

CHAPTER 631

INSURANCE CONTRACTS GENERALLY

SUBCHAPTER I
GENERAL RULES

631.01	Application of statutes.
631.02	Definition.
631.03	Insurance in mutuals.
631.05	Oral contracts of insurance and binders.
631.07	Insurable interest and consent.
631.08	Mistakes in contracts.
631.09	Knowledge and acts of agents.
631.11	Representations, warranties and conditions.
631.13	Incorporation by reference.
631.15	Contract rights under noncomplying policies.

SUBCHAPTER II
APPROVAL OF FORMS

631.20	Filing and approval of forms.
631.21	Explicit approval required.
631.22	Consumer insurance policy readability.
631.23	Authorized clauses for insurance forms.
631.24	Credit life and disability insurance.
631.27	Rules of law as provisions of contracts.

SUBCHAPTER III
SPECIFIC CLAUSES IN CONTRACTS

631.31	Clauses required to be on first page.
631.36	Termination of insurance contracts by insurers.
631.37	Special cancellation provisions.
631.41	Policies jointly issued.
631.43	Other insurance provisions.
631.45	Limitations on loss to be borne by insurer.
631.48	Nonwaiver clause.
631.51	Dividends on policies.
631.61	Group and blanket insurance.
631.64	Corporate name.
631.65	Assessable policies.
631.69	Insurance written in connection with finance plans.
631.81	Notice and proof of loss.
631.83	Limitation of actions.
631.85	Appraisal or arbitration.
631.90	Restrictions on use of tests for HIV.
631.93	Prohibited provisions concerning HIV infection.

NOTE: Chapter 375, laws of 1975, which repealed and recreated this chapter of the statutes, contained notes explaining the revision.

SUBCHAPTER I

GENERAL RULES

631.01 Application of statutes. (1) GENERAL. This chapter and ch. 632 apply to all insurance policies and group certificates delivered or issued for delivery in this state, on property ordinarily located in this state, on persons residing in this state when the policy or group certificate is issued, or on business operations in this state, except:

(a) As provided in ss. 600.01 and 618.42;

(b) On business operations in this state if the contract is negotiated outside this state and if the operations in this state are incidental or subordinate to operations outside this state, unless the contract is for a policy of insurance to cover a warranty, as defined in s. 100.205 (1) (g), in which case the provisions set forth in sub. (4m) apply; and

(c) As otherwise provided in the statutes.

(2) REINSURANCE. Sections 631.05, 631.15 (1), 631.41, 631.45 and 631.81 apply to contracts used in reinsurance; the commissioner may specify by rule that reinsurance contracts are subject to other provisions of this chapter and ch. 632 upon a finding that the interests of Wisconsin insureds, of ceding insurers domiciled in this state or of the public in this state so require.

(3) OCEAN MARINE INSURANCE. Sections 631.03 to 631.09, 631.15 (1) and (4), 631.20 (1), 631.27, 631.41 to 631.51, 631.64 to 631.81 and 631.85 apply to ocean marine insurance; the commissioner may specify by rule that ocean marine contracts are subject to other provisions of this chapter upon a finding that the interests of Wisconsin insureds or creditors or of the public in this state so require.

(4) GROUP POLICIES AND ANNUITIES FOR ELEEMOSYNARY INSTITUTIONS. This chapter and ch. 632 do not apply to group policies or annuities provided on a basis as uniform nationally as state statutes permit to educational, scientific research, religious or charitable institutions organized without profit to any person, for the benefit of employes of such institutions. The commissioner may by order subject such contracts issued by a particular insurer to this chapter or ch. 632 or any portion of either upon a finding, after a hearing, that the

interests of Wisconsin insureds or creditors or the public of this state so require.

(4m) RUSTPROOFING WARRANTIES INSURANCE. An insurer issuing a policy of insurance to cover a warranty, as defined in s. 100.205 (1) (g), shall comply with s. 632.18 and the policy shall be on a form approved by the commissioner under s. 631.20.

(5) OTHER EXCEPTIONS. The commissioner may by rule exempt any class of insurance contract or insurer from any or all of the provisions of this chapter and ch. 632 if the interests of Wisconsin insureds or creditors or of the public of this state do not require such regulation.

History: 1975 c. 375, 421; 1985 a. 29; 1987 a. 247

631.02 Definition. "Interest of the insured", when used in an insurance policy, includes the interest of the named insured and of any other person with whom the named insured holds the insured property in joint tenancy or as marital property.

History: 1979 c. 102; 1983 a. 186.

631.03 Insurance in mutuals. Any mutual under ch. 611 or 612 and any service corporation under ch. 613 may issue policies to any public or private corporation, board or association or to any unit of government, in any place in this state or elsewhere where it is authorized to do an insurance business. Any public or private corporation, board or association or unit of government in this state that is authorized to acquire insurance may make applications, enter into agreements for and hold policies in any mutual insurer or service corporation authorized under ch. 611, 612, 613 or 618.

History: 1975 c. 375.

631.05 Oral contracts of insurance and binders. No provision of chs. 600 to 646 and 655 may be interpreted to forbid an oral contract of insurance or issuance of a written binder. The insurer shall issue a policy as soon as reasonably possible after issuance of any binder or negotiation of an oral contract.

History: 1975 c. 375; 1979 c. 89; 1989 a. 187 s. 29.

631.07 Insurable interest and consent. (1) INSURABLE INTEREST. No insurer may knowingly issue a policy to a person without an insurable interest in the subject of the insurance.

631.07 INSURANCE CONTRACTS GENERALLY

(2) **CONSENT IN LIFE AND DISABILITY INSURANCE.** Except under sub. (3), no insurer may knowingly issue an individual life or disability insurance policy to a person other than the one whose life or health is at risk unless the latter has given written consent to the issuance of the policy. Consent may be expressed by knowingly signing the application for the insurance with knowledge of the nature of the document, or in any other reasonable way.

