

CHAPTER 616

MISCELLANEOUS INSURERS

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SUBCHAPTER I

SCHOOL BENEFIT PLANS

NOTE: Chapter 261, laws of 1979, which created this subchapter, contains explanatory notes.

616.03 Designation of a mutual insurer as a school benefit insurer. A mutual insurer engaged in no activities other than those specified in s. 616.06 may apply to the commissioner for designation as a school benefit insurer. If the commissioner finds that the insurer is engaged in no other activities, the commissioner shall declare it to be a school benefit insurer. As long as the insurer's activities are thus restricted and it uses the term "school benefit" or its equivalent in its name, it is deemed to be operating under this subchapter, within the meaning of s. 601.31 (2) and shall have the tax exemptions under s. 616.10.

History: 1979 c. 261; 1981 c. 314 s. 146.

616.06 Continuation of existing school benefit plans. A plan directed by schools or school authorities in this state, which was organized under s. 185.991, 1977 stats., prior to May 11, 1980 and is operating on a nonprofit basis without capital stock, may continue to operate under this subchapter, if its purpose is exclusively to provide benefits for accidental injury to or accidental death of pupils attending the school.

History: 1979 c. 261.

616.07 Certificate of authority. (1) ISSUANCE. Within 90 days after May 11, 1980, each plan authorized under s. 616.06 shall apply to the commissioner for a certificate of authority to continue the business it was doing on that date. The commissioner shall issue the certificate unless the commissioner finds after a hearing that the plan is in substantial or willful noncompliance with the law. No charge may be made for the initial issuance of the certificate under this subsection.

(2) TERMINATION. A certificate issued under sub. (1) remains in force until it is revoked after a hearing for a substantial violation of chs. 600 to 646.

History: 1979 c. 261; 1981 c. 314.

616.08 Organization of new insurers. (1) GENERAL. Except as provided in sub. (2), new insurers may be organized exclusively for the purposes stated in s. 616.06 pursuant to the procedures for mutual insurers specified in ch. 611.

(2) EXCEPTIONS. (a) Sections 611.24 to 611.26 do not apply to insurers organized under this section.

(b) After issuance of the certificate of authority, incorporators of an insurer under this section who have advanced money or incurred obligations for the reasonable and authorized expenses of organization may be reimbursed in cash from the proceeds of subscriptions for bonds and contribution notes, on itemized receipts audited by the commissioner. The total reimbursement may not exceed 5% of the amount received for the bonds and notes.

(c) Upon request by the incorporators, the commissioner may modify any requirements in the organizational process specified in ch. 611 if the commissioner considers the modification justified by the simplicity of the proposed operation or by the circumstances surrounding the organizational process.

History: 1979 c. 261.

616.09 Applicability of other statutes. (1) EXISTING ORGANIZATIONS UNDER S. 616.06. (a) 1. Except as provided in subd. 2., plans authorized under s. 616.06 are not subject to chs. 600 to 646.

2. Plans authorized under s. 616.06 are subject to s. 610.21, 1977 stats., s. 610.55, 1977 stats., s. 610.57, 1977 stats., and ss. 628.34 to 628.39, 1977 stats., to chs. 600, 601, 620, 625, 627 and 645, to ss. 632.72, 632.755, 632.86 and 632.87 and to this subchapter except s. 616.08.

(b) Plans authorized under s. 616.06 are subject to rules issued under s. 620.03 (3) which are applicable to life insurers.

(c) 1. Plans authorized under s. 616.06 are subject to ch. 185 or 193, as applicable, except that ss. 185.03 (5) and (6), 185.05 (1) (c), 185.55, 185.61, 185.62, 185.63, 185.64, 185.71 to 185.76, 185.81, 193.215 (2) (a) 2., 193.225, 193.301 (9), 193.801, 193.805, 193.905 to 193.971, and those provisions applicable to cooperatives or unincorporated cooperative associations with stock do not apply.

2. In all actions commenced after May 11, 1980, in those provisions of ch. 185 which apply under subd. 1. to plans authorized under s. 616.06, "department" shall be deemed to read "department of financial institutions and commissioner", except in s. 185.48, where "department" shall be deemed to read "commissioner".

(d) Each plan authorized under s. 616.06 shall:

1. File with the commissioner for approval its rules and regulations and schedules of the benefits contemplated, together with the forms of agreement entered into with students, parents, guardians or others;

2. File with the commissioner its constitution and bylaws; and

3. Maintain sufficient reserves to discharge its obligations and for any prepayment of dues or fees collected.

(2) CORPORATIONS ORGANIZED UNDER S. 616.08. (a) Except as provided in par. (b), corporations organized under s. 616.08 are subject to all applicable provisions of chs. 600 to 646.

(b) Corporations organized under s. 616.08 may elect to be subject to one or more of the following sections in place of corresponding provisions of ch. 611: s. 185.11, 185.12, 185.13, 185.14, 185.15, 185.38 or 185.45.

History: 1979 c. 261; 1981 c. 205; 1981 c. 314 s. 144; 1987 a. 307, 403; 1991 a. 70; 1995 a. 27; 2005 a. 441; 2007 a. 96.

