

CHAPTER 209.

INSURANCE—MISCELLANEOUS PROVISIONS.

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209.01 Deposits of insurers. (1) **ACCEPTANCE AND APPROVAL.** The state treasurer shall accept, subject to the approval of the commissioner of insurance, deposits of securities by insurers as follows:

(a) Deposits in amount as required to be made as prerequisite to a certificate of authority to transact business in this state and other deposits required by the laws of this state.

(b) Deposits of domestic insurers or insurers of foreign countries in amount as required to be made by the laws of other states as prerequisite for authority to transact insurance in such other states.

(c) Deposits in amount as resulting from application of the retaliatory provisions of section 76.35.

(d) Deposits in other additional amounts permitted to be made by the laws of this state.

(2) **IN TRUST FOR POLICYHOLDERS.** Each such deposit except the deposits required under sections 200.04 (4) and 209.02 shall be held by the state treasurer in trust for the protection of all policyholders of the insurer making it; except that deposits of insurers of foreign countries shall be so held for the security of such insurers' obligations arising out of its transactions in the United States, and except as to deposits the purpose of which may be further limited pursuant to the retaliatory provisions of section 76.35.

(3) **SECURITIES ELIGIBLE FOR DEPOSIT.** All such deposits shall consist of bonds, notes or other evidences of indebtedness which are direct obligations of the United States or of any county, district or municipality of the state of Wisconsin with the proceeds to be available to the state treasurer.

(4) **VALUATION OF SECURITIES ON DEPOSIT.** Securities so deposited or held on deposit shall be valued at their market value in the same manner as like investments of domestic insurers.

(5) **RECEIPT AND RECORD OF DEPOSITS.** The state treasurer shall deliver to the insurer a receipt for all securities deposited and shall, on application of the insurer, issue such certificate of such deposit as may be required by any law of the United States or of any other state or foreign country or by the order of any court of competent jurisdiction. The commissioner shall keep a record in permanent form of securities deposited by insurers and of any transfers or withdrawals of such deposits.

(6) **TRANSFER OF SECURITIES.** No transfer of securities so held on deposit, whether voluntary or by operation of law, shall be valid unless approved in writing by the commissioner of insurance, and countersigned by the state treasurer or by their authorized deputies.

(7) **INTEREST AND SUBSTITUTIONS.** While solvent and complying with the provisions of the laws of this state an insurer shall be entitled:

(a) To receive interest and dividends accruing on the securities so held on deposit for its account, as provided in section 14.42;

(b) From time to time to exchange and substitute any of such securities for other securities eligible for deposit and of equal value.

(8) **RELEASE OF DEPOSIT.** (a) Any such required deposit shall be released in these instances only:

1. Upon extinguishment of all liabilities of the insurer for the security of which the deposit is held, by reinsurance contract or otherwise.

2. If any such deposit or portion thereof is no longer required under the laws of this state or of any other state or foreign country.

3. If the deposit has been made pursuant to the retaliatory provisions of section 76.35, it shall be released in whole or in part when no longer required.

4. Upon proper order of a court of competent jurisdiction, the deposit shall be released to the receiver, conservator, rehabilitator or liquidator of the insurer for whose account the deposit is held.

(b) No such release shall be made except on application to and written order of the commissioner of insurance made on proof satisfactory to him of the existence of one of such grounds therefor. The commissioner of insurance and the state treasurer shall have no personal liability for any release of any deposit or part thereof so made by them in good faith.

(c) All releases of deposits or any part thereof shall be made to the person then entitled thereto upon proof of title satisfactory to the commissioner of insurance and state treasurer.

(9) PARTIAL RELEASE OF DEPOSITS. Any part of any deposit of an insurer held by the state treasurer on May 17, 1947, which is in amount in excess of the deposit required or permitted to be made by such insurer under the laws of this state or of any other state or foreign country, shall, upon written order of the commissioner of insurance, be released. The provisions of subsection (8) (b) shall apply to such partial release.

(10) VOLUNTARY EXCESS DEPOSIT. An insurer may deposit and maintain on deposit with the state treasurer eligible securities in amount exceeding its required deposit for the purpose of absorbing fluctuations in the value of securities held in its required deposit, and to facilitate the exchange and substitution of such required securities. During the solvency of the insurer any such excess deposit or any part thereof shall be released to it upon request. During the insolvency of the insurer such excess deposit shall be released only as provided in section 209.01 (8).

(11) NOT SUBJECT TO LEVY. No judgment creditor or other claimant of an insurer shall levy upon any deposit held pursuant to this section.

History: 1951 c. 94.

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.

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.

