

CHAPTER 628

INSURANCE MARKETING

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|--------|---|--------|---|
| | SUBCHAPTER I | | |
| | GENERAL PROVISIONS | | |
| 628.01 | Purposes. | 628.32 | Restrictions on intermediaries' interests. |
| 628.02 | Definitions. | 628.33 | Unfair methods of competition and unfair or deceptive act or practices defined. |
| | SUBCHAPTER II | 628.34 | Unfair marketing practices. |
| | LICENSING OF INTERMEDIARIES | 628.35 | Prohibition of exclusive contracts. |
| 628.03 | Requirement of license. | 628.36 | Limitations on corporations supplying health care services. |
| 628.04 | Issuance of license. | 628.37 | Preservation of professional relationships in professional services. |
| 628.05 | Licensing of town mutual agents. | 628.39 | Extension of credit on premiums. |
| 628.06 | Licensing of fraternal agents. | 628.40 | Effect of agent's appointment on insurer. |
| 628.07 | Licensing of nonresidents. | 628.45 | Trust obligation for funds collected. |
| 628.08 | Changes in status of intermediaries. | | SUBCHAPTER IV |
| 628.09 | Apprentice permits and temporary licenses. | | COMPENSATION OF INTERMEDIARIES |
| 628.10 | Termination of license. | 628.51 | Controlled business. |
| 628.11 | Listing of insurance agents. | 628.61 | Sharing commissions. |
| 628.12 | Liability of surplus lines insurer. | 628.77 | Bonuses prohibited. |
| 628.13 | State banks. | 628.78 | Benefit plans for agents. |
| | SUBCHAPTER III | 628.81 | Filing of commission rates paid to agents and brokers. |
| | MARKETING PRACTICES | | |
| 628.31 | Sale of insurance through vending machines. | | |

SUBCHAPTER I

GENERAL PROVISIONS

628.01 Purposes. The purposes of this chapter are:

(1) To encourage improvement in the professional competence of insurance intermediaries;

(2) To provide maximum freedom of marketing methods for insurance, consistent with the interests of the public in this state;

(3) To preserve and encourage competition at the consumer level;

(4) To limit the adverse effects of imperfect competition on the cost of insurance; and

(5) To regulate insurance marketing practices in conformity with the general purposes of the insurance code.

History: 1975 c. 371.

Note: Chapter 371, laws of 1975, which created this chapter of the statutes, contains notes explaining the revision. See the 1975 session law volume.

628.02 Definitions. In Title XLI, unless the context otherwise requires:

(1) **INSURANCE MARKETING INTERMEDIARIES.** (a) *Activities constituting intermediary.* Except as provided under par. (b), a person is an "intermediary" if the person does or assists another in doing any of the following:

1. Solicits, negotiates or places insurance or annuities on behalf of an insurer or a person seeking insurance or annuities; or

2. Advises other persons about insurance needs and coverages.

(b) *Exceptions.* The following persons are not intermediaries:

1. A regular salaried officer, employe or other representative of an insurer or licensed intermediary, who devotes substantially all working time to activities other than those in par. (a), and who receives no compensation that is directly dependent upon the amount of insurance business obtained;

2. A regular salaried officer or employe of a person seeking to procure insurance, who receives no compensation that is directly dependent upon the amount of insurance coverage procured, with respect to such insurance;

3. A person who gives incidental advice in the normal course of a business or professional activity other than insurance consulting if neither the person nor the person's employer receives compensation directly or indirectly on account of any insurance transaction that results from that advice;

4. A person who without special compensation performs incidental services for another at the other's request without providing advice or technical or professional services of a kind normally provided by an intermediary;

5. A holder of a group insurance policy, or any other person involved in mass marketing, with respect to administrative activities in connection with such a policy, if he or she receives no compensation therefor beyond actual expenses, estimated on a reasonable basis;

6. A person who provides information, advice or service for the principal purpose of reducing loss or the risk of loss; or

7. A person who gives advice or assistance without compensation, direct or indirect.

(2) INSURANCE CONSULTANT. An intermediary is an insurance consultant when the intermediary advises other persons about insurance needs and coverages, is compensated by the person the intermediary advises on a basis not related directly to the insurance placed and is not compensated directly or indirectly by an insurer, agent or broker for the advice the intermediary gives.