616.10 Exemption from taxation. Every mutual designated a school benefit insurer under s. 616.03, every plan authorized under s. 616.06, and every corporation organized under s. 616.08 is declared to be a charitable and benevolent corporation, and its property, real, personal and mixed, and its income and property transferred to it, are exempt from taxation as provided in ss. 70.11, 71.26 (1) (a) and 71.45 (1) (a).

History: 1979 c. 261; 1987 a. 27 s. 3202 (47) (a); 1987 a. 312 s. 17; 2007 a. 20.

616.14 Limitations applicable to plans under s. 616.06.

(1) **GOVERNING BODY.** The governing body of a plan shall be the same as the governing body of the sponsoring organization, but must have at least 3 members. If the governing body of the sponsoring organization consists of fewer than 3 members, the governing body of the sponsoring organization shall appoint to the governing body of the plan the number of persons necessary to comply with this subsection. Appointments under this subsection shall be made under rules adopted by the governing body of the sponsoring organization.

(2) **SIZE.** No plan under s. 616.03, 616.06 or 616.08 may operate unless the plan covers a number of students large enough to give stability to its loss experience.

History: 1979 c. 261.

616.18 Restrictions on transactions. (1) **VOIDABLE TRANSACTIONS.** Any material transaction between a plan or corporation authorized under this subchapter and one or more of its management or members of its governing board, or with any person in a position to influence the vote of any member of its governing board or the decision of any of its management or with any person having power to control the plan or corporation is voidable by the plan or corporation unless:

(a) The transaction at the time it is entered into is reasonable and fair to the interests of the plan or corporation and its members;

(b) The transaction has, with full knowledge of its terms and of the interests involved, been approved in advance by the governing board or by the members; and

(c) The transaction has been reported to the commissioner immediately after approval under par. (b).

(2) **EXCEPTED TRANSACTIONS.** (a) This section does not apply to policies of insurance issued by the plan or corporation in the normal course of its business.

(b) The commissioner may by rule exempt other classes of transactions from the reporting requirement of sub. (1) (c), if the purposes of this section can be achieved without the report.

History: 1979 c. 261.

616.20 Conversion of plans under s. 616.06 to mutuals under ch. 611 or service insurance corporations under ch. 613. (1) **AUTHORIZATION.** Under a proposal proposed by the officers of a plan operating under s. 616.06 and approved by the commissioner and by a majority of the members voting, the plan may be converted to a mutual under ch. 611 or a service insurance corporation under ch. 613.

(2) **NOTICE AND VOTING RIGHTS.** Voting on the conversion is required only if the bylaws provide for it. Voting shall be as provided in the bylaws. If voting is required, but there is no notice provision in the bylaws, the officers shall give notice of the plan to convert under sub. (1) to all members entitled to vote on the conversion at least 30 days before the plan is submitted to the members for a vote. Whether or not voting is required, any member

who feels aggrieved by the conversion plan may communicate objections to the commissioner who shall give them consideration before approving the plan. If voting is required by the bylaws, the commissioner may not approve the plan until at least 60 days after notice has been given to all members and 30 days after the voting on the plan. In all cases the commissioner may approve the plan only if the conversion plan protects the legitimate interests of the members.

(3) **MEMBERSHIP AND OWNERSHIP OF ASSETS.** Members of the plan shall be the members of the mutual or service insurance corporation created by conversion under this section. Assets of the plan shall become assets of the new corporation, and all existing contracts shall become the contracts of the new corporation.

(4) **LIABILITY OF OFFICERS.** If the commissioner approves a conversion under this section, no officer is liable to any member for losses suffered solely as a result of the conversion.

(5) **FEEES.** A new corporation formed under this section is not subject to the fees under s. 601.31 (1) or (2).

History: 1979 c. 261.

SUBCHAPTER III

PROPERTY SERVICE CONTRACTS

616.50 Definitions. In this subchapter:

(1) “Administration” includes any of the following activities performed on behalf of a provider:

(a) Approving or disapproving claims, paying claims, or controlling the claims adjustment process.

(b) Arranging for or controlling the purchase of insurance associated with the offering of service contracts.

(c) Maintaining records or submitting filings required under this subchapter on behalf of a provider.

(d) Collecting provider fees from service contract sellers and remitting the provider fees to the provider.

(2) “Administrator” means a person appointed by a provider under s. 616.54 (1) to be responsible for any or all of the administration of service contracts and compliance with this subchapter.

(3) “Commissioner” means the commissioner of insurance.

(4) “Consumer” means an individual who buys other than for purposes of resale any tangible personal property that is distributed in commerce and that is normally used for personal, family, or household purposes and not for business or research purposes.

(5) “Maintenance agreement” means a contract of a specified duration that provides for scheduled maintenance only and does not include repair or replacement.

(6) “Motor vehicle manufacturer” means a person that does or satisfies any of the following:

(a) Manufactures or produces motor vehicles and sells motor vehicles under its own name or label.

(b) Is a subsidiary of the person that manufactures or produces motor vehicles.

(c) Is a corporation that owns 100 percent of the person that manufactures or produces motor vehicles.

