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## WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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### CLEARINGHOUSE RULE 18-093

#### Comments

**[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Legislative Reference Bureau and the Legislative Council Staff, dated December 2014.]**

#### 1. Statutory Authority

a. The proposed rule does not appear to meet the standard that is required to submit a petition under s. 227.26 (4), Stats., for expedited repeal of an unauthorized rule. For purposes of the expedited repeal process, an “unauthorized rule” is a rule for which an agency lacks the authority to promulgate the rule due to the repeal or amendment of the law that previously authorized its promulgation.

This rule repeals s. Ins. 2.04, which authorizes life insurance companies to charge premiums in excess of maximum premiums set forth under the 1973 statutes. The rule summary states that the practice of exceeding filed rates was repealed under a 1975 act, and that the rule is thus “unauthorized” because it conflicts with current statutes. However, the 1975 act does not appear to have repealed or amended a statute providing underlying rule promulgation authority for s. Ins. 2.04.<sup>1</sup>

b. In the rule summary’s listing of statutory authority, the reference to s. 227.26 (4) Stats., should be removed. Section 227.26 (4), Stats., provides a process and does not remove or confer

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<sup>1</sup> Although the proposed rule does not appear to meet the standard that is required for expedited repeal of an unauthorized rule, a proposed order under the permanent rule procedures to repeal s. Ins. 2.04 may be a rule for which the general public hearing requirement does not apply, because the rule “brings an existing rule into conformity with a statute that has been changed or enacted”. Additionally, in the annual report required to be submitted under s. 227.29, Stats., it appears that the office should identify s. Ins. 2.04 as a rule that is obsolete or is in conflict with a state statute, and describe any proposed actions to address the rule. [ss. 227.16 (2) (b) and 227.29 (1) (c) and (d) and (2) (a), Stats.]

rulemaking authority. The rule summary's listing of statutory authority should be revised to instead cite the specific statutory provision that granted rulemaking authority for the original rule, if applicable, or to cite general authority if there was no explicit authority and the rule was considered necessary to effectuate the purpose of administering premium charges. [s. 1.02 (2m) (a), Manual.]

c. The rule summary's explanation of agency authority should be updated to reflect any revisions made in accordance with the previous comment.

## **2. Form, Style and Placement in Administrative Code**

a. The rule summary's listing of statutes interpreted should be revised to cite the specific statutory provision that was interpreted for administration and enforcement in the original rule. The citations to ss. 227.10 (2) and 227.26 (4), Stats., should be removed, as those provisions govern administrative rulemaking procedures and do not identify a subject matter that is administered by the agency. [s. 1.02 (2m) (a) and (b), Manual.]

b. In the rule summary, a heading and entry should be inserted for related statutes or rules. [ss. 227.14 (2) (a) 1. and 227.26 (4) (b) 1., Stats.]

## **4. Adequacy of References to Related Statutes, Rules and Forms**

In its rule summary, the agency refers to Ch. 374, Laws of 1975, as repealing s. 206.26, 1973 Stats., as referenced in s. Ins 2.04. Section 206.26, 1973 Stats., was repealed by Ch. 371, Laws of 1975.