

Ins 6.64

STATE OF WISCONSIN)
) ss.
OFFICE OF THE COMMISSIONER OF INSURANCE)

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REVISOR OF STATUTES
BUREAU *CB*

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, Harold R. Wilde, Commissioner of Insurance and custodian of the official records of said office, do hereby certify that the annexed order amending a rule regarding Insurance Marketing - Intermediary-Broker was issued by this office December 21, 1978.

I further certify that said copy has been compared by me with the original on file in this office and that the same is a true copy thereof, and of the whole of such original.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name in the City of Madison, State of Wisconsin, this 21st day of December, 1978.

H R Wilde

Harold R. Wilde
Commissioner of Insurance

STATE OF WISCONSIN
DEPARTMENT OF STATE
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DOUGLAS LAFOLETTE
SECRETARY OF STATE

ORDER OF THE OFFICE OF THE COMMISSIONER OF INSURANCE

Adopting a Rule

Pursuant to authority invested in the Commissioner of Insurance by section 601.41 (3), Wis. Stats., the Commissioner of Insurance hereby adopts a rule as follows:

Section Ins 6.64 of the Wisconsin Administrative Code is adopted to read:

Ins 6.64 Insurance Marketing Intermediary-Broker. (Sections 628.01 to 628.04, 628.07, 628.32, 628.34, 628.40, 628.45, 628.51 and 628.61, Wis. Stats.)

(1) PURPOSE. The purpose of this rule is to define the powers and responsibilities of a licensed intermediary-broker, to describe acceptable practices in the conduct of a brokerage business and to ensure fulfillment of the fiduciary obligation of an intermediary-broker to the client through disclosure agreements, bonding, trust accounts, fee regulation and record keeping. An intermediary-broker not also licensed pursuant to ss. 618.41 and 628.04 (2), Stats., may not engage in direct placement of surplus lines insurance. This rule implements sections of chapter 628, Stats., entitled Insurance Marketing.

(2) Intermediary-Broker. (a) An intermediary-broker is a person engaged in searching out, negotiating or procuring contracts of insurance with insurers with which the intermediary is not listed as an intermediary-agent, with the consent and on behalf of the insured.

(b) An intermediary-broker licensed in this state pursuant to section Ins 6.65 Wis. Adm. Code shall be responsible in a fiduciary capacity to the insured or prospective insured for all representations and promises, all funds received or collected in the capacity of a broker, and all funds received or collected from the insurer on the policy.

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(c) An intermediary-broker shall not be empowered to bind an insurer or an insured and shall disclose the lack of binding authority to the insured.

(d) An application for insurance that is brokered by an intermediary-broker directly to an insurer or through a listed intermediary-agent or that is brokered upon receipt from an intermediary-agent shall be signed by the intermediary-broker as well as by any other intermediaries involved.

(3) Prohibitions. (a) An intermediary-broker acting as such shall not also act as an intermediary-agent in the placement of a particular piece of business with any insurer with which that intermediary is also listed as an intermediary-agent, nor shall the intermediary-broker utilize an affiliate to place business with a insurer with which the affiliate is listed or associated, if the business involved is the same brokered risk or group of risks. "Affiliate" is defined in s. 600.03 (1), Stats.

(b) An intermediary-broker shall not engage in any insurance transaction involving a particular risk which benefits the intermediary-broker or an affiliate financially, where that intermediary-broker has provided service or advice as another type of intermediary in a related transaction within the recent past.

(c) Examples of prohibited practices defined by paragraph (b) include but are not limited to the following:

1. An intermediary who is requested to review a complete life and health insurance program for a brokerage or a consultant's fee recommends the purchase of certain coverage and suggests that this coverage be obtained from another intermediary-agent working in the same agency.

2. An intermediary-broker places a risk with one insurer, and then two weeks later recommends that he rewrite the risk with one of his own companies as an intermediary-agent.

(4) Client Pre-agreement. (a) Every licensed intermediary-broker shall maintain in his files for 5 years a copy of an agreement signed by the intermediary-broker and the prospective insured-client, certifying that the named intermediary is acting in the capacity of an intermediary-broker obligated to act in the client's best interest with regard to procuring insurance specified therein according to general type(s), quantity and the nature of the risk. A copy of the pre-agreement shall accompany each application for insurance to cover the risks described in that pre-agreement.

(b) The following format shall be followed:

WISCONSIN INSURANCE BROKER PRE-AGREEMENT

_____ hereby engages the services of _____
(Principal) (Broker)
of _____, an insurance broker licensed by the state of
(Firm)
Wisconsin, to seek, negotiate and/or procure the following insurance coverages:

A broker shall secure insurance which in his or her professional judgment is deemed to be most appropriate for the insured.

An individual acting in the capacity of an intermediary-broker shall not place insurance business with an insurer for which he or she is also listed as an intermediary-agent.

A broker is NOT EMPOWERED TO BIND an insurer. No valid contract of insurance exists until the risk is accepted by an insurer and a policy or written binder is issued.

THIS IS NOT AN INSURANCE POLICY.

If applicable, the parties hereby agree on the following brokerage fee: _____ payable (at this signing) (upon completion of brokerage services). Such brokerage fee is (waived) (refunded to the insured) (applied to premium) if the broker received any commission from an insurer.