(d) Manufactures or produces motor vehicles and sells motor vehicles under the trade name or label of another person that manufactures or produces motor vehicles.

(e) Does not manufacture or produce motor vehicles but, pursuant to a written contract, licenses the use of its trade name or label to another person that manufactures or produces motor vehicles and that sells motor vehicles under the licensor’s trade name or label.

(7) “Nonoriginal manufacturer’s parts” means replacement parts for property that are not made for or by the original manufacturer of the property.

(8) “Provider” means a person that is contractually obligated to a service contract holder under the terms of a service contract.

(9) “Provider fee” means the consideration paid for a service contract.

(10) “Reimbursement insurance policy” means any of the following:

(a) A policy of insurance issued to a provider under the terms of the insured service contracts issued or sold by the provider that, in the event of the provider’s or administrator’s nonperformance, will pay or perform on behalf of the provider or administrator all covered contractual obligations or services under the terms of the insured service contracts issued or sold by the provider.

(b) A policy of insurance issued to a provider that provides the coverage specified in par. (a) and additional coverage that does not conflict with par. (a).

(11) “Service contract” means a contract or agreement for a separately stated consideration for a specific duration to perform the repair, replacement, or maintenance of property, or to provide indemnification for the repair, replacement, or maintenance of property, for the operational or structural failure of property, due to a defect in materials or workmanship, accidental damage from handling, or normal wear and tear, with or without additional provisions for incidental payment of indemnity under limited circumstances, including towing, rental, and emergency road service and road hazard protection. “Service contract” includes a contract or agreement that provides for any of the following:

(a) The repair, replacement, or maintenance of property or indemnification for the repair, replacement, or maintenance of property for damage resulting from a power surge or interruption.

(b) The repair or replacement or indemnification for the repair or replacement of a motor vehicle for the operational or structural failure of one or more parts or systems of the motor vehicle brought about by the failure of an additive product to perform as represented.

(c) The repair or replacement of tires or wheels on a motor vehicle damaged as a result of coming into contact with road hazards including potholes, rocks, wood debris, metal parts, glass, plastic, curbs, or composite scraps.

(d) The removal of dents, dings, or creases on a motor vehicle that can be repaired using the process of paintless dent removal without affecting the existing paint finish and without replacing vehicle body panels, sanding, bonding, or painting.

(e) The repair or replacement of motor vehicle windshield chips or cracks.

(f) The repair of damage to the interior components of a motor vehicle caused by wear and tear, but does not include the replacement of any part or component of a motor vehicle’s interior.

(12) “Service contract holder” means a person who is the purchaser or holder of a service contract.

(13) “Service contract seller” means a person, including a real estate agent, who is engaged only in the selling or soliciting of a service contract, but who is not acting as a provider or involved in the administration of service contracts.

(14) “Warranty” means a warranty made solely by the manufacturer, importer, or seller of property or services without consideration, that is not negotiated or separated from the sale of the product or services, that is incidental to the sale of the product or services, and that guarantees indemnity for defective parts, mechanical or electrical breakdown, labor, or other remedial measures, such as repair or replacement of the property or repetition of services.

History: 2011 a. 226.

616.52 Applicability. (1) This subchapter does not apply to any of the following:

(a) Warranties, as defined in s. 100.203 (1) (g), 100.205 (1) (g), or 616.50 (14).

(b) Maintenance agreements.

(c) Service contracts offered by public utilities on their devices for the transmission of public utility service to customers to the extent such service contracts are regulated by the public service commission.

(cm) Service contracts offered by cooperative associations organized under ch. 185, for the purpose of producing or furnishing heat, light, power, or water to their members, or by subsidiaries or affiliates of such cooperative associations.

(d) Service contracts sold or offered for sale to persons other than consumers.

(e) Service contracts for inside wire protection plans associated with the offering of telecommunications service, as defined in s. 182.017 (1g) (cq), or video service, as defined in 66.0420 (2) (y).

(f) Service contracts with respect to commercial property used in the provision of telecommunications service, as defined in s. 182.017 (1g) (cq), or video service, as defined in 66.0420 (2) (y).

(2) Motor vehicle manufacturer’s service contracts on the motor vehicle manufacturer’s products are exempt from this subchapter, except for ss. 616.56 (1) to (3) and (6) to (16), 616.58, and 616.62, and motor vehicle manufacturers offering service contracts on the motor vehicle manufacturer’s products are exempt from licensure under s. 616.54 (4).

(3) A person who holds a valid certificate of authority under s. Ins 15.01, Wis. Adm. Code may elect to do one of the following:

(a) Continue to operate in this state under the certificate of authority. If the person makes such an election, s. Ins 15.01, Wis. Adm. Code shall continue to apply to the person and this section shall not apply to the person.

(b) Apply for a license as a provider pursuant to s. 616.54 (4). If the person is licensed, this subchapter shall apply to the person and s. Ins 15.01, Wis. Adm. Code shall not apply to the person for any service contracts issued subsequent to licensure.

History: 2011 a. 226.

