

CHAPTER 625

RATE REGULATION

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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) "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.

(2) "Rate service organization" means any person, other than an employe 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) "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.

625.03 Scope of application. 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:

(1) Ocean marine insurance;

(2) Workmen's compensation insurance;

(3) Contracts issued by fraternal benefit societies;

(4) Life insurance other than credit life insurance;

(5) Variable and fixed annuities; and

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

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 he finds their application unnecessary to achieve the purposes of this chapter.

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

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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.

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 past and prospective loss and expense experience within and outside of this state, to catastrophe hazards and contingencies, to trends within and outside of this state, to 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, and to all other relevant factors, including the judgment of technical personnel.

(2) *CLASSIFICATION.* Risks may be classified in any reasonable way for the establishment of rates and minimum premiums, except that classifications may not be based on race, color, creed or national origin. Rates thus produced may be modified for individual risks in accordance with rating plans or schedules which establish reasonable standards for measuring

probable variations in hazards, expenses, or both.

(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.

625.13 Filing of rates. 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.

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 any market segment based on the factors in s. 625.12, or it 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 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.

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 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 him at least 15 days before they become effective. He 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 he 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 such information as the commissioner has required under sub. (2), he may so inform the insurer and the filing shall be deemed to be made when the information is furnished.

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, he 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 him. 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 de minimis shall not be required.

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 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. He 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.

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 shall issue a license specifying the authorized activity of the applicant. He shall 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).

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.

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 him. 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 him in gathering such experience and making compilations

thereof, which shall be made available to the public.

625.35 Examination of rate service organizations. (1) **POWER TO EXAMINE.** (a) *Rate service organizations.* Whenever he deems it necessary in order to inform himself about any matter related to the enforcement of the insurance laws, the commissioner may examine the affairs and condition of any rate service organization under s. 625.31 (1).

(b) *Collateral examinations.* So far as reasonably necessary for an examination under par. (a), the commissioner may examine the accounts, records, documents or evidences of transactions, so far as they relate to the examinee, of any officer, manager, general agent, employe, person who has executive authority over or is in charge of any segment of the examinee's affairs, person controlling or having a contract under which he has the right to control the examinee whether exclusively or with others, person who is under the control of the examinee, or any person who is under the control of a person who controls or has a right to control the examinee whether exclusively or with others.

(c) *Availability of records.* On demand every examinee under par. (a) shall make available to the commissioner for examination any of its own accounts, records, documents or evidences of transactions and any of those of the persons listed in par. (b).

(2) **DUTY TO EXAMINE.** The commissioner shall examine every licensed rate service organization at intervals to be established by rule.

(3) **AUDITS OR ACTUARIAL EVALUATIONS.** In lieu of all or part of an examination under subs. (1) and (2), or in addition to it, the commissioner may order an independent audit by certified public accountants or actuarial evaluation by actuaries approved by him of any person subject to the examination requirement. Any accountant or actuary selected shall be subject to rules respecting conflicts of interest promulgated by the commissioner. Any audit or evaluation under this subsection shall be subject to subs. (6) to (15), so far as appropriate.

(4) **ALTERNATIVES TO EXAMINATION.** In lieu of all or part of an examination under this section, the commissioner may accept the report of an audit already made by certified public accountants or actuarial evaluation by actuaries approved by him, or the report of an examination made by the insurance department of another state.

(5) **PURPOSE AND SCOPE OF EXAMINATION.** An examination may but need not cover comprehensively all aspects of the examinee's affairs

and condition. The commissioner shall determine the exact nature and scope of each examination, and in doing so shall take into account all relevant factors, including but not limited to the length of time the examinee has been operating, the length of time he has been licensed in this state, the nature of the services provided, the nature of the accounting records available and the nature of examinations performed elsewhere.

(6) **ORDER OF EXAMINATION.** For each examination under this section, the commissioner shall issue an order stating the scope of the examination and designating the examiner in charge. Upon demand a copy of the order shall be exhibited to the examinee.

