CHAPTER 626

RATE REGULATION IN WORKER'S COMPENSATION INSURANCE

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

NOTE: Chapter 148, laws of 1975, which created this chapter, contains explanatory notes.

626.02 Definitions. In this chapter, unless the context indicates otherwise:

(1) "Bureau" means the Wisconsin compensation rating bureau provided for in s. 626.06.

(2) "Rate service organization" has the meaning designated for the term under s. 625.02 (2).

History: 1975 c. 148; 1983 a. 189.

626.03 Scope of application. This chapter applies to all worker's compensation insurance written on risks or operations in this state, employers' liability insurance when written in connection with worker's compensation insurance or insurance covering any part of the liability of an employer exempted from insuring the employer's liability for compensation under s. 102.28.

History: 1975 c. 148, 199.

626.06 Rating bureau. The Wisconsin compensation rating bureau is continued and every insurer writing any insurance specified under s. 626.03 is a member of it.

History: 1975 c. 148.

626.09 General provisions concerning the bureau. **(1)** PURPOSES. The bureau has the following purposes:

(a) To establish, maintain and administer rules, regulations, classifications, rates and rating plans to govern the transaction of insurance included in s. 626.03;

(b) To cooperate with other rate service organizations and with insurers in the development of rules, rates and rating plans and insurance policies and forms;

(c) To secure and analyze statistical and other data required to accomplish these purposes;

(d) To inspect and classify risks;

(e) To file with the commissioner on behalf of its members every manual of classifications, rules and rates, every rating plan and every modification of any of them proposed for use in this state;

(f) To assist the commissioner and insurers in the promotion of safety in industry; and

(g) To assist in any matter necessary for the accomplishment of these purposes.

(2) LICENSING. The bureau's license which it holds under s. 205.03 (2), 1973 stats., immediately prior to January 17, 1976 shall continue as its license under s. 625.32, and thereafter the bureau shall be treated as if it had applied for and had received a license under s. 625.32.

(3) EXAMINATIONS. Sections 601.43 to 601.45 apply to the bureau.

(4) FEES. Section 601.31 (1) (c) 2. applies to the bureau.

History: 1975 c. 148; 1979 c. 102 s. 237.

626.11 Rate standards. **(1)** GENERAL. Rates determined under this chapter shall not be excessive, inadequate or unfairly discriminatory.

(2) EXCESSIVENESS. Rates determined under this chapter are not excessive merely because a reasonable margin is allowed for a profit.

(3) ADEQUACY. The commissioner shall approve a minimum adequate pure premium for each classification under which worker's compensation insurance is written. No insurer writing any insurance specified under s. 626.03 may use a pure premium less than that approved by the commissioner.

History: 1975 c. 148, 199.

626.12 Rating methods. In determining whether rates comply with the standards under s. 626.11, the following criteria shall be applied:

(1) BASIC FACTORS IN RATES. Due consideration shall be given to past and prospective loss and expense experience within and outside this state, to catastrophe hazards and contingencies, to a reasonable margin for profit, to dividends, savings or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members or subscribers, and to all other relevant factors.

(2) CLASSIFICATION. Risks may be classified in any reasonable way for the establishment of rates and minimum premiums. Classification rates may be modified to produce rates for individual risks in accordance with rating plans which establish standards for measuring variations in hazards or expense provisions, or both. Such standards may measure any differences among risks that can be demonstrated to have a probable effect upon losses or expenses.

(3) PHYSICAL IMPAIRMENT. Rates or rating plans may not take into account the physical impairment of employees. Any employer who applies or promotes any oppressive plan of physical examination and rejection of employees or applicants for employment shall forfeit the right to experience rating. If the department of workforce development determines that grounds exist for such forfeiture it shall file with the commissioner a certified copy of its findings, which shall automatically suspend any experience rating credit for the employer. The department shall make the determination as prescribed in ss. 103.005 (5) (b) to (f), (6) to (11), (13) (b) to (d) and (16), so far as such subsections are applicable, subject to review under ch. 227. Restoration of an employer to the advantages of experience rating shall be by the same procedure.

History: 1975 c. 148; 1995 a. 27 ss. 7037, 9130 (4); 1997 a. 3.