616.54 Requirements for doing business. (1) APPOINTMENT OF ADMINISTRATOR. A provider may, but is not required to, appoint an administrator to be responsible for any or all of the administration of service contracts and compliance with this subchapter. Except as provided in s. 616.58 (2) (b), a provider shall be liable for the acts of an administrator appointed by the provider to assist with the administration of the provider’s service contracts to the extent such acts relate to the provider’s service contracts offered in or from this state. No person may act as an administrator of service contracts sold in this state unless the person registers with the commissioner by providing the following information:

(a) The name, business address, and other information required by the commissioner for an employee or officer of the administrator that is designated by the applicant as the person responsible for the administration of service contracts in this state.

(b) The location of the administrator’s home office.

(c) The names of the service contract providers for whom the administrator performs administration.

(2) RECEIPT AND COPY OF CONTRACT. A service contract may not be issued, sold, or offered for sale in this state unless the provider of the service contract has done all of the following:

(a) Provided a receipt for, or other written evidence of, the purchase of the service contract to the service contract holder.

(b) Provided a copy of the service contract to the service contract holder within a reasonable period of time from the date of purchase.

(3) SAMPLE CONTRACT. A provider shall provide a consumer with a complete sample copy of the service contract terms and conditions prior to the time of sale upon a request for the same by the consumer. A provider may comply with this subsection by providing the consumer with a complete sample copy of the terms and conditions or by directing the consumer to an Internet Web

site containing a complete sample of the terms and conditions of the service contract.

(4) LICENSURE. (a) No person may act as a provider in this state unless the commissioner issues a license to the person under par. (c).

(b) A person seeking to act as a provider in this state shall submit an application for licensure with the commissioner consisting of all of the following:

1. The applicant's name.
2. The applicant's full business address.
3. The applicant's telephone number.
4. The name and full business address of a person in this state designated for service of process.
5. A copy of the service contracts proposed to be sold in this state that comply with s. 616.56.
6. Documentation of compliance with sub. (5).
7. The names of any administrator appointed by the applicant to assist with the administration of the provider's service contract business in this state.

8. An initial licensure fee in the amount specified in s. 601.31 (1) (kr).

(c) Upon receipt of an application that complies with par. (b) as determined by the commissioner, the commissioner shall issue a license to the applicant.

(d) The information submitted with an applicant's application for licensure need only be updated by written notification to the commissioner if material changes occur in the license application on file with the commissioner.

(e) By March 31 of each year after issuance of a license under par. (c), a provider shall pay the commissioner an annual fee in the amount specified in s. 601.31 (1) (kr).

(5) ASSURANCE OF PERFORMANCE; IN GENERAL. In order to assure the faithful performance of a provider's obligations to its service contract holders, each provider shall be responsible for complying with the requirements specified in sub. (6) or (7).

(6) ASSURANCE OF PERFORMANCE; INSURANCE. (a) A provider may satisfy sub. (5) by insuring all service contracts under a reimbursement insurance policy that has been filed with and approved by the commissioner under s. 631.20, that is issued by an insurer authorized to do business in this state, and that satisfies, at a minimum, all of the following:

1. The policy states that, if the provider covered under the policy does not provide, or reimburse or pay for, a service that is covered under a service contract insured under the policy within 60 days after a service contract holder provides proof of loss, or in the event of the provider's insolvency or other financial impairment, the service contract holder may file a claim with the insurer issuing the reimbursement insurance policy for reimbursement, payment, or provision of the service.

2. The policy states that the insurer issuing the policy shall assume full responsibility for administering and paying claims and other obligations under service contracts insured under the policy if the provider or designated administrator fails to do so.

3. The policy states that the insurer issuing the policy may not terminate or refuse to renew the policy unless the insurer has provided a written notice of termination or nonrenewal to the commissioner at least 60 days before the date of the termination or, in the case of nonrenewal, the expiration of the policy.

(b) If a reimbursement insurance policy by which a provider is satisfying this subsection is terminated, cancelled, or not renewed for any reason, or if the insurer issuing the policy is not in compliance with applicable financial standards, all of the following apply:

1. The provider shall immediately notify the commissioner of the termination, cancellation, or nonrenewal of the policy, if applicable.

2. The provider shall cease selling service contracts in this state until the provider either files with the commissioner a new reimbursement insurance policy that covers its obligations under service contracts sold in the state and that satisfies the requirements under par. (a) or provides a deposit or irrevocable letter of credit in accordance with sub. (7).

3. If the commissioner so requests, the provider shall file with the commissioner copies of its audited financial statements or financial statements that are certified as accurate by a corporate officer of the provider if the provider does not have audited financial statements.

(c) An insurer issuing a reimbursement insurance policy to a provider is considered to have received the premium for that insurance policy upon payment by a consumer of the fee for a service contract issued by the insured provider.

(d) The termination or nonrenewal of a provider's reimbursement insurance policy does not reduce the insurer's responsibility with respect to service contracts issued by the provider before the date of the termination or, in the case of nonrenewal, the expiration of the policy.

(e) Nothing in this subsection prevents, or limits the right of, an insurer that issued a reimbursement insurance policy to seek indemnification from or subrogation against a provider if the insurer pays or is obligated to pay the service contract holder any amount that the provider was obligated to pay under the service contract.