209.04 Licensing of agents other than life. (1) APPLICATION; LICENSE; FEE. (a) *“Agent” defined.* The term “agent”, as used in this section, shall mean any natural person, resident in this state, authorized by law to solicit, negotiate or effect contracts of insurance other than life insurance. The term “agent” shall not include any regular salaried officer or employe, who does not solicit, negotiate or effect contracts of insurance. A regular salaried officer or employe of an authorized insurer shall not be deemed to be an agent by reason of rendering assistance to, or on behalf of an agent, provided that such salaried officer or employe devotes substantially all of his time to activities other than the solicitation of applications for insurance and receives no commission or other compensation directly dependent upon the amount of business obtained. It shall be unlawful for any person to act as an agent unless he holds an agent’s license issued by the commissioner.

(b) *Application for agent’s license.* 1. Every person desiring to act as an agent for a company in this state shall apply to the commissioner through the company for a license so to do, in the manner hereinafter prescribed. The applicant for such license shall submit to the commissioner through the company his written application therefor and shall make

a sworn statement on forms to be prepared by the commissioner, giving his name, age, residence, place of business and occupation for the 5-year period preceding the date of such application, the percentage of his time he intends to devote to the insurance business; whether he agrees to comply with the provisions of section 201.53 (3) with reference to compensation for effecting insurance upon his own property or other risk; whether he has been refused or has had suspended or revoked a license to solicit insurance applications by the commissioner or other proper supervising officials of any state; whether any insurance company claims that he is indebted to it under any agency contract or otherwise, and if so, what company, the nature of the claim and of his defense, if any; whether he has had an agency contract canceled by any company and if so, when, by what company, and the reason for such action. No such application for license shall be required to be filed by an agent or a company representative who on November 1, 1951 was lawfully acting in such capacity.

2. The applicant shall be vouched for by an official or representative of the company for which he proposes to act, setting forth that the applicant is personally known to him; that the applicant is of good business reputation and worthy of a license. Such voucher shall be signed and sworn to by the person executing the same and shall be a part of the form of application prepared by the commissioner.

(c) *Issuance of agent's license; examination of applicants; fees.* After the receipt of such application in due form, properly verified and certified, and upon the payment of the examination fee, it shall be the duty of the commissioner, or his deputy, or any salaried employe of the department designated by the commissioner, within a reasonable time and in a place reasonably accessible to the applicant for a license, to subject each first-time applicant for license and any applicant for renewal of license, to a personal written examination as to his competency to act as such agent for the kind or kinds of insurance contracts he intends to solicit, negotiate or effect, except that the commissioner shall show just cause before requiring a renewal applicant to submit to a written examination for such license, and except that no first-time applicant or applicant for renewal license who makes application to solicit exclusively the kinds of insurance described in s. 203.32 (2) (b) 6 for domestic mutual windstorm, cyclone and tornado insurance companies operating on the assessment plan will be required to take a written examination and pay the examination fee. If the application be for a nonresident agent's license, the commissioner is authorized to enter into reciprocal agreements with the appropriate official of any other state waiving the written examination of any applicant residing in such other state, provided: 1. that a written examination is required of applicants for similar licenses in such other state; and 2. that the appropriate official in the state certifies that the applicant holds a currently valid license as an insurance agent in such other state and either passed such written examination or was the holder of such license prior to the time such written examination was required. When it is shown from such application and examination that the applicant is 1. intending in good faith to act as insurance agent, and 2. is of good reputation, and 3. has had experience or training, or is otherwise qualified in the kind or kinds of insurance for which he desires to be licensed, and 4. is a resident of this state (unless application be for a nonresident agent's license), and 5. is reasonably familiar with the insurance laws or contracts he is proposing to solicit, negotiate or effect, and 6. is worthy of a license, the commissioner shall issue to the applicant a license to transact business in this state as a resident or nonresident insurance agent.

(d) *Expiration of license.* The fee shall continue the license in force until the following November 1.

(e) *Temporary licenses.* 1. The commissioner may issue a temporary agent's license without requiring the applicant to pass a written examination or to satisfy the requirements of s. 209.04 (1) except as to trustworthiness, to the surviving spouse or next of kin or to the administrator or executor of a deceased licensed agent or to the spouse, next of kin, employe or legal guardian of a licensed agent becoming disabled because of sickness, insanity or injury, if in the commissioner's opinion such temporary license is necessary for the continuation of the business of the agent thereby affected. Such license may be issued for a term not exceeding 3 months and the commissioner may in his discretion renew such license for an additional term or terms of 3 months each, not exceeding in the aggregate 9 months.