(3) **CASES WHERE CONSENT IS UNNECESSARY OR MAY BE GIVEN BY ANOTHER.** (a) *Consent unnecessary.* A life or disability insurance policy may be taken out without consent in the following cases:

1. A person may obtain insurance on a dependent who does not have legal capacity;

2. A creditor may at the expense of the debtor obtain life or disability insurance on the debtor in an amount reasonably related to the amount of the debt;

3. A person may obtain a life or disability insurance policy on members of the person's family living with or dependent on the person;

3m. A person may obtain a disability insurance policy on a child placed for adoption, as defined in s. 632.896 (1) (c), with the person.

NOTE: Subd. 3m is created by 1989 Wis. Act 336, eff. 3-1-91.

4. A person may obtain a disability insurance policy on others that would merely indemnify against expenses the policyholder would be legally or morally obligated to pay; and

5. The commissioner may promulgate rules permitting issuance of insurance for a limited term on the life or health of a person serving outside the continental United States in the public service of the United States, provided the policyholder is closely related by blood or by marriage to the person whose life or health is insured.

(b) *Consent given by another.* Consent may be given by another in the following cases:

1. A parent, a guardian of the person, or a person having legal custody as defined in s. 48.02 (12) may consent to the issuance of a policy on a dependent child.

2. A grandparent may consent to the issuance of life or disability insurance on a grandchild.

3. A court of general jurisdiction may give consent on ex parte application on the showing of any facts the court considers sufficient to justify such insurance.

(4) **EFFECT OF LACK OF INSURABLE INTEREST OR CONSENT.** No insurance policy is invalid merely because the policyholder lacks insurable interest or because consent has not been given, but a court with appropriate jurisdiction may order the proceeds to be paid to someone other than the person to whom the policy is designated to be payable, who is equitably entitled thereto, or may create a constructive trust in the proceeds or a part thereof, subject to terms and conditions of the policy other than those relating to insurable interest or consent.

History: 1975 c. 373, 375, 422; 1977 c. 354 s. 101; 1989 a. 336.

631.08 Mistakes in contracts. (1) GENERAL. Except as otherwise provided in chs. 600 to 646 and 655, general contract law applies to mistakes in insurance contracts.

(2) **PERSON TO WHOM PROCEEDS PAYABLE IN PROPERTY INSURANCE.** Mistake in designating the person to whom the insurance is payable in a policy of property insurance does not void the policy nor constitute a defense for the insurer unless the mistake was due to misrepresentation or concealment by the owner of the property or someone representing the owner in procuring the policy, or unless the company

would not have issued or continued the policy if it had known the truth.

History: 1975 c. 375, 421; 1979 c. 89; 1989 a. 187 s. 29.

631.09 Knowledge and acts of agents. (1) IMPUTATION OF KNOWLEDGE. An insurer is deemed to know any fact material to the risk or which breaches a condition of the policy, if the agent who bound the insurer or issued the policy or transmitted the application to the insurer knew it at the time the agent acted, or if thereafter any of the insurer's agents with whom the policyholder is then dealing as agent of the insurer learns it in the course of the agent's dealing with the policyholder, and knows that it pertains to a policy written by the insurer.

(2) **ACTS OF AGENT.** A failure by any policyholder or insured to perform an act required to perfect his or her rights under the policy, or failure to perform the act in the time and manner prescribed, does not affect the insurer's obligations under the policy if the failure was caused by an act, statement or representation or omission to perform a duty by an agent of the insurer who has apparent authority, whether or not the agent was within the actual scope of the agent's authority.

(3) **EFFECT OF NOTICE TO AGENT.** Notice given by or on behalf of the policyholder or insured to any authorized agent of the insurer with particulars sufficient to identify the policy is notice to the insurer.

(4) **COLLUSION.** Subsections (1) and (2) do not apply if the agent and the policyholder or insured acted in collusion to deceive or defraud the insurer, or if the policyholder or insured knew the agent was acting beyond the scope of the agent's authority.

(5) **GROUP POLICYHOLDER NOT AGENT.** No person is an agent of an insurer merely because the person is a policyholder of a group insurance policy.

(6) **LIABILITY UNDER COMMON LAW.** This section does not diminish any liability of the insurer that would exist under common law.

History: 1975 c. 375, 421.

See note to 627.23, citing *Master Plumbers Mut. Liab. v. Cormany & Bird*, 79 W (2d) 308, 255 NW (2d) 533.

Where insured elected to have open heart surgery after agent indicated insurer would probably pay bills, such action was sufficient reliance to estop insurer from denying coverage. *Nolden v. Mutual Benefit Life Ins. Co.* 80 W (2d) 353, 259 NW (2d) 75.

631.11 Representations, warranties and conditions. (1) ENTIRE CONTRACT. (a) *Signed application for policy.* No statement, representation or warranty made by any person in the negotiation for an insurance contract affects the insurer's obligations under the policy unless it is stated in the policy, or in a written application signed by such person, a copy of which is made a part of the policy by attachment or endorsement.

(b) *Copy to be made available.* The policyholder and any person whose life or health is insured under the policy may request in writing a copy of the application if he or she did not receive the policy or a copy of it, or if the policy has been reinstated or renewed without attachment of a copy of the original application. If the insurer does not deliver or mail a copy as requested within 15 working days after receipt of the request by the insurer or its agent, or in the case of a group policy certificate holder does not inform such person within the same period how he or she may inspect the policy and application during normal business hours at a place reasonably convenient to the certificate holder, nothing in the application affects the insurer's obligations under the policy to the person making the request. The person whose life or health is insured under a group policy has the same right to request a copy of any document subject to par. (c).

(c) *Signed application or enrollment form for group insurance certificate.* No statement, representation or warranty

made by or on behalf of a particular certificate holder under a group policy affects the insurer's obligations under the certificate unless it is stated in the certificate, or in a written document signed by the certificate holder, a copy of which is supplied to the certificate holder or the beneficiary whose rights would be affected.

(2) **EFFECT OF MISREPRESENTATION OR BREACH OF AFFIRMATIVE WARRANTY.** No misrepresentation or breach of an affirmative warranty affects the insurer's obligations under the policy unless the insurer relies on it and it is either material or is made with intent to deceive, or unless the fact misrepresented or falsely warranted contributes to the loss.

