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West's Wisconsin Statutes Annotated Currentness
Insurance (Ch. 600 to 655)
Chapter 611. Domestic Stock and Mutual Insurance Corporations (Refs & Annos)
Subchapter II. Organization of Corporations (Refs & Annos)
611.24. Segregated accounts in general

(1) Mandatory segregated accounts. A corporation shall establish segregated accounts for the following classes of insurance business, if it also does other classes of insurance business:

(a) Mortgage guaranty insurance;

(am) Unless the corporation is exempted by the commissioner by rule or order, financial guaranty insurance, if the corporation commences this class of insurance business on or after March 25, 1988, or if the corporation engages in this class of business on or after November 1, 1988; and

(b) Life insurance including fixed and variable annuities. Disability insurance may be included in a life insurance account.

(2) Optional segregated accounts. With the approval of the commissioner, a corporation may establish a segregated account for any part of its business. The commissioner shall approve unless he or she finds that the segregated account would be contrary to the law or to the interests of any class of insureds.

(3) Special provisions for segregated accounts. (a) *Capital and surplus.* The commissioner shall specify in the certificate of authority of a newly organized corporation the minimum capital or the minimum permanent surplus and the initial expendable surplus to be provided for each segregated account. If a segregated account is established after a certificate of authority has been issued, the commissioner shall require the corporation to have and maintain an adequate amount of capital and surplus in the segregated account.

(b) *Identification.* The income and assets attributable to a segregated account shall always remain identifiable with the particular account but unless the commissioner so orders, the assets need not be kept physically separate from other assets of the corporation. The income, gains and losses, whether or not realized, from assets attributable to a segregated account shall be credited to or charged against the account without regard to other income, gains or losses of the corporation.

(c) *Charges.* Except under par. (e), assets attributable to a segregated account shall not be chargeable with any liabilities arising out of any other business of the corporation, nor shall any assets not attributable to the account

be chargeable with any liabilities arising out of it, except under par. (i).

(d) *Incidental business.* Incidental business done by a corporation under s. 610.21 may be done under the general account or under any segregated account approved by the commissioner. Expenses and income for such business shall be allocated among the general account and all segregated accounts in accordance with generally accepted accounting principles.

(e) *Delinquency proceedings.* Each segregated account shall be deemed an insurer within the meaning of s. 645.03(1)(f). A liquidation order under s. 645.42 for the general account or for any segregated account shall have effect as a rehabilitation order under s. 645.32 for all other accounts of the corporation. Claims remaining unpaid after completion of the liquidation under ch. 645 shall have liens on the interests of shareholders, if any, in all of the corporation's assets that are not liquidated, and the rehabilitator may transform the liens into ownership interests under s. 645.33(5).

(f) *Ownership.* Assets allocated to segregated accounts are the property of the corporation, which is not and shall not hold itself out to be a trustee of the assets.

(g) *Common assets.* A corporation may own a particular asset in determinate proportions for segregated accounts, for its general account or as a trustee when acting as such within its legal powers.

(h) *Transfer.* The corporation may by an identifiable act transfer assets for fair consideration among the segregated accounts, the general account and any trust accounts of the corporation.

(i) *Expenses, loans, and services.* The general account of the corporation, or any segregated account, may for a fair consideration provide loans or guarantees in connection with, perform services for, or reinsure other accounts, subject to rules promulgated by the commissioner. Generally accepted accounting principles and realistic actuarial tables may be considered to ascertain what is a fair consideration. Notwithstanding s. 645.68, the commissioner may assign a general or segregated account obligation to a segregated account an order of distribution higher in priority than provided for under s. 645.68(5).

<<For credits, see Historical Note field.>>

COMMENTS--L.1979, C. 109

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> Segregated accounts, by their very nature, are the equivalent of a "company within a company". Since both assets and liabilities are insulated from the rest of the company's business, each segregated account must have adequate capital and surplus, or an appropriate substitute. The requirements of s. 611.19 (or its equivalent in other chapters) should be satisfied in order to justify insulation of the account's business from the rest of the insurer's business. Moreover, unless adequate capital and surplus is required,

there is no justification for having ch. 646 apply to the account, for that chapter requires the entire industry to underwrite the solidity of the account, with recourse to shareholder interests in the insurer under s. 611.24(3)(e) but with no recourse to any surplus in a mutual insurer. Thus, the requirement is more important for mutual than for stock insurers.

COMMENTS--L.1971, C. 260, § 72

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Some branches of the insurance business are much riskier than others. Traditionally, it has been considered desirable for certain kinds of business to be transacted by separate companies, so that adverse experience or failure in the more hazardous venture would not endanger the policyholders in the more stable types of business. On the other hand, the needs of the market have produced a combination of coverages. This has helped develop fleets or groups of corporations under common management. With more refined actuarial and management techniques, reducing the risk of failure even in the more hazardous types of business, and the growing demand for a combination of coverages in a single policy, the traditional requirements of a separation of lines have been substantially relaxed in recent decades. Under s. 201.05(1) [repealed], all lines may be transacted by a single corporation, with the single exception of mortgage guaranty insurance, and the requirement of s. 201.05(2) [repealed] that for life insurance a "separate" account has to be maintained if other insurance is also written. Sub. (1) continues this idea that insurers should not be forced to form separate corporate entities if they do not want to. Of course, insurers have, for a variety of reasons, often found it desirable to establish separate corporations for certain divisions of their business, even within a single line. High risk automobile business is an illustration.

