

Chapter Ins 6

GENERAL

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**Ins 6.01 Foreign company to operate two years before admission.** Experience has demonstrated that until a company has engaged in the business of insurance for at least 2 years there is not a sufficient basis upon which to form a judgment as to whether its methods and practices in the conduct of its business are such as to safeguard the interests of its policyholders and the people of this state. Therefore, no application of a foreign insurance company or mutual benefit society for a license to

transact business in Wisconsin will be considered until it has continuously transacted the business of insurance for at least 2 years immediately prior to the making of such application for license.

**Ins 6.02 Company to transact a kind of insurance two years before admission.** (1) Experience has demonstrated that until a company has engaged in a kind of insurance or in another kind of insurance of the same class for at least 2 years, there is not a sufficient basis upon which to form a judgment as to whether its methods and practices in the conduct of its business in such kind of insurance or another kind in the same class of insurance, are such as to safeguard the interests of its policyholders and the people of this state. Therefore, no application of a foreign insurance company or mutual benefit society for a license to transact a kind of insurance business in Wisconsin will be considered until it has continuously transacted that kind of insurance, or another kind of insurance in the same class of insurance as that for which it makes such application; for at least 2 years immediately prior to making such application. For the purposes hereof, insurance is divided into kinds of insurance according to the provisions of section Ins 6.75 each subsection setting forth a separate kind, and into classes of insurance upon the basis of and including the said kinds as follows:

(a) Fire insurance includes the kinds in section Ins 6.75 (2) (a).

(b) Life insurance includes the kinds in section Ins 6.75 (1) (a) and (b) but excluding all insurance on the health of persons other than that authorized in s. 627.06, Stats., and section 6.70, Wis. Adm. Code.

(c) Casualty insurance includes the kinds in section Ins 6.75 (2) (c) through (n).

(2) Provided, however, that nothing herein shall preclude consideration of an application to transact the kind of insurance in Ins 6.75 (1) (e) or (2) (c) if the applicant company has transacted any of the kinds of insurance in Ins 6.75 (1) (a) and (b) or (2) (d), (e), (k) and (n) continuously for 2 years immediately prior to the making of application for license to transact the kind of insurance in Ins 6.75 (1) (e) or (2) (c).

**History:** 1-2-56; emerg. am. eff. 6-22-76; am. Register, September, 1976, No. 249, eff. 10-1-76; am. Register, March, 1979, No. 279, eff. 4-1-79.

**Ins 6.03 Nonresident casualty and fire insurance agents.** (1) Separate licenses are required for the solicitation of casualty insurance business and of fire insurance business.

(4) The company which a nonresident wishes to represent as an agent must furnish a statement showing that the applicant is appointed to solicit insurance in Wisconsin as its agent and agree that it will be bound by his knowledge and acts to the same extent as it is in connection with authorized resident agents in Wisconsin.

(6) The applicant will be required to make full disclosure regarding any connection which he may have as an employe or member of any agency partnership, association or corporation, including the full names and residences of all members, officers, directors and stockholders.

(7) Licenses issued on or after November 1, 1949, shall expire on the next succeeding November 1st. The fee for each nonresident agent's license shall be \$10.00.

**History:** 1-2-56; r. (6) and renum. (7) and (8) to be (6) and (7), Register, February, 1976, No. 242, eff. 3-1-76; emerg. r. (2), (3) and (4); r. (2), (3) and (5), Register, September, 1976, No. 249, eff. 10-1-76.

Register, March, 1979, No. 279

(d) Base all such rates on sound actuarial principles or a valid classification system and actual experience statistics.

(6) **PENALTY.** Violation of this rule shall subject the insurer to the penalties set forth in s. 601.64, Stats.

**History:** Cr. Register, May, 1976, No. 245, eff. 6-1-76; emerg. am. (1), eff. 6-22-76; am. (1), Register, September, 1976, No. 249, eff. 10-1-76.

**Ins 6.57 Listing of insurance agents by insurers.** (1) Submission of an application for an intermediary-agent appointment shall constitute the initial listing of such agent in accordance with s. 628.11, Stats., and such application shall be submitted to the office of the commissioner of insurance on or before the date of appointment on forms 11-1 and 11-9 for resident individual intermediary-agents and on form 11-17 for non-resident individual intermediary-agents.

