

CHAPTER 207.

UNFAIR INSURANCE BUSINESS METHODS.

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207.01 Declaration of purpose. The purpose of sections 207.01 to 207.13 is to regulate trade practices in the business of insurance in accordance with the intent of Congress as expressed in the Act of Congress of March 9, 1945 (Public Law 15, 79th Congress), by defining, or providing for the determination of, all such practices in this state which constitute unfair methods of competition or unfair or deceptive acts or practices and by prohibiting the trade practices so defined or determined.

207.02 Definitions. When used in ss. 207.01 to 207.13:

(1) "Person" shall mean any individual, corporation, association, partnership, reciprocal exchange, interinsurer, Lloyd's insurer, fraternal benefit society, and any other legal entity engaged in the business of insurance, including agents, brokers and adjusters.

(2) "Commissioner" shall mean the commissioner of insurance of this state.

207.03 Unfair methods of competition or unfair and deceptive acts or practices prohibited. No person shall engage in this state in any trade practice which is defined in section 207.04 as or determined pursuant to section 207.09 to be an unfair method of competition or an unfair or deceptive act or practice in the business of insurance.

207.04 Unfair methods of competition and unfair or deceptive acts or practices defined. (1) The following are hereby defined as unfair methods of competition and unfair and deceptive acts or practices in the business of insurance:

(a) *Misrepresentations and false advertising of policy contracts.* Making, issuing, circulating, or causing to be made, issued or circulated, any estimate, illustration, circular or statement misrepresenting the terms of any policy issued or to be issued or the benefits or advantages promised thereby or the dividends or share of the surplus to be received thereon, or making any false or misleading statement as to the dividends or share of surplus previously paid on similar policies, or making any misleading representation or any misrepresentation as to the financial condition of any insurer, or as to the legal reserve system upon which any life insurer operates, or using any name or title of any policy or class of policies misrepresenting the true nature thereof, or making any misrepresentation to any policyholder insured in any company for the purpose of inducing or tending to induce such policyholder to lapse, forfeit or surrender his insurance.

(b) *False information and advertising generally.* Making, publishing, disseminating, circulating, or placing before the public, or causing, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine or other publication, or in the form of a notice, circular, pamphlet, letter or poster, or over any radio station, or in any other way, an advertisement, announcement or statement containing any assertion, representation or statement with respect to the business of insurance or with respect to any person in the conduct of his insurance business, which is untrue, deceptive or misleading.

(c) *Defamation.* Making, publishing, disseminating or circulating, directly or indirectly, or aiding, abetting or encouraging the making, publishing, disseminating or circulating of any oral or written statement or any pamphlet, circular, article or literature which is false, or maliciously critical of or derogatory to the financial condition of an insurer, and which is calculated to injure any person engaged in the business of insurance.

(d) *Boycott, coercion and intimidation.* 1. Entering into any agreement to commit, or by any concerted action committing, any act of boycott, coercion or intimidation resulting in or tending to result in unreasonable restraint of the business of insurance.

2. By any act of boycott, coercion or intimidation monopolizing or attempting to monopolize any part of the business of insurance.

(e) *False financial statements.* 1. Filing with any supervisory or other public official, or making, publishing, disseminating, circulating or delivering to any person or placing before the public, or causing directly or indirectly, to be made, published, disseminated, circulated, delivered to any person, or placed before the public, any false statement of financial condition of an insurer with intent to deceive.

2. Making any false entry in any book, report or statement of any insurer with intent to deceive any agent or examiner lawfully appointed to examine into its condition or into any of its affairs, or any public official to whom such insurer is required by law to report, or who has authority by law to examine into its condition or into any of its affairs, or, with like intent, wilfully omitting to make a true entry of any material fact pertaining to the business of such insurer in any book, report or statement of such insurer.

(f) *Stock operations and advisory board contracts.* Issuing or delivering or permitting agents, officers, or employes to issue or deliver, agency company stock or other capital stock, or benefit certificates or shares in any common law corporation, or securities or any special or advisory board contracts or other contracts of any kind promising returns and profits as an inducement to insurance.

(g) *Unfair discrimination.* 1. Making or permitting any unfair discrimination between individuals of the same class and equal expectation of life in the rates charged for any contract of life insurance or of life annuity or in the dividends or other benefits payable thereon, or in any other of the terms and conditions of such contract.

2. Making or permitting any unfair discrimination between individuals of the same class and of essentially the same hazard in the amount of premium, policy fees, or rates charged for any policy or contract of accident or health insurance or in the benefits payable thereunder, or in any of the terms or conditions of such contract, or in any other manner whatever.

