CHAPTER 209.

INSURANCE—MISCELLANEOUS PROVISIONS.

209.01 Voluntary deposit of securities. The state treasurer, in his official capacity, shall take on deposit the securities of any domestic insurance corporation deposited by it for the purpose of securing policyholders or complying with the laws of any other state to enable such corporation to transact business in such state; and upon the application of such corporation, to give such certificate of such deposit as may be required by the laws of other states. The depositor shall have the right to receive the income from the securities and with the approval of the commissioner of insurance exchange the same from time to time, according to the laws of the state in which it may be doing business, and with the approval of the commissioner of insurance to withdraw the same. [*1933 c. 487 s. 247; 1939 c. 362; 1943 c. 436*]

209.02 Insurance and benefit associations; advance deposit of fees. Any fraternal benefit society or other insurer required to pay fees to the state through the commissioner, may, subject to the approval of said commissioner, make a deposit with the state treasurer, from which any such fees shall be paid, as ordered by the commissioner, which shall not be less than twice each year. Any balance remaining from any such deposit at the end of any calendar year may, upon the certificate of said commissioner, be returned to the depositor. [*1933 c. 487 s. 248*]

209.03 Nonpayment of judgment, bar to business; forfeitures. No insurance company or mutual benefit society, order or association against which a judgment as an insurer shall have been recovered in this state shall, after sixty days from the rendition of such judgment and while the same remains unpaid, issue any policy in this state; and in case such insurer or its officers shall violate this section it shall forfeit one thousand dollars. And any agent thereof who shall knowingly violate the same shall forfeit not less than one hundred nor more than five hundred dollars; provided, that if an appeal is taken said sixty days shall not begin to run until after the case has been remitted to the trial court. If the judgment appealed from shall be affirmed, any surety company which shall have executed any undertaking to stay proceedings upon such judgment, or to guarantee the payment or performance thereof, if such surety company shall not, within thirty days after notice of the filing of the remittitur, perform its undertaking in respect thereto, it shall forfeit its rights to transact such business in this state until it shall have fully performed such undertaking. [*1933 c. 487 s. 249*]

209.04 Agents, license, commissions, eligibility. (1) No person, officer, or broker, agent or subagent of any insurance company required to pay any tax or license fee to the state shall act or aid in any manner in transacting the business of or with such company in placing risks or in collecting premiums or assessments or effecting insurance therein, without he holds an unexpired and unrevoked certificate of authority from the insurance company.

(2) Such certificate shall be issued only by the officers or resident agent of such company signing its policies or a person authorized thereto in writing by such officers or resident agent, after a copy of such authority has been filed in the office of the commissioner; the certificates shall be in the form prescribed by the commissioner and numbered consecutively as issued; and a statement of the names and residences of all persons to whom such certificates are issued, together with the fees provided for certificates to agents, shall be mailed to the commissioner on the day the certificates are issued. Such certificate may be revoked for cause by the commissioner of insurance after a hearing.

(3) All certificates of authority shall expire annually upon the expiration of the license of the company issuing the same.

(4) Any person violating the provisions of this section shall be fined not more than five hundred dollars for each offense. Any company violating subsection (2) of this section shall pay five times the amount of fees upon each license included in such violation.

(5) Nothing in this section shall be construed to prevent the proper exchange of business between lawfully licensed resident agents of this state.

(6) No corporation shall be licensed as agent of any insurance company for the purpose mentioned in subsection (1).