(3) **EFFECT OF FAILURE OF CONDITION OR BREACH OF PROMISSORY WARRANTY.** No failure of a condition prior to the loss and no breach of a promissory warranty affects the insurer's obligations under the policy unless it exists at the time of the loss and either increases the risk at the time of the loss or contributes to the loss. This subsection does not apply to failure to tender payment of premium.

(4) **EFFECT OF INSURER'S KNOWLEDGE.** No misrepresentation made by or on behalf of the policyholder and no breach of an affirmative warranty or failure of a condition affects the insurer's obligations under the policy if at the time the policy is issued the insurer has either constructive knowledge of the facts under s. 631.09 (1) or actual knowledge. If the application is in the handwriting of the applicant, the insurer does not have constructive knowledge under s. 631.09 (1) merely because of the agent's knowledge. If after issuance of a policy the insurer acquires knowledge of sufficient facts to constitute a general defense to all claims under the policy, the defense is not available unless the insurer notifies the insured within 60 days after acquiring such knowledge of its intention to defend against a claim if one should arise, or within 120 days if it is deemed necessary by the insurer to secure additional medical information.

(5) **FRATERNALS.** This section applies to fraternal, as defined in s. 614.01 (1) (a).

History: 1975 c. 375, 421; 1977 c. 339 s. 44; Stats. 1977 s. 641.11; 1983 a. 189 s. 329 (25).

Where question on form calls for applicant's judgment or opinion as layman, any ambiguity should be construed against company. *Nolden v. Mutual Benefit Life Ins. Co.* 80 W (2d) 353, 259 NW (2d) 75.

Insured's contradictory statements constituted a breach of contractual duties of notice and cooperation. *Dietz v. Hardware Dealers Mut. Fire Ins. Co.* 88 W (2d) 496, 276 NW (2d) 808 (1979).

See note to 632.32, citing *Rauch v. American Fam. Ins. Co.* 115 W (2d) 257, 340 NW (2d) 478 (1983).

631.13 Incorporation by reference. No insurance contract may contain any agreement or incorporate any provision not fully set forth in the policy or in an application or other document attached to and made a part of the policy at the time of its delivery except that:

(1) **RATES.** Any policy may by reference incorporate rate schedules and classifications of risks and short-rate tables filed with the commissioner; and

(2) **COMPLEX CONTRACTS.** By rule or order or by approval of a form the commissioner may authorize for complex contracts incorporation by reference of provisions for administrative arrangements, premium schedules and payment procedures.

History: 1975 c. 375.

631.15 Contract rights under noncomplying policies. (1) ENFORCEMENT OF POLICY TERMS. Except as otherwise specifically provided by statute, a policy is enforceable against the insurer according to its terms, even if it exceeds the authority of the insurer.

INSURANCE CONTRACTS GENERALLY 631.20

(3m) **ENFORCEMENT OF STATUTE AND RULE REQUIREMENTS.** A policy that violates a statute or rule is enforceable against the insurer as if it conformed to the statute or rule.

(4) **REFORMATION OF CONTRACT.** Upon written request of the policyholder or an insured whose rights under the policy are continuing and not transitory, an insurer shall reform and reissue its written policy to comply with the requirements of the law existing at the date of issue or last renewal of the policy.

History: 1975 c. 375; 1987 a. 247.

SUBCHAPTER II

APPROVAL OF FORMS

631.20 Filing and approval of forms. (1) FILING. No form subject to s. 631.01 (1), except as exempted under s. 631.01 (2) to (5), may be used unless it has been filed with and approved by the commissioner and unless the insurer certifies that the form complies with chs. 600 to 655 and rules promulgated under chs. 600 to 655. It is deemed approved if it is not disapproved within 30 days after filing, or within a 30-day extension of that period ordered by the commissioner prior to the expiration of the first 30 days.

(2) **GROUND FOR DISAPPROVAL.** The commissioner may disapprove a form upon a finding:

(a) That it is inequitable, unfairly discriminatory, misleading, deceptive, obscure or encourages misrepresentation, including cases where the form:

1. Is misleading because its benefits are too restricted to achieve the purposes for which the policy is sold;

2. Contains provisions whose natural consequence is to obscure or lessen competition;

3. Is unnecessarily verbose or complex in language; or

4. Is misleading, deceptive or obscure because of such physical aspects as format, typography, style, color, material or organization;

(b) That it provides benefits or contains other provisions that endanger the solidity of the insurer;

(c) That in the case of the policy, though not of riders and endorsements, it fails to provide the exact name of the insurer and the full address of its home office; or

(d) That it violates a statute or a rule promulgated by the commissioner, or is otherwise contrary to law.

(e) That its use would violate s. 631.22.

(3) **SUBSEQUENT DISAPPROVAL.** Whenever the commissioner finds, after a hearing, that a form approved or deemed to be approved under sub. (1) would be disapproved under sub. (2) if newly filed, the commissioner may order that on or before a date not less than 30 nor more than 90 days after the order the use of the form shall be discontinued or appropriate changes shall be made.

(4) **CONTENTS OF ORDER OF DISAPPROVAL.** The commissioner's disapproval must be in writing and constitutes an order. It must state the reasons for disapproval sufficiently explicitly that the insurer is provided reasonable guidance in reformulating its proposals.

(5) **EXPLICIT APPROVAL OF CERTAIN CLAUSES.** General approval of a form under this section, or failure to disapprove, does not constitute approval of clauses specified in s. 631.21.

(6) **APPROVED FORM WHICH VIOLATES STATUTE OR RULE. (a)** The penalties under s. 601.64 (3) to (5) may not be imposed against an insurer for using a form that does not comply with a statute or rule if the statute or rule was in effect on the date the form was approved or deemed to be approved under sub. (1).

(b) Use of a form that does not comply with a statute or rule which takes effect after the date the form was approved or deemed to be approved under sub. (1) is a violation of the statute or rule, and the penalties under s. 601.64 may be imposed against the insurer using the form.

History: 1975 c. 375, 421; 1979 c. 218; 1987 a. 247.

