the state significantly. (Bill 600-S)

617.21 History: 1969 c. 398; Stats. 1969 s. 617.21.

Legislative Council Note, 1969: Every transaction between affiliates has the potential for abuse. This section therefore not only provides standards by which such transactions shall be judged but also gives the commissioner a broad continuum of power that can be tailored for the differing needs of different classes of cases.

Some transactions require only disclosure to the commissioner, others require an opportunity for disapproval. Details are to be specified by rule. The power of the commissioner with respect to nondomestic insurers is limited to a requirement of post facto reporting, though the information thus gained may enable him to act on the basis of other powers, such as those in ch. 645. (Bill 600-S)

617.22 History: 1969 c. 398; Stats. 1969 s. 617.22.

617.23 History: 1969 c. 398; Stats. 1969 s. 617.23.

Legislative Council Note, 1969: One of the dangers inherent in the holding company relationship is that the parent may drain from the subsidiary insurer so much surplus that the insurer is no longer solid. This section would, in effect, make the holding company and other affiliates a guarantor of the insurer's obligation to the extent that they have recently withdrawn assets from the insurer. This is not fully consistent with the notion of limited liability that is characteristic of the modern corporation. But limited liability is not inherent in "corporateness". Historically it was not "of the essence". Rather, corporate organization was often used in an early time as a device for compulsory mobilization of capital from subscribers. It had a purpose quite inconsistent with the limitation

of liability to money actually invested. Moreover, as the owners of bank shares have had occasion to know in the recent past, liability limited to investment has not always been the rule in even the modern corporation. Here, the amount recovered is limited to recoupment; this is a kind of statutory remedy against unjust enrichment.

A question has been raised about the fairness of making two different affiliates liable under sub. (2) (a) and (b) for the same dividends. But they are together only liable to repay the dividends once. It should be left to the courts to determine, on the basis of all the facts, which of the two is primarily liable, if they wish to litigate that question (which would occur only rarely). For the purposes of this protective device, it is desirable to make it as easy as possible for the receiver to collect, whatever corporate manipulations have taken place since the dividend was declared.

Sub. (3) distinguishes between domestic and foreign insurers. For the former, recoupment should result in complete payment of legitimate claims; for the latter, Wisconsin should only be concerned to the extent necessary to protect Wisconsin policyholders. This is a significant change from earlier drafts.

Sub. (4) attempts to reach another of the dangers of the holding company arrangement by restricting the parent's ability to use intercorporate transfers and manipulations to impose economic loss on those who should not be asked to bear it. In the unusual but possible case where dishonest manipulations have produced an insolvent insurer, other manipulations might also produce insolvency in the dividend recipient made liable for repayment to the delinquent insurer under s. 9. And the manipulations would almost certainly be such as to make the funds untraceable under any general equitable doctrines. Sub. (4) would force solvent affiliates to assume the liability for making dividend repayments which fall on insolvent affiliates. It is limited to "upstream" affiliates only. (Bill 600-S)

Editor's Note: Sec. 617.23 of 600-S was amended by inserting a new subsection (2) and renumbering the following subsections.

CHAPTER 619.

Risk Sharing Plans.

Editor's Note, 1969: Ch. 144, Laws 1969, which created this chapter, contains extensive explanatory notes; these notes are printed in full in the bound volume containing the session laws, Laws of Wisconsin, 1969.

619.01 History: 1969 c. 144; Stats. 1969 s. 619.01.

619.02 History: 1969 c. 144; Stats. 1969 s. 619.02.

619.03 History: 1969 c. 144; Stats. 1969 s. 619.03.

CHAPTER 625.

Rate Regulation.

Editor's Note: Ch. 144, Laws 1969, which