(2) Notice of termination of appointment of individual intermediary-agent in accordance with s. 628.11, Stats., shall be filed prior to or within 15 calendar days of the termination date with the office of the commissioner of insurance on form 11-11. Prior to or within 7 days of filing this termination notice, the insurer must provide the agent written notice that the agent is no longer to be listed as a representative of the company and that he or she may not act as its representative. This notice shall also include a formal demand for the return of all indicia of agency. "Termination date" means the date on which the insurer effectively severs the agency relationship with its intermediary-agent and withdraws the agent's authority to represent the company in any capacity.

(3) In addition, each insurer shall pay once each year, in accordance with an assigned billing schedule, the annual listing fee defined in s. 601.31 (16), Stats., within 30 days after the mailing of a payment notice to such insurer showing the amount due for all individual intermediary-agents serving as agents for such insurer, according to the commissioner's records as of the end of the month prior to the notice date. A billing schedule shall be adopted by the commissioner under which listing notices will be sent to insurers. This schedule will also designate the calendar month of billing for the various insurers and/or insurer groups.

(4) Fees applicable for listing of insurance agents under s. 628.11, Stats., are hereby established to be:

|  |         |
|--|---------|
| Resident individual intermediary-agents    | \$ 5.00 |
| Nonresident individual intermediary-agents | 15.00   |

(5) No insurer shall accept business directly from any intermediary unless that intermediary is a licensed intermediary-agent listed with that company or unless the intermediary holds a valid license as an intermediary-broker.

(6) No intermediary-agent shall submit an application for insurance directly to an insurer or solicit insurance on behalf of a particular insurer unless the agent is listed with that insurer.

**History:** Cr. Register, December, 1976, No. 252, eff. 1-1-77; r. and recr. Register, March, 1978, No. 267, eff. 4-1-78; cr., (5) and (6), Register, March, 1979, No. 279, eff. 4-1-79.

**Ins 6.58 Insurance marketing individual intermediary-agent examination and licensing.** (1) The purpose of this rule is to establish procedures for a currently authorized insurance agent to be examined

and to become licensed as an individual intermediary-agent under subchapter II, Licensing of Intermediaries, ch. 628, Insurance Marketing, Stats.

(2) Any resident or non-resident insurance agent holding a valid certification of registration or valid non-resident insurance agent's license issued in conformance with section Ins 6.56 can make application that his or her experience and performance to date should be considered as primary evidence that he or she is competent and trustworthy to qualify to be licensed as an individual intermediary-agent under the conditions and qualifications of s. 628.04, Stats.

(3) Such application by a currently authorized agent must be received by the commissioner of insurance by January 31, 1977, if that agent wants his or her experience and performance to date to be considered as primary evidence to be utilized for issuance of an individual intermediary-agent license on or before May 31, 1977.

(4) Examination and investigation of currently authorized agents will be based, in part, on information completed on such application.

(5) Examination and investigation activities may include a review of correspondence and complaints involving individual agents, a review of insurance company records and experience on selected agents, a review of data submitted in the application, individual interviews, and other steps prescribed in advance, in accordance with appropriate standards established by rule, to determine the competence and trustworthiness of the applicants.

(6) The application by a currently authorized agent for issuance of an individual intermediary-agent license shall be made on Office of the Commissioner of Insurance Form 11-40.

(7) An examination and investigation fee of \$25.00, authorized by s. 601.31 (17), Stats., reflecting the estimated average cost of investigation and review, shall be submitted along with such application from a currently authorized insurance agent.

(8) Those applicants who satisfy the standards established by the office of the commissioner of insurance for determining the competence and trustworthiness of individual intermediary-agents will be notified prior to May 15, 1977, and upon timely payment of a license issuing fee of \$10.00, as authorized by s. 601.31 (15), Stats., will receive an individual intermediary-agent license for those lines of insurance for which they are authorized.

(9) Any currently authorized insurance agent not making application as provided in this rule by January 31, 1977, will be subject to the same licensing procedure as any new applicant for a permanent individual intermediary-agent license.