(7) ASSURANCE OF PERFORMANCE; DEPOSIT OR IRREVOCABLE LETTER OF CREDIT. (a) A provider may satisfy sub. (5) by providing security to compensate any service contract holder who sustains a loss due to the failure of the provider to perform its obligations under a service contract as a result of insolvency or other financial impairment. The commissioner shall approve the amount and form of the security.

(b) The security under this subsection shall be in one or a combination of the following forms:

1. A deposit of securities under s. 601.13 for the benefit of Wisconsin consumers.

2. An irrevocable letter of credit that is from a bank properly chartered by the federal government or any state, that is acceptable to the commissioner, and that is issued for a term of at least 5 years with provision for renewal 2 years before termination. The letter of credit shall be payable to the commissioner or the commissioner's designee for the benefit of Wisconsin consumers upon a finding by the commissioner that a provider is insolvent or financially impaired and unable to meet its obligations under service contracts issued in Wisconsin. The provider shall notify the commissioner in writing of the nonrenewal of a letter of credit within 30 days after receiving a notice of nonrenewal. No provider whose letter of credit has been nonrenewed may offer or sell or renew any service contract on or after the date of nonrenewal until the provider obtains security satisfying the requirements of this subsection or satisfies the requirements of sub. (6).

(c) The security under this subsection shall be not less than \$50,000 plus one of the following:

1. If the provider has not appointed an administrator under s. 616.54 (1), 15 percent of the provider fees collected from service contract holders for all unexpired service contracts in force in Wisconsin on January 1 of each year.

2. If the provider has appointed an administrator under s. 616.54 (1), 22.5 percent of the provider fees collected from service contract holders for all unexpired service contracts in Wisconsin on January 1 of each year.

(d) The security under this subsection shall continue until released by the commissioner pursuant to a finding that it is not necessary for the reasonable protection of Wisconsin consumers.

(8) FINANCIAL STATEMENTS. A provider using a deposit or irrevocable letter of credit as specified in sub. (7) to satisfy sub. (5) shall, by the end of the 5th month following the end of each fiscal

year of the provider, submit financial statements for the fiscal year to the commissioner that are prepared on an accrual basis in accordance with generally accepted accounting principles and that are audited by an independent certified public accountant.

(9) **COMMISSIONER LIMITATION.** Except for the requirements specified in sub. (5), no other financial security requirements shall be required by the commissioner for providers.

(10) **PAYMENT OF CLAIMS.** A provider shall be subject to and shall pay claims under a service contract in accordance with s. 628.46 (1) and (2).

(11) **SERVICE CONTRACT SELLERS.** A service contract seller is not subject to licensure or registration under this subchapter.

History: 2011 a. 226.

616.56 Form filing and required disclosures. (1) A service contract may not be marketed, sold, offered for sale, issued, made, proposed to be made, or administered in this state unless the service contract has been filed with and approved by the commissioner in a manner and format prescribed by the commissioner. Service contracts shall be filed in the final printed format or typed facsimile exactly as they will be offered for issuance or delivery in this state.

(2) Service contracts shall be written, printed, or typed in commonly understood language, shall be legible, appropriately divided, and captioned by their various sections, and their various sections shall be presented in a meaningful sequence. Contract filings shall be accompanied by a certificate of compliance and readability signed by an officer of the provider or administrator submitting the contract for review and approval.

(3) Service contracts shall contain the following statement printed in bold and capitalized type: “THIS CONTRACT IS SUBJECT TO LIMITED REGULATION BY THE OFFICE OF THE COMMISSIONER OF INSURANCE.”

(4) Service contracts insured under a reimbursement insurance policy pursuant to s. 616.54 (6) shall contain a statement in substantially the following form: “Obligations of the provider under this service contract are insured under a service contract reimbursement insurance policy.” The service contract shall state the name and address of the insurer; state that if a provider does not provide, or reimburse or pay for, a service that is covered under a service contract within 60 days after a contract holder provides proof of loss, or if the provider becomes insolvent or otherwise financially impaired, the contract holder may file a claim directly with the service contract reimbursement insurer for reimbursement, payment, or provision of the service; and state the instructions on how to file a claim.

(5) Service contracts not insured under a reimbursement insurance policy pursuant to s. 616.54 (6) shall contain a statement in substantially the following form: “Obligations of the provider under this service contract are backed by the full faith and credit of the provider.”

(6) Service contracts shall state the name and address of the provider, and shall identify any administrator that is different from the provider, the service contract seller, and the service contract holder, if the name of the service contract holder has been furnished by the service contract holder. The identities of such parties are not required to be preprinted on the service contract and may be added to the service contract at the time of sale.

(7) Service contracts shall state the total purchase price and the terms under which the service contract is sold. The purchase price is not required to be preprinted on the service contract and may be negotiated at the time of sale with the service contract holder.

(8) Service contracts shall identify any applicable deductible amount.

(9) Service contracts shall specify the merchandise and services to be provided and any limitations, exceptions, or exclusions.