Intermediary-Broker

License No.

Date

Principal-Client

Original - Client

Copies - Broker's file/Insurance application

(5) Compensation. (a) An intermediary-broker shall not receive or collect from any insured or prospective insured in connection with the actual procurement of insurance from an authorized or unauthorized insurer any sum greater than the premium(s) and policy and inspection fees fixed by such insurer(s), except for brokerage fee(s) in par. (b).

(b) An intermediary-broker may charge the prospective insured a brokerage fee for the services of the intermediary-broker in searching for appropriate insurance coverage, provided that prior to the performance of the service the charged insured shall consent in writing to pay the fee pursuant to sub. (4).

(c) The contractual right to a brokerage fee shall be forfeited and any brokerage fee collected shall be returned to the insured or applied to the premium charged for the brokered insurance coverage, if:

1. The intermediary-broker originally entitled to the fee or an affiliate of the intermediary-broker receives a commission or portion of a commission from an insurer; or

2. The insured pays a premium which includes a commission charge not refundable to the insured. The intermediary-broker shall inform the insured that the premium includes a commission charge.

(d) Acceptance of a commission or portion of a commission by the intermediary-broker may include rights to any renewal commissions resulting from continuance of the brokered insurance by the insured, pursuant to the agreement of the insurer and the intermediary-broker.

(6) Trust Accounts and Bookkeeping. (a) Every intermediary-broker shall maintain one or more appropriately identified demand deposit trust accounts in a Wisconsin bank for the deposit and disbursement of all insurance premiums, commissions, brokerage fees and other funds entrusted by an insurer or insured to the intermediary-broker acting in that capacity. Operating accounts shall be maintained separately from premium trust accounts.

(b) Certification by a bank official of the creation of a demand deposit trust account for purposes noted herein must accompany the intermediary-broker license application, unless it is otherwise certified by an employer-company that all funds submitted by the accounts of such intermediary-broker shall be maintained in a separate trust account administered by the employer-company.

(c) Withdrawal of commissions, broker fees or any other portion of deposited trust funds rightfully belonging to the intermediary-broker shall be at regular weekly or monthly intervals and properly identified with receipts or collections in books of account.

(d) Every intermediary-broker shall maintain books of account according to accepted principles of accounting. Such books shall record all trust deposits and disbursements, the names of all parties from whom money is received or to whom it is paid, the insurance purpose for which the funds are to be used, and current balances of premiums and commissions remaining in trust account(s), if applicable. All regular bank statements are to be retained by the intermediary-broker for at least five years.

(7) Bonding. (a) Every individual intermediary-broker shall supply a license (and permit surety) bond in favor of the people of the state of Wisconsin executed by an authorized surety insurer and payable to any party injured under the terms of the bond. The bond shall be conditioned upon full accounting and due payment to the person or company entitled thereto of funds coming into the possession of the intermediary-broker as an incident to insurance transactions under the intermediary-broker license and compliance with Wisconsin laws regarding fair representation and fiduciary responsibility. Liability of the surety under the bond is limited, in the aggregate, to the penal sum and extends only to funds entrusted to the broker.

(b) The bond shall be continuous in form and shall remain in force and effect until the surety is released from the bond by the commissioner or until the bond is canceled by the surety. The surety may cancel the bond and be relieved of continued bond coverage upon 45 days' written notice to the commissioner prior to cancellation. Coverage under the bond continues until the 46th day after receipt of the notification of cancellation by the commissioner. The surety and the commissioner shall notify the licensee of the bond termination.

(c) All claims against the licensee for debt, default or miscarriage in violation of Wisconsin law or a fiduciary obligation shall be subject to administrative hearing by the commissioner at the request of the aggrieved party, the surety or the state. Judicial review is available under ss. 227.15 and 227.16, Stats. The surety shall have the privilege of participation in administration dispositions which affect its obligations under this section.

(d) Upon expiration or cancellation of the bond, the commissioner shall suspend the license of the intermediary-broker unless or until comparable bonding is secured by the intermediary-broker.

(e) Bonds shall be supplied in the following amounts:

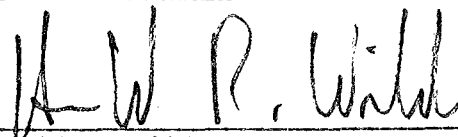
1. Resident Intermediary-Brokers \$5,000 initially, or 20% of gross premium written annually as an intermediary-broker, whichever is greater, up to a \$50,000 bond limit.
2. Non-resident Intermediary-Brokers \$10,000 initially or 20% of gross premium written annually as an intermediary-broker, whichever is greater up to a \$100,000 bond limit.

(f) Every intermediary-broker shall submit an affidavit of gross premium written as an intermediary-broker for the previous calendar year by each February 1 and shall secure additional bonding if appropriate.

(g) Bond forms shall be supplied by the commissioner at the time of application. The original bond shall be retained during its life by the commissioner.

(h) Any intermediary-broker insured by errors and omissions or other form of professional liability insurance in the licensee's role as an intermediary-broker and in an amount at least commensurate with the bond amounts of this section may, upon approval by the commissioner supply a surety bond in an amount one-half (1/2) that required in par. (e).

Dated at Madison, Wisconsin, this 21st day of December, 1978



Harold R. Wilde
Commissioner of Insurance