

## 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 divi-

dends 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, willfully 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 employees 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.

(k) *Refusing free choice of doctors.* Refusing to provide such payment benefits for medical, surgical or other services of podiatrists as may be rendered pursuant to the laws of this state under a policy providing accident and sickness benefits for treatment of feet, including policies under plans established pursuant to s. 148.03 (1), to the same extent as provided under the terms of the policy if rendered by a physician. This subsection does not require the refile of any policies, and any policy issued or renewed after July 21, 1967 shall be interpreted as complying with this subsection.

(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 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 ss. 601.41 (4) and 601.64 until after a reasonable time for appropriate action by such supervisory official.

(3) (a) No person 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, 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 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 nor shall such person make a charge other than the premiums and any cost of financing thereof in connection with the issuance, cancellation or substitution of insurance for the protection of property on which a loan has been made or a mortgage has been obtained, or for the protection of a loan or a mortgage.

(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.

(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.

**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 s. 601.62. 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 attorney general, 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.

**207.13 Immunity from prosecution.** If any individual asks 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 notwithstanding is 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, but 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 no person so testifying shall be exempt from proceedings for or the issuance of orders under ss. 207.01 to 207.04, 207.09, 207.10, 601.41 (4) and 601.64 (1), (2), (3) and (5). 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.