(10) Applicants subject to subsection (2) who do not receive an individual intermediary-license will have hearing or appeal rights in accordance with law.

Note: Chapter 371, Laws of 1975, established a permanent individual intermediary-agent license. This rule outlines the method whereby agents holding licenses subject to annual renewal (i.e. agents who have a "track-record" and have been subject to some screening for competence under prior law) are to make application, be examined and investigated, and where standards of trust and competence are met, be issued a permanent license in accordance with the requirements of the law.

To determine competence and trustworthiness, as required by ch. 628, Stats., any new applicant for a permanent individual intermediary-agent license will be subject to a comprehensive written qualifying examination as well as such personal investigation as may be appropriate. The above rule does not cover procedures to be established for new (i.e. previously unlicensed) individual intermediary-agents. For these applicants, examination and investigation fees may be adjusted by rule to provide for the extra cost of a written examination.

**History:** Cr. Register, December, 1976, No. 252, eff. 1-1-77.

**Ins 6.59 Licensing procedures - individual intermediary-agent.**

(1) Application for individual intermediary-agent license shall be made on Insurance Forms 11-41 (resident) or 11-42 (non-resident) and filed with the commissioner of insurance, Madison, Wisconsin. The determination by the commissioner as to the trustworthiness of the applicant shall be based, in part, on data contained on the application form. Determination on the competence of the applicant shall be based on results of an examination process, which shall include a written examination, as well as a review of the application form in accordance with Ins 6.62.

(2) Applications shall be filed with the commissioner of insurance, Madison, Wisconsin, at least 30 days prior to the scheduled date of the written examination. Written examinations can be scheduled for one or more kinds of individual intermediary-agent license authority on the same date.

(3) The following fee schedule is established, in accordance with s. 601.31 (17), Stats., for investigation and examination of an individual intermediary-agent:

(a) Individual not holding any kind of individual intermediary-agent authority as part of a license listed in Ins 6.50 (2):

|   |         |
|---|---------|
| Examination for one kind of authority     | \$25.00 |
| Examinations for two kinds of authority   | 29.00   |
| Examinations for three kinds of authority | 33.00   |
| Examinations for four kinds of authority  | 37.00   |

(b) Individual holding one or more kinds of individual intermediary-agent authority as part of a license listed in Ins 6.50 (2), or individual seeking re-examination within four months of failure to attain a passing grade for the same kind or kinds of authority.

|  |         |
|--|---------|
| Examination for one additional kind of authority     | \$16.00 |
| Examinations for two additional kinds of authority   | 20.00   |
| Examinations for three additional kinds of authority | 24.00   |
| Examinations for four additional kinds of authority  | 28.00   |

(4) The fee schedule in (3) shall be applicable to applications by non-residents seeking to become individual intermediary-agents. Where the commissioner determines that a non-resident has passed an examination as stringent as that of Wisconsin, the written examination requirement may be waived.

(5) A written examination shall be required for each kind of individual intermediary-agent license authority listed in Ins 6.50 which the applicant must personally take and pass to the satisfaction of the commissioner. Each such written examination shall be designed to effectively test the applicant's basic knowledge of the kinds of insurance for which he or she intends to solicit coverage, and the applicant's basic understanding of the applicable laws and regulations, necessary for service as a competent individual intermediary-agent.

(6) If the applicant fails an examination twice in a 6 months' period, a third application will not be accepted from that applicant prior to 6 months after the second examination date.

(7) An applicant obtaining a passing grade on the written examination who submits a satisfactory application and meets all requirements of Ins 6.62 (3) shall be issued an individual intermediary-agent license for those kinds of authority for which he or she is qualified upon timely payment of a license issuing fee of \$10.00 as authorized by s. 601.31 (15), Stats. The same fee and procedure shall apply to an enlargement of authority for which an individual intermediary-agent qualified by the current examination.

(8) Written examinations for each kind of individual intermediary-agent authority will be administered at least once a month in accordance with a schedule adopted by the commissioner at the following examination centers: Eau Claire, Green Bay, LaCrosse, Oshkosh, Madison, Rhinelander, Racine, Superior, and Stevens Point. Written examinations will be administered twice a month in Milwaukee and at least one other center.

