

1975 Senate Bill 16

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CHAPTER 371, Laws of 1975

AN ACT to repeal 201.21, 201.44 to 201.53, 201.63, 206.26 to 206.33, 206.40, 206.41, 206.51, 206.60, 206.63 (1) (a) and (2) (a), 206.64 (1) to (4), 209.04 to 209.05, 209.09, 209.14, 601.31 (16m) and 645.48 (2); to renumber 206.63 (1) (b) and (2) (b) and (c), 206.64 (5), 618.39 and 645.48 (3); to amend 133.28, 200.26 (4), 204.321 (4) (a), 206.61 (intro.), 422.202 (1) (b) (intro.), 601.02 (3), 601.64 (5) and 601.72 (1) (b) and (c); to repeal and recreate 102.31 (5), 135.07, 201.04 (3a), (3c) and (4a), 204.321 (1), 204.322 (1), 206.385 (1), ch. 207, 601.31 (15), (16) and (17), 612.61 and 618.41 (7) (a); and to create 600.03 (28a), 601.31 (15m) and (17m), 601.62 (5), 601.72 (1) (d), 618.39 (1) (title) and (2), and chapters 628 and 632 of the statutes, relating to insurance marketing regulation, granting rule-making authority and providing penalties.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 102.31 (5) of the statutes is repealed and recreated to read:

102.31 (5) The commission has standing to appear as a complainant and present evidence in any administrative hearing or court proceeding instituted for alleged violation of s. 628.34 (7).

NOTE: This deals with an unfair insurance marketing practice, but the cross-reference is retained here to be sure the industry, labor and human relations commission is aware of the provision and of its powers in relation thereto.

SECTION 2. 133.28 of the statutes is amended to read:

133.28 (title) Statutes superseded as to insurance business. The provisions of ss. 133.17, 133.18 and 133.25 as respects the business of insurance are superseded by the provisions of ss. ~~207.01 to 207.13~~ ch. 628.

SECTION 2m. 135.07 of the statutes is repealed and recreated to read:

135.07 Nonapplicability. This chapter does not apply:

(1) To a dealership to which a motor vehicle dealer or motor vehicle distributor or wholesaler as defined in s. 218.01 (1) is a party in such capacity.

(2) To the insurance business.

(3) Where goods or services are marketed by a dealership on a door to door basis.

SECTION 3. 200.26 (4) of the statutes is amended to read:

200.26 (4) **SUBJECT TO INSURANCE LAWS FOR CERTAIN PURPOSES.** Such organizations and their agents, plans and contracts are subject to s. 201.045 relating to licensing, ~~ch. 207 relating to unfair methods of competition and unfair or deceptive acts or practices, s. 209.04 (11) relating to agents,~~ ch. 601 relating to the administration of the insurance laws, ch. 620 relating to investments, ~~ch. 623 relating to accounting, valuation and reserves,~~ ch. 628 relating to insurance marketing, and to ch. 645 relating to delinquency proceedings, to the same extent and in the same manner as if such organizations were domestic insurance corporations. Such organizations are also subject to s. 201.18 (1) relating to premium reserves except

that where risks are written for more than one month and the premium or fee is paid on a monthly basis, the reserve shall be computed at 50% of the monthly premium or fee received each month.

SECTION 4. 201.04 (3a) of the statutes is repealed and recreated to read:

201.04 (3a) Group life insurance.

SECTION 5. 201.04 (3c) of the statutes is repealed and recreated to read:

201.04 (3c) Credit life insurance.—Upon the lives of borrowers or purchasers of goods in connection with specific loans or credit transactions, when all or a portion of the insurance is payable to the creditor in satisfaction of the debt.

NOTE: Language was omitted in SECTIONS 4 and 5 that referred to ss. 206.60 and 206.63, containing limits on group life and group credit life insurance that are repealed by this act. The added language at the end of SECTION 5 is needed to keep the definition from sweeping in life insurance taken out at the time of incurring a debt, whether or not the insurance is for the purpose of paying the debt. Much life insurance is taken out at the time of contracting a debt that is not properly called credit life insurance.

SECTION 6. 201.04 (4a) of the statutes is repealed and recreated to read:

201.04 (4a) Credit disability insurance.—Against loss of time of debtors resulting from accident or sickness, when all or a portion of the insurance is payable to the creditor in satisfaction of the debt.

NOTE: The omitted portion of the former subsection provided limits on such insurance. The limits are repealed as unnecessary.

SECTION 7. 201.21 of the statutes is repealed.

SECTION 8. 201.44 to 201.53 of the statutes are repealed.

SECTION 9. 201.63 of the statutes is repealed.

NOTE: The general philosophy of the revision is discussed after SECTION 25. Specific comments on these repealed sections follow.

Section 201.21 is a specific limitation on expenses that is not needed, in view of the broader control over rates in chapter 625 of the statutes.

Section 201.44 (1) is incorporated elsewhere in ch. 628 (created by this act), except for the last clause, which is obsolete. Sub. (2) is also obsolete. Both are repealed. Countersignature laws are a relic of a past age and are beginning to be abandoned elsewhere. Sub. (1a) is obsolete with the authorization of brokers in this chapter. Sub. (4) is continued in s. 628.03 (3). See also comment on s. 628.03. Subs. (5) to (8) implement sub. (2). They do not need to continue after the repeal of sub. (2).

Sections 201.45, 201.46 and 201.47 of the statutes are comprehended within s. 628.34 (1).

Section 201.53 is a mixture of provisions, some of which are comprehended within s. 628.34, and some of which are found elsewhere or are repealed as unjustified restrictions on the free market in insurance. In part it is duplicative of ch. 207, because it was enacted earlier and not repealed when ch. 207 was passed. Subs. (1) and (2) are continued in s. 628.34 (2).

Sub. (3) is continued as s. 628.51.

Sub. (4) is repealed. It is no longer necessary. In practical effect, it permitted corporate agents under certain circumstances. This act permits them more broadly. See s. 628.04.

Sub. (5) is not necessary with repeal of the countersignature requirements.

Sub. (6) is continued in s. 628.02 (1) (b) 6.

Sub. (7) is continued as s. 628.39.

Sub. (8) is comprehended within the language of s. 628.34 (2).

Sub. (9) is repealed. If rebating is bad, it is so only on the professional insurance side; penalizing a buyer of insurance for acquiring his insurance wholesale is as difficult to justify as penalizing the frequenter of discount houses. Moreover, it makes it more difficult to enforce the prohibition against the agent.

Subs. (11) and (12) deal with self-incrimination and immunity from prosecution. There is need for a special provision to be applied in connection with insurance that is slightly broader than s. 972.08. Subs. (11) and (12) are retained as s. 601.62 (5).

Sub. (13) is comprehended within s. 628.34 (1).

Section 201.63 (10) is revised and reenacted as s. 628.12, while s. 201.63 (14) is unnecessary and is repealed.

SECTION 10. 204.321 (1) of the statutes is repealed and recreated to read:

204.321 (1) DEFINITION. Group accident and sickness insurance is the form of insurance under s. 201.04 (4) covering groups of persons, and issued to a policyholder in behalf of the group for the benefit of those persons in the group eligible for coverage under procedures defined in the policy or agreements collateral thereto, with or without members of their families or dependents.