Despite this liberalization, it is not yet possible to abandon completely the notion that the fortunes of policyholders in hazardous and secure types of insurance should be separated. One of the secure lines is life insurance. It should be kept apart from any other business, lest the life policyholders have to subsidize other business in times of stress. On the merits, this should perhaps include separation from the more hazardous forms of disability insurance. This could be achieved in this law by deleting the exception of sub. (1)(b). However, in view of the long history of combined life and disability insurance operation, this law continues to permit the combination without qualification.

Mortgage guaranty insurance has long been regarded as a particularly hazardous type of business, based primarily on bad experience in the 1930's. Whether it is still hazardous with modern techniques is questionable. Perhaps sub. (1)(a) could be deleted. This law no longer requires a separate corporate entity for such insurance but, taking a cautious approach, continues the requirement of segregation of assets. The peculiar characteristics of the business may justify the separation irrespective of the question of hazard.

Sub. (2) provides for optional segregated accounts under any circumstances the corporation wishes, if the separation meets the commissioner's approval. This is effect extends to all insurance the liberality of former s. 206.385(1), but protects insureds by requiring the commissioner's approval. S. 206.385(1) is

continued expressly (with minor changes) for life insurers in s. 611.25(2).

The basic idea behind segregated accounts is that different operations can be kept independent without formally creating a separate corporation. A segregated account is in some respects like a "corporation within a corporation". Its legal nature and treatment is prescribed in sub. (3). Sub. (3)(a) requires that a segregated account be equipped with an adequate share of the corporation's capital and surplus. This is indispensable if the account is to be expected to function and survive like a separate corporation. If it carries no risks not assumed by the corporation's general account, the commissioner may set the required figure at zero under s. 611.19(1). There is no reason why a corporation which could create a subsidiary under s. 611.26(2) for any portion of its insurance business should not be permitted to achieve the desired separation by establishing a segregated account, provided it is adequately capitalized to make it independently viable, and the commissioner approves its creation.

Sub. (3)(b) continues former s. 206.385(3) but without the reference to the contract. The law should provide for such attribution of income, gains and losses without regard to the contract. Otherwise, segregation has little meaning. This would not prevent transfers to other parts of the corporation to pay designated expenses, in accordance with sound accounting principles.

Sub. (3)(c) continues s. 206.385(5m) but makes the immunity bilateral instead of unilateral. This does not prevent the corporation in its general account from underwriting, for a price that will be under supervision under par. (i), such things as the mortality experience or the expense load assumed in the premiums charged the segregated account policyholder.

Sub. (3)(d) is necessary to accommodate the collateral activities contemplated by s. 611.26.

Sub. (3)(e) is new. It recognizes that for a variety of reasons, the general account or some segregated accounts may fail. It should then be possible to liquidate it without disturbing the other segregated operations of the corporation, except to subject the ownership interests of shareholders to the costs of the failure in any part of the corporation's operation. Though the typical segregated account could not fail because of a decline in the value of its portfolio of assets, it could fail if the assets were embezzled or stolen without proper insurance against those risks. Such an event is improbable but should be contemplated by the law.

Sub. (3)(f) continues s. 206.385(5), in edited form. It makes clear an important, but sometimes misunderstood principle, that an insurance corporation is not a trustee of assets but a debtor on insurance contracts. A quasi-trust notion is often used to justify regulation, or at least particular aspects of regulation. But there is no true "trust" relationship, although the separation of assets in segregated accounts provides an additional similarity to the true trustee-beneficiary relationship.

Sub. (3)(g) is new. There is no reason assets cannot be held jointly by different accounts in the same corporation, so long as the corporation's records make it always determinable how they are held.

Sub. (3)(h) continues s. 206.385(7), slightly elaborated. The transfer should be by an identifiable act, to lessen any chance of manipulation of assets for improper purposes. The fair consideration requirement is presently implicit in s. 206.385(7) (the rule-making power) and s. 206.385(6) (prohibiting unfair discrimination). Explicit reference to it as a standard seems desirable.

Sub. (3)(i) continues s. 206.385(6). It recognizes that the general account of a corporation may insure the mortality assumptions and expense loading of a segregated account, for a fair consideration.

HISTORICAL AND STATUTORY NOTES

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Source:

L.1979, c. 102, § 236, eff. Dec. 18, 1979.

L.1979, c. 109, § 1r, eff. Feb. 16, 1980.

L.1981, c. 314, § 146, eff. May 1, 1982.

1987 Act 167, §§ 3, 4, eff. March 25, 1988.

2010 Electronic Pocket Part Update

2009 Act 342, § 9t, eff. May 28, 2010.

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Prior Laws:

L.1965, c. 260, § 1.

St.1965, § 206.385.

L.1967, c. 338, §§ 2, 4, eff. Feb. 3, 1968.

L.1971, c. 260, §§ 52, 53, 72, eff. April 30, 1972.

St.1973, §§ 206.385, 611.24.

L.1975, c. 371, § 13, eff. June 17, 1976.

L.1975, c. 372, § 28.

L.1975, c. 375, § 19.

L.1975, c. 422, § 107.

2010 Electronic Pocket Part Update

2009 Legislation:

2009 Act 342 amended subsec. (3)(i).

CROSS REFERENCES

Evaluation of accounts established under this section, see § 620.02.
Fraternals, application of this section, see § 614.24.
Gift annuities, see § 615.10.
Nondomestic insurers, substantial compliance with this section, see § 618.21.
Service insurance corporations, application of this section, see § 613.24.

ADMINISTRATIVE CODE REFERENCES

Mortgage guaranty insurance, see Wis. Adm. Code s Ins 3.09.

LIBRARY REFERENCES

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Insurance ⚿ 1136, 1138, 1196.
Westlaw Topic No. 217.
C.J.S. Insurance §§ 49, 101, 104, 108, 119.

W. S. A. 611.24, WI ST 611.24

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