(9) Any applicant who otherwise satisfies the standards for intermediary competence and trustworthiness who receives a grade on the written examination of at least 70% of the passing grade, can within 20 days of receiving the examination result notice, make application for an apprentice permit. An apprentice permit shall be issued when such applicant complies with the requirements established by Ins 6.60 (1), (2) and (3) and a permanent intermediary-agent license shall be issued when such applicant meets the requirement of Ins 6.60 (7).

(10) A town mutual agent exempt from licensing under s. 628.03 (1), Stats., by s. 628.05 (1), Stats., includes an agent for a town mutual not authorized to insure members against loss to property by windstorm or hail insurance as provided in ss. 612.31 (2) (a) 3 and 612.33 (2) (a), Stats., who provides windstorm or hail insurance to the town mutual's members through an insurance policy issued by another authorized insurer operating on an assessment plan. The town mutual agent need not be licensed but the other insurer must list the agent and pay the listing fee in accordance with section Ins 6.57.

**History:** Cr. Register, March, 1977, No. 255, eff. 4-1-77; am. (8), Register, June, 1978, No. 270, eff. 7-1-78; cr. (10), Register, September, 1978, No. 273, eff. 10-1-78.

**Ins 6.60 Apprentice permit procedure - individual intermediary-agent apprentice.** (1) Applications for an individual intermediary-agent apprentice permit shall be made on Insurance Form 11-43 signed by the applicant and his or her sponsor and filed with the Commissioner of Insurance, Madison, Wisconsin. No individual may apply for an apprentice permit unless he or she has obtained a grade of at least 70% of the passing grade on the written test administered in accord with Ins 6.59.

(2) A licensing fee of \$10.00 shall be payable with the application for an apprentice permit.

(3) An apprentice permit shall be issued for a three-month period if the application and other information provided the commissioner establishes that the applicant:

(a) Is embarked on a recognized study program acceptable to the commissioner for each kind of authority for which the permit is requested, and

(b) Is sponsored by:

1. An individual intermediary-agent who has been licensed in Wisconsin for 2 or more years, or

2. A licensed insurer conducting an apprentice training program approved by the commissioner. In such a program a supervisory employe must serve as the individual sponsor of the apprentice.

(4) The sponsor of an apprentice shall supervise his or her study and work activities and assumes full legal responsibility for all insurance intermediary acts and omissions of the apprentice.

(5) An individual intermediary-agent sponsor or supervisory employe of an insurer sponsor shall have no more than two apprentices during each supervision period.

(6) The requirement of insurer filing of listing and termination of appointment notices for individual intermediary-agents, established by Ins 6.57, shall be applicable to individual intermediary-agent apprentices. Each insurer listing an apprentice in accordance with Ins 6.57 shall also be responsible for the insurance intermediary acts and omissions of the apprentice.

(7) An individual intermediary-agent license shall be issued to an individual intermediary-agent apprentice upon conclusion of the three-month apprentice period upon receipt in the Office of the Commissioner of Insurance of completed Insurance Form 11-44 which shall include certification by the sponsor as to the competence and trustworthiness of the applicant, and certification that 40 hours of study in a recognized study course for each kind of individual intermediary-agent license authority have been completed.

- History: Cr. Register, March, 1977, No. 255, eff. 4-1-77.

**Ins 6.61 Intermediary records.** (1) Each intermediary shall maintain or have maintained, for a 3 year period, unless a specific period is provided elsewhere, records of the intermediary's policyholder financial transactions and records of transactions with brokerage clientele which occur in the regular course of business or are prescribed by rule, in accordance with accepted accounting principles. Such records shall include an accounting of such billings to and receipts from purchasers of insurance and payments to insurers or others for coverage provided, as have passed through the hands of the intermediary, or comparable records on an agency or partnership-wide basis. An insurer may by written agreement assume the responsibility to maintain these records for an individual intermediary-agent if the records can be made immediately available to the commissioner of insurance on demand.