SECTION 11. 204.322 (1) of the statutes is repealed and recreated to read:

204.322 (1) DEFINITION. Blanket accident and sickness insurance is the form of insurance under s. 201.04 (4) covering groups of persons, with the persons insured to be determined by definition of the class without election by the persons covered.

NOTE: Sections 204.321 (1) and 204.322 (1) are changed to provide definitions instead of complex limitations of an underwriting character as to the kinds of groups that may be underwritten. Such restrictions are not justified and are repealed. They prevent useful forms of mass marketing of insurance products. Some definitions remain necessary because of the limitations on contracts contained in the remainder of ss. 204.321 and 204.322.

SECTION 12. 206.26 to 206.33 of the statutes are repealed.

SECTION 13. 206.385 (1) of the statutes is repealed and recreated to read:

206.385 (1) Any contract issued under s. 611.25 which provides for payment of benefits in variable amounts shall contain a statement of the essential features of the procedure to be followed by the company in determining the dollar amount of the variable benefits and shall contain nonforfeiture provisions appropriate to such a contract in lieu of those under s. 206.181. Any individual contract and any group certificate issued under a group contract shall state that the dollar amount may decrease or increase and shall contain on its first page, in a prominent position, a statement that the benefits under the contract are on a variable basis.

NOTE: The remainder of present s. 206.385 (1) is replaced by general provisions in ch. 628 (created by this act).

SECTION 14. 206.40 of the statutes is repealed.

SECTION 15. 206.41 of the statutes is repealed.

SECTION 16. 206.51 of the statutes is repealed.

SECTION 17. 206.60 of the statutes is repealed.

SECTION 18. 206.61 (intro.) of the statutes is amended to read:

206.61 Group life insurance standard provisions. (intro.) No policy of group life insurance shall be delivered in this state unless it contains in substance the following provisions, or provisions which in the opinion of the commissioner are more favorable to the persons insured, or at least as favorable to the persons insured and more favorable to the policyholder, provided ~~(a)~~ that provisions of subs. (6), (8), (9) and (10) shall not apply to policies issued to a creditor to insure debtors of such creditor and subs. (7) and (11) also shall not apply to such policies which were issued under s. 206.60 (6), 1973 stats.; ~~(b)~~ that the standard provisions required for individual life insurance policies shall not apply to group life insurance policies; ~~(c)~~ that if the group life insurance policy is on a plan of insurance other than the term plan, it shall contain nonforfeiture provisions which in the opinion of the commissioner are equitable to the insured persons and to the policyholder, but nothing herein in this section shall be construed to require that group life insurance policies contain the same nonforfeiture provisions as are required for individual life insurance policies; and ~~(d)~~ that the premium rate applicable to an individual policy issued pursuant to sub. (8) or (9) shall be determined without taking into account any extra rate of mortality expected among the general class of persons exercising the rights afforded by such subsections:

SECTION 19. 206.63 (1) (a) of the statutes is repealed.

SECTION 20. 206.63 (1) (b) of the statutes is renumbered 206.63 (1).

SECTION 21. 206.63 (2) (a) of the statutes is repealed.

SECTION 22. 206.63 (2) (b) and (c) of the statutes are renumbered 206.63 (2) (a) and (b), respectively.

SECTION 23. 206.64 (1) to (4) of the statutes are repealed.

SECTION 24. 206.64 (5) of the statutes is renumbered 206.64.

SECTION 25. Chapter 207 of the statutes is repealed and recreated to read:

CHAPTER 207

UNFAIR INSURANCE BUSINESS METHODS

207.04 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.

NOTE: Section 206.40 is replaced by s. 628.78 (created by this act), which is broader and applies to all agents, not merely to life insurance agents.

Section 206.41 is dealt with fully in the licensing provisions of ch. 628.

Section 206.51 is comprehended within the general provisions of s. 628.34 (1).

Sections 206.60, 206.63 (1) (a) and (2) (a) and 206.64 (1) to (4) are undesirable limitations on mass marketing of life insurance in various situations. Such limitations as are desirable are contained in s. 632.55 (created by this act).

Ch. 207 is generally replaced by various provisions in ch. 628, plus ss. 601.62 (5) and 632.87 (created by this act). Sections 207.01 to 207.03 are preliminary provisions of the existing unfair trade practices law that are fully dealt with in ch. 628.

Section 207.04 (1) (k) is concerned with a contract provision and is continued in altered form in s. 632.87. For the disposition of the remainder of s. 207.04, see comment on s. 628.34 (created by this act).

Sections 207.09 and 207.10 are replaced by a different approach, in s. 628.34.

SECTION 26. 209.04 to 209.05 of the statutes are repealed.

SECTION 27. 209.09 of the statutes is repealed.

SECTION 28. 209.14 of the statutes is repealed.

NOTE: Sections 209.04 to 209.05, 209.09 and 209.14 are comprehended within ch. 628. For s. 209.04 (10), see s. 628.03 (2) and comment thereon.

This act repeals substantially all of the constraints that have existed on the use of mass marketing techniques in life and disability insurance. Group, franchise and blanket insurance are mass marketing devices that have won an important place in the insurance marketplace and have demonstrated great advantages over individual contracts, in certain contexts. Yet mass marketing has been needlessly subjected to excessive restriction. For example, s. 206.60 (repealed by this act) limits group life insurance to the following specified groups: employe-employer groups, creditor-debtor groups, labor union groups, trustees for employment groups; and credit unions, cooperatives or associations of public employes. Other groups which could advantageously utilize group protection where denied its use: professional associations, veterans groups, associations of retired persons, etc. Other states authorize the insurance of some kinds of groups not authorized in Wisconsin. Oregon authorizes group life insurance upon "the lives of persons who are associated in a common group for purposes other than obtaining insurance..." (Oregon Insurance Code, sec. 743.303). This act adopts the Oregon type of limitation. See s. 632.55 (1).

Section 206.60 also requires minimum participation and size for certain kinds of groups: Creditor-debtor groups, for example, have to receive new entrants at the rate of at least 100 per year and at least 75% have to participate if the insurance charges are to be paid by debtors. Smaller groups or those that might function with lower participation ratios are denied the possibility of group life protection. Group term life insurance coverage issued through employers or labor unions is also limited to a maximum between \$50,000 and \$75,000 depending on the annual compensation of the insured [see s. 206.60 (7), repealed by this act]. These amounts were increased from

\$20,000/\$40,000 by the laws of 1969, ch. 346, s. 3. A limit of \$100,000 is retained in s. 632.55 (2) (created by this act).

There is another way to describe the matter. Removal of the limits will not make a great deal of difference. They are liberal enough to present no serious obstacles to the effective use of group insurance. But they are theoretically unsound and also impose no significant limitation. Hence removal makes good sense. Restrictions that do not significantly restrict merely encumber a law that is already too complex.

There are also limitations on the amount and terms of credit life, accident and sickness insurance that might be issued to an insured in ss. 201.04 (4a) and 206.63 (2) (a), which are also eliminated by this act.