626.13 Approval of rates and rating plans. The bureau shall file with the commissioner on behalf of its members every manual of classifications, rules and rates, every rating plan and every modification of any of them proposed for use in this state. Every such filing shall state its proposed effective date. The bureau shall also file the information upon which it supports the filings. All filings must comply with the law and shall not be effective nor used until approved by the commissioner. A filing that

has been on file for 30 days is deemed to meet the requirements of ss. 626.11 and 626.12 unless the commissioner earlier disapproves in a written order.

History: 1975 c. 148.

626.14 Filings open to inspection. Section 625.14 applies to rates filed under this chapter.

History: 1975 c. 148.

626.22 Disapproval of rates. (1) ORDER IN EVENT OF VIOLATION. If the commissioner finds after a hearing that a filing already in effect under s. 626.13 fails to meet the requirements of the law, 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 commissioner shall issue an order under s. 626.13 within 30 days after the filing and issue an order under sub. (1) within 30 days after the close of the hearing. In either case the commissioner may extend the period for a reasonable time by written order prior to the expiration of the time limit.

(3) INTERIM RATES. Whenever an insurer has no legally effective rates as a result of an order by the commissioner under s. 626.13 or sub. (1), the commissioner shall on request specify interim rates for the insurer 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 that are trifling shall not be required.

History: 1975 c. 148, 199; 1979 c. 110.

626.25 Use of rates. (1) APPROVAL REQUIRED. No insurer writing any insurance specified under s. 626.03 may use a rate, rating plan or classification nor an expense loading not approved by the commissioner.

(2) UNFAIR DISCRIMINATION. No insurer writing any insurance specified under s. 626.03 may make or charge any rate which discriminates unfairly between risks or classes, nor discriminates unfairly between risks in the application of rating plans, nor discriminates by granting to any employer insurance against other hazards except in accordance with its rates and rating plans filed and which are in effect for the insurer under ch. 625 nor at less than its legal rates for the insurance if that chapter is inapplicable.

History: 1975 c. 148.

626.31 Operation and control of bureau. (1) BUREAU ADMINISTRATION. (a) *Organization.* The bureau shall make bylaws for its government which, with amendments thereto, shall be filed with and approved by the commissioner before they are effective.

(b) *Representation.* The rating committee shall consist of an even number of members, up to 12 and no fewer than 8. Two members of the rating committee shall represent noninsurer, employer interests and shall be appointed by and serve at the pleasure of the governor. Of the remaining members, half of the members shall be chosen by stock insurers and half of the members shall be chosen by mutual insurers. Both stock and mutual insurers shall be represented equally on all other committees, including the managing committee. Each member of a committee shall have one vote, with the commissioner deciding the matter in the event of a tie.

(c) *Charges and services.* The services of the bureau shall be supplied to members without discrimination. Each member of the bureau shall pay an equitable share of the cost of operating the bureau.

(2) INFORMATION TO BE SUPPLIED. (a) *Surveys.* Upon demand the bureau shall furnish to any employer upon whose risk a survey has been made under s. 626.32 (2) and to any insurer full information about the survey.

(b) *Rates.* The bureau shall, within a reasonable time after receiving a written request and upon payment of a reasonable charge, furnish information as to any rate to the insured affected by it or to an authorized representative.

(3) REVIEW BY BUREAU. (a) *Cases where required.* The following persons or their authorized representatives shall be heard by the bureau upon written request:

1. Any insurer or employer on any matter affecting the risk in connection with a survey under sub. (2) (a);

2. Any person aggrieved by the application of the bureau's rating system to the person;

3. Any member alleging discrimination as to services or charges of the bureau; and

4. Any municipality, as defined under s. 345.05 (1) (c), or any state department or agency.

(b) *Procedure for review.* 1. The bureau shall provide within this state a specified procedure for review of the matters under par. (a).

2. The commissioner may disapprove the procedure specified under subd. 1. if the commissioner finds that it does not provide adequate notice and fair hearing to the person asking for review.

3. The person asking for review may appeal to the commissioner under sub. (4) from a decision of the bureau or from its failure to provide a review and decision within 30 days after a written request therefor.

(4) APPEALS FROM THE BUREAU. (a) *Cases where appeal is allowed.* The following persons or their authorized representatives may petition the commissioner in writing for review of a bureau action or decision:

1. Any member aggrieved by an apportionment of costs made by the bureau under sub. (1) (c), or by the bureau's failure to make an apportionment;

2. Any member aggrieved by discrimination in the supplying of services by the bureau;

3. Any member aggrieved by the bureau's rejection of proposed changes in or additions to its filings that would affect the member;

4. Any insurer or employer aggrieved by findings made in a survey under sub. (2) (a); and

5. Any insurer, municipality, as defined under s. 345.05 (1) (c), any state department or agency or employer aggrieved by the application of the bureau's rating system to that person or agency.