(h) *Rebates.* Except as otherwise expressly provided by law, knowingly permitting or offering to make or making any contract of life insurance, life annuity or accident and health insurance, or agreement as to such contract other than as plainly expressed in the contract issued thereon, or paying or allowing or giving or offering to pay, allow or give, directly or indirectly, as inducement to such insurance or annuity, any rebate of premiums payable on the contract, or any special favor or advantage in the dividends or other benefits thereon, or any valuable consideration or inducement whatever not specified in the contract; or giving or selling or purchasing or offering to give, sell or purchase as inducement to such insurance or annuity or in connection therewith, any stocks, bonds or other securities of any insurance company or other corporation, association or partnership, or any dividends or profits accrued thereon, or anything of value whatsoever not specified in the contract.

(i) *Exceptions.* Nothing in paragraph (g) or (h) of this subsection shall be construed as including within the definition of discrimination or rebates any of the following practices:

1. In the case of any contract of life insurance or life annuity, paying bonuses to policyholders or otherwise abating their premiums in whole or in part out of surplus accumulated from nonparticipating insurance, provided that any such bonuses or abatement of premiums shall be fair and equitable to policyholders and for the best interest of the company and its policyholders;

2. In the case of life insurance policies issued on the industrial debit plan, making allowance to policyholders who have continuously for a specified period made premium payments directly to an office of the insurer in an amount which fairly represents the saving in collection expense;

3. Readjustment of the rate of premium for a group insurance policy based on the loss or expense experience thereunder, at the end of the first or any subsequent policy year of insurance thereunder, which may be made retroactive only for such policy year.

(j) *Secret rebates.* Any violation of section 133.185.

(2) Any trade practice defined in section 207.04 (1) (a) or (b) engaged in by any insurer domiciled in this state or by any alien insurer having its principal United States office or port of entry in this state, shall be deemed to have been engaged in within this state, regardless of where the practice occurred. If any foreign or alien insurer having its principal United States office or port of entry in this state, engages in this state in any trade practice defined in section 207.04 (1) (a) or (b) by means of any advertisement, announcement or statement in any magazine or other periodical having a general circulation in more than one state, or by means of any radio broadcast from stations in more than one state, and if the laws of the state where such foreign insurer is domiciled, or in the case of an alien insurer where such insurer has its principal United States office, prohibits such trade practice, the commissioner shall make a report thereon to the in-

insurance supervisory office of the state of domicile of such insurer or, in the case of an alien insurer, to the insurance supervisory official of the state wherein such insurer has its principal office or port of entry in the United States, in order that such official may take appropriate action and not proceed in respect thereto under section 207.07 until after a reasonable time for appropriate action by such supervisory official.

(3) (a) No person, firm or corporation engaged in the business of financing the purchase of real or personal property or of lending money on the security of real or personal property and no trustee, director, officer, agent or other employe of any such person, firm or corporation, shall require, as a condition precedent to financing the purchase of such property or to loaning money upon the security of a mortgage thereon, or, as a condition prerequisite for the renewal or extension of any such loan or mortgage or for the performance of any other act in connection therewith, that the person, firm or corporation for whom such purchase is to be financed or to whom the money is to be loaned or for whom such extension, renewal or other act is to be granted or performed, negotiate any policy of insurance or renewal thereof covering such property through a particular insurance agent or broker.

(b) This subsection shall not prevent the reasonable exercise by any such person, firm, corporation, trustee, director, officer, agent or employe of his right to approve or disapprove the insurer selected to underwrite the insurance or to determine the adequacy of the insurance offered.

(c) The provisions for additional recording fees in s. 235.16 (3) shall not apply to alterations in any forms made to conform to the requirements of this subsection.

(4) No seller of real or personal property, and no person, firm or corporation engaged in the business of selling real or personal property, and no trustee, director, officer, agent or other employe of any such seller or such other person, firm or corporation, shall require, as a condition precedent to the selling of such property, or for the performance of any other act in connection therewith, that the person, firm or corporation to whom such property is to be sold, negotiate any policy of insurance or renewal thereof covering such property through a particular insurance agent or broker.

History: 1953 c. 415.

(3), relating to unfair methods of competition by prohibiting coercive practices in the purchase of insurance in connection with financing the purchase of property or loan of money on property as security, is probably valid. (4) is of doubtful validity except as to those engaged in the business of selling real or personal property. 42 Atty. Gen. 137.

207.05 Power of commissioner. The commissioner shall have power to examine and investigate into the affairs of every person engaged in the business of insurance in this state in order to determine whether such person has been or is engaged in any unfair method of competition or in any unfair or deceptive act or practice prohibited by section 207.03.

207.06 Hearing, witnesses, appearances, production of books and service of process.

(1) Whenever the commissioner shall have reason to believe that any such person has been engaged or is engaging in this state in any unfair method of competition or any unfair or deceptive act or practice defined in section 207.04, and that a proceeding by him in respect thereto would be to the interest of the public, he shall issue and serve upon such person a statement of the charges in that respect and a notice of a hearing thereon to be held at a time and place fixed in the notice, which shall not be less than 10 days after the date of the service thereof.

(2) At the time and place fixed for such hearing, such person shall have an opportunity to be heard and to show cause why an order should not be made by the commissioner requiring such person to cease and desist from the acts, methods or practices so complained of. Upon good cause shown, the commissioner shall permit any person to intervene, appear and be heard at such hearing by counsel or in person.

(3) Nothing contained in this section shall require the observance at any such hearing of formal rules of pleading or evidence.

(4) The commissioner, upon such hearing, may administer oaths, examine and cross-examine witnesses, receive oral and documentary evidence, and shall have the power to subpoena witnesses, compel their attendance, and require the production of books, papers, records, correspondence, or other documents which he deems relevant to the inquiry. The commissioner, upon such hearing, may, and upon the request of any party shall, cause to be made a stenographic record of all the evidence and all the proceedings had at such hearing. If no stenographic record is made and if a judicial review is sought, the commissioner shall prepare a statement of the evidence and proceeding for use on review. In case of a refusal of any person to comply with any subpoena issued hereunder or to testify with respect to any matter concerning which he may be lawfully interrogated, the circuit court of Dane County or the county where such party resides, on application

of the commissioner, may issue an order requiring such person to comply with such subpoena and to testify; and any failure to obey any such order of the court may be punished by the court as a contempt thereof.

(5) Statements of charges, notices, orders and other processes of the commissioner under this section may be served by anyone duly authorized by the commissioner, either in the manner provided by law for service of process in civil action, or by registering and mailing a copy thereof to the person affected by such statement, notice, order or other process at his or its residence or principal office or place of business. The verified return by the person so serving such statement, notice, order or other process, setting forth the manner of such service, shall be proof of the same, and the return postcard receipt of such statement, notice, order or other process, registered and mailed as aforesaid, shall be proof of the service of the same.

207.07 Cease and desist orders and modifications thereof. (1) If, after such hearing, the commissioner shall determine that the method of competition or the act or practice in question is defined in section 207.04 and that the person complained of has engaged in such method of competition, act or practice, he shall reduce his findings to writing and shall issue and cause to be served upon the person charged with the violation an order requiring such person to cease and desist from engaging in such method of competition, act or practice.

(2) Until the expiration of the time allowed under section 207.08 (1) for filing a petition for review if no such petition has been duly filed within such time or, if a petition for review has been filed within such time, then until the transcript of the record in the proceeding has been filed in the circuit court, as hereinafter provided, the commissioner may at any time, upon such notice and in such manner as he shall deem proper, modify or set aside in whole or in part any order issued by him under this section.

(3) After the expiration of the time allowed for filing such petition for review if no such petition has been duly filed within such time, the commissioner may at any time, after notice and opportunity for hearing, reopen and alter, modify or set aside, in whole or in part, any order issued by him under this section, whenever in his opinion conditions of fact or of law have so changed as to require such action or if the public interest shall so require.

207.08 Judicial review of cease and desist orders. (1) Any person required by an order of the commissioner under section 207.07 to cease and desist from engaging in any unfair method of competition or any unfair or deceptive act or practice defined in section 207.04 may obtain a review of such order as provided in chapter 227.

(2) To the extent that the order of the commissioner is affirmed, the court shall thereupon issue its own order commanding obedience to the terms of such order of the commissioner.

(3) A cease and desist order issued by the commissioner under section 207.07 shall become final:

(a) Upon the expiration of the time allowed for filing a petition for review if no such petition has been duly filed within such time; except that the commissioner may thereafter modify or set aside his order to the extent provided in section 207.07 (2); or

(b) Upon the final decision of the court if the court directs that the order of the commissioner be affirmed or the petition for review dismissed.

(4) No order of the commissioner under section 207.07 or order of a court to enforce the same shall in any way relieve or absolve any person affected by such order from any liability under any other laws of this state.

207.09 Procedure as to unfair methods of competition and unfair or deceptive acts or practices which are not defined. (1) Whenever the commissioner shall have reason to believe that any person engaged in the business of insurance is engaging in this state in any method of competition or in any act or practice in the conduct of such business which is not defined in section 207.04, that such method of competition is unfair or that such act or practice is unfair or deceptive and that a proceeding by him in respect thereto would be to the interest of the public, he may issue and serve upon such person a statement of the charges in that respect and a notice of a hearing thereon to be held at a time and place fixed in the notice, which shall not be less than 20 days after the date of the service thereof. Each such hearing shall be conducted in the same manner as the hearings provided for in section 207.06. The commissioner shall, after such hearing, make a report in writing in which he shall state his findings of fact and conclusions, and he shall serve a copy thereof upon such person.