Wisconsin has already opened the way completely for mass marketing of property and liability insurance in the new rating law (ch. 625), and this act takes similar steps in life and disability insurance. The statutory limitations on mass marketing methods are not necessary to protect policyholders or the public. Insurance men are able to make sound underwriting decisions on insurance policies without statutory directions on such matters as size of and extent of participation in groups, amount of coverage, and other factors. Insurance companies should have maximum freedom to compete and innovate through mass marketing methods. Barriers to doing so are anti-competitive devices, not sound public policy. This act puts reliance on the ability of insurers properly to underwrite mass marketed coverages and on the ability of the marketplace to decide which approach is entitled to public favor, in each situation.

Though there is always the possibility of unfair discrimination through subsidy of groups by individual policyholders, the problem can be handled through the commissioner's power to deal with unfair discrimination directly, under ch. 625 for all lines except life and group disability insurance, and under s. 628.34 (3) [created by this act] for all lines.

SECTION 29. 422.202 (1) (b) (intro.) of the statutes is amended to read:

422.202 (1) (b) (intro.) Charges or premiums for credit life insurance, as defined in ss. 201.04 (3c) and 206.63, 1973 stats., or credit accident and sickness insurance, as defined in s. 201.04 (4a), if:

SECTION 30. 600.03 (28a) of the statutes is created to read:

600.03 (28a) "Intermediary" means an insurance marketing intermediary as defined in s. 628.02.

SECTION 31. 601.02 (3) of the statutes is amended to read:

601.02 (3) "Agent" means ~~the same as in s. 209.047~~ an intermediary as defined in s. 628.02 (4).

SECTION 32. 601.31 (15) of the statutes is repealed and recreated to read:

601.31 (15) For issuing or enlarging the scope of a license, amounts to be set by the commissioner by rule but not to exceed:

- (a) Individual intermediary, \$10;
- (b) Corporation or partnership intermediary, \$100;
- (c) Licensees authorized to place business under s. 618.41, \$100, including the fee prescribed under par. (a) or (b) unless the license under this paragraph is separately issued; and
- (d) Adjusters of insurance, \$2.

NOTE: Terminology has been changed from present law. A certificate of registration has been called a license, so that the charges in this subsection are not annual fees but one-time fees. Maximum charges have been increased for individual agents (\$10 instead of \$5), though the commissioner may charge less. There is no present charge for corporations or partnerships which are not now licensed as such. The added inquiry necessary in those cases justifies a larger fee. It should be emphasized that they are not annually repeated.

SECTION 33. 601.31 (15m) of the statutes is created to read:

601.31 (15m) For regulating, annually after the year in which the initial license is issued, amounts to be set by the commissioner by rule and paid at times and under procedures set by him, but not to exceed:

- (a) Resident intermediaries, \$5;
- (b) Nonresident intermediaries, \$15; and
- (c) Holder of a license to place business under s. 618.41, including the fees set under par. (a) or (b), \$100.

NOTE: Annual fees for licenses, charged to the intermediary, are new except for surplus lines intermediaries, which remain the same. This is a change in concept and responds to a new and enlarged focus on the agent as an independent licensee instead of as the creature of the insurer. Of course it is perfectly permissible for the insurer to agree with the agent to pay his fees.

SECTION 34. 601.31 (16) of the statutes is repealed and recreated to read:

601.31 (16) For listing an agent under s. 628.11, a fee to be set by the commissioner by rule but not to exceed \$5 annually for resident agents and \$15 annually for nonresident agents.

NOTE: This subsection continues to recognize the connection between agent and insurer but leaves the amount of the fee for listing an agent for determination by the commissioner, with an upper limit set. The amount actually charged should be closely related to the actual needs of the commissioner for policing the market.

One of the major movements in insurance is toward the professionalization of agents. This makes it desirable to increase the money available to the commissioner to assist in the process, which should be encouraged. The changes in this section do that, making other changes in terminology necessitated by ch. 628. The amounts specified here should be altered if necessary, so that they provide sufficient revenue for expanded activity of the commissioner, but without making the provision a revenue measure for the general fund of the state. The requirement of budget approval by the legislature precludes any incentive he might otherwise have to increase the fees beyond necessity.

SECTION 35. 601.31 (16m) of the statutes is repealed.

SECTION 36. 601.31 (17) of the statutes is repealed and recreated to read:

601.31 (17) For examination of an applicant for a license as an insurance intermediary, an amount to be set by the commissioner by rule but not to exceed \$50 and not to exceed the reasonably estimated average cost of the examination and investigation of an intermediary.

NOTE: New intermediaries should undergo a searching examination which will cost more money than the \$5 previously charged. Even \$50 may not be enough, especially if some is used for character investigation. If that

happens, the subsection should be amended to provide a larger fee. Though corporations will not need examination, they will have to be investigated.

SECTION 37. 601.31 (17m) of the statutes is created to read:

601.31 (17m) For approval and supervision of a vending machine under s. 628.31, an amount to be set by the commissioner by rule but not to exceed \$5 annually.

SECTION 38. 601.62 (5) of the statutes is created to read:

601.62 (5) IMMUNITY FROM PROSECUTION. No natural person is excused from attending and testifying or from producing any document or record before the commissioner, or from obedience to the subpoena of the commissioner, or from appearing in any proceeding instituted by the commissioner, on the ground that the testimony or evidence required from him may tend to incriminate him or subject him to a penalty or forfeiture; but no such person may be criminally prosecuted for or on account of any transaction, matter or thing concerning which he is compelled, after claiming his privilege against self-incrimination, to testify or produce evidence, except that the person testifying is not exempt from prosecution and punishment for perjury, false swearing or contempt committed in testifying.

NOTE: This replaces ss. 207.13 and 201.53 (11) and (12) [repealed by this act]. Section 207.13 was in the unfair insurance business methods chapter but applied in terms "to any hearing". This new provision is even broader in proceedings covered. It is modeled after the securities act provision (s. 551.56 (3) of the statutes) with one phrase deleted because s. 601.18 makes it unnecessary, and other changes, some editorial and one limiting the scope of the immunity to criminal prosecution. Other similar provisions are to be found in s. 93.17 (department of agriculture), s. 97.20 (10) (same; food regulation), s. 111.07 (employment relations commission), 196.48 (public service commission), and s. 972.08 (criminal proceedings). Section 201.53 (11) and (12) only applied in terms to s. 201.53, which contained a miscellaneous group of provisions, mostly concerning unfair marketing practices, but it applied very broadly to all proceedings and, apparently, even informal requests for information.

SECTION 39. 601.64 (5) of the statutes is amended to read:

601.64 (5) REVOCATION, SUSPENSION AND LIMITATION OF LICENSES. Whenever a licensee of the office other than an insurer or an insurance intermediary persistently or substantially violates the insurance law or an order of the commissioner under s. 601.41 (4), or if the licensee's methods and practices in the conduct of his business endanger, or his financial resources are inadequate to safeguard, the legitimate interests of his customers and the public, the commissioner may, after a hearing, in whole or in part revoke, suspend, limit or refuse to renew the license.

NOTE: This amendment removes insurance intermediaries from the purview of the subsection. Under this act, revocation of an intermediary's license will be governed by s. 628.10 (2).