(3) INSURANCE BROKER. An intermediary who is not an insurance consultant is an insurance broker if the intermediary acts in the procuring of insurance on behalf of an applicant for insurance of an insured, and does not act on behalf of the insurer except by collecting premiums or performing other ministerial acts.

(4) INSURANCE AGENT. An intermediary is an insurance agent if the intermediary acts as an intermediary other than as a broker or consultant.

(5) SURPLUS LINES AGENT OR BROKER. A surplus lines agent or broker is one licensed to place insurance with unauthorized insurers, under s. 628.04 (2).

History: 1975 c. 371, 421.

SUBCHAPTER II

LICENSING OF INTERMEDIARIES

628.03 Requirement of license. (1) GENERAL. No person may perform, offer to perform or advertise any service as an intermediary in this state, unless the person obtains a license under s. 628.04 or 628.09, and no person may utilize the services of another as an intermediary if the person knows or should know that the other does not have a license as required by law.

(2) EXEMPTIONS. The commissioner may by rule exempt certain classes of persons from the requirement of obtaining a license:

(a) If the functions they perform do not require special competence or trustworthiness or the regulatory surveillance made possible by licensing; or

(b) If other existing safeguards make regulation unnecessary.

(3) VALIDITY OF CONTRACT. No insurance contract is invalid as a result of a violation of this section.

History: 1975 c. 371, 421.

628.04 Issuance of license. (1) CONDITIONS AND QUALIFICATIONS. The commissioner

shall issue a license to act as an intermediary to any applicant who:

(a) Pays the applicable fee;

(b) Shows to the satisfaction of the commissioner:

1. That if a natural person, the applicant has the intent in good faith to do business as an intermediary or, if a corporation or partnership, has that intent and has included that purpose in the articles of incorporation or association;

2. That if a natural person, the applicant is competent and trustworthy, or that if a partnership or corporation, all partners, directors or principal officers or persons in fact having comparable powers are competent and trustworthy, and that it will transact business in such a way that all acts that may only be performed by a licensed intermediary are performed exclusively by natural persons who are licensed under this section; and

3. That the applicant intends to comply with s. 628.51 with reference to compensation for effecting insurance upon the applicant's own property or other risk; and

(c) If a nonresident, executes in a form acceptable to the commissioner an agreement to be subject to the jurisdiction of the commissioner and the courts of this state on any matter related to the applicant's insurance activities in this state, on the basis of service of process under ss. 601.72 and 601.73.

(2) SURPLUS LINES AGENTS OR BROKERS. The commissioner may issue a license as an agent or broker authorized to place business under s. 618.41 if the applicant shows to the satisfaction of the commissioner that in addition to the qualifications necessary to obtain a general license under sub. (1), the applicant has the competence to deal with the problems of surplus lines insurance. The commissioner may by rule require an agent or broker authorized to place business under s. 618.41 to supply a bond not larger than \$100,000, conditioned upon proper performance of obligations as a surplus lines agent or broker.

(3) CLASSIFICATION AND EXAMINATION. The commissioner may by rule prescribe classifications of intermediaries in addition to those provided in s. 628.02 (2) to (5), by kind of authority, or kind of insurance, or in other ways, and may prescribe different standards of competence, including examinations and educational prerequisites, for each class. The commissioner may by rule set annual continuing education standards, but may not require a licensed intermediary to complete a course of study requiring more than 15 hours, per license, of approved continuing education, including continuing education programs approved by the commissioner and presented by the insureres, in any one-year

period. The commissioner may, by rule, exempt any class of intermediaries from the continuing education requirements. So far as practicable, the commissioner shall issue a single license to each individual intermediary for a single fee.

(3m) APPROVAL OF RULES. This subsection does not apply to emergency rules adopted under s. 227.027.

(a) Role of legislative council. Prior to any public hearing on a proposed rule under sub. (3), or if no public hearing is required, prior to notification of the standing committees, the commissioner shall submit the proposed rule to the legislative council for review. The legislative council shall act as a clearing house for rule drafting and cooperate with the commissioner and the revisor of statutes to:

1. Review the statutory authority under which the commissioner intends to adopt the rule. The legislative council shall notify the commissioner, the joint committee for the review of administrative rules and the appropriate standing committee when the statutory authority is eliminated or significantly changed by repeal, amendment, court decision or for any other reason.