(b) *Procedure for appeal.* 1. An appeal is initiated by a written petition to the commissioner, which must be filed within 30 days after the adverse decision of the bureau on review or, if the bureau has not announced a decision within the specified 30 days, within 60 days after the written request for review. If the bureau announces a decision after the specified 30 days but before filing of the petition, the petitioner has 30 days after announcement of the decision to petition the commissioner.

2. The commissioner shall give not less than 10 days' notice of hearing to the appellant and the bureau, and in cases under par. (a) 1., to all other members of the bureau.

3. Procedure in the hearing shall be as provided for other hearings before the commissioner.

4. The commissioner shall mail a copy of the commissioner's decision to the appellant and the bureau.

(c) *Relief authorized.* The commissioner's decision shall be by order, with findings of fact and conclusions of law, which order may:

1. Approve the action or decision of the bureau;

2. Direct the bureau within a reasonable time the commissioner designates to give further consideration to the matter and to reach a conclusion consistent with the commissioner's order; or

3. Direct the bureau within a reasonable time the commissioner designates to take specified action consistent with the commissioner's findings.

History: 1975 c. 148, 199; 1983 a. 189 s. 329 (31); 1989 a. 332; 2017 a. 313.

626.32 Development of rates by bureau. (1) ACQUISITION OF INFORMATION. (a) *General.* Every insurer writing any insurance specified under s. 626.03 shall report its insurance in this state to the bureau at least annually, on forms and under rules prescribed by the bureau. The bureau shall file, under rules promulgated by the department of workforce development, a record of such reports with that department. No such information may be made public by the bureau or any of its employees except as required by law and in accordance with its rules. No such information may be made public by the department of workforce development or any of its employees except as authorized by the bureau.

(b) *Payroll audits.* Payroll audits by insurers shall show information classified under the statistical plan and shall be correct as to amount in each classification. The commissioner or the bureau may check any payroll audit and upon written complaint alleging facts that if true would create serious doubt about the accuracy of the payroll audit shall check it.

(2) CLASSIFICATIONS AND PLANS. The commissioner shall promulgate a statistical plan, which shall give due consideration to the rating system on file with the commissioner and seek to make the plan as uniform among the several states as is practicable. The statistical plan may be modified from time to time. It shall be used thereafter by each insurer in the recording and reporting under sub. (1) of its Wisconsin loss and country-wide expense experience. The rules and statistical plan may also provide for the recording and reporting of expense experience items which are specially applicable to this state. The bureau shall assign each compensation risk to its proper class, and its classification shall be used by all insurers writing any insurance specified under s. 626.03. On behalf of all members the bureau shall inspect and make a written survey of compensation risks to determine their proper classifications, shall maintain a record of its classification of risks and the written surveys of all risks inspected by it showing such facts as are material in the writing of insurance thereon.

(3) AIDS IN RATE-MAKING. The commissioner and every insurer and rate service organization may exchange information and experience data with insurance supervisory officials, insurers and rate service organizations in other states and may consult with them with respect to rate-making and the application of rates. The commissioner may designate one or more rate service organizations to assist the commissioner in gathering experience and making compilations thereof, and the compilations shall be made available to insurers and rating organizations.

History: 1975 c. 148, 199; 1995 a. 27 s. 9130 (4); 1997 a. 3; 2001 a. 37.

626.35 Worker's compensation insurance contracts. (1) FILING. An insurer who provides a contract under s. 102.31 (1) (a) or 102.315 (3), (4), or (5) (a) shall file with the bureau a copy of the contract, or other evidence of the contract as designated by the bureau, not more than 60 days after the effective date of the contract.

(2) PENALTY. The bureau may assess a penalty, in accordance with a schedule adopted by the bureau, against an insurer who fails to comply with sub. (1).

History: 1989 a. 64 s. 45; 1989 a. 332 ss. 1, 14; Stats. 1989 s. 626.35; 2007 a. 185.

626.51 Other rate service organizations. Any group, association or other organization which assists the bureau in rate-making by the collection and furnishing of loss and expense statistics or by the submission of recommendations is a rate service organization and shall be governed by ss. 625.31 and 625.32.

History: 1975 c. 148.