SECTION 40. 601.72 (1) (b) and (c) of the statutes are amended to read:

601.72 (1) (b) *Surplus lines insurers.* For all insurers as to any proceeding arising out of any contract that is permitted by s. 618.41, or out of any certificate, cover note or other confirmation of such insurance; ~~and~~

(c) *Unauthorized insurers.* For all unauthorized insurers or other persons doing an unauthorized insurance business in this state as to any proceeding arising out of the unauthorized transaction; ~~and~~

SECTION 41. 601.72 (1) (d) of the statutes is created to read:

601.72 (1) (d) *Nonresident intermediaries*. For all nonresident intermediaries as to any proceeding arising out of insurance activities within this state or out of insurance activities related to policies on risks within this state.

NOTE: Under s. 628.04 (created by this act), Wisconsin takes an important step in liberalizing prevailing licensing laws by not requiring residence for unrestricted Wisconsin intermediaries' licenses. As a correlative measure, however, the reach of the Wisconsin courts and administrative agencies is extended to all such nonresidents.

SECTION 42. 612.61 of the statutes is repealed and recreated to read:

612.61 Licensing of agents. Persons soliciting insurance for town mutuals shall comply with s. 628.05.

NOTE: Present s. 612.61 is replaced by s. 628.05, which is part of this act. The terms remain the same. It is preserved only as a cross reference to s. 628.05.

SECTION 43. 618.39 of the statutes is renumbered 618.39 (1).

SECTION 44. 618.39 (1) (title) and (2) of the statutes are created to read:
618.39 (1) (title) CONDUCT PROHIBITED.

(2) **PERSONAL LIABILITY FOR VIOLATION.** Any person who violates sub. (1) is personally liable to any claimant under the policy for any damage proximately caused by his own violation. That damage may include damage resulting from the necessity of replacing the insurance in an authorized insurer or the failure of the unauthorized insurer to perform the insurance contract.

NOTE: Sub. (2) is added as an effective sanction to suppress knowing placement of insurance with unauthorized insurers. It is adapted from Conn. Insurance Laws, Sec. 38-90. Insurance agents and others should guarantee performance of insurance contracts they negotiate knowingly with unlicensed insurers, unless legally negotiated under the surplus lines law. In addition, the sanctions of s. 601.64 apply to violators of this provision.

SECTION 45. 618.41 (7) (a) of the statutes is repealed and recreated to read:

618.41 (7) (a) The commissioner may, pursuant to s. 628.04 (2), issue to any licensed agent or broker a surplus lines license granting authority to procure insurance under this section.

SECTION 46. Chapter 628 of the statutes is created to read:

PREFATORY NOTE: This chapter has three main parts: (1) the licensing of insurance intermediaries; (2) the regulation of marketing practices; and (3) the compensation of insurance intermediaries. There are exceptionally difficult problems in the insurance marketing system, few of which can be effectively dealt with by the law — most of them must be left for the free play of the market. Some, however, can and should be controlled by the insurance code.

This chapter involves some departures from the historical approach to insurance marketing. It assumes, for example, that licensing of an insurance agent need not, and should not, depend on the prior existence of an agency relationship with a particular insurer. Licensing is, in the rhetoric of the business, concerned solely with the qualifications of the licensee; the law should accept that position and emphasize it. The agency relationship with a particular insurer should be a mere matter of contract, subject to reporting by insurers to facilitate effective surveillance of the market.

A second departure of this chapter lies in the assumption that there should be maximum freedom to use various marketing methods and legal relationships for dealing between insurance intermediaries and companies. The law should permit brokers as well as agents, and there is nothing in legal doctrine to prevent a person from being both, at different times. Moreover, consultants should be authorized who represent buyers merely by giving advice for a fee. In a sense, they are agents but with relationships different from the persons who are usually called agents. However, the commissioner should permit a multiple license only under conditions prescribed to preclude conflicts of interest. Of course, it can and should be made clear to the insurance buyer in what capacity the intermediary is acting at a given time.

One of the terminological problems in the licensing of insurance agents is the slippery meaning of the word "agent", and even that of "broker". Life insurance agents are usually only soliciting agents, without power to bind insurers, while the binding power of other agents is almost infinitely variable. Most confusing of all, the independent agent of the traditional "American agency system" often has the power to bind many insurers but in most respects acts more like a broker than an agent. Agents and brokers have almost indistinguishable roles, although in a technical legal sense, the agent represents the insurer and the broker the applicant. A consultant represents the policyholder too, but in a different sense. He has neither the function nor the privilege of "selling" or "placing" insurance. He merely advises.

In this code, the term "intermediary" is used to include all varieties of agency representation of either policyholder or insurer in the marketing of insurance. The crucial thing required by law is competence; all else is a matter for contractual determination, subject to full disclosure. The commissioner is empowered to differentiate among classes of "intermediaries" for licensing purposes as need requires.

A major emphasis of this chapter consists in giving equal status with the licensing of intermediaries to the enforcement against them of strict standards of integrity, so far as practicably possible. Examination is not enough to protect policyholders against objectionable marketing practices. If a policyholder has been sold unnecessary coverage or the wrong kind of coverage because the agent wanted additional commission, there is little comfort for the policyholder in the fact that the agent knew better. Only a small minority of agents engage in such objectionable practices, but that minority needs control. Subchapter III focuses on insurance marketing practices.

Finally, there are instances where the compensation paid to intermediaries should be subjected to control. This problem has long plagued regulators. Unfortunately, the insurance business is particularly vulnerable to an erosion of price competition on the consumer level in favor of a "reverse competition" in commission rates paid to agents or brokers. Various provisions limiting insurers' expenses have the purpose of preventing excessive commissions. The new law on rate regulation (chapter 625 of the statutes) also recognizes the impact of commission rates and, albeit indirectly, takes them into consideration. See ss. 625.01 (2) (e) and 625.11 (2) (b) of the statutes.

Two suggestions have been made about the licensing provisions of this law that merit special mention. The first is that consideration should be given to adopting the Model Licensing Bill of the NAIC. But this act only provides the essential framework. By rule the commissioner can adopt as

much of the Model Act as is appropriate for this state. As is characteristic of Model Acts of the NAIC, the one for agents' licensing has excessive detail for a statute. The second suggestion is that life insurance should be treated separately from other lines for agents' licensing purposes. The same answer is appropriate. Under this draft, the commissioner is free to treat life insurance agents differently from others. He may initially adopt rules that parallel s. 206.41 for life insurance and s. 209.04 for other lines (both sections repealed by this act), and later can modify both to improve the process.

CHAPTER 628
INSURANCE MARKETING
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.

NOTE: This section seeks to identify the objectives of the law found in this chapter. Sub. (1) recognizes that many licensing provisions are "fence-me-in-and-you-out" legislation. Licensing has only two legitimate roles: to provide quality control at the entrance gate, and to define the boundaries of the market to facilitate the commissioner's policing task. It is helpful if he can confine his primary concern to persons licensed by his office.

Sub. (2) recognizes that constraints previous law has placed on marketing methods are often ill-conceived and this law removes many of them. There is a limit to permissible market practices, of course. Unfair marketing practices should be suppressed, as sub. (5) recognizes.