2. The commissioner may issue a temporary agent's license without requiring the applicant to pass a written examination or to satisfy the requirements of s. 209.04 (1) except as to trustworthiness to the designee of a licensed agent who shall enter upon active service in the armed forces of the United States, for such period of time as in the opinion of the commissioner may be necessary for the continuation of the business of the agent thereby affected.

3. The commissioner shall issue a temporary license without examination to an applicant for a license as agent of an insurer while taking a preparatory course of study, in-

struction and field training for written examination under the supervision of his insurer who shall be responsible during such period of temporary license for all acts or omissions of such agent within the scope of his agency appointment. Such temporary license shall remain in force unless revoked or suspended for cause until the first examination occurring 6 months after the date of temporary license and until he is advised of the result of such examination. The commissioner may, in his discretion, renew such temporary license for one additional period of 3 months subject to the same conditions as apply to the original temporary license.

(2) **AUTHORITY UNDER LICENSE; REVOCATION; LISTS OF AGENTS.** (a) *Authority under license; revocation.* Any license issued to an agent shall authorize him to act as such agent during the time for which the company appointing him is authorized to do an insurance business in this state and during the time for which the agent's license fee has been paid and during the time such agent is a bona fide resident of this state. Upon revocation or termination of such license by the commissioner, such license shall be promptly returned to the commissioner.

(b) *Certification of agents by company.* Annually, prior to November 1 of each year, every insurance company licensed to do business in this state shall submit to the commissioner a list of all agents appointed by it to act within this state together with the required annual license fees. Such list shall be an alphabetical list by towns of all of its agents whose licenses are to remain in effect, with their respective office addresses. Any change in the address of an agent holding a license shall be promptly reported to the commissioner by the company for whom such agent acts.

(3) **CORPORATIONS EXCLUDED AS AGENTS.** No corporation shall be licensed as an agent of any insurance company.

(4) **PENALTY.** Any person or company violating the provisions of this section shall be fined not more than \$500 for each offense.

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

(6) **REVOCATION OF LICENSE.** (a) *Grounds; notice.* Any agent's license may be revoked for cause by order of the commissioner after a hearing held upon 10 days' written notice of the time and place thereof. After such hearing so noticed the commissioner may revoke or suspend for at least one year the license of any agent for a violation of s. 134.10 or 134.11.

(b) *Insurer's statement on termination.* Every insurer shall, upon termination of the appointment of any insurance agent, immediately file with the commissioner a statement of the facts relative to the termination of the appointment and the date and cause thereof. The commissioner shall thereupon terminate the license of such agent to represent such insurer in this state.

(7) **EXCLUSION FROM PROVISIONS.** The provisions of this section requiring licenses shall not apply to persons engaged in the following activities:

(a) *Life insurance.* Persons engaged in the business of life insurance exclusively and subject to licensing under other statutes of this state.

(b) *Town mutuals.* Persons engaged in the business of soliciting insurance exclusively for town mutual insurance companies.

(c) *Clerical help.* A person employed by an insurance agent or insurer solely for the performance of clerical, stenographic or similar office duties who incidentally takes insurance applications and receives premiums if his compensation is not related to the volume of such applications, insurance, or premiums; or

(d) *Incidental transportation insurance.* The ticket-selling agent of a railroad or steamship company, carrier by air or public bus carrier, who acts as agent in the sale of accident insurance tickets to individuals, insurance on personal effects against loss or damages while being carried as baggage incident to the sale of a passenger's transportation ticket.

History: 1951 c. 574; 1955 c. 366, 600; 1957 c. 74, 448.

See note to 201.44, citing 43 Atty. Gen. 181.

209.045 Insurance advisers. No person, firm or corporation acting in the capacity of an insurance adviser, counselor or analyst and as such serving any person, firm or corporation not engaged in the insurance business for compensation paid or to be paid by the person served, shall directly or indirectly receive any part of commission or compensation paid by any insurer or agent of any insurer in connection with the sale or writing of any insurance which is within the subject matter of any such service. Any person violating the provisions of this section shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than \$50 nor more than \$500 or by imprisonment in the county jail not less than 30 days nor more than 90 days, or both.

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.

If the purported signature of the insured to the application was not genuine, the defendant insurer could not be held liable on the policy, since its contract was predicated on the insured's having signed that part of the application containing the answers to the medical examiner. If by false statements in the medical-examination portion of an application for a life policy an insurance company is induced to insure someone whom it would be barred from insuring under its rules, and such false statements have increased the risk, the insurer should be permitted to raise such facts as a defense regardless of whether the insured who made the false statements is the purchaser or owner of the policy, or whether such owner is his wife, partner, corporate employer, or other third person. *Bradach v. New York Life Ins. Co.* 260 W 451, 51 NW (2d) 13.