631.21 Explicit approval required. (1) REQUIRED APPROVAL. Despite the general approval of a form under s. 631.20, the following clauses are not approved even if contained in the form unless the commissioner gives explicit approval to them:

(a) *Expeditious notice.* Clauses requiring more expeditious notice than 1st class mail, as provided in s. 631.81 (2).

(c) *Reinstatement fees.* A schedule of reinstatement fees under s. 632.74, if made a part of the policy. Such a schedule need not be included in the contract but may be given approval as a separate document specifically made applicable to particular classes of policies.

(2) EFFECT OF FAILURE TO OBTAIN EXPLICIT APPROVAL. If an insurer fails to obtain explicit approval from the commissioner for the clauses under sub. (1), the clauses shall be null and void.

History: 1975 c. 375; 1985 a. 280.

631.22 Consumer insurance policy readability. (1) In this section "consumer insurance policy" means a life, disability, property or casualty insurance policy, or a certificate or a substitute for a certificate for group life, disability, property or casualty insurance coverage, which is issued to a person for a personal, family or household purpose and a copy of which is customarily, in the insurance industry, delivered or is required by law, rule or agreement to be delivered to the person obtaining insurance coverage.

(2) An insurer may provide a consumer insurance policy which is delivered to a person obtaining insurance coverage and is not exempt under sub. (5) only if the consumer insurance policy is coherent, written in commonly understood language, legible, appropriately divided and captioned by its various sections and presented in a meaningful sequence. The commissioner shall promulgate rules establishing standards for the determination of compliance with this subsection.

(3) This section does not apply to specific language or format required by state or federal law, rule or regulation.

(4) This section applies only to consumer insurance policies delivered on or after the date which is 6 months after May 8, 1980 except the commissioner may provide by rule that this section will not apply to specific types of consumer insurance policies until a later date which is not later than the date which is 2 years after May 8, 1980 if the commissioner determines that delayed application is necessary to prevent an unreasonable burden upon insurers issuing those types of consumer insurance policies.

(5) The commissioner may by rule exempt a type of consumer insurance policy from the application of this section if the commissioner finds that type of consumer insurance policy is generally understood by persons to whom it is delivered or that those persons are otherwise adequately protected.

(6) A violation of this section does not void or render voidable any portion of an insurance policy and is not a defense to an action under the insurance policy.

History: 1979 c. 218.

631.23 Authorized clauses for insurance forms. (1) PROMULGATION OF CLAUSES. The commissioner may not promulgate mandatory uniform clauses that preclude an insurer

from filing its own forms for approval under s. 631.20; the commissioner may only disapprove such forms on the basis of the criteria stated in that section. Subject thereto, the commissioner may promulgate authorized clauses by rule upon a finding that:

(a) Price or coverage competition is ineffective because diversity in language or content makes comparison difficult;

(b) Provision of language, content or form of specific clauses is necessary to provide certainty of meaning of those clauses;

(c) Regulation of contract forms would be more effective or litigation would be substantially reduced if there were increased standardization of certain clauses; or

(d) Reasonable minimum standards of insurance protection are needed for policies to serve a useful purpose.

(2) DEGREE OF SPECIFICITY. Any rule creating an authorized clause may prescribe that to be treated as an authorized clause there must be verbatim or substantial adherence to prescribed language, that certain standards or criteria must be met, or that certain drafting principles must be followed. The rules may also permit liberalization of prescribed language. If the proposed rule prescribed verbatim adherence, the commissioner shall make a finding that substantial adherence to the prescribed language is not sufficient and that liberalization of prescribed language will frustrate the purposes of the prescription. If an insurer uses authorized clauses as part of filed forms the commissioner may only disapprove those clauses under s. 631.20 upon a finding that improper combination of clauses makes them violate the criteria of s. 631.20.

History: 1975 c. 375, 421; 1979 c. 221.

631.24 Credit life and disability insurance. Section 631.20 does not apply to credit life and disability insurance forms which are subject to approval under s. 424.209.

History: 1979 c. 102.

631.27 Rules of law as provisions of contracts. By rule, the commissioner may require an insurer to insert in a policy any rule of law stated in chs. 600 to 646 and 655 that is applicable to the contents or interpretation of an insurance contract.

History: 1975 c. 375; 1979 c. 89; 1989 a. 187 s. 29.

SUBCHAPTER III

SPECIFIC CLAUSES IN CONTRACTS

631.31 Clauses required to be on first page. (1) LIST OF CLAUSES. The following clauses of insurance policies shall appear on the first page of the policy:

(a) *Corporate name.* The name of the insurer as required by s. 631.64;

(b) *Several liability.* Information that 2 or more insurers undertake only several liability, as required by s. 631.41;

(c) *Assessability.* That the policy is assessable as required by s. 631.65;

(d) *Variable benefits.* A statement that benefits are variable, as required by s. 632.45 (1); and

(e) *Right to return policy.* The right to return a disability insurance policy under s. 632.73; except that this clause may be conspicuously attached to the first page rather than printed on it.

(2) MANNER OF DISPLAY. Clauses listed in sub. (1) shall be displayed conspicuously and separately from any other clauses.

History: 1975 c. 375; 1981 c. 218.

631.36 Termination of insurance contracts by insurers. (1) SCOPE OF APPLICATION. (a) *General.* Except as otherwise pro-

vided in this section or in other statutes or by rule under par. (c), this section applies to all contracts of insurance based on forms which are subject to filing and approval under s. 631.20 (1).

(b) *Contracts more favorable to policyholder.* The contract may provide terms more favorable to policyholders than are required by this section.

(c) *Exemption by rule.* The commissioner may by rule totally or partially exempt from this section classes or parts of classes of insurance contracts if the policyholders do not need protection against arbitrary or unannounced termination.

(d) *Other rights.* The rights provided by this section are in addition to and do not prejudice any other rights the policyholder may have at common law or under other statutes.

(e) *Construction.* Nothing in this section prevents the rescission or reformation of any life or disability insurance contract not otherwise denied by the terms of the contract or by any other statute.