Subs. (3) and (4) point to a serious problem in some branches of insurance. Competition can take the form of seeking marketing outlets by bidding up commissions. It exists at times in almost all lines of insurance and the severity of the problem is quite variable. For example, in life insurance, which is ordinarily thought to require a "hard" sell by a personable and persuasive agent, companies are sometimes tempted to bid against each other for agents. New York's life insurance expense limitation law, sec. 213, has tried to deal with the phenomenon, and has done so successfully for New York admitted insurers. This chapter deals only to a limited extent with the problem, however, for it is a very complex and slippery one.

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 he 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 of his 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 he nor his employer receives compensation directly or indirectly on account of any insurance transaction that results from his 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 his administrative activities in connection with such a policy, if he 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 he advises other persons about insurance needs and coverages, is compensated by the person he 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 he gives.

(3) **INSURANCE BROKER.** An intermediary who is not an insurance consultant is an insurance broker if he acts in the procuring of insurance on behalf of an applicant for insurance or 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 he 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).

NOTE: Sub. (1) is based on s. 209.047 (repealed by this act) but with two important changes. First, it omits the characterization as intermediary of any person who "transmits an application for a policy of insurance" or who "collects any premium, assessment, fees or dues for insurance or annuities". Premium collection by itself, and mere transmission of an application by itself, like some other activities sometimes performed by agents and brokers which do not involve advising customers, do not warrant the license and examination requirements imposed on true intermediaries and should be deemed a purely administrative function for which the special qualifications of an insurance intermediary are not needed. A collection agency need not be licensed as a physician to collect medical bills. Nor should a television personality advertising a product be regarded as an intermediary, though the unfair marketing practices section, s. 628.34, should apply to all of them. The advent of cooperative data processing by agents and others, as well as the

demands of efficient insurance marketing, also make the omitted language unduly restrictive. The second change is to narrow the exceptions in sub. (1) (b) so that they do not exclude persons who in fact act as intermediaries, such as representatives of reciprocals.

Sub. (1) (b) 5, along with the deletion of premium collection as a unique activity of insurance intermediaries, is intended to eliminate any unreasonable obstacles agency laws may place in the path of mass marketing developments. The group policyholder should be able to collect premiums, circulate brochures and transmit applications, among other things, without obstacles imposed by licensing laws. Even for group policyholders not qualifying for an exemption under subd. 5, no license is required if an employe who handles the business is licensed. See s. 628.61 (1) (last sentence). Experience rating credits or dividends would not be regarded as compensation if they went to the persons paying the premiums, not to the policyholders.

Sub. (1) (b) 6 is intended to permit loss prevention and control activity, without the violation of insurance laws. It continues s. 201.53 (6) [repealed by this act].

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 he obtains a license under s. 628.04 or 628.09, and no person may utilize the services of another as an intermediary if he 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.

NOTE: Sub. (1) does not require that all business from this state be written by intermediaries licensed here. Unlicensed persons may be intermediaries for business in this state if they do all their acts as intermediaries outside this state. This is consistent with s. 618.42 for business done with unauthorized insurers. If some acts are necessary in the state, licensed intermediaries must be used to perform them. Thus this section continues the crucial part of s. 201.44 (repealed by this act). However, the countersignature requirement of s. 201.44 (2) is omitted, as a relic of the past. The provision is an anti-competitive, protectionist measure without regulatory relevance. Wis. Adm. Code Ins. s. 6.04, needs to be withdrawn as a result of this change.

Under sub. (2) the commissioner can extend and clarify the exemptions of s. 628.02 (1) (b). He can also promulgate and modify those of s. 209.04 (10) [repealed by this act], which relate to town mutual agents, clerical help, persons who store fur, and others.

This section cannot be used to undermine the position of agents. The findings required in sub. (2) give adequate protection against abuse.

Sub. (3) continues present s. 201.44 (4). Section 201.44 (5) is unduly harsh if the insurer is authorized. If the insurer is not authorized, a guarantor's liability is provided by s. 618.44.

Because of the narrower reach of sub. (1), present s. 201.44 (6) is inapplicable and inappropriate. Present s. 201.44 (8) is unnecessary.

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, he 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, he 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 he intends to comply with s. 628.51 with reference to compensation for effecting insurance upon his 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 his 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), he 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 his 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. So far as practicable, he shall issue a single license to each individual intermediary for a single fee.

(4) **INTERMEDIARIES REPRESENTING NONPROFIT 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.

NOTE: This section contemplates licensing of intermediaries by the commissioner with a view solely to integrity and competence. For that purpose he may classify and license them separately for different lines of insurance or kinds of relationship. However, this chapter does not contemplate artificial barriers to a flexible and free market. A person properly qualified should be able to get a single license for all lines and for both agency and brokerage. He should also be able to be licensed as a consultant, but with stringent controls on the manner of exercising his multiple roles.

Residence in this state is not a requirement for licensing. It makes no sense in a free market and is here abolished without a requirement of reciprocity. The danger to Wisconsin intermediaries is slight. A requirement of majority imposed on applicants for licenses as life insurance intermediaries is also unnecessary. To the extent that age is relevant, it is because it bears on competence and can be dealt with under that rubric, by a rule if necessary.

Especially stringent qualifications may be required under sub. (2) for surplus lines agents or brokers and for other specialties under sub. (3). Present law does not impose more severe requirements on surplus lines agents except for charging much higher fees. It can be argued that every agent or broker should be able to place surplus lines business after he pays the appropriate fees. That would lead to the elimination of sub. (2). Even then the commissioner could impose more stringent requirements for surplus lines agents or brokers under sub. (3), except that he would have to take affirmative steps to do so.

This section does not require sponsorship by an insurer for a person to qualify as an agent. He should qualify on his own merits. The agency relationship is by this act made a mere matter of contract. That also makes it reasonable and easy to combine agency relationships and a brokerage business. There is no good reason to forbid the combination. An agent or broker should also be able to act as a consultant, if licensed as such and if he keeps his roles clearly separate, exercising only one of them in each transaction.

The provision eliminates existing prohibitions against partnerships and corporations acting as insurance agents. See ss. 206.41 (7) and 209.04 (6) [repealed by this act]. So long as the natural persons who actually perform the services for such entities are competent, trustworthy and licensed, there is no reason to deny them any operational and financial advantages these other legal forms seem to offer to them, whether illusory or not. Insurers may, for reasons of their own, prefer to deal with a partnership or a corporate agent. Insurance intermediaries may also prefer for their own purposes to use other recognized forms of legal organization than the sole proprietorship. The general prohibition of the present law has already been relaxed by some important exceptions in s. 201.53 (4) [repealed by this act].

Though nonprofit service plans theoretically sell mainly services rather than indemnity, their representatives need to be qualified in the same way as other intermediaries. They should be as completely professional as are agents for other insurers, or as are brokers.

Agents of nonprofit service plans have been required to be licensed, under s. 209.047 [repealed by this act]. Since nonprofit service plans are properly to be regarded as insurers, sub. (4) should be eliminated, once it is made clear in the law that service plans are to be treated as "insurers".

Present ss. 206.41 (9) and 209.04 (8) do not need to be continued explicitly since nothing in the law forbids exchange of business between licensed intermediaries.

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 he 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.