(7) **ACCESS TO EXAMINEE.** Any examiner authorized by the commissioner shall, so far as necessary to the purposes of the examination, have access at all reasonable hours to the premises and to any books, records, files, securities, documents or property of the examinee and to those of persons under sub. (1) (b) so far as they relate to the affairs of the examinee.

(8) **COOPERATION.** The officers, employes and agents of the examinee and of persons under sub. (1) (b) shall comply with every reasonable request of the examiners for assistance in any matter relating to the examination. No person shall obstruct or interfere with the examination in any way other than by legal process.

(9) **CORRECTION OF BOOKS.** If the commissioner finds the accounts or records to be inadequate for proper examination of the condition and affairs of the examinee or improperly kept or posted, he may employ experts to rewrite, post or balance them at the expense of the examinee.

(10) **REPORT ON EXAMINATION.** The examiner in charge of an examination shall make a proposed report of the examination which shall include such information and analysis as is ordered in sub. (6), together with the examiner's recommendations. Preparation of the proposed report may include conferences with the examinee or his representatives at the option of the examiner in charge. The proposed report shall remain confidential until filed under sub. (11).

(11) **ADOPTION AND FILING OF EXAMINATION REPORT.** The commissioner shall serve a copy of the proposed report upon the examinee. Within 20 days after service, the examinee may serve upon the commissioner a written demand for a hearing on the contents of the report. If a hearing is demanded, the commissioner shall give notice and hold a hearing under ch. 227, except that on demand by the examinee the hearing shall be private. Within 60 days after

the hearing or if no hearing is demanded then within 60 days after the last day on which the examinee might have demanded a hearing, the commissioner shall adopt the report with any necessary modifications and file it for public inspection, or he shall order a new examination.

(12) **COPY FOR EXAMINEE.** The commissioner shall forward a copy of the examination report to the examinee immediately upon adoption, except that if the proposed report is adopted without change, the commissioner need only so notify the examinee.

(13) **COPIES FOR BOARD.** The examinee shall forthwith furnish copies of the adopted report to each member of its board of directors or other governing board.

(14) **COPIES FOR OTHER PERSONS.** The commissioner may furnish, without cost or at a price to be determined by him, a copy of the adopted report to the insurance commissioner of each state in the United States and of each foreign jurisdiction in which the examinee is licensed and to any other interested person in this state or elsewhere.

(15) **REPORT AS EVIDENCE.** In any proceeding by or against the examinee or any officer or agent thereof the examination report as adopted by the commissioner shall be admissible as evidence of the facts stated therein. In any proceeding by or against the examinee, the facts asserted in any report properly admitted in evidence shall be presumed to be true in the absence of contrary evidence.

(16) **COSTS TO BE PAID BY EXAMINEE.** The reasonable costs of an examination under this section shall be paid by the examinee except as provided in sub. (19). The costs shall include the salary and expenses of each examiner and any other expenses which may be directly apportioned to the examination.

(17) **DUTY TO PAY.** The amount payable under sub. (16) shall become due 10 days after the examinee has been served a detailed account of the costs.

(18) **DEPOSIT.** The commissioner may require any examinee, before or from time to time during an examination to deposit with the state treasurer such deposits as the commissioner deems necessary to pay the costs of the examination. Any deposit and any payment made under subs. (16) and (17) shall be credited to the appropriation under s. 20.145 (1) (g).

(19) **EXEMPTIONS.** On the examinee's request or on his own motion, the commissioner may pay all or part of the costs of an examination from the appropriation under s. 20.145 (1) (g) whenever he finds that because of the frequency of examinations or other factors, imposition of the costs would place an unreasonable burden

on the examinee. The commissioner shall include in his annual report information about any instance in which he applied this subsection.

(20) RETALIATION. Deposits and payments under subs. (16) to (19) shall not be deemed to be a tax or license fee within the meaning of any

statute. If any other state charges a per diem fee for examination of examinees domiciled in this state, any examinee domiciled in that other state shall be required to pay the same fee when examined by the insurance office of this state.