(2) Each individual intermediary-agent shall maintain records for a 3 year period giving the effective date of the coverage on all newly issued contracts and indicating that the necessary suitability inquiry and replacement procedures required by Ins 2.07, Ins 2.14 (5) (f), Ins 3.27 (7), and Ins 3.29 were followed for each individually-issued life and accident and health contract written and/or replaced.

(3) Records required by subsection (1) and (2) are to be maintained at the business address of the intermediary or the insurer recorded with the commissioner of insurance, or at another location only if notice has been provided the commissioner of insurance of such alternate location.

(4) Each agent intermediary shall, within 30 days, notify the commissioner of insurance in writing of any change in the intermediary's business or residence address or any change of address of location of the intermediary's records.

**Note:** Individual intermediary-agent records which are to be maintained and subject to examination by the commissioner of insurance, are limited to transactions where the individual intermediary-agent serves in a fiduciary capacity (i.e., collects or handles premiums from his clients and remits that amount of the premium due the carrier providing the coverage). This record maintenance requirement is not intended to apply to individual intermediary-agent office expense accounts, general office management records, income tax returns, or any other individual intermediary-agent financial transactions other than financial and other records directly pertaining to the individual intermediary-agent insurance transactions between clients and providers of coverage. Amendments to the rule comprehend the records of account and disclosure set forth in Ins 6.64 which are to be maintained by intermediary-brokers and do not alter the previous requirements for intermediary-agents. Some intermediary-broker records are required to be maintained for 5 years as opposed to 3 years for intermediary-agent.

**History:** Cr. Register, March, 1977, No. 255, eff. 4-1-77; am., Register, March, 1979, No. 279, eff. 4-1-79.

**Ins 6.62 Competence and trustworthiness standards.** (1) The standards of competence and trustworthiness as applied to an insurance intermediary in s. 628.04 (1) (b) 2., Stats., are determined to provide that intermediaries shall:

(a) Be well-informed on the kinds of insurance they are qualified to write.

(b) Thoroughly analyze the insurance needs of their clients and recommend the forms of coverage best suited to their needs.

(c) Make no intentional false statements nor any material misrepresentations by omission of facts, inference or subterfuge in their relations with their clients, insurance companies, or other insurance agents.

(d) Take all reasonable steps so clients are informed on the extent and limitation of coverage provided by their contracts.

(e) Manage agency financial affairs in accordance with the high standards applicable to a fiduciary.

(f) Conform to all applicable insurance statutes and regulations.

(2) Standards of competence and trustworthiness established by subsection (1) shall be applied to all applicants for individual intermediary-agent licenses.

(3) The following screening standards and procedures for determination of competence and trustworthiness of individual intermediary-agents submitting applications under the provisions of Ins 6.58 and 6.59 are adopted:

(a) *Accuracy of application.* Material misrepresentation in completing an application form (e.g. Insurance Form 11-40, 11-41 or 11-42) shall be considered evidence of untrustworthiness and cause for not issuing a permanent license.



(b) *Complaint review.* Information developed through consumer complaints involving an intermediary's activities during the prior three years (where applicable) shall be reviewed to determine whether the allegation, if proven, concerns a violation of the standards of competence and trustworthiness in subsection (1).

(c) *Application data.* Information reported in the application form (e.g. Insurance Form 11-40, sections 16, 22-25) shall be reviewed and investigated through correspondence with insurance companies, affected consumers, appropriate regulatory and law enforcement agencies, and, where necessary, follow-up investigation in the field to determine if the standards of competence and trustworthiness have been met.

(d) *Competence.* Where 2 or more verifiable instances of incompetence of an applicant making application under Ins 6.58 are developed through the procedures in (b) and (c), a license shall not be issued until the person makes application for and passes the written examination prescribed by Ins 6.59 for the kind or kinds of authority involved. Review under this paragraph will be in accordance with the standards for competence in subsection (1).

(e) *Trustworthiness.* Where information developed through the procedures in pars. (b) and (c) indicates that there has been substantial violation of the standards in pars. (b) through (f) of subsection (1) sufficient for the commissioner to institute proceedings to revoke a license, an intermediary-agent license shall not be issued.