NOTE: Town mutual agents are treated somewhat differently from other agents. This section follows the principle that town mutual agents do not need a license for the traditional town mutual coverages but do need one for the multiple-line contracts requiring reinsurance. This section replaces the operative portion of s. 612.61, which is amended by this act to provide only a cross reference to this section.

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 his residence has imposed upon him requirements substantially as rigorous as those of this state and has enforced them with comparable rigor.

NOTE: This section attempts to pave the way for intermediaries to function fairly freely across state lines, and does so without invoking the principle of reciprocity. This state should encourage the elimination of unnecessary barriers at state lines. The protection of Wisconsin insureds requires, however, that this state be as much concerned about the qualifications of such foreign intermediaries as about its own, hence the insistence on rigorous requirements in the other state. This section adapts the provisions of s. 209.04 (3) (c) [repealed by this act], but also applies them to life insurance.

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.

NOTE: Section 628.04 permits the business of an intermediary to be transacted in the partnership or corporate form. This necessitates some surveillance over the management of such partnerships and corporations in addition to the licensing of the natural persons through whom they act. This section can be further implemented by a rule. Technically the provision is unnecessary because of the powers of s. 601.42 (1) of the statutes, but it is inserted for additional clarity.

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 he 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 he deems necessary to protect insureds and the public. He 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).

NOTE: This section partly corresponds to s. 209.04 (4) [repealed by this act]. It provides a way for those without full qualifications to be intermediaries under certain circumstances. It should survive only if carefully circumscribed, and is justified only if accompanied by a tightening of the requirements for a regular license. Ideally the requirements for this qualified license should approximate those heretofore imposed for a regular license, while those for the latter should be more rigorous.

The words "bona fide" in sub. (1) (a) enable the commissioner to decline to issue a license to someone who wishes it for a "one-shot" transaction, such as with controlled business.

Sub. (2) permits the commissioner to limit the powers of such intermediaries and to require a legally responsible sponsor or special bond. A qualifying examination is always possible, as provided by sub. (3), and normally should be given. The examination should be as rigorous as the present one for regular intermediaries, and be abbreviated only in relation to those for fully qualified intermediaries which should become more stringent. Present s. 209.04 (4) does not contemplate any examination at all. That is unsound because it sacrifices the public interest to the limited interests of individual persons. The required examination should be consistent with the temporary character of the license, however.

Sub. (4) limits the total duration of the license, but the fees, under sub. (5), are the same as for regular licenses. That is justified because of the expense involved in regulating such licenses.

Sub. (6) makes clear that an apprentice or temporary licensee is an intermediary for all legal purposes, except for the duration and destructibility of his license, the requirement of special supervision and specially imposed limits. If a labor agreement is in effect between agents and insurer, a temporary licensee or apprentice is an agent within the meaning of the

collective bargaining agreement. No distinction is tenable other than those specified in sub. (6).

A temporary license is a privilege to be granted rarely and should not be given to anyone who might endanger the interests of insureds or the public. It should not be allowed in life insurance. An apprentice's license should be given more freely but only to persons whose permanent licensing is probable, and the apprentice should be under adequate supervision. If it evolves under appropriate direction by the commissioner, the apprentice's license may result in a 2-stage licensing process that will give better assurance of real qualifications in all fully licensed agents.

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) **REVOCAION, SUSPENSION, AND LIMITATION OF LICENSES.** (a) *For nonpayment of fees.* Whenever a licensed intermediary fails to pay a fee on time, 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 his methods and practices in the conduct of his business endanger, or his financial resources are inadequate to safeguard, the legitimate interests of his 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 he 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 he is relicensed, pay all fees he would have paid if his 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 he would have paid if his license had not been suspended.

NOTE: Sub. (1) provides for an indeterminate duration for a license, in the normal case.

An intermediary other than a temporary licensee under s. 628.09 should only be put out of business, even temporarily, for activity that is dangerous to insureds or the public. For minor infractions, he should be punished by fine or forfeiture. But although suspension should be used only rarely, it has not been eliminated from the commissioner's arsenal of weapons. It amounts in practice to a revocation with automatic relicensing.

Revocation or suspension of a permanent intermediary's license should follow a hearing and opportunity for judicial review, as specified in ch. 227, for a person's livelihood and reputation are at stake. Sub. (2) requires the commissioner to hold a hearing for the drastic sanction of revocation, suspension or limitation of license, except for nonpayment of fees. But voluntary surrender of license is an informal device by which an agent may consent to a "revocation" without a hearing, by giving up his license. This may be better for him than having a hearing but it should be his choice.

Sub. (3) puts limits on relicensing. The fee requirement of sub. (4) is partial compensation for the extra expenses to which the state is put by the disciplinary proceedings.

In addition to the sanctions of revocation, etc., provided by sub. (2) intermediaries violating the law or a rule or order of the commissioner are subject to the sanctions provided in s. 601.64 (1) to (4) of the statutes, which need not be referred to in this chapter.

628.11 Listing of insurance agents. An insurer shall report to the commissioner at such intervals as he 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).

NOTE: This section is not necessary to provide the information since the commissioner may require it under s. 601.42. The importance of the report, however, merits its inclusion here, despite the duplication. Moreover, the section clarifies the obligation to pay fees.

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.

NOTE: This is s. 201.63 (10) [repealed by this act], slightly amended.

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.

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 he 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.

NOTE: There is no justification for requiring that there be an agent as an intermediary between a mechanical vending machine and an authorized insurer. Similarly there is no reason to prevent an agent from selling through a machine, where use of a machine is otherwise appropriate.

As a general principle, the market should be as free as possible, and permit use of machine marketing and other available marketing techniques. New and old, novel and conventional, marketing approaches should have a fair chance in the marketplace. The commissioner needs broad powers, however, to prevent abuses. For example, rental charges in airports for space for insurance vending machines have often been excessive, because the supplier of space has a monopoly. This provision attempts to permit the commissioner to deal with the problem. In general, subs. (1) and (3) follow s. 209.05 (4) [repealed by this act].

Someone must be responsible for maintaining the machine in good working condition or retiring it from service; sub. (5) imposes such an obligation.

A rule should be promulgated to implement this section. Initially its contents should follow the provisions of present s. 209.05, in the main.

Sub. (6) continues in essence the thrust of present s. 209.05 (5), with somewhat broader powers of termination of license.

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 he or any member of his 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 he or any member of his immediate family is an executive in or employe of or owns any stock or does any business that gives him 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 his immediate family may receive any benefit, direct or indirect, from any advice he 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.

NOTE: This law imposes restrictions on the conduct of an insurance intermediary, and especially one who holds himself out as an unbiased advisor of policyholders. A consultant is strictly forbidden by sub. (1) from making any profit on a transaction that results from his advice. He must be a professional who gets his compensation by charging a fee for the advice in

such a way that there is real assurance that his advice will be totally unbiased.

Sub. (2) makes it certain that an intermediary cannot choose to occupy 2 different roles in the same matter. Serving in 2 capacities has too many dangers of abuse. There is some danger in multiple licensing but it also has enough advantages to justify it under this limitation.