Where an agent of an insurance company writes a statement of fact into either an application for a policy, or into the policy itself, without making inquiry of the insured or relying on any information supplied by the insured, the company is precluded on the theory of either waiver or estoppel from showing that the fact as to incumbrances on the insured property was other than such statement of fact so written in by the agent, in order to avoid liability on the policy. The failure of the insured to read his policy, and to discover that a false answer had been inserted by the insurer's agent in the blank space in respect to incumbrances, did not constitute such lack of diligence or negligence as to bar the insured from invoking the principle of estoppel against the insurer to avoid liability on the policy because of such false answer. (*Collum v. National Fire Ins. Co.* 181 W 425, and *Taluc v. Fall Creek Farmers Mut. F. Ins. Co.* 203 W 319, applied; *Bradach v. New York Life Ins. Co.* 260 W 451, explained and distinguished; *Moe v. Allemania Fire Ins. Co.* 209 W 526, distinguished.) The fact that the insured called the insurer's agent and told him to "transfer" the insurance from an old, unincumbered car to a new car did not make it the insured's duty first to read the fine-print exclusion clause in the existing policy and, because of so reading it, to inform the agent that the new car was mortgaged, since, whether the agent effects insurance cover-

age on a new car by a rider to the old policy or, as in the instant case, by writing a new policy, the car owner is entitled to depend on the agent to ask for whatever information is required by the insurer for filling in blanks, and the insured should not be held to presume that the agent will fill in the answers without first making inquiry to ascertain the true facts. *Emmco Ins. Co. v. Palatine Ins. Co.* 263 W 553, 53 NW (2d) 525.

In an application for reinstatement which represented that the insured had not since the policy was issued been "sick or afflicted with any disease," a cold will not be included and, in the absence of proof that the cold produced disease or sickness, the words cannot be construed as meaning absolute freedom from bodily ills, but rather freedom from such ills as would ordinarily be called "disease" or "sickness," which do not include a trifling illness nor a temporary illness which readily yields to professional treatment and leaves no permanent physical injury or disorder calculated or having a tendency to shorten life. *Schneider v. Wisconsin Life Ins. Co.* 273 W 105, 76 NW (2d) 586.

An examining physician's confidential report to a life insurance company, relating to an applicant for a life policy, and stating that the applicant's condition of hydrocele "should not affect insurable risk" and that "in his opinion the risk was not questionable because of any factor, such as the presence or history of physical defect, etc.," amounted to a declaration that the applicant was a fit subject for insurance, within the purview of 209.07. When it appears that such report was based on material false representations, made with intent to defraud or to deceive, and that the medical examiner and the insurer relied on the same, the insurer was entitled, under 209.06, to avoid liability on the policy. *Gibson v. Prudential Ins. Co.* 274 W 277, 80 NW (2d) 233.

Materiality of misrepresentation is to be determined by trier of facts. Test is whether fact, if truthfully stated, might reasonably have influenced the insurer in deciding whether to accept or reject the risk. If a question material to risk is falsely stated, the risk is necessarily increased. *Allstate Ins. Co. v. Moldenhauer*, 193 F (2d) 663.

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.

See note to 209.06, citing *Gibson v. Prudential Ins. Co.* 274 W 277, 80 NW (2d) 233.

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.

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.

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

209.14 False statements by insurance companies. Any officer, director, attorney in fact, manager or employe of any insurance corporation, Lloyd's association, interinsurer, fraternal or mutual benefit society or other insurer, who shall wilfully and knowingly subscribe to, make or cause to be made, any false entry in the books thereof, or shall knowingly subscribe to or exhibit false papers, or shall knowingly make, state or publish any false report or statement of any such insurance corporation, Lloyd's association, interinsurer, fraternal or mutual benefit society or other insurer, shall be punished by a fine of not less than \$100 nor more than \$5,000 or by imprisonment in the state penitentiary not less than one nor more than 10 years, or by both such fine and imprisonment.

History: 1955 c. 696 s. 109.

209.15 Penalty for unauthorized insurance. Any unauthorized insurance company or other unauthorized insurer which shall hereafter take or receive any application for insurance in this state, or shall receive or collect a premium on any part thereof for such insurance, shall be punished by a fine of not more than \$5,000. Any officer, agent, solicitor or broker, or other employe of any unauthorized insurance company or other unauthorized insurer who shall take or receive any application for insurance in this state, or shall receive or collect a premium or any part thereof for such insurance, shall be guilty of a felony, and shall be punished by a fine of not more than \$500, or imprisonment in the state penitentiary for one year, or by both such fine and imprisonment.

History: 1955 c. 696 s. 232.