2. Ensure that the procedures for the promulgation of a rule required by this subsection and ch. 227 are followed.

3. Review proposed rules for form, style and placement in the administrative code.

4. Review proposed rules to avoid conflict with or duplication of existing rules.

5. Review proposed rules to provide adequate references to relevant statutes, related rules and forms.

6. Streamline and simplify the rule-making process.

7. Review proposed rules for clarity, grammar and punctuation and to ensure plain language.

8. Review proposed rules to determine potential conflicts and to make comparisons with federal regulations.

(b) Legislative council to assist standing committees. The legislative council shall work with and assist the appropriate standing committees throughout the rule-making process. The legislative council may issue recommendations concerning any proposed rule which the commissioner submits under this subsection.

(c) Notification of standing committees. The commissioner shall notify appropriate standing committees when proposed rules under sub. (3) are in final draft form by submitting a notice to the presiding officer in each house. Each presiding officer shall refer the notice to one standing committee. The commissioner may withdraw a proposed rule by notifying the presiding officer

in each house of the legislature of her or his intention not to promulgate the rule.

(d) Form of notice. The notice shall include the proposed rule in a form complying with s. 227.024 (1).

(e) Standing committee review. 1. A committee may be convened upon the call of its chairperson or a majority of its members to review a proposed rule. A committee may meet separately or jointly with the other committee to which the notice is referred, direct the commissioner to attend the meeting and hold public hearings to review the proposed rule.

2. The standing committee review period lasts for 30 days after the notice is submitted and if within the 30-day period a standing committee directs the commissioner to meet with it to review the proposed rule, the standing committee review period is extended for 30 days from the date of that request.

3. The commissioner may not promulgate a proposed rule during the standing committee review period unless both committees approve the rule prior to the expiration of that period.

4. Either standing committee may disapprove the proposed rule or part of a proposed rule by taking action in executive session to disapprove the rule within the standing committee review period. If both committees fail to take this action, the proposed rule is not disapproved and the commissioner may promulgate the rule.

(f) Joint committee for the review of administrative rules. 1. If either standing committee disapproves a proposed rule or part of a proposed rule, the proposed rule or its part shall be referred to the joint committee for the review of administrative rules.

2. The joint committee review period lasts for 30 days after the proposed rule is referred and the joint committee shall meet and take action in executive session during that period.

3. The commissioner may not promulgate a proposed rule or its part which is disapproved by a standing committee unless the proposed rule is approved by the joint committee for the review of administrative rules or until the bill in subd. 5 fails of enactment. The commissioner may promulgate portions of the rule which were not suspended, if the committee disapproved only parts of the rules.

4. The joint committee for the review of administrative rules may reverse the standing committee disapproval by taking action to approve the rule within the joint committee review period. The joint committee may uphold the standing committee disapproval by taking action to disapprove the rule within the joint committee review period. The joint committee

may remand the proposed rule to the commissioner for further consideration or public hearings or both. If the joint committee disapproves a proposed rule, the commissioner may not promulgate the proposed rule until the bill in subd. 5 fails of enactment.

5. When the joint committee for the review of administrative rules disapproves a proposed rule or portion of the proposed rule, the committee shall as soon as possible place before the legislature, a bill to support the disapproval. If such bill is defeated, or fails of enactment in any other manner, the proposed rule or portion of the proposed rule may be promulgated. If the bill becomes law, the proposed rule or portion of the proposed rule, may not be promulgated unless a properly enacted law specifically authorizes the adoption of that rule.

(4) INTERMEDIARIES REPRESENTING NON-PROFIT SERVICE PLANS. Intermediaries dealing with or representing nonprofit service plans must be licensed under ss. 628.03 and 628.04, and are subject to all provisions of this chapter.
History: 1975 c. 371, 421; 1977 c. 363.

628.05 Licensing of town mutual agents.

(1) GENERAL EXEMPTION. Except as otherwise provided in sub. (2), or by rule promulgated by the commissioner, persons engaged in soliciting insurance exclusively for town mutuals are not subject to the requirements of s. 628.03 (1).

(2) AGENTS SOLICITING INSURANCE REQUIRING REINSURANCE. No person may solicit any application for a contract providing coverage of the kind specified in s. 612.31 (3) unless the person first obtains a license to do so under this chapter. The license need be only for those coverages the town mutual is authorized to write and any examination of applicants shall be appropriately limited.
History: 1975 c. 371, 421.