(7) The word "solicitor" means a natural person, residing in this state and recommended in writing by an agent to solicit risks and collect premiums for all kinds of insurance other than life insurance. Such solicitors shall be appointed on application, the form of which shall be prescribed by the commissioner of insurance. The application shall be signed by the applicant and by a regularly licensed insurance agent. Such license may be renewed annually as of May first of each year upon application. The annual fee for such license shall be two dollars. This fee shall be paid by the solicitor. This subsection shall not apply to solicitors of insurance in domestic mutual insurance companies. [*1933 c. 144; 1933 c. 487 s. 239, 250; 1933 c. 489 s. 31; 1939 c. 468; 1943 c. 436*]

Note: A lay person, engaged in the business of adjuster of losses for insurance companies, may communicate to an insurance company employing him an opinion obtained from an attorney, and may communicate to a claimant an opinion, or its truthful substance, rendered by counsel for the insurance company or by a local attorney employed by the insurance company, but he may not communicate an opinion of an attorney as his own without thereby engaging in the "practice of law." State ex rel. Junior Ass'n of Milwaukee Bar v. Rice, 236 W 38, 294 NW 550.

Building and loan association may not act as agent of life insurance company in collection of premiums. 26 Atty. Gen. 561.

209.05 Who are agents. Every person or member of a firm or corporation who solicits insurance on behalf of any insurance company or person desiring insurance of any kind, or transmits an application for a policy of insurance, other than for himself, to or from any such company, or who makes any contract for insurance, or collects any premium for insurance, or in any manner aids or assists in doing either, or in transacting any business of like nature for any insurance company, or advertises to do any such thing, shall be held to be an agent of such company to all intents and purposes, unless it can be shown that he receives no compensation for such services. This section shall not apply to agents of town mutual fire insurance companies. [*1933 c. 487 s. 251*]

Revisor's Note, 1933: The last sentence was amended by chapter 353, Laws 1905, and referred to 1896, 1897 and 1898, R. S. 1898; but those sections were repealed by chapter 460, Laws 1909. The new 1898 (201.16) does not deal with organization of corporations. Companies are not organized under 201.04. The exception of fraternals is needless. Chapter 208 excepts them. If the exception is intended for town mutuals it is best to say so. (Bill No. 50 S, s. 251)

For extra territorial effect of statute, see note to 328.01, citing Cooper v. Commercial C. Ins. Co., 209 W 314, 245 NW 154.

One who was not an authorized agent of the insurer, but who secured a burglary policy for the insured and collected the premium therefor, was the agent of the insurer. McKinnon v. Massachusetts B. & I. Co., 213 W 145, 250 NW 503.

Where an insured signed no application for insurance and had no knowledge of limitations on the authority of a soliciting agent, a contract of fire insurance on a truck and feed mill executed by the agent to take effect immediately was binding upon the insurer. Anderson v. Indiana L. M. I. Co., 214 W 384, 253 NW 405.

A bank cashier was requested by a client of the bank to obtain compensation insurance for the client; the cashier wrote to an insurance agency requesting such insurance, which agency in turn made application to the local agent of a company which wrote workmen's compensation insurance; the insurance company rejected the application. The cashier was not the agent of insurance company. Bohnke v. Standard A. I. Co., 41 F (2d) 696.

209.06 Insurance; application; effect. (1) No oral or written statement, representation or warranty made by the insured or in his behalf in the negotiation of a contract of insurance shall be deemed material or defeat or avoid the policy, unless such statement, representation or warranty was false and made with intent to deceive, or unless the matter misrepresented or made a warranty increased the risk or contributed to the loss.

(2) No breach of a warranty in a policy shall defeat or avoid such policy unless the breach of such warranty increased the risk at the time of the loss, or contributed to the loss, or existed at the time of the loss.

(3) This section applies to fraternal benefit societies. [*1933 c. 487 s. 252*]

Note: A mere soliciting agent has no authority to modify the provisions of an application for tornado insurance, or to waive conditions of such application or effect an oral contract for tornado insurance. Kaufhusman v. Home M. H.-T. Ins. Co., 203 W 184, 233 NW 85.

Ulcers of the stomach increased the insured's risk as a matter of law, and false representations thereon voided his policy. Demirjian v. New York L. Ins. Co., 205 W 71, 236 NW 566.

See note under 203.01, citing Moe v. Allemannia F. Ins. Co., 209 W 526, 244 NW 593.