(2) MIDTERM CANCELLATION. (a) *Permissible grounds.* Except as provided by par. (c) and sub. (3) and s. 655.24 (2) (b), no insurance policy may be canceled by the insurer prior to the expiration of the agreed term except for failure to pay a premium when due or on grounds stated in the policy, which must be comprehended within one of the following classes:

1. Material misrepresentation;
2. Substantial change in the risk assumed, except to the extent that the insurer should reasonably have foreseen the change or contemplated the risk in writing the contract;
3. Substantial breaches of contractual duties, conditions or warranties; or
4. Attainment of the age specified as the terminal age for coverage, in which case the insurer may cancel by notice under par. (b) accompanied by a tender of a proportional return of premium.

(b) *Notice.* No cancellation under par. (a) is effective until at least 10 days after the 1st class mailing or delivery of a written notice to the policyholder.

(c) *New policies.* Paragraphs (a) and (b) do not apply to any insurance policy that has not been previously renewed if the policy has been in effect less than 60 days at the time the notice of cancellation is mailed or delivered. No cancellation under this paragraph is effective until at least 10 days after the 1st class mailing or delivery of a written notice to the policyholder. Subsections (6) and (7) do not apply to such a policy.

(3) ANNIVERSARY CANCELLATION OR ALTERATION. A policy may be issued for a term longer than one year or for an indefinite term with a clause providing for cancellation by the insurer in the manner provided in sub. (4) (a) for nonrenewals, except the notice must be given at least 60 days prior to any anniversary date and an insurer may not cancel a policy solely because of the termination of an insurance marketing intermediary's contract with the insurer unless the insurer complies with sub. (4m). The clause may also provide for alteration of the terms or premium by the insurer as provided in sub. (5) (c), except the clause must then permit cancellation by the policyholders as provided in sub. (5) (c).

(4) NONRENEWAL. (a) *Notice required.* Subject to subs. (2) and (3), a policyholder has a right to have the policy renewed, on the terms then being applied by the insurer to similar risks, for an additional period of time equivalent to the expiring term if the agreed term is one year or less, or for one year if the agreed term is longer than one year, unless at least 60 days prior to the date of expiration provided in the policy a notice of intention not to renew the policy beyond the agreed expiration date is mailed or delivered to the policyholder, or with respect to failure timely to pay a renewal premium a

notice is given, not more than 75 days nor less than 10 days prior to the due date of the premium, which states clearly the effect of nonpayment of premium by the due date.

(am) *Prohibited nonrenewals.* Notwithstanding par. (a) an insurer may not refuse to renew a policy solely because of the termination of an insurance marketing intermediary's contract with the insurer unless the insurer complies with sub. (4m).

(b) *Exceptions.* This subsection does not apply if the policyholder has insured elsewhere, has accepted replacement coverage or has requested or agreed to nonrenewal, or if the policy is expressly designated as nonrenewable.

(4m) POLICY CANCELLATION. An insurer may refuse to renew or may cancel a policy under sub. (3) or (4) solely because of the termination of an insurance marketing intermediary's contract with the insurer only if the notice of nonrenewal or cancellation contains an offer to continue or renew the policy with the insurer if the insurer receives a written request from the policyholder prior to the cancellation or renewal date. The insurer shall continue or renew the policy if a timely request is received unless the policyholder does not meet normal underwriting criteria.

(5) RENEWAL WITH ALTERED TERMS. (a) *General.* Subject to pars. (b) and (d), if the insurer offers or purports to renew the policy but on less favorable terms or at higher premiums, the new terms or premiums take effect on the renewal date if the insurer sent by 1st class mail or delivered to the policyholder notice of the new terms or premiums at least 60 days prior to the renewal date. If the insurer notifies the policyholder within 60 days prior to the renewal date, the new terms or premiums do not take effect until 60 days after the notice is mailed or delivered, in which case the policyholder may elect to cancel the renewal policy at any time during the 60-day period. The notice shall include a statement of the policyholder's right to cancel. If the policyholder elects to cancel the renewal policy during the 60-day period, return premiums or additional premium charges shall be calculated proportionately on the basis of the old premiums. If the insurer does not notify the policyholder of the new premiums or terms as required by this subsection prior to the renewal date, the insurer shall continue the policy for an additional period of time equivalent to the expiring term and at the same premiums and terms of the expiring policy, except as permitted under sub. (2) or (3).

(b) *Exception.* Paragraph (a) does not apply if the only change that is adverse to the policyholder is a premium increase and if either of the following applies to the premium increase:

1. The premium increase is less than 25% and is generally applicable to the class of business to which the policy belongs.
2. The premium increase results from a change based on action by the insured that alters the nature or extent of the risk insured against, including but not limited to a change in the classification or the units of exposure or increased policy coverage.

(c) *Anniversary alteration.* Subject to par. (d), an insurer may alter the terms or premium of a policy issued for a term longer than one year or for an indefinite term on the anniversary date only if notice of less favorable terms or premiums is sent by 1st class mail or delivered to the policyholder at least 60 days prior to the anniversary date. If the insurer notifies the policyholder within 60 days prior to the anniversary date, the new terms or premiums do not take effect until 60 days after the notice is mailed or delivered, in which case the policyholder may elect to cancel the policy at any time during the 60-day period. The notice shall include a statement of the policyholder's right to cancel. If the policy-

holder elects to cancel the policy during the 60-day period, return premiums or additional premium charges shall be calculated proportionately on the basis of the old premiums. If the insurer does not notify the policyholder of the new premiums or terms as required by this subsection prior to the anniversary date, the insurer shall continue the policy until the next anniversary date or the renewal date, whichever is earlier, at the same premiums and terms as for the previous period, except as permitted under sub. (2) or (3).

(d) *Estimate*: An insurer may give notice under par. (a) or (c) of a new premium by stating the actual amount or percentage increase to be charged. If the insurer cannot reasonably determine the actual amount or percentage increase 60 days prior to the renewal or anniversary date, the notice shall include a good faith estimate of the increase based on information that the insurer can reasonably obtain. If an estimate is stated, the insurer shall renew or continue the policy at a premium that does not exceed the increase stated in the notice except as permitted under sub. (5) (b).