PREFATORY NOTE to s. 628.34: The law relating to abuses in insurance marketing has been crucial in the effort to keep insurance regulation within the jurisdiction of the states and free from significant federal intervention. After the McCarran Act in 1945 exempted the business of insurance from the application of the federal antitrust laws to the extent that it was regulated by the states, it was felt necessary to enact state statutes resembling the federal antitrust acts. All states did so. Chapter 207 of the Wisconsin Statutes is an example of that kind of legislation. It follows the pattern of a model bill recommended by the National Association of Insurance Commissioners, which in turn closely resembles the Federal Trade Commission Act. NAIC Proceedings, 1947, pp. 392-400. No care was taken to relate the new law to earlier provisions, however. As a result, provisions regulating unfair practices in insurance marketing appear in various places in the Wisconsin Statutes, with different language and much overlapping. In addition to ch. 207, ss. 201.45 to 201.53 and 206.31 to 206.33 are applicable.

These provisions create an appearance of great specificity. However, it is difficult, if not impossible, to define in advance in statutory language all the acts constituting unfair trade practices. "Unfair" tactics come in variegated and novel forms.

Because no statute can foresee all the possibilities, present and future, of unfair trade practices, ch. 207 provides, in addition to a list of detailed definitions, a procedure for action against undefined unfair practices. See present s. 207.09. In view of the multitude of different and changing marketing situations and possible abuses, it is better yet to prescribe basic principles in the statute while leaving the details to be determined by the commissioner through rule-making. The commissioner has issued many rules in this area. See Wis. Adm. Code Ins. ss. 2.07, 2.08, 2.09, 2.12, 2.14, 3.26, 6.04 and 6.09.

Nothing is to be feared from abandonment of the form of the NAIC model bill. This law covers the same ground, but more comprehensively and in a simpler manner. The main difference is that present s. 207.04 (2) leaves basic responsibility in the domiciliary state — each state is expected to control abuses committed by its domestic companies anywhere in the United States. If a foreign insurer engaged in an unfair trade practice, the commissioner of the state where the offense occurred is expected to report it to the commissioner of the insurer's home state and wait for his action; he might not take action himself against the insurer until after the domiciliary commissioner has had a reasonable time for action and has taken none. That restriction is inconsistent with the commissioner's basic duty to protect the interests of insureds and insurers in this state, and this act changes the approach. While the commissioner still has discretion to rely on the regulatory authorities of other states, his options are not limited to such reliance.

Present ch. 207 establishes a special procedure for enforcement, because it follows the model bill, and therefor is self-contained. There is now no reason for such separate treatment; chs. 601 and 645 of the statutes provide

powers and procedures for responding to violations of the insurance law, including unfair trade practices. Under s. 645.21, the commissioner may issue summary orders prohibiting continuation of any act or practice that is a violation of a fair trade standard, and is also a violation of law; and the effect would be the same as that of a cease and desist order under present ch. 207. The commissioner is also authorized to issue orders under s. 601.41 (4) (a) and to obtain injunctions under s. 601.64 (1). Judicial review of the commissioner's actions is guaranteed in s. 601.62 (3), through the procedures of ch. 227. Most of the procedural provisions of ch. 207 have already been repealed by ch. 337, laws of 1969, which created ch. 601 of the statutes.

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 he represents as agent, 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 his 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 his 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.

NOTE: This section is intended to preserve the essence of the provisions in the present law, and add some unfair practices. It is also intended to be stated very broadly, and to be made more specific by rules. Any problem cases that appear can be dealt with by implementing rules, to be promulgated by the commissioner under his general powers or under sub. (11).

Sub. (1) continues the thrust of ss. 201.45 to 201.47, 206.51 and 207.04 (1) (a) and (b) [repealed by this act], but without all of the detail. Some of the detail, in s. 201.45 (1) for example, can create unnecessary difficulties by conflict with SEC requirements. It is broader in applying to more persons, not only to licensees under the insurance law and their employes, but also to their competitors and to persons acting for any of them. However, it would not apply to private persons not connected with the insurance business.

This section does not continue the prohibition of defamation in s. 207.04 (1) (c) which is a mere repetition of the general criminal provision in s. 942.01. Defamation will also nearly always be misrepresentation, which is included in this section.

Section 207.04 (1) (e) prohibiting false statements to officials and similar acts is not strictly necessary. To the extent that the information is directed to the public, it is covered by sub. (1). If directed to the

commissioner, there is no doubt that it would constitute a violation of the insurance law and trigger all the sanctions provided therefor. If made under oath or affirmation, it would also be punishable under s. 946.32. Nevertheless, the second sentence of sub. (1) makes it an unfair marketing practice.

Sub. (2) continues the prohibition of special inducements presently contained in ss. 201.53 (1), (2) and (8) and 207.04 (1) (f) and (h) [repealed by this act]. But special inducements are only unfair because they result in unfair discrimination. If they result from mass marketing, they should be encouraged, not prohibited. The policyholder should not be penalized for accepting a rebate. If rebating is bad, it is bad only for the giver and not for the receiver. In addition, enforcement is easier if only the giver is guilty of an offense.

Sub. (3) establishes a general prohibition of unfair discrimination similar in substance though broader than the one in ss. 206.33 and 207.04 (1) (g) [repealed by this act]. The definition corresponds to s. 625.11 (4). The "exceptions" in s. 207.04 (1) (i), which should rather be considered as official interpretations, could be continued in a rule, though they are not necessary. They do not violate this section as reformulated. The last sentence of sub. (3) is included to make sure that the subsection does not hamper mass marketing, and in no way detracts from the broad authorization of the rating law [s. 625.11 (4)] as to group pricing, and as to price concessions based on risk and expense factors.

Subs. (2) and (3) cover present s. 207.04 (1) (j). Besides, s. 133.185 is applicable by its own force; it is not included in the list of provisions from which the insurance industry is exempted by s. 133.28.

Sub. (4) continues present s. 207.04 (1) (d), but is somewhat broader. It does not require a tendency to unreasonable restraint of the business or monopoly. The acts are illegal per se.

Subs. (5) and (6) continue present s. 207.04 (3) and (4), somewhat enlarged.

Sub. (7) continues s. 102.31 (5) [repealed and recreated by this act], but extends it to all insurers. There is no reason it should be limited to workmen's compensation insurance, though that is its most obvious application. The purpose of such a section is to prevent insurance considerations from being urged upon employers as a reason to decline employment of marginal employees. There are important reasons to encourage employment of persons in classes that might make various kinds of insurance more expensive.

Sub. (8) is an effort to deal with a problem of official misconduct that is not actual dishonesty or corruption and thus is hard to deal with through criminal law.

Sub. (9) requires terminated agents to return indicia of agency, to lessen the danger of misleading possible policyholders.

Sub. (10) adds a miscellaneous provision to include common law unfair trade practices, while sub. (11) permits unfair practices to be defined by rule. The present law has provisions for regulating undefined unfair trade practices through the courts. See present s. 207.09. That procedure is too cumbersome to be useful.

Sub. (11) permits specification of unfair trade practices within the general language of the section.

There is no reason to continue s. 207.04 (1) (k) in this chapter. It has nothing to do with insurance marketing practices but rather modifies the terms of insurance contracts with respect to podiatrists. This provision should be included in the chapter on insurance contracts by the legislative council (which will be ch. 632), and is found, substantially altered, in this bill as s. 632.87.