628.06 Licensing of fraternal agents. (1)

GENERAL PROVISION. Subject to sub. (2), an agent of a fraternal is subject to the same licensing requirements as an agent for any other insurer doing the same lines of business, unless the agent was an agent for a fraternal immediately prior to October 2, 1963, and is still such an agent on June 19, 1976. The agent's authority under this exception ceases upon ceasing, for however short a period, to be an agent for a fraternal.

(2) PART-TIME FRATERNAL AGENTS. An agent for one or more fraternal who devotes or intends to devote less than half-time to the solicitation of insurance business is not subject to the requirements of sub. (1). A person is presumed to have devoted half-time to the solicitation of insurance business if in the preceding

calendar year the person procured life insurance contracts in a face amount in excess of \$50,000, or, in the case of other kinds of insurance, on the persons of more than 25 individuals, and if the person received compensation therefor.

History: 1975 c. 373, 421.

Legislative Council Note, 1975: These subsections continue the general thrust of s. 208 21. The grandfather clause is considerably restricted. The part-time exception in sub. (2) reflects the informal and nonprofessional nature of some of the marketing methods of the smaller fraternal; some question may be raised about the merits of the exception, but it reflects strongly held views. It clearly permits nonprofessional solicitation of new members by existing members, when no compensation is involved. [Bill 643-S]

628.07 Licensing of nonresidents.

The commissioner may waive the requirement of an examination for a nonresident applicant under s. 628.04 if the jurisdiction of the applicant's residence has imposed upon the applicant requirements substantially as rigorous as those of this state and has enforced them with comparable rigor.

History: 1975 c. 371, 421.

628.08 Changes in status of intermediaries.

Every change in the members of a partnership or the principal officers of a corporation licensed as an intermediary, every significant change in management powers in either, and so far as it relates to competency or trustworthiness as an intermediary, every change in the status and relationships of a natural person licensed as an intermediary, shall be reported to the commissioner promptly by the intermediary, in such detail and form as the commissioner by rule prescribes.

History: 1975 c. 371.

628.09 Apprentice permits and temporary licenses. (1) ISSUANCE OF LICENSE.

The commissioner may issue an apprentice's permit or temporary license as an intermediary for a period of not more than 3 months:

(a) *Apprentices' permits.* To a person who is, under the direct supervision of a licensed intermediary or insurer, actually studying and gaining experience with a bona fide view to becoming a licensed intermediary and whom the commissioner considers a suitable candidate for a permanent license under s. 628.04;

(b) *Temporary licenses.* To the personal representative of a deceased or mentally disabled intermediary, or to a person designated by an intermediary who is otherwise disabled or has entered active duty in the U.S. armed forces, in order to give time for more favorable sale of the goodwill of a business owned by the intermediary, for the recovery or return of the intermediary, or for the orderly training and licensing of new personnel for the intermediary's business.

This paragraph does not apply to life insurance agents.

(2) **LIMITATION ON AUTHORITY.** The commissioner may by order limit the authority of any apprentice or temporary licensee in any way deemed necessary to protect insureds and the public. The commissioner may require the apprentice or temporary licensee to have a suitable sponsor who is a licensed intermediary or insurer and who assumes full legal responsibility for all acts and omissions of the apprentice or temporary licensee, may impose special bonding requirements and may impose other similar requirements designed to protect insureds and the public.

(3) **EXAMINATIONS.** The commissioner may administer an examination as a prerequisite to the issuance of an apprentice's permit or a temporary license.

(4) **DURATION OF LICENSE.** The commissioner may by order revoke a temporary license or apprentice's permit if the interests of insureds or the public are endangered. A temporary license or apprentice's permit may be extended beyond the initial period specified under sub. (1), for additional periods of not more than 3 months each, with the total period not to exceed 12 months in the aggregate. A temporary license may not continue after the owner or the personal representative disposes of the business.

(5) **FEES.** The fees for an apprentice's permit or a temporary license are the same as for a permanent license. No additional fee may be charged for extensions under sub. (4), nor for the issuance of a subsequent license under s. 628.04 if that license is issued while the apprentice permit or temporary license remains in effect.

(6) **STATUS OF APPRENTICE OR TEMPORARY LICENSEE.** An apprentice or temporary licensee is a fully qualified intermediary for all purposes other than the process of licensing, the duration of the license and the limits imposed under sub. (2).

History: 1975 c. 371, 421.