(6) **INFORMATION ABOUT GROUNDS**. A notice of cancellation or nonrenewal under sub. (2) (b) or (4) shall state with reasonable precision the facts on which the insurer's decision is based. No such notice is effective unless it so states the facts.

(7) **CANCELLATION OR NONRENEWAL NOTICE**. (a) Notice of cancellation or nonrenewal required under sub. (2) (b) or (4) is not effective:

1. Unless the notice contains the notice required under s. 632.785, if applicable; and

2. Unless the notice contains adequate instructions to the policyholder for applying for insurance through a risk sharing plan under subch. I of ch. 619, if a risk sharing plan exists under subch. I of ch. 619 for the kind of coverage being canceled or nonrenewed, except as provided in par. (b).

(b) Paragraph (a) 2 does not apply to a notice of cancellation or nonrenewal issued by the mandatory health care liability risk sharing plan established under s. 619.04.

(8) **CANCELLATION FOR NONPAYMENT OF PREMIUM**. Subsections (6) and (7) do not apply if the ground for cancellation or nonrenewal is nonpayment of the premium and if the notice so states.

(9) **IMMUNITY**. There is no liability on the part of and no cause of action of any nature arises against any insurer, its authorized representatives, its agents, its employees, or any firm, person or corporation furnishing to the insurer information relating to the reasons for cancellation or nonrenewal; for any statement made by them in complying or enabling the insurer to comply with this section, or for the provision of information pertaining thereto.

History: 1975 c. 375, 421; 1977 c. 444 s. 11; 1979 c. 102; 1979 c. 110 s. 60 (11); 1981 c. 83; 1985 a. 335; 1989 a. 187, 332, 359.

Sub. (2) (c) applies to cancellation of binder. *Terry v. Mongin Ins. Agency*, 105 W (2d) 575, 314 NW (2d) 349 (1982).

Policy did not lapse as result of insured's failure to pay renewal premium before policy expiration date because insurer failed to notify insured of nonrenewal or of premium due. *Sausen v. American Family Mut. Ins. Co.* 121 W (2d) 653, 360 NW (2d) 565 (Ct. App. 1984).

631.37 Special cancellation provisions. The following cancellation provisions apply to the policies specified, whether or not s. 631.36 is also applicable to them.

(1) **CANCELLATION UPON REQUEST OF PREMIUM FINANCE COMPANY**. Section 138.12 (12) applies to cancellation on request of a premium finance company.

(2) **CANCELLATION UPON REQUEST OF CREDITOR**. Section 424.303 applies to cancellation upon request of a creditor.

(3) **WORKER'S COMPENSATION INSURANCE**. Section 102.31 (2) applies to the termination of worker's compensation insurance.

(3m) **HEALTH CARE LIABILITY INSURANCE**. Section 655.24 (2) (b), (3) and (4) applies to the termination of a health care liability insurance policy.

(4) **SPECIAL LIMITATIONS ON CANCELLATION**. (a) *School bus insurance*. Section 121.53 (4) applies to school bus insurance.

(b) *Insurance on common carriers*. Section 194.41 (2) applies to insurance on common carriers.

(c) *Driver education motor vehicles*. Section 341.267 (6) applies to motor vehicles used for driver education.

(d) *Insurance of juveniles*. Section 343.15 (4) applies to motor vehicle policies covering juveniles as described therein.

(e) *Motor vehicle liability policy*. Section 344.34 applies to motor vehicle liability policies certified under s. 344.31 and to policies certified under s. 344.32.

(f) *Health care liability policy*. Section 655.25 applies to insurance issued by the mandatory health care liability risk sharing plan established under s. 619.04.

History: 1979 c. 102 ss. 165, 166; 1985 a. 83; 1989 a. 187.

631.41 Policies jointly issued. Two or more insurers may together issue a policy in which their liability is either several or joint and several. If it is several, the heading of the policy shall conspicuously so state and the policy shall conspicuously state the proportion or amount of premium to be paid to each insurer and the type and the proportion or amount of liability each insurer agrees to assume.

History: 1975 c. 375.

631.43 Other insurance provisions. (1) **GENERAL**. When 2 or more policies promise to indemnify an insured against the same loss, no "other insurance" provisions of the policy may reduce the aggregate protection of the insured below the lesser of the actual insured loss suffered by the insured or the total indemnification promised by the policies if there were no "other insurance" provisions. The policies may by their terms define the extent to which each is primary and each excess, but if the policies contain inconsistent terms on that point, the insurers shall be jointly and severally liable to the insured on any coverage where the terms are inconsistent, each to the full amount of coverage it provided. Settlement among the insurers shall not alter any rights of the insured.

(2) **FRAUD AS A DEFENSE**. Subsection (1) does not affect the right of an insurer to defend against a claim under the policy on the ground of fraudulent misrepresentation.

(3) **EXCEPTION**. Subsection (1) does not affect the rights of insurers to exclude coverages under s. 632.32 (5) (b) and (c).

History: 1975 c. 375; 1979 c. 102.

Clause providing that any amount payable under insurer's policy would be reduced by monies paid by other insurance company's uninsured motorist coverage was not valid; therefore, plaintiff was entitled to entire benefits under both uninsured motorist provisions. *Landvatter v. Globe Security Ins. Co.* 100 W (2d) 21, 300 NW (2d) 875 (Ct. App. 1980).

Insurance policy provision which prohibits stacking of uninsured motorist benefits against same insurer is prohibited by sub. (1). *Tahtinen v. MSI Ins. Co.* 122 W (2d) 158, 361 NW (2d) 673 (1985).

Sub. (1) only prohibits use of reducing clauses in indemnity coverages, not in underinsured motorist coverage. *Kuehn v. Safeco Ins. Co. of America*, 140 W (2d) 620, 412 NW (2d) 126 (Ct. App. 1987).

Stacking uninsured motorist coverage. *Hannula*, WBB Oct. 1985.

