State of Wisconsin / OFFICE OF THE COMMISSIONER OF INSURANCE

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May 1, 2009

REPORT ON Section Ins 2, 5, 6, 26 & 28, Wis. Adm. Code,
relating to licensing, prelicensing and continuing education
for insurance agents and affecting small business

Clearinghouse Rule No. 09-022
Submitted Under s. 227.19 (3), Stats.
(The proposed rule-making order is attached.)

(a) A detailed statement of basis for the proposed rule and how the rule advances relevant statutory goals or purposes:

OCI has authority to set the initial licensing procedures and renewal requirements for insurance agents in the state of Wisconsin. This rule changes the agent licensing requirements to conform to the NAIC model requirements for licensing and regulation of insurance agents. Three new lines of authority, variable life, crop and surety are created to bring Wisconsin in conformance with the lines in the NAIC model. For the variable line, there will be a 6 month transition period where an agent can solicit under either the current licensing requirements or the new ones. After that period, the agent would only be able to solicit under the new requirements.

These proposals will now allow online, self study and correspondence course credits to satisfy the existing prelicensing education requirements. This conforms Wisconsin to requirements under the NAIC model. Prelicensing course providers will be required to pay the same course approval fees as currently paid by continuing education providers.

The NAIC model requires that the state of residence use fingerprint identification for crime checks. There are 16 States that now require fingerprinting of their resident insurance agent applicants including AK, AZ, CA, CT, FL, ID, MT, NJ, NV, PA, OH, OR, TN, UT, WA and WV. Wisconsin statutes permit the commissioner to require fingerprints for this purpose (see 628.04(1c), Stats.) Currently, resident agent applicant's criminal records are checked using only the Department of Justice, Crime Information Bureau ("CIB"). The CIB database contains no information about federal convictions or convictions in other states. The CIB matches are currently done using a name match and can result in inaccurate matches. A fingerprint match is the only method that the CIB match can be verified. Thus a person who applies for a Wisconsin insurance license could fail to disclose significant convictions under federal law, in other states or even Wisconsin and OCI would have no method to catch the falsehood. OCI would license the person not knowing that the public may be at significant risk. The FBI requires fingerprint in order to provide criminal records to the Commissioner. Other Wisconsin agencies currently require fingerprint crime checks with the FBI including those holding securities licenses, teachers, private detectives, and health professionals. The current testing vendor contracted with OCI holds the current statewide contract for fingerprinting, and provides those services for the licenses identified above. Pursuant to the current contract, the fingerprints collected would be used only to do an FBI and CIB crime check and then destroyed.

Another change proposed is to raise the application fee for the initial licensing of insurance agents. Currently, the fees OCI collects from insurance agent applicants are less than what OCI pays to have the licensing examination administered. As with most state contracts, the contract for the administration of the licensing examination was recently rebid with the new contract effective July 1, 2009. This new contract contains higher charges for examination and processing and makes the current fee structure even more inadequate. Unless the initial licensing fees are raised, OCI will not be able to administer the licensing program without incurring substantial debt.

A similar situation exists with the agent renewal fees. The cost of continuing regulation of agents after they are licensed has increased and the current fee is inadequate.

(b) Summary of the public comments and the agency's responses to those comments:

There were 19 comments made regarding the rule.

11 comments supported allowing online prelicensing education and 4 opposed it.

Response: No change.

2 comments supported requiring fingerprints for FBI crime checks

Response: No change.

2 comments supported OCI providing greater uniformity with other states

Response: No change.

1 comment suggested that the limited line of crop insurance be required to have 8 hours of continuing education.

Response: No Change - Under the NAIC model, limited lines should not have continuing education requirements. Federal USDA law requires that agents selling crop insurance complete 8 hours of continuing education and would still be required to do so if this rule is adopted.

1 comment suggested changing the definition of "accredited institution of higher education" to include more entities as recognized by the US Department of Education.

Response: Expanded the definition.

1 comment suggested delaying the effective date for all non-monetary items.

Response: The rule has a delayed effective date for the variable line changes. The other changes are much less intrusive and don't need a delayed effective date.

(c) An explanation of any modifications made in proposed rule as a result of public comments or testimony received at a public hearing:

Modified the definition of "accredited institution of higher education" to include more entities as recognized by the US Department of Education

(d) Persons who appeared or registered regarding the proposed rule:

Appearances for:

Susan Link	National Assoc of Insurance and Financial Advisors

Appearances against: None

Appearances for information:

Ms. Connie O'Connell	Wisconsin Council of Life Insurers

Registrations for: None

Registrations against: None

Registrations neither for nor against: None

Letters & emails received:

Robert S Houser	
Todd J Robertson	Princor Financial Services Corp
Rodney K Schultz	GoProEducation.com
Tim J Hetzel	American Family Insurance
Todd C Duval	American Family Insurance
Michael T Hanson	Bankers Life and Casualty Co
Steven H Ober	American Family Insurance
James A Counter	JA Counter & Associates Inc
Gerri Meverden	World Financial Group
David Dies	Wisconsin Educational Approval Board
Todd Grabner	Northwestern Mutual Financial Network
Paul Stachowicz	Farmers Insurance
Nate Amack	Farmers Insurance
Jon Woodbury	
Lesa Pastor	ABLE Inc
Kelly L Christensen	American Family Insurance

(e) An explanation of any changes made to the plain language analysis of the rule under s. 227.14 (2), Stