CHAPTER 625

INSURANCE — RATE REGULATION

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Cross–reference: See definitions in ss. 600.03 and 628.02.

625.01 Construction and purposes. (1) CONSTRUCTION. This chapter shall be liberally construed to achieve the purposes stated in sub. (2), which shall constitute an aid and guide to interpretation but not an independent source of power.

(2) PURPOSES. The purposes of this chapter are:

(a) To protect policyholders and the public against the adverse effects of excessive, inadequate or unfairly discriminatory rates;

(b) To encourage, as the most effective way to produce rates that conform to the standards of par. (a), independent action by and reasonable price competition among insurers;

(c) To provide formal regulatory controls for use if independent action and price competition fail;

(d) To authorize cooperative action among insurers in the rate–making process, and to regulate such cooperation in order to prevent practices that tend to bring about monopoly or to lessen or destroy competition;

(e) To encourage the most efficient and economic marketing practices; and

(f) To regulate the business of insurance in a manner that will preclude application of federal antitrust laws.

625.02 Definitions. In this chapter, unless contrary to context:

(1) "Market segment" means any line or kind of insurance or, if it is described in general terms, any subdivision thereof or any class of risks or combination of classes.

(2) "Rate service organization" means any person, other than an employee of an insurer, who assists insurers in rate making or filing by:

(a) Collecting, compiling and furnishing loss or expense statistics;

(b) Recommending, making or filing rates or supplementary rate information; or by

(c) Advising about rate questions, except as an attorney giving legal advice.

(3) "Supplementary rate information" includes any manual or plan of rates, statistical plan, classification, rating schedule, minimum premium, policy fee, rating rule, rate–related underwriting rule and any other information prescribed by rule of the commissioner.

History: 1983 a. 189.

625.03 Scope of application. (1m) This chapter applies to all kinds and lines of direct insurance written on risks or operations in this state by any insurer authorized to do business in this state, except:

(a) Ocean marine insurance;

(b) Worker's compensation insurance;

(c) Life insurance other than credit life insurance;

(d) Variable and fixed annuities; and

(e) Group and blanket accident and sickness insurance other than credit accident and sickness insurance.

(7) To the extent that ch. 424 is inconsistent with this chapter, ch. 424 shall apply.

History: 1973 c. 3; 1975 c. 147 s. 54; 1975 c. 373; 1999 a. 85.

Legislative Council Note to sub. (3), 1975: Fraternals should be subjected to rate regulation to the same extent as and no farther than other insurers. [Bill 643–S]

625.04 Exemptions. The commissioner may by rule exempt any person or class of persons or any market segment from any or all of the provisions of this chapter, if and to the extent that the commissioner finds their application unnecessary to achieve the purposes of this chapter.

History: 1979 c. 102 s. 236 (6).

625.11 Rate standards. (1) GENERAL. Rates shall not be excessive, inadequate or unfairly discriminatory, nor shall an insurer charge any rate which if continued will have or tend to have the effect of destroying competition or creating a monopoly.

(2) EXCESSIVENESS. (a) *Competitive market.* Rates are presumed not to be excessive if a reasonable degree of price competition exists at the consumer level with respect to the class of business to which they apply. In determining whether a reasonable degree of price competition exists, the commissioner shall consider all relevant tests including:

1. The number of insurers actively engaged in the class of business;

2. The existence of rate differentials in that class of business;

3. Whether long–run profitability for insurers generally of the class of business is unreasonably high in relation to its riskiness.

(b) *Noncompetitive market.* If such competition does not exist, rates are excessive if they are likely to produce a long run profit that is unreasonably high in relation to the riskiness of the class of business, or if expenses are unreasonably high in relation to the services rendered.

(3) INADEQUACY. Rates are inadequate if they are clearly insufficient, together with the investment income attributable to them, to sustain projected losses and expenses in the class of business to which they apply.

(4) UNFAIR DISCRIMINATION. One rate is unfairly discriminatory in relation to another in the same class if it clearly fails to reflect equitably the differences in expected losses and expenses. Rates are not unfairly discriminatory because different premiums result for policyholders with like loss exposures but different expense factors, or like expense factors but different loss exposures, so long as the rates reflect the differences with reasonable accuracy. Rates are not unfairly discriminatory if they are averaged broadly among persons insured under a group, franchise or blanket policy.

Cross–reference: See also s. Ins 6.54, Wis. adm. code.

Read together, ss. 625.11 and 625.22 provide that the insurance commissioner shall disapprove any rate that destroys competition, thus providing a regulatory remedy for rates that constitute restraints of trade and barring private rate–related suits for damages. Prentice v. Minnesota Title Ins. Co. 176 Wis. 2d 714, 500 N.W.2d 658 (1993).

There is no active state supervision of the organization established by title insurance companies to set uniform rates for its members and thus no "state–action immunity" for otherwise prohibited price–fixing engaged in by the member title insurers. FTC v. Ticor Title Insurance Co. 504 U.S. 621, 119 L. Ed. 2d 410 (1992).

There is no private right of action to enforce sub. (1). NAACP v. American Family Mutual Insurance Co. 978 F.2d 287 (1992).

625.12 Rating methods. In determining whether rates comply with the standards under s. 625.11, the following criteria shall be applied:

(1) BASIC FACTORS IN RATES. Due consideration shall be given to all of the following that apply:

(a) Past and prospective loss and expense experience within and outside of this state.

(b) Catastrophe hazards and contingencies.

(c) Trends within and outside of this state.

(d) Loadings for leveling premium rates over time or for dividends or savings to be allowed or returned by insurers to their policyholders, members or subscribers.

(e) Subject to s. 632.365, all other relevant factors, including the judgment of technical personnel.

(2) CLASSIFICATION. Except as provided in s. 632.729, risks may be classified in any reasonable way for the establishment of rates and minimum premiums, except that no classifications may be based on race, color, creed or national origin, and classifications in automobile insurance may not be based on physical condition or developmental disability as defined in s. 51.01 (5). Subject to ss. 632.365 and 632.729, rates thus produced may be modified for individual risks in accordance with rating plans or schedules that establish reasonable standards for measuring probable variations in hazards, expenses, or both. Rates may also be modified for individual risks under s. 625.13 (2).

(3) EXPENSES. The expense provisions included in the rates to be used by an insurer may reflect the operating methods of the insurer and, so far as it is credible, its own expense experience.

(4) PROFITS. The rates may contain an allowance permitting a profit that is not unreasonable in relation to the riskiness of the class of business.

History: 1975 c. 275; 1977 c. 418 s. 929 (55); 1979 c. 93; 1991 a. 279; 2019 a. 185.

Cross–reference: See also s. Ins 6.54, Wis. adm. code.

625.13 Filing of rates and consent to rate. (1) FILING PROCEDURE. Except as provided in sub. (2), every authorized insurer and every rate service organization licensed under s. 625.31 which has been designated by any insurer for the filing of rates under s. 625.15 (2) shall file with the commissioner all rates and supplementary rate information and all changes and amendments thereof made by it for use in this state within 30 days after they become effective.

(2) CONSENT TO RATE. Upon written application of the insured, stating the insured's reasons therefor, filed with and not disapproved by the commissioner within 10 days after filing, a rate in excess of that provided by a filing otherwise applicable may be applied to any specific risk. The rate may be disapproved without a hearing, subject to s. 601.62 (3). If disapproved, the rate otherwise applicable applies from the effective date of the policy, but the insurer may cancel the policy proportionally on 10 days' notice to the policyholder. If the insurer does not cancel the policy the insurer shall refund any excess premium from the effective date of the policy.

History: 1979 c. 93, 177; 1983 a. 36.

Cross–reference: See also ss. Ins 6.10, 6.54, 6.78, and 6.785, Wis. adm. code.

Legislative Council Note, 1979: This amendment to sub. (2) legitimizes a practice that is virtually universal throughout the country. Although it was not specifically provided for in ch. 625, the Office of the Commissioner of Insurance has assumed that ch. 625 intended to continue it and has accepted and handled "consent to rate" filings much as it did prior to the enactment of ch. 625. Adoption of the amendment makes it clear that the department practice is appropriate. [Bill 20–S]

625.14 Filings open to inspection. Each filing and any supporting information filed under this chapter shall, as soon as filed, be open to public inspection at any reasonable time. Copies may be obtained by any person on request and upon payment of a reasonable charge therefor.

625.15 Delegation of rate making and rate filing obligation. (1) RATE MAKING. An insurer may itself establish rates and supplementary rate information for one or more market segments based on the factors in s. 625.12 and, if the rates are for motor vehicle liability insurance, subject to s. 632.365, or the insurer may use rates and supplementary rate information prepared by a rate service organization, with average expense factors determined by the rate service organization or with such modification for its own expense and loss experience as the credibility of that experience allows.

(2) RATE FILING. An insurer may discharge its obligation under s. 625.13 (1) by giving notice to the commissioner that it uses rates and supplementary rate information prepared by a designated rate service organization, with such information about modifications thereof as is necessary fully to inform the commissioner. The insurer's rates and supplementary rate information shall be those filed from time to time by the rate service organization, including any amendments thereto as filed, subject, however, to the modifications filed by the insurer.

History: 1979 c. 177 s. 85; 1991 a. 279.

Cross–reference: See also ss. Ins 6.78 and 6.785, Wis. adm. code.

625.16 Loss ratios for certain disability policies. The commissioner may by rule establish reasonable minimum standards for loss ratios of medicare supplement policies, medicare replacement policies and long–term care insurance policies. The standards shall be based on incurred claims experience and earned premiums and be in accord with accepted actuarial principles so that benefits will be reasonable in relation to the premiums charged.

History: 1981 c. 82; 1985 a. 29; 1989 a. 31.

625.21 Delaying effect of rates. (1) RULE INSTITUTING DELAYED EFFECT. If the commissioner finds that competition is not an effective regulator of the rates charged or that a substantial number of companies are competing irresponsibly through the rates charged, or that there are widespread violations of this chapter, in any kind or line of insurance or subdivision thereof or in any rating class or rating territory, he or she may promulgate a rule requiring that in the kind or line of insurance or subdivision thereof or rating class or rating territory comprehended by the finding any subsequent changes in the rates or supplementary rate information be filed with the commissioner at least 15 days before they become effective. The commissioner may extend the waiting period for not to exceed 15 additional days by written notice to the filer before the first 15–day period expires.

(2) SUPPORTING DATA. By rule, the commissioner may require the filing of supporting data as to any or all kinds or lines of insurance or subdivisions thereof or classes of risks or combinations thereof as the commissioner deems necessary for the proper functioning of the rate monitoring and regulating process. The supporting data shall include:

(a) The experience and judgment of the filer, and, to the extent it wishes or the commissioner requires, of other insurers or rate service organizations;

(b) Its interpretation of any statistical data relied upon;

(c) Descriptions of the actuarial and statistical methods employed in setting the rates; and

(d) Any other relevant matters required by the commissioner.

(3) EXPIRATION OF RULE. A rule promulgated under sub. (1) shall expire no more than one year after issue. The commissioner may renew it after a hearing and appropriate findings under sub. (1).

(4) SUPPORTING INFORMATION. Whenever a filing is not accompanied by the information the commissioner requires under

sub. (2), the commissioner may so inform the insurer and the filing shall be deemed to be made when the information is furnished.

History: 1979 c. 102; 1991 a. 316.

Cross–reference: See also s. Ins 6.54, Wis. adm. code.

625.22 Disapproval of rates. (1) ORDER IN EVENT OF VIOLATION. If the commissioner finds after a hearing that a rate is not in compliance with s. 625.11, the commissioner shall order that its use be discontinued for any policy issued or renewed after a date specified in the order.

(2) TIMING OF ORDER. The order under sub. (1) shall be issued within 30 days after the close of the hearing or within such reasonable time extension as the commissioner may fix.

(3) APPROVAL OF SUBSTITUTED RATE. Within one year after the effective date of an order under sub. (1), no rate promulgated to replace a disapproved one may be used until it has been filed with the commissioner and not disapproved within 30 days thereafter.

(4) INTERIM RATES. Whenever an insurer has no legally effective rates as a result of the commissioner's disapproval of rates or other act, the commissioner shall on request specify interim rates for the insurer that are high enough to protect the interests of all parties and may order that a specified portion of the premiums be placed in an escrow account approved by the commissioner. When new rates become legally effective, the commissioner shall order the escrowed funds or any overcharge in the interim rates to be distributed appropriately, except that refunds to policyholders that are trifling shall not be required.

History: 1979 c. 102 s. 236 (6), (21); 1979 c. 110.

Read together, ss. 625.11 and 625.22 provide that the insurance commissioner shall disapprove any rate that destroys competition, thus providing a regulatory remedy for rates that constitute restraints of trade and barring private rate–related suits for damages. Prentice v. Minnesota Title Ins. Co. 176 Wis. 2d 714, 500 N.W.2d 658 (1993).

625.23 Special restrictions on individual insurers. The commissioner may by order require that a particular insurer file any or all of its rates and supplementary rate information 15 days prior to their effective date, if and to the extent that he or she finds, after a hearing, that the protection of the interests of its insureds and the public in this state requires closer supervision of its rates because of the insurer's financial condition or rating practices. The commissioner may extend the waiting period for any filing for not to exceed 15 additional days by written notice to the insurer before the first 15–day period expires. A filing not disapproved before the expiration of the waiting period shall be deemed to meet the requirements of this chapter, subject to the possibility of subsequent disapproval under s. 625.22.

History: 1979 c. 102.

625.31 Operation and control of rate service organizations. (1) LICENSE REQUIRED. No rate service organization shall provide any service relating to the rates of any insurance subject to this chapter, and no insurer shall utilize the services of such organization for such purposes unless the organization has obtained a license under s. 625.32.

(2) AVAILABILITY OF SERVICES. No rate service organization shall refuse to supply any services for which it is licensed in this state to any insurer authorized to do business in this state and offering to pay the fair and usual compensation for the services.

625.32 Licensing. (1) APPLICATION. A rate service organization applying for a license as required by s. 625.31 shall include with its application:

(a) A copy of its constitution, charter, articles of organization, agreement, association or incorporation, and a copy of its bylaws, plan of operation and any other rules or regulations governing the conduct of its business;

(b) A list of its members and subscribers;

(c) The name and address of one or more residents of this state upon whom notices, process affecting it or orders of the commissioner may be served;

(d) A statement showing its technical qualifications for acting in the capacity for which it seeks a license; and

(e) Any other relevant information and documents that the commissioner may require.

(2) CHANGE OF CIRCUMSTANCES. Every organization which has applied for a license under sub. (1) shall thereafter promptly notify the commissioner of every material change in the facts or in the documents on which its application was based.

(3) GRANTING OF LICENSE. If the commissioner finds that the applicant and the natural persons through whom it acts are competent, trustworthy, and technically qualified to provide the services proposed, and that all requirements of law are met, he or she shall issue a license specifying the authorized activity of the applicant. The commissioner may not issue a license if the proposed activity would tend to create a monopoly or to lessen or destroy price competition.

(4) DURATION. Licenses issued pursuant to this section shall remain in effect until the licensee withdraws from the state or until the license is suspended or revoked.

(5) AMENDMENTS TO CONSTITUTION AND BYLAWS. Any amendment to a document filed under sub. (1) (a) shall be filed at least 30 days before it becomes effective. Failure to comply with this subsection shall be a ground for revocation of the license granted under sub. (3).

History: 1979 c. 102.

625.33 Binding agreements by insurers. No insurer shall assume any obligation to any person other than a policyholder or other companies under common control to use or adhere to certain rates or rules, and no other person shall impose any penalty or other adverse consequence for failure of an insurer to adhere to certain rates or rules.

Cross–reference: See also s. Ins. 6.25, Wis. adm. code.

625.34 Recording and reporting of experience. The commissioner shall promulgate or approve reasonable rules, including rules providing statistical plans, for use thereafter by all insurers in the recording and reporting of loss and expense experience, in order that the experience of such insurers may be made available to the commissioner. No insurer shall be required to record or report its experience on a classification basis inconsistent with its own rating system. The commissioner may designate one or more rate service organizations to assist the commissioner in gathering such experience and making compilations thereof, which shall be made available to the public.

History: 1979 c. 102 s. 236 (21).