Insurer, whose examiner reports applicant as a fit subject for life insurance is estopped to assert contrary, in absence of fraud. Frozena v. Metropolitan L. Ins. Co., 211 W 373, 247 NW 333.

An insurer was not relieved from liability under a burglary policy because of a false warranty that the insured had not been burglarized within five years prior to the date of the application, where at the date of the application the insurer had knowledge of a prior burglary, since in such situation the false warranty did not increase the risk. McKinnon v. Massachusetts B. & I. Co., 213 W 145, 250 NW 503.

Insurer's soliciting agent's knowledge of insured's previous illness and falsity of statement, written by agent in application for accident and sickness policy that insured had not been disabled by accident or illness during last ten years, must be considered insurer's knowledge, so as to defeat its right to claim that policy was void because of such statement. Insured's deliberate false swearing in proof of claim under accident and sickness policy that he had never before been afflicted by any illness or disease invalidates claim, regardless of whether he derived any advantage to insurer's actual prejudice in consequence

thereof. Kline v. Washington N. Ins. Co., 217 W 21, 258 NW 370.

Provision in life policy, which required no medical examination, that policy should not take effect if on date of its issuance insured was not in sound health and that in such event premiums paid should be returned, is valid. Compliance with such provision in policy constituted a condition precedent to liability, and hence insurer was not liable where insured died of heart disease which existed when policy was issued. Clark v. Prudential Ins. Co., 219 W 422, 263 NW 364.

The failure of the insured to state, in his application for an accident insurance certificate, that he was a wholesaler of beer in addition to being the owner and manager of a restaurant and tavern, did not preclude the insured from recovering for a disability sustained in an automobile accident while on a pleasure trip, where the misrepresentation was innocently made, the society's agent and local council knew that the insured was engaged in such business, and the fact that he was engaged therein did not increase the risk or contribute to the loss. Spray v. Order of U. C. T., 221 W 329, 267 NW 50.

209.07 Estoppel by report of medical examiner, effect of fraud. If the medical examiner of any life or disability insurance company shall issue a certificate of health, or declare the applicant a fit subject for insurance, or so report to the company or its agent under the rules and regulations of such company, it shall thereby be estopped from setting up in defense of an action on a policy issued thereon that the insured was not in the condition of health required by the policy at the time of the issue or delivery thereof, unless the same was procured by or through the fraud or deceit of the insured. This section shall apply to fraternal benefit societies. [*1933 c. 487 s. 238*]

209.08 [*Renumbered section 203.13 by 1933 c. 487 s. 95*]

209.09 Percentages paid to agents. Every company shall at or prior to the filing of its application for license or any renewal thereof file a schedule of percentages or kinds of commissions paid to its agents within this state; provided, that the amount of any fixed salary need not be specified. [*1933 c. 487 s. 253*]

209.10 [*Renumbered section 206.54 by 1933 c. 487 s. 245*]

209.11 [*Renumbered section 206.55 by 1933 c. 487 s. 245a*]

209.12 Action to collect assessments, limitation. No action shall be brought by a receiver or trustee to recover any assessment made by or on behalf of a foreign mutual fire, life or accident insurance company, or for dues or fees on account of insurance therein, unless begun within six months after such assessment is made or the liability to pay such dues or fees accrued. [*Stats. 1931 s. 203.27; 1933 c. 487 s. 254*]

209.13 Saving provisions relating to old companies. (1) When no other provision is made for the amendment of the by-laws of any domestic insurance corporation, doing business on June 20, 1909, such by-laws may be amended in the manner provided in section 201.02 (3) (g).

(2) Every such insurance corporation then doing business is continued without any limitation whatever upon the duration of its corporate existence, notwithstanding any limitation theretofore imposed by law or incorporated into its articles of organization. [*Stats. 1931 s. 203.50 (3), (4); 1933 c. 487 s. 255; 1943 c. 275 s. 53*]