631.45 Limitations on loss to be borne by insurer. (1)

GENERAL. An insurance policy indemnifying an insured against loss may by clear language limit the part of the loss to be borne by the insurer to a specified or determinable maximum amount, to loss in excess of a specified or determinable amount, to a specified percentage of the loss, which may vary with the amount of the loss, or by a combination of these methods. If the policy covers various risks, different limitations may be provided separately for each risk if the policy clearly so states.

(2) **PROPERTY COINSURANCE**. A policy indemnifying an insured against loss of or damage to property may limit the

part of the loss to be borne by the insurer to a percentage of the total loss that corresponds to the ratio of the insured sum to a specified percentage of the value of the insured property.

History: 1975 c. 375.

Under facts of case, insurer's tender of policy limits into court did not relieve insurer of its duty to defend insured in lawsuit. *Gross v. Lloyds of London Ins. Co.* 121 W (2d) 78, 358 NW (2d) 266 (1984).

631.48 Nonwaiver clause. An insurer may insert in any insurance policy a provision that no change in the policy is valid unless approved by an executive officer of the insurer, or unless the approval is endorsed on the policy or attached to it, or both; and that no agent has authority to change the policy or waive any of its provisions. This does not preclude a person claiming a right under the policy from relying on waiver or estoppel in an appropriate case.

History: 1975 c. 375.

631.51 Dividends on policies. (1) LIFE INSURANCE AND ANNUITIES. Section 632.62 applies to life insurance and annuities.

(2) INSURANCE, OTHER THAN LIFE INSURANCE AND ANNUITIES. Any insurer may distribute a portion of surplus attributable to policies other than life insurance or annuities, in amounts and with classifications the board of directors determines to be fair and reasonable. Such distribution may not be made contingent on the continuation of the policy or of premium payments except under s. 632.75 (2). A schedule explaining the basis for the distribution shall be filed with the commissioner prior to the distribution.

(3) WHEN NOT SPECIFIED IN POLICY. Any insurer may distribute surplus to any class of policyholders even if those policies do not so provide. A schedule explaining the basis for the distribution shall be filed with the commissioner at least 30 days prior to the distribution.

(4) COMBINED DIVIDENDS. It is permissible to provide an indivisible dividend to classes of policyholders having more than one type of policy, including a combination of life or annuities with other types of insurance.

History: 1975 c. 375.

631.61 Group and blanket insurance. (1) CERTIFICATES. (a) General. Except under par. (d), an insurer issuing a group insurance policy other than blanket shall, as soon as practicable after the coverage is effective, provide a certificate for each member of the insured group, except that only one certificate need be provided for the members of a family unit. The certificate shall contain a summary of the essential features of the insurance coverage, including any rights of conversion to an individual policy. Upon receiving a written request therefor, the insurer shall also inform any insured how the insured may inspect a copy of the policy during normal business hours at a place reasonably convenient to the insured.

(b) Blanket insurance. The commissioner may by rule impose a similar requirement for any class of blanket insurance policies for which the commissioner finds that the group of persons covered is constant enough for such action to be practicable and not unreasonably expensive.

(c) Method of providing certificates. The certificate shall be provided in a manner reasonably calculated to bring it to the attention of the certificate holder. The insurer may deliver or mail it directly to the certificate holder or may deliver or mail the certificates in bulk to the policyholder to transmit to certificate holders, unless the insurer has reason to believe that the policyholder will not promptly transmit the certificates. An affidavit by the insurer that it has mailed the certificates in the usual course of business creates a rebuttable presumption that it has done so.

(d) Substitutes. The commissioner may by rule or order prescribe substitutes for delivery or mailing of certificates, including booklets describing the coverage, the posting of notices in the place of business, or publication in a house organ, if the substitutes are reasonably calculated to inform certificate holders of their rights.

(2) EFFECT OF FAILURE TO ISSUE CERTIFICATES. Unless a certificate or an authorized substitute has been made available to the certificate holder as required by this section, no act or omission by the certificate holder after the coverage has become effective as to the certificate holder, other than intentionally causing the loss insured against, affects the insurer's obligations under the insurance contract.

History: 1975 c. 375, 421.

631.64 Corporate name. Every insurance policy or annuity contract shall conspicuously display the name of the insurer on its first page.

History: 1975 c. 375.

631.65 Assessable policies. Every assessable policy shall conspicuously display on the first page, separately from any other provision and in type at least as large as any used in the body of the policy, the words "This policy is assessable".

History: 1975 c. 375; 1981 c. 218.

631.69 Insurance written in connection with finance plans. Any insurance contract written in connection with a finance plan or other credit transaction shall contain provisions to protect the insured from overreaching by the insurer or by the creditor in connection with the insurance, including a provision that a copy of the complete policy or a certificate containing all of the essential terms be furnished to the debtor and that there shall be an appropriate surrender value or refund of unearned premium to the debtor calculated on a basis approved by the commissioner if the debt is paid or if the insurance contract is rewritten because the original finance plan or credit transaction is altered or a new plan or transaction is entered into with the same or an affiliated lender. This section is satisfied by compliance with the terms of ch. 424, if they are applicable.

History: 1975 c. 375.

631.81 Notice and proof of loss. (1) TIMELINESS OF NOTICE. Provided notice or proof of loss is furnished as soon as reasonably possible and within one year after the time it was required by the policy, failure to furnish such notice or proof within the time required by the policy does not invalidate or reduce a claim unless the insurer is prejudiced thereby and it was reasonably possible to meet the time limit.

(2) METHOD OF GIVING NOTICE. It is a sufficient service of notice or proof of loss if a 1st class postage prepaid envelope addressed to the insurer and containing the proper notice or proof is deposited in any U.S. post office within the time prescribed. The commissioner may expressly approve clauses requiring more expeditious methods of notice where that is reasonable.

(3) MEANING OF INSURER'S ACTS. The acknowledgment by the insurer of the receipt of notice, the furnishing of forms for filing proofs of loss, the acceptance of such proofs, or the investigation of any claim are not alone sufficient to waive any of the rights of the insurer in defense of any claim arising under the insurance contract.

History: 1975 c. 375.