628.10 Termination of license. (1) GENERAL. An intermediary's license issued under s. 628.04 shall remain in force until it is revoked, suspended or limited under sub. (2), or is surrendered, or until the licensee dies or is adjudicated incompetent or found by the commissioner after a hearing to be incompetent to act as an intermediary.

(2) **REVOCATION, SUSPENSION, AND LIMITATION OF LICENSES.** (a) *For nonpayment of fees.* If a licensed intermediary fails to pay a fee on time or fails to produce evidence of compliance with the continuing education standards set by

the commissioner, the commissioner may by order suspend the license.

(b) *For other reasons.* Whenever a licensed intermediary persistently or substantially violates an insurance statute or rule or an order of the commissioner under s. 601.41 (4), or the intermediary's methods and practices in the conduct of business endanger, or financial resources are inadequate to safeguard, the legitimate interests of customers and the public, the commissioner may, after a hearing, in whole or in part revoke, suspend or limit the license.

(3) **DELAY FOR NEW APPLICATION.** In an order revoking an intermediary's license under sub. (2), the commissioner shall specify a time not to exceed 5 years within which no application for a new license may be made. If the commissioner does not so specify, no application may be made for 5 years.

(4) **PENALTIES.** Any intermediary whose license has been suspended or revoked shall, when the suspension ends or when relicensed, pay all fees that would have been payable if the license had not been suspended or revoked, unless the commissioner by order waives the payment of the fees. If suspension is for nonpayment of fees, the intermediary shall, in order to terminate the suspension, pay double the fees that would have been payable if the license had not been suspended.

History: 1975 c. 371, 421; 1977 c. 363.

628.11 Listing of insurance agents. An insurer shall report to the commissioner at such intervals as the commissioner establishes by rule all appointments and all terminations of appointments of insurance agents to do business in this state, and shall pay the fees prescribed under s. 601.31 (16).

History: 1975 c. 371, 421.

628.12 Liability of surplus lines insurer. If a surplus lines insurer has assumed a risk and if the premium therefor has been received by the surplus lines agent or broker who placed the insurance, then as between the insurer and the insured the insurer is deemed to have received the premium due to it for the coverage; and the insurer is liable to the insured for losses covered by the insurance and for unearned premiums upon cancellation of the insurance, whether or not the surplus lines agent or broker is indebted to the insurer. Each surplus lines insurer assuming a surplus lines risk under this section thereby subjects itself to the terms of this section.

History: 1975 c. 371.

628.13 State banks. A bank organized under ch. 221, or an officer or salaried employe

of any such bank, may obtain a license as an intermediary if otherwise qualified.

History: 1975 c. 371.

SUBCHAPTER III

MARKETING PRACTICES

628.31 Sale of insurance through vending machines. (1) LICENSE REQUIRED. No insurance contract may be sold through a vending machine in this state unless the machine is licensed by the commissioner. Vending machine licenses may be issued to authorized insurers or licensed intermediaries.

(2) APPLICATION FOR LICENSE. The application for a vending license shall be on a form prescribed by the commissioner by rule and shall include such information and exhibits as the commissioner reasonably specifies. It shall be accompanied by the fee under s. 601.31 (17m).

(3) SPECIFICATIONS TO BE PRESCRIBED. The commissioner may prescribe by rule mechanical specifications for machines, the types of locations where machines may be placed, the kinds of servicing to be provided, provisions for refunds and processing of complaints, any other reasonable requirements to ensure that a machine is suitable for its intended purpose, and limitations on the rental that may be paid for the space occupied by the machine.

(4) LIMITATIONS ON CONTRACTS TO BE SOLD. No insurance policies may be sold by a vending machine except policies of personal travel accident insurance providing benefits for accidental bodily injury or accidental death.

(5) SUPERVISION OF MACHINES. Each machine shall be under the supervision of either a licensed intermediary or a salaried employe of the insurer who shall keep the machine in good working order or remove it. If money is deposited for which no insurance or less than the correct amount of insurance is issued, the licensee shall make a prompt refund.

(6) TERMINATION OF LICENSE. The license for a vending machine shall terminate when the licensee's own license to do business of the kind sold through the machine in this state terminates. The commissioner may by order revoke the license for the machine. If a hearing is demanded under s. 601.62 (3), the revocation must be based upon a finding that there is a violation of the conditions for granting a license or that the machine is being used in violation of the law, of a rule or an order of the commissioner, or that the interest of the public is threatened by its continued use.

History: 1975 c. 371, 421.

628.32 Restrictions on intermediaries' interests. (1) CONFLICTS OF INTEREST OF CONSULTANTS. (a) *All consultants.* No insurance consultant may recommend or encourage the purchase of insurance from any insurer or through any agent or broker in which the consultant or any member of the consultant's immediate family is an executive or employe or owns any stock that gives a substantial interest, direct or indirect.

(b) *Life insurance consultants.* No person may be a life insurance consultant if the person or any member of the person's immediate family is an executive in or employe of or owns any stock or does any business that gives the person a substantial interest, direct or indirect, in advising clients against the purchase of life insurance or annuities. No life insurance consultant or any member of the consultant's immediate family may receive any benefit, direct or indirect, from any advice the consultant gives as a consultant, other than a previously agreed upon fee for the advice that is not dependent on the sale of insurance or any other thing or service.

(2) PROHIBITION OF DUAL ROLES. No insurance intermediary may act in the same or any directly related transaction as both an agent and a broker or as a consultant and either agent or broker.

History: 1975 c. 371, 421.

628.33 Unfair methods of competition and unfair or deceptive act or practices defined. It is defined as an unfair method of competition and unfair or deceptive act or practice in the business of insurance to refuse, with respect to all insurance policies issued or renewed after June 16, 1974, to offer inclusion of coverage for services of chiropractors or physicians, as defined in s. 990.01 (28), lawfully rendered in this state when writing a policy providing accident and health benefits for treatment encompassing such services, if the policy provides payment for services performed by such a physician or chiropractor, all at the option of the assured, including policies under plans under s. 148.03 (1). If any such policy filed after January 1, 1976, which provides coverage for hospital care but does not provide coverage for at least 30 days for skilled nursing care to patients upon transfer within 24 hours from a general hospital to a licensed skilled nursing home at a daily rate which does not exceed the daily rate established for such home by the department of health and social services, is deemed to be an unfair method of competition and an unfair and deceptive act. Such skilled nursing care shall be certified as medically necessary by the attending physician and recertified as medically necessary every 7 days, shall

not be domiciliary or custodial, shall be continued treatment for the same medical or surgical condition for which the patient had been treated at the hospital and shall not be available to the patient without charge or under a government health care program.

History: 1975 c. 371; 1977 c. 339 s. 21.

Note: Chapter 371, laws of 1975, which created this section, contains notes explaining the revision. See the 1975 session law volume.

628.34 Unfair marketing practices. (1)

MISREPRESENTATION. (a) *Conduct forbidden.* No person who is or should be licensed under this code, no employe or agent of any such person, no person whose primary interest is as a competitor of a person licensed under this code, and no person on behalf of any of the foregoing persons may make or cause to be made any communication relating to an insurance contract, the insurance business, any insurer or any intermediary which contains false or misleading information, including information misleading because of incompleteness. Filing a report and, with intent to deceive a person examining it, making a false entry in a record or wilfully refraining from making a proper entry, are "communications" within the meaning of this paragraph. No intermediary or insurer may use any business name, slogan, emblem or related device that is misleading or likely to cause the intermediary or insurer to be mistaken for another insurer or intermediary already in business.

(b) *Presumption of insurer's violation.* If an insurance agent distributes cards or documents, exhibits a sign or publishes an advertisement which violates par. (a), having reference to a particular insurer that the agent represents, the agent's violation creates a rebuttable presumption that the violation was also committed by the insurer.

(2) UNFAIR INDUCEMENTS. (a) *General.* No insurer, no employe of an insurer, and no insurance intermediary may seek to induce any person to enter into an insurance contract or to terminate an existing insurance contract by offering benefits not specified in the policy, nor may any insurer make any agreement of insurance that is not clearly expressed in the policy to be issued. This subsection does not preclude the reduction of premiums by reason of expense savings, including commission reductions, resulting from any form of mass marketing.

(b) *Absorption of tax.* No agent, broker or insurer may absorb the tax under s. 618.43 (2).

(3) UNFAIR DISCRIMINATION. No insurer may unfairly discriminate among policyholders by charging different premiums or by offering different terms of coverage except on the basis of

classifications related to the nature and the degree of the risk covered or the expenses involved. Rates are not unfairly discriminatory if they are averaged broadly among persons insured under a group, blanket or franchise policy, and terms are not unfairly discriminatory merely because they are more favorable than in a similar individual policy.

(4) RESTRAINT OF COMPETITION. No person who is or should be licensed under this title of the statutes, no employe or agent of any such person, no person whose primary interest is as a competitor of a person licensed under this code, and no one acting on behalf of any of the foregoing persons, may commit or enter into any agreement to participate in any act of boycott, coercion or intimidation tending to unreasonable restraint of the business of insurance or to monopoly in that business.

(5) FREE CHOICE OF INSURER. No person may restrict in the choice of an insurer or insurance intermediary another person required to pay the cost of insurance coverage whenever the procurement of insurance coverage is required as a condition for the conclusion of a contract or other transaction or for the exercise of any right under a contract. However, the person requiring the coverage may reserve the right to disapprove on reasonable grounds the insurer or the coverage selected. The form of corporate organization of an insurer authorized to do business in this state is not a reasonable ground for disapproval, and the commissioner may by rule specify that additional grounds are not reasonable.

(6) EXTRA CHARGES. No person may make any charge other than premiums and premium financing charges for the protection of property or of a security interest in property, as a condition for obtaining, renewing or continuing the financing of a purchase of the property or the lending of money on the security of an interest in the property.

(7) INFLUENCING EMPLOYERS. No insurer or insurance intermediary or employe or agent of either may, in connection with an insurance transaction, encourage, persuade or attempt to influence any employer to refuse employment to or to discharge any person arbitrarily or unreasonably.

(8) USE OF OFFICIAL POSITION. No person holding an elective, appointive or civil service position in federal, state or local government may use decision-making power or influence in that position to coerce the placement of insurance for any prospective policyholder through any particular intermediary or with any particular insurer.

(9) **REFUSAL TO RETURN INDICIA OF AGENCY.** No agent may refuse or fail to return promptly all indicia of agency to the principal on demand.

(10) **OTHER UNFAIR TRADE PRACTICES.** No person may engage in any other unfair method of competition or any other unfair or deceptive act or practice in the business of insurance, as defined under sub. (11).

(11) **RULES DEFINING UNFAIR TRADE PRACTICES.** The commissioner may define specific unfair trade practices by rule, after a finding that they are misleading, deceptive, unfairly discriminatory, provide an unfair inducement, or restrain competition unreasonably.

History: 1975 c. 371, 421.

628.35 Prohibition of exclusive contracts.

No insurer may make, enforce or participate in any contract or other arrangement for exclusive services of a health care provider that prevents or materially inhibits any other insurer authorized to do business in this state from entering into a contract or other arrangement with any health care provider of services that the other insurer has contracted to supply or for which it has promised indemnity under its insurance contracts, unless:

(1) The health care provider is an individual who is an employee of the insurer;

(2) The health care provider is a corporation owned by the insurer;

(3) The health care provider uses the insurer's name under a franchise arrangement; or

(4) The case is within a class for which the commissioner by rule establishes an exception after a finding that the contract or other arrangement does not seriously impede the effective operation of a legitimate insurance business by other insurers.

History: 1975 c. 223, 371, 422.

628.36 Limitations on corporations supplying health care services. (1) PAYMENT METHODS.

Any corporation operating a voluntary health care plan may pay health care professionals on a salary, per patient or fee-for-service basis to provide health care to policyholders or beneficiaries of the corporation. No corporation may retain any part of the professional's fee if a fee-for-service payment basis is used to provide members with health care service.

(2) **DISCRIMINATION AGAINST PROFESSIONALS.** No health care plan or contract may prevent any person covered under the plan from choosing freely among licensed health care professionals who have agreed to participate in the plan and abide by its terms, except by requiring

the person covered to select primary providers to be used when reasonably possible. No licensed professional may be required to participate exclusively in the plan as a condition for participation in it, nor may any licensed professional be denied the opportunity to participate in the plan under its terms, except for professional cause.

(3) **EXEMPTION BY RULE.** By rule the commissioner may exempt from the application of any part of subs. (1) and (2) plans which provide innovative approaches to the delivery of health care and which cannot operate successfully consistent with all of the provisions in subs. (1) and (2). The commissioner may promulgate such a rule only if on a finding that the interests of the public require such innovations either as an experiment or to supply health care services that are not otherwise available in adequate quantity or quality. The promulgated rule shall be as narrow as is compatible with the success of the plans.

History: 1975 c. 223, 371, 422.

628.37 Preservation of professional relationships in professional services.

No insurance plan related to or providing health care, legal or other professional services may alter the direct relationship and responsibility of professional persons to their patients or clients for the professional services rendered. All professional relationships are subject to the same rules of contract and tort law and professional ethics as if no insurance plan were involved.

History: 1975 c. 223, 371, 422.

628.39 Extension of credit on premiums.

The extension of credit to the insured upon a premium without interest for not exceeding 60 days from the effective date of the policy, or after that time with interest at not less than the legal rate nor more than 12% per annum on the unpaid balance, is permissible. The payment of premiums on policies issued under a mass marketing program on an instalment basis through payroll deductions is not an extension of credit.

History: 1975 c. 371.

628.40 Effect of agent's appointment on insurer.

Every insurer is bound by any act of its agent performed in this state that is within the scope of the agent's apparent authority, while the agency contract remains in force and after that time until the insurer has made reasonable efforts to recover from the agent its policy forms and other indicia of agency. Reasonable efforts shall include a formal demand in writing for return of the indicia, and notice to the commissioner if the agent does not comply with the demand promptly.

History: 1975 c. 371, 421.

628.45 Trust obligation for funds collected. Every licensed intermediary who is a broker, consultant or surplus lines agent is a trustee for all funds received or collected as an intermediary for transmission to the insurer and may not commingle any such funds with the intermediary's funds or with funds held by the intermediary in any other capacity than as an insurance intermediary. Unless the funds are transmitted to the insurer by the close of the next business day after their receipt, the intermediary shall deposit them in a commercial bank in this state in one or more trust accounts for funds received as an intermediary and shall retain them therein pending proper payment therefrom to the appropriate payee. This section does not relieve an agent not covered by this section of duties and responsibilities arising from contract, general law or other statutes.

History: 1975 c. 371, 421.

SUBCHAPTER IV

COMPENSATION OF INTERMEDIARIES

628.51 Controlled business. No intermediary may receive any compensation from an insurer for effecting insurance upon the intermediary's property, life or other risk unless during the preceding 12 months the intermediary had effected other insurance with the same insurer with aggregate premiums exceeding the premiums on the intermediary's risks.

History: 1975 c. 371, 421.

628.61 Sharing commissions. (1) PROHIBITION. No intermediary or insurer may pay any consideration, nor reimburse out-of-pocket expenses, to any person for services performed within this state as an intermediary if he or she knows or should know that the payee is not licensed under s. 628.04 or 628.09. No person may accept compensation for service performed as an intermediary unless the person is licensed under s. 628.04 or 628.09, except that a duly licensed agent may direct that the agent's commissions be paid to a partnership of which the agent is a member, employe or agent, or to a corporation of which the agent is an officer, employe or agent.

(2) EXCEPTIONS. This section does not prohibit:

(a) The payment of deferred commissions to formerly licensed agent and broker intermediaries or their assignees; or

(b) The proper exchange of business between agent and broker intermediaries lawfully licensed in this state.

History: 1975 c. 371, 421.

628.77 Bonuses prohibited. (1) GENERAL. No life insurer or representative of a life insurer may provide any bonus, prize or award or similar additional compensation on insurance business transacted in this state, as a result of a contest or competition among intermediaries, except that awards may be given not primarily as compensation but as recognition of merit, if no such award has a cost in excess of \$150 and if the aggregate cost of all such awards in any calendar year does not exceed 1.5% of the insurer's total first year life insurance premium income derived from sales in this state, excluding single premium income.

(2) BUSINESS OR EDUCATIONAL CONFERENCES. Payment may be made to cover reasonable actually incurred expenses in connection with any educational conference, meeting or training course of an insurer or intermediary held for bona fide business or educational purposes.

History: 1975 c. 371.

628.78 Benefit plans for agents. A domestic insurer may establish retirement, insurance and other benefit plans for agents on an actuarial basis approved by the commissioner.

History: 1975 c. 371.

628.81 Filing of commission rates paid to agents and brokers. Every insurer shall at or prior to the filing of its application for a certificate of authority file such information as the commissioner requests about the percentages and kinds of commissions paid to agents and brokers within this state, as well as the amounts of any fixed salaries if they are supplemented by commissions. It shall supply amended information promptly after any major change, and whenever the commissioner requests by rule or by order.

History: 1975 c. 371.