(2) If such report charges an unfair method of competition or unfair or deceptive act or practice within the provisions of subsection (1) and if such method of competition, act or practice has not been discontinued, the commissioner may, through the at-

torney-general of this state, at any time after 10 days after the service of such report cause a petition to be filed in the circuit court for Dane county or in the circuit court for the county of this state wherein the person resides or has his principal place of business, to enjoin and restrain such person from engaging in such method, act or practice. The court shall have jurisdiction of the proceeding and shall have power to make and enter appropriate orders in connection therewith and to issue such writs as are ancillary to its jurisdiction or are necessary in its judgment to prevent injury to the public pendente lite.

(3) A transcript of the proceedings before the commissioner including all evidence taken and the report shall be filed with such petition. If either party shall apply to the court for leave to adduce additional evidence and shall show, to the satisfaction of the court, that such additional evidence is material and there were reasonable grounds for the failure to adduce such evidence in the proceeding before the commissioner the court may order such additional evidence to be taken before the commissioner and to be adduced upon the hearing in such manner and upon such terms and conditions as the court may deem proper. The commissioner may modify his findings of fact and conclusions or make new findings and conclusions by reason of the additional evidence so taken, and he shall file such modified or new findings and conclusions with the return of such additional evidence.

(4) If the court finds that the proceedings by the commissioner in respect to the matter involved are in the public interest, that the findings of fact of the commissioner are supported by the weight of the evidence in the record so submitted, and that the findings so supported establish a method of competition that is unfair or an act or practice that is unfair or deceptive within the provisions of subsection (1), it shall issue its order enjoining and restraining the continuance of such method of competition, act or practice.

207.10 Judicial review by intervenor. If the report of the commissioner does not charge an unfair method of competition or unfair or deceptive act or practice within the provisions of section 207.09, then any intervenor in the proceedings may have a judicial review thereof in the manner provided in chapter 227. Upon such review, the court shall have authority to issue appropriate orders and decrees in connection therewith, including, if the court finds that it is to the interest of the public, orders enjoining and restraining the continuance of any method of competition, act or practice which it finds, notwithstanding such report of the commissioner, constitutes an unfair method of competition or unfair or deceptive act or practice.

207.11 Penalty. Any person who violates a cease and desist order of the commissioner under section 207.07 after it has become final, and while such order is in effect, shall forfeit and pay to the state of Wisconsin a sum not to exceed \$100 which may be recovered in a civil action; except that if such violation is found to be wilful, the amount of such penalty shall be a sum not to exceed \$3,000. Such penalty shall not apply to an act done in any period during which the enforcement of such order shall be stayed.

207.12 Provisions additional to existing law. The powers vested in the commissioner by ss. 207.01 to 207.13 shall be additional to any other powers to enforce any penalties, fines or forfeitures authorized by law with respect to the methods, acts and practices hereby declared to be unfair or deceptive.

207.13 Immunity from prosecution. If any individual shall ask to be excused from attending and testifying or from producing any books, papers, records, correspondence or other documents at any hearing on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to a penalty or forfeiture, and he shall notwithstanding be directed to give such testimony or produce such evidence, he must nonetheless comply with such direction, but he shall not thereafter be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he may testify or produce evidence pursuant thereto, and no testimony so given or evidence produced shall be received against him upon any criminal action, investigation or proceeding, provided, that no such individual so testifying shall be exempt from prosecution or punishment for any perjury committed by him while so testifying and the testimony or evidence so given or produced shall be admissible against him upon any criminal action, investigation or proceeding concerning such perjury, nor shall he be exempt from the refusal, revocation or suspension of any license, permission or authority conferred, or to be conferred, pursuant to the insurance laws of this state, and provided further, that no person so testifying shall be exempt from proceedings for or the issuance of orders under sections 207.01 to 207.10, or from penalties under section 207.11 for the violation of orders under section 207.08 by acts committed after the same shall have become final, or from penalties for the violation of court orders under sections 207.09 and 207.10 after the same shall be in effect. Any

such individual may execute, acknowledge and file in the office of the commissioner a statement expressly waiving such immunity or privilege in respect to any transaction, matter or thing specified in such statement and thereupon the testimony of such person or such evidence in relation to such transaction, matter or thing may be received or produced before any judge or justice, court, tribunal, grand jury or otherwise, and if so received or produced such individual shall not be entitled to any immunity or privilege on account of any testimony he may so give or evidence so produced.