See note to 631.11, citing *Dietz v. Hardware Dealers Mut. Fire Ins. Co.* 88 W (2d) 496, 276 NW (2d) 808 (1979).

Claimant failing to give notice under (1) within one year must prove lack of prejudice. *Gerrard Realty Corp. v. American States Ins. Co.* 89 W (2d) 130, 277 NW (2d) 863 (1979).

631.83 INSURANCE CONTRACTS GENERALLY

631.83 Limitation of actions. (1) STATUTORY PERIODS OF LIMITATION. (a) *Fire insurance.* An action on a fire insurance policy must be commenced within 12 months after the inception of the loss. This rule also applies to riders or endorsements attached to a fire insurance policy covering loss or damage to property or to the use of or income from property from any cause, and to separate windstorm or hail insurance policies.

(b) *Disability insurance.* An action on disability insurance coverage must be commenced within 3 years from the time written proof of loss is required to be furnished.

(c) *Life claims based on absence of insured.* Sections 813.22 to 813.34 apply to life insurance actions based on death in which absence is relied upon as evidence of death.

(d) *Other.* Except as provided in this subsection or elsewhere in chs. 600 to 646 and 655, s. 893.43 applies to actions on insurance policies.

(2) GENERAL LAW APPLICABLE TO LIMITATION OF ACTIONS. Except for the prescription of time periods under sub. (1) or elsewhere in chs. 600 to 646 and 655, the general law applicable to limitation of actions as modified by ch. 893 applies to actions on insurance policies.

(3) PROHIBITED CLAUSES OF POLICIES. No insurance policy may:

(a) *Shorten periods of limitation.* Limit the time for beginning an action on the policy to a time less than that authorized by the statutes;

(b) *Limit jurisdiction.* Prescribe in what court action may be brought thereon; or

(c) *Proscribe action.* Provide that no action may be brought.

(4) MINIMUM WAITING PERIOD FOR ACTION. No action may be brought against the insurer on an insurance policy to compel payment thereunder until at least 60 days after proof of loss has been furnished as required by the policy or such proof of loss has been waived, or the insurer has denied full payment, whichever is earlier. This subsection does not apply in any case in which the verified complaint alleges facts that would establish prejudice to the complainant by reason of such delay, other than the delay itself.

(5) TOLLING OF PERIOD OF LIMITATION. The period of limitation is tolled during the period in which the parties conducted an appraisal or arbitration procedure prescribed by the insurance policy or by law or agreed to by the parties.

History: 1975 c. 375; 1979 c. 89, 102; 1983 a. 192; 1987 a. 247; 1989 a. 187 s. 29

Term "fire insurance" covers indemnity insurance for losses to property caused by many other perils than fire. *Villa Clement v. National Union Fire Ins.* 120 W (2d) 140, 353 NW (2d) 369 (Ct. App. 1984)

Action by mortgagees of insured property was not barred by (1) (a). *Picus v. Citizens Sec. Mut. Ins. Co.* 127 W (2d) 359, 379 NW (2d) 341 (Ct. App. 1985)

Two-year statute of limitations, 893.57, governs intentional tort of bad faith by insurer. *Warmka v. Hartland Cicero Mut. Ins.*, 136 W (2d) 31, 400 NW (2d) 923 (1987)

631.85 Appraisal or arbitration. An insurance policy may contain provision for independent appraisal and compulsory arbitration, subject to the provisions of s. 631.20. If an approved policy provides for application to a court of record for the appointment of a disinterested appraiser, arbitrator or umpire, any court of record of this state except the court of

appeals or the supreme court may be requested to make an appointment. Upon appropriate request, the court shall make the appointment promptly.

History: 1975 c. 375; 1977 c. 187.

631.90 Restrictions on use of tests for HIV. (1) In this section, "HIV" means any strain of human immunodeficiency virus, which causes acquired immunodeficiency syndrome.

(2) With regard to policies issued or renewed on and after July 20, 1985, an insurer may not do any of the following:

(a) Require or request directly or indirectly any individual to reveal whether the individual has obtained a test for the presence of HIV, antigen or nonantigenic products of HIV or an antibody to HIV or what the results of this test, if obtained by the individual, were.

(b) Condition the provision of insurance coverage on whether an individual has obtained a test for the presence of HIV, antigen or nonantigenic products of HIV or an antibody to HIV or what the results of this test, if obtained by the individual, were.

(c) Consider in the determination of rates or any other aspect of insurance coverage provided to an individual whether an individual has obtained a test for the presence of HIV, antigen or nonantigenic products of HIV or an antibody to HIV or what the results of this test, if obtained by the individual, were.

(3) (a) Subsection (2) does not apply with regard to any test or series of tests for use in the underwriting of individual life, accident and health insurance policies that the person designated by the secretary of health and social services as the state epidemiologist finds medically significant and sufficiently reliable for the presence of HIV, antigen or nonantigenic products of HIV or an antibody to HIV and that the commissioner finds and designates by rule as sufficiently reliable for use in the underwriting of individual life, accident and health insurance policies.

(b) Paragraph (a) does not authorize the use of any test or series of tests for the presence of HIV, antigen or nonantigenic products of HIV or an antibody to HIV to discriminate in violation of s. 628.34 (3).

History: 1985 a. 29, 73; 1987 a. 70 ss. 34, 36; 1989 a. 201 ss. 31, 36.

631.93 Prohibited provisions concerning HIV infection. (1) DEFINITIONS. In this section, "HIV infection" means the pathological state produced by a human body in response to the presence of HIV, as defined in s. 631.90 (1).

(2) ACCIDENT AND HEALTH INSURANCE. An accident or health insurance policy may not contain exclusions or limitations, including deductibles or copayments, for coverage of the treatment of HIV infection or any illness or medical condition arising from or related to HIV infection, unless the exclusions or limitations apply generally to other illnesses or medical conditions covered by the policy.

(3) LIFE INSURANCE. A life insurance policy may not deny or limit benefits solely because the insured's death is caused, directly or indirectly, by HIV infection or any illness or medical condition arising from or related to HIV infection.

History: 1989 a. 201