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 employe 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.

NOTE: This parallels but is broader than the provision in the first sentence of s. 185.981 (3) of the statutes. It is inconsistent with s. 182.032 (6) which, however, applies only to nonprofit hospital service plans. The provision prevents the creation of local monopolies of services that are the subject of insurance coverage.

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 he finds 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.

NOTE: Sub. (1) substantially parallels s. 185.982 (2), relative to payment methods for cooperative sickness plans. It applies more broadly to service plans, whether dominated by providers or by policyholders, i.e.,

whether under ch. 611 of the statutes or proposed ch. 613 (by the legislative council).

Sub. (2) continues the latter part of s. 185.982 (1).

Sub. (3) provides for the need to experiment with health care systems.

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.

NOTE: This is an adaptation of part of s. 182.032 (2) (f), and of corresponding provisions in the enabling statutes for other health care plans. See ss. 148.03 (1), 447.13 (1), 449.15 (1) and 450.13 (1). It is here expanded beyond health care to include insurance contracts for legal and any other professional services which are likely to be more common in the future. No one is to be deprived of his remedies for breach of contract or malpractice because the relationship was one created, perhaps without any effective power of selection by the patient or client, under the insurance plan. If there are problems with malpractice suits they should be solved directly, in such a way as not to deprive insured persons who do not make their own arrangements of equal rights with uninsured persons or with insured persons who do make their own arrangements. Moreover, it makes clear as a matter of insurance law that the professional relationship is also preserved.

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.

NOTE: This is present s. 201.53 (7), supplemented by an amendment which was proposed in 1973 Senate Bill 675.

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 his 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.

NOTE: This section is based upon s. 206.41 (11) [repealed by this act], but is extended to domestic insurers and to nonlife insurers. It also requires the insurer to recover the indicia of agency from the agent or make reasonable efforts to do so, so that potential policyholders will not be misled by such indicia. Section 628.34 (9) makes it an unfair marketing practice for agents to refuse or fail to return the indicia on demand.

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 his own funds or with funds held by him 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, he 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.

NOTE: An anti-commingling law is a necessary requirement for preserving the integrity of funds passing through the intermediary's hands.

SUBCHAPTER IV

COMPENSATION OF INTERMEDIARIES

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

NOTE: This is present s. 201.53 (3), slightly edited.

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 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 he is licensed under s. 628.04 or 628.09, except that a duly licensed agent may direct that his commissions be paid to a partnership of which he is a member, employe or agent, or to a corporation of which he 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.

NOTE: This is adapted from Conn. Ins. Laws, sec. 38-75, and from ss. 201.53 (4) and (5), 206.41 (3) (b) and (9) and 209.04 (8) [repealed by this act]. It does not prevent reimbursing group policyholders or other mass marketing entities for actual out-of-pocket expenses of administering programs. Such persons would not be acting as intermediaries.

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.

NOTE: This continues present s. 206.32 (1) with two essential changes, eliminating the exception for nonparticipating business of stock insurers and for "industrial" insurance, made applicable by s. 206.28 (1), and adding the representatives of insurers. Quite apart from the difficulty of defining industrial insurance, that is alleged to be an area where serious abuses exist. It can be argued that stock insurers should be excepted since their excess assets belong to shareholders, not policyholders. That does not seem to be a

sound reason, however, since the harm of the practices, if any, is to the marketing process.

The purpose of this section is to prevent the alleged pressure on agency staffs that leads them to unsound and sometimes even fraudulent sales practices to earn bonuses or win competitions.

Section 206.32 (2) can be continued by rule. It is too obvious to need memorializing in a statute.

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.

NOTE: This continues s. 206.40 [repealed by this act] without essential change, and extends it to nonlife insurers. It is necessary because s. 180.04 (16) of the statutes, which is applicable to domestic insurers by virtue of ch. 611, authorizes such plans only for directors, officers and employes. This result could also be achieved by regarding agents as employes for this purpose, but since they are not employes for all purposes, the approach of this section is preferable.

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.

NOTE: This incorporates s. 209.09 [repealed by this act], considerably strengthened. It is useful even though the commissioner can already require the information under his general powers in ch. 601. Publication of commission rates can be a useful regulatory device, in the discretion of the commissioner, though publication should be resorted to only rarely.

SECTION 47. Chapter 632 of the statutes is created to read:

CHAPTER 632

INSURANCE CONTRACTS IN SPECIFIC LINES

632.55 Limitations on group life insurance. (1) NATURE OF GROUP. No group life insurance policy may be issued on any group unless the group is formed in good faith for purposes other than to obtain insurance.

(2) SIZE OF POLICIES. No policy of group term life insurance may be issued on any group which, together with any other term life insurance policy on the same group, provides insurance on any one insured life in excess of \$100,000. This limitation of amount does not apply to any such group policy existing on July 15, 1949, or to any amount thereafter written under the policy or any amendments or substitution thereof.

NOTE: This section continues those limitations on the issuance of group life insurance that are widely felt to be necessary. It also preserves and incorporates the grandfather clause from s. 206.60 (7) (last sentence) [repealed by this act].

632.87 Restrictions on health care services. No insurer may refuse to provide or pay for benefits for health care services provided by a licensed health care professional on the ground that they were not rendered by a physician as defined in s. 990.01 (28), unless the contract clearly excludes services by such practitioners.

NOTE: This continues (and expands the scope of) s. 207.04 (1) (k) [repealed by this act], which does not deal with an unfair marketing practice

but an unduly restrictive interpretation of an insurance contract. Presently it applies only to podiatrists but the same principles apply to all health care professionals. Since the legislature has licensed podiatrists (s. 448.10 et. seq.), as well as other health care professionals who are not physicians, applicable insurance contracts should provide benefits for their services or payment to them, as well as for those of physicians, unless they are specifically and clearly excluded by a policy which has been approved by the commissioner. But general principles of freedom of contract should be operative if the contract is clear enough. Parties negotiating for insurance coverage should be free to decide what kind of health care services they want and are willing to pay for.

SECTION 48. 645.48 (2) of the statutes is repealed.

SECTION 49. 645.48 (3) of the statutes is renumbered 645.48 (2).

NOTE: This specific sanction is unnecessary in view of the general provisions of ch. 601 for sanctions.

SECTION 50. **Cross reference changes.** In the sections listed below in column A, the cross references shown in column B are changed to the cross references shown in column C:

A	B	C
Statute Section	Old Cross Reference	New Cross Reference
138.12 (2) (a)	209.04	628.02
201.065	206.64 (5)	206.64
203.24 (1)	209.04	628.04
204.321 (4) (a)	subs. (1) (d) and (f), (2) (a) and (b), and (3) (e)	subs. (2) (a) and (b) and (3) (e)
208.21 (1)	206.41	628.03 and 628.04
215.21 (8) (a)	207.04 (3)	628.34 (5)
447.13 (3)	209.04 (11)	ch. 628
449.15 (2)	209.04 (11)	ch. 628
450.13 (2)	209.04 (11)	ch. 628
601.02 (3)	209.047	628.02
618.41 (5)	ch. 207	628.34
618.41 (6) (c) 1	ch. 207	628.34
618.43 (2)	207.04	628.34 (2) (b)