(10) Service contracts covering motor vehicles shall state whether the use of nonoriginal manufacturers’ parts is allowed.

(11) Service contracts shall state any applicable restrictions governing the transferability of the service contract.

(12) Service contracts shall state the terms, restrictions, or conditions governing cancellation of the service contract by the provider prior to the termination or expiration date of the service contract. A service contract may be cancelled by a provider only for nonpayment of the provider fee, material misrepresentation by the contract holder to the provider or administrator, or substantial breach of duties by the service contract holder relating to the covered product or its use. A provider shall comply with all of the following when cancelling a service contract:

(a) The provider shall mail a written notice to the service contract holder at the last-known address of the service contract holder contained in the records of the provider at least 5 days prior to cancellation by the provider.

(b) The notice under par. (a) shall state the effective date of the cancellation and the reason for the cancellation.

(c) If a service contract is cancelled by the provider for a reason other than nonpayment of the provider fee, the provider shall refund to the service contract holder 100 percent of the unearned pro rata provider fee, less any claims paid.

(d) A provider may charge a reasonable administrative fee for cancellation, which may not exceed 10 percent of the provider fee.

(13) Service contracts shall set forth all of the obligations and duties of the service contract holder, including the duty to protect against any further damage and any requirement to follow the owner’s manual.

(14) Service contracts shall state whether or not the service contract provides for or excludes consequential damages or pre-existing conditions. Service contracts may, but are not required to, cover damage resulting from rust, corrosion, or damage caused by a noncovered part or system.

(15) Service contracts shall require the provider to permit the service contract holder to return the service contract within 20 days of the date the service contract was mailed to the service contract holder, or within 10 days of delivery if the service contract is delivered to the service contract holder at the time of sale, or within a longer period permitted under the service contract. Upon return of the service contract to the provider within the applicable period, if no claim has been made under the service contract prior to its return to the provider, the service contract is void and the provider shall refund to the service contract holder, or credit the account of the service contract holder, the full purchase price of the service contract. Unless otherwise stated in a service contract, the right to void a service contract under this paragraph is not transferable and shall apply only to the original service contract purchaser. If a provider does not pay or credit a refund within 45 days after the return of a service contract to the provider, the provider shall pay a 10 percent per month penalty of the refund amount outstanding which the provider shall add to amount of the refund.

(16) Service contracts shall provide that, subsequent to the period specified in sub. (15) for voiding a service contract or if a claim has been made under a service contract within such period, a service contract holder may cancel the service contract and the provider shall refund to the service contract holder 100 percent of the unearned pro rata provider fee, less any claims paid. A provider may charge a reasonable administrative fee for the cancellation, which may not exceed 10 percent of the provider fee.

(17) A service contract shall be subject to s. 631.85.

(18) In the event of a total loss of property covered by a service contract that is not covered by a replacement of the property pursuant to the terms of the contract, a service contract holder shall be entitled to cancel the service contract and receive a pro rata refund of any unearned provider fee, less any claims paid.

History: 2011 a. 226; s. 35.17 correction in sub. (12).

616.58 Prohibited acts. (1) (a) A provider shall not use in its name used in this state the words “insurance,” “casualty,” “surety,” or “mutual” or any other words descriptive of the insurance, casualty, or surety business; or a name deceptively similar to the name or description of any insurance or surety corporation, or to the name of any other provider. The word “guaranty” or a similar word may be used by a provider.

(b) Paragraph (a) does not apply to a provider that was using any language prohibited under par. (a) in its name used in this state prior to April 20, 2012.

(2) (a) No provider, administrator, service contract seller, or provider’s representative may make or cause to be made any communication relating to a service contract, the service contract business, insurance business, any insurer, any administrator, or any provider that contains false or misleading information, including information that is misleading due to incompleteness. Filing a report and, with intent to deceive a person examining it, making a false entry in a record or intentionally refraining from making a proper entry, are “communications” within the meaning of this paragraph. No provider or administrator may use any business name, slogan, emblem, or related device that is misleading or likely to cause the provider or administrator to be mistaken for another provider or administrator already in business.

(b) If an administrator or representative of a provider distributes cards or documents, exhibits a sign, or publishes an advertisement that violates par. (a), having reference to a particular provider that the administrator or representative represents, such violation creates a rebuttable presumption that the violation was also committed by the provider.

(3) A person, including a bank, savings and loan association, lending institution, manufacturer, or seller of any product, shall not require the purchase of a service contract as a condition of a loan or a condition for the sale of any property, except that a person buying or selling a home may condition the purchase or sale of the home on the seller’s or buyer’s procurement of a service contract that covers the home.

(4) A motor vehicle service contract provider or its representative shall not, directly or indirectly, represent in any manner, whether by written solicitation or telemarketing, a false, deceptive, or misleading statement with respect to any of the following:

(a) The provider’s affiliation with a motor vehicle manufacturer.

(b) The provider’s possession of information regarding a motor vehicle owner’s current motor vehicle manufacturer’s original equipment warranty.

(c) The expiration of a motor vehicle owner’s current motor vehicle manufacturer’s original equipment warranty.