(f) *Notice.* Applicants under Ins 6.58 shall be notified by May 1, 1977 where a determination has been made not to issue a permanent license.

1. Applicants shall have the right to request a review of such determination by a review committee designated by the Insurance Agent's Advisory Council established by Ins 6.10. Such request shall be made to the commissioner of insurance who shall proceed in a timely manner to arrange for a review by the council designated committee. The committee conclusion shall be transmitted to the applicant by the commissioner.

2. Applicants shall also have the right to a hearing to appeal a decision not to license. Such hearing and appeal shall be in accordance with procedures set forth in ch. 227, Stats., and rules of the commissioner.

**Note:** The standards of competence and trustworthiness listed are not meant to be exclusive, nor are they intended to suggest that insurance intermediaries will never make mistakes. Professionals exercising broad discretion are always subject to second-guessing, in circumstances where there is no single "right" answer. The primary concern here is with substantial or persistent violations, or with a pattern of behavior which may endanger the legitimate interests of customers or the public.

**History:** Cr. Register, March, 1977, No. 255, eff. 4-1-77.

**Ins 6.63 Annual regulation charge.** (1) The annual regulation amount to be paid by each licensed individual intermediary-agent, in accordance with s. 601.31 (15m), Stats., is established to be as follows:

|                           |         |
|---------------------------|---------|
| Resident intermediary     | \$ 5.00 |
| Non-resident intermediary | 15.00   |

(2) The commissioner shall mail notification of the annual regulation charge due and payable to each individual intermediary-agent to the resident address on file with the office of the commissioner of insurance.

(3) The annual regulation charge is due annually after the year in which the initial license is issued in the month of the birth date of the individual intermediary-agent and shall be paid within 30 days after the mailing by the office of the commissioner of insurance of a notification that the charge is due.

(4) The license of any individual intermediary-agent not making timely payment of the annual regulation amount may, by order of the commissioner, be suspended.

(5) Any suspended individual intermediary-agent can, within one year of the license suspension date, make application for termination of the suspension by payment of double the regulation fee as authorized by s. 628.10 (4), Stats.

(6) Any individual intermediary-agent whose license has been suspended for a period of longer than one year for non-payment of fees may be required to:

(a) Satisfy the examination and licensing requirements established by Ins 6.59, and

(b) In addition to any other charges required, make payment of double the regulation fees which would have been payable if the license had not been suspended.

**History:** Cr. Register, December, 1977, No. 264, eff. 1-1-78.

**Ins 6.64 Insurance marketing intermediary-broker.** (Ss. 628.01 to 628.04, 628.07, 628.32, 628.34, 628.40, 628.45, 628.51 and 628.61, Stats.)

(1) **PURPOSE.** The purpose of this rule is to define the powers and responsibilities of a licensed intermediary-broker, to describe acceptable practices in the conduct of a brokerage business and to ensure fulfillment of the fiduciary obligation of an intermediary-broker to the client through disclosure agreements, bonding, trust accounts, fee regulation and record keeping. An intermediary-broker not also licensed pursuant to ss. 618.41 and 628.04 (2), Stats., may not engage in direct placement of surplus lines insurance. This rule implements sections of chapter 628, Stats., entitled Insurance Marketing.

(2) **INTERMEDIARY-BROKER.** (a) An intermediary-broker is a person engaged in searching out, negotiating or procuring contracts of insurance with insurers with which the intermediary is not listed as an intermediary-agent, with the consent and on behalf of the insured.

(b) An intermediary-broker licensed in this state pursuant to section Ins 6.65 Wis. Adm. Code shall be responsible in a fiduciary capacity to the insured or prospective insured for all representations and promises, all funds received or collected in the capacity of a broker, and all funds received or collected from the insurer on the policy.

(c) An intermediary-broker shall not be empowered to bind an insurer or an insured and shall disclose the lack of binding authority to the insured.

(d) An application for insurance that is brokered by an intermediary-broker directly to an insurer or through a listed intermediary-agent or that is brokered upon receipt from an intermediary-agent shall be signed by the intermediary-broker as well as by any other intermediaries involved.