(d) A requirement that a motor vehicle owner purchase a new motor vehicle service contract with the provider in order to maintain coverage under the motor vehicle owner’s current motor vehicle service contract or manufacturer’s original equipment warranty.

History: 2011 a. 226.

616.60 Record-keeping requirements. (1) (a) A provider shall keep accurate accounts, books, and records concerning transactions regulated under this subchapter.

(b) A provider’s accounts, books, and records shall include all of the following:

1. Copies of each type of service contract sold.
2. The name and address of each service contract holder that has furnished such information to the provider.
3. A list of the locations where service contracts are marketed, sold, or offered for sale in this state.
4. Written claims files that shall contain at least the dates, descriptions, and amounts paid or denied for claims related to the service contracts.
5. The effective date, expiration date, name of the seller, and provider fee paid for each service contract sold in this state.

(c) Except as provided in sub. (2), a provider shall retain all records required to be maintained under this subsection for a service contract for at least one year after the period of coverage specified in the contract has expired.

(d) The records required under this subsection may be, but are not required to be, maintained on a computer disk or other record-keeping technology. If the records are maintained in other than hard copy, the records shall be capable of duplication to electronic copy or legible hard copy at the request of the commissioner.

(2) A provider discontinuing business in this state shall maintain its records until it furnishes the commissioner satisfactory proof that it has discharged all obligations to service contract holders in this state.

History: 2011 a. 226.

616.62 Enforcement. (1) The commissioner may conduct examinations of providers, administrators, service contract sellers, or other persons under ss. 601.43 to 601.45 to enforce the provisions of this subchapter and protect service contract holders in this state. Upon request of the commissioner, a provider shall make all accounts, books, and records concerning service contracts sold by or on behalf of the provider available to the commissioner which are necessary to enable the commissioner to reasonably determine compliance with this subchapter.

(2) The commissioner may take any action under ss. 601.41 and 601.61 to 601.73 that is necessary or appropriate to enforce the provisions of this subchapter and the commissioner’s rules and orders and to protect service contract holders in this state. The commissioner may subject a provider to any reporting and replying requirement under s. 601.42.

History: 2011 a. 226.

SUBCHAPTER IV

MOTOR CLUB SERVICE CONTRACTS

616.71 Motor club service; definitions. As used in this subchapter, unless the context or subject matter otherwise requires:

(1) “Agent” means one who solicits the purchase of service contracts, as herein defined, or transmits for another any such contract, or application therefor, to or from the company, or acts or aids in any manner in the delivery or negotiation of any such contract, or in the renewal or continuance thereof.

(2) “Bail bond service” means any act by a company, as herein defined, the purpose of which is to furnish to, or procure for, any person accused of violation of any law of this state a cash deposit, bond or other undertaking required by law in order that the accused might enjoy personal freedom pending trial.

(3) “Buying and selling service” means any act by a company, as herein defined, whereby the holder of a service contract with any such company is aided in any way in the purchase or sale of an automobile.

(4) “Commissioner” means the commissioner of insurance, or the commissioner’s assistants or deputies, or other persons authorized to act for the commissioner.

(5) “Company” means any person, firm, partnership, company, association or corporation engaged in selling, furnishing or procuring, as principal, for a consideration, motor club service.

(6) “Discount service” means any act by a company, as herein defined, resulting in the giving of special discounts, rebates or reductions of price on gasoline, oil, repairs, parts, accessories or service for motor vehicles, to holders of service contracts with any such company.

(7) “Emergency road service” means any act by a company, as herein defined, consisting of the adjustment, repair or replacement of the equipment, tires or mechanical parts of an automobile so as to permit it to be operated under its own power.

(8) “Financial service” means any act by a company, as herein defined, whereby loans or other advances of money, with or without security, are made to holders of service contracts with any such company.

(9) “Insurance service” means any act by a company, as herein defined, consisting of the selling or giving with a service contract, as herein defined, or as a result of membership in or affiliation with a company, as herein defined, a policy of insurance covering liability or loss by the holder of a service contract with any such company as the result of injury to the person of such service contract holder following an accident resulting from the ownership, maintenance, operation or use of a motor vehicle.

(10) “Legal service” means any act by a company, as herein defined, consisting of the hiring, retaining, engaging or appointing of an attorney or other person to give professional advice to, or represent, holders of service contracts with any such company, in any court, as the result of liability incurred by the right of action accruing to the holder of a service contract as a result of the ownership, operation, use or maintenance of a motor vehicle.

(11) “Map service” means any act by a company, as herein defined, by which road maps are furnished without cost to holders of service contracts with any such company.

(12) “Motor club service” means the rendering, furnishing or procuring of 3 or more of the following, to any person, in connection with that person’s ownership, operation, use, or maintenance, of a motor vehicle, in consideration of that person’s being or becoming a member of, affiliated with or entitled to membership or other motor club service from any company rendering, procuring or furnishing those services by virtue of any agreement or understanding with any such company:

- (a) Towing service.
- (b) Emergency road service.
- (c) Insurance service.
- (d) Bail bond service.
- (e) Legal service.
- (f) Discount service.
- (g) Financial service.
- (h) Buying and selling service.
- (i) Theft service.
- (j) Map service.
- (k) Touring service.

(13) “Service contract” means any written agreement whereby any company, as herein defined, for a consideration, promises to render, furnish, or procure for any other person, whether that person is a member of such company or otherwise, motor club service, as herein defined.

(14) “Theft service” means any act by a company, as herein defined, the purpose of which is to locate, identify or recover a motor vehicle, owned or controlled by the holder of a service contract with any such company, which has been, or may be, stolen, or to detect or apprehend the person guilty of such theft.

(15) “Touring service” means any act by a company, as herein defined, by which touring information is furnished without cost to holders of service contracts with any such company.

(16) “Towing service” means any act by a company, as herein defined, consisting of the drafting or moving of a motor vehicle from one place to another under other than its own power.

History: 1977 c. 339 ss. 8, 44; Stats. 1977 s. 616.71; 1979 c. 355 s. 236; 1983 a. 189; 1987 a. 166; 1991 a. 316; 1993 a. 490; 1997 a. 254.

616.72 License to sell motor club service. No company shall sell or offer for sale any motor club service without first having deposited with the commissioner the sum of \$25,000, in cash or securities approved by the commissioner, or, in lieu thereof, a bond in the form prescribed by the commissioner, payable to the state of Wisconsin, in the sum of \$50,000, with corporate surety approved by the commissioner, conditioned upon the faithful per-

formance in the sale or rendering of motor club service and payment of any fines or penalties levied against it for failure to comply with this chapter. Upon the depositing of such security with the commissioner, it shall be the duty of said commissioner to issue a certificate of authority to said company. The provisions of this section shall not affect or apply to any company heretofore organized which has been in continuous operation in this state for a period of more than 3 years immediately prior to May 24, 1933 and has a fully paid annual membership of more than 500 members within this state. The foregoing cash deposit or bond is not required in any instance as a penalty, but for the protection of the public only.

History: 1977 c. 339 ss. 8, 44; Stats. 1977 s. 616.72.

616.74 Manner of obtaining company license; fee.

(1) No certificate of authority shall be issued by the commissioner until the company has filed with the commissioner the following:

(a) A formal application in such form and detail as the commissioner may require, executed under oath by its president or other principal officer;

(b) A certified copy of its charter or articles of incorporation and its bylaws, if any;

(c) A certificate from the department of financial institutions, if it is a nonprofit corporation, that it has complied with the corporation laws of this state; if it is a corporation the stock of which has been or is being sold to the general public, a certificate from the division of securities that it has complied with the requirements of the securities law of this state.

(2) No certificate of authority shall be issued by the commissioner until the company has paid to the commissioner the fee required by s. 601.31 (1) (b).

(3) Every certificate of authority issued hereunder shall expire annually on July 1, of each year, unless sooner revoked or suspended, as hereinafter provided.

History: 1971 c. 307; 1977 c. 339 s. 8; Stats. 1977 s. 616.74; 1979 c. 102 s. 237; 1991 a. 316; 1995 a. 27.

616.76 Form of service contract. No service contract shall be executed, issued, or delivered in this state until the form thereof has been approved in writing by the commissioner.

History: 1977 c. 339 s. 8; Stats. 1977 s. 616.76.

616.77 Execution of service contract. Every service contract, executed, issued, or delivered in this state shall be made in duplicate, and shall be dated and signed by the company issuing the service contract and by the party purchasing the service contract, and one copy shall be kept by the company, and the other copy shall be delivered to the party purchasing the service contract.

History: 1977 c. 339 s. 8; Stats. 1977 s. 616.77; 1987 a. 166.

616.78 Contents of contract. No service contract shall be executed, issued, or delivered in this state unless it contains the following:

(1) The exact corporate or other name of the company.

(2) The exact location of its home office and of its usual place of business in this state, giving street number and city.

History: 1977 c. 339 s. 8; Stats. 1977 s. 616.78.

616.79 Only agents to solicit business. No person shall solicit, or aid in the solicitation of, another person to purchase a service contract issued by a company not duly licensed under this subchapter.

History: 1977 c. 339 ss. 8, 44; 1979 c. 355 s. 236.

616.80 Misrepresentations forbidden. No company, and no officer or agent thereof, shall orally, or in writing, misrepresent the terms, benefits, or privileges of any service contract issued, or to be issued, by it.

History: 1977 c. 339 s. 8; Stats. 1977 s. 616.80.

616.81 Company always bound by contract. Any service contract made, issued, or delivered contrary to any provision of this subchapter shall nevertheless be valid and binding on the company.

History: 1977 c. 339 ss. 8, 44; Stats. 1977 s. 616.81; 1979 c. 355 s. 236.

616.82 Person exempted. Nothing in this subchapter applies to an authorized attorney at law acting in the usual course of the profession, nor to any insurance company, bonding company, or surety company now or hereafter duly and regularly licensed and doing business as such under the laws of this state.

History: 1977 c. 339 ss. 8, 44; Stats. 1977 s. 616.82; 1979 c. 89, 176; 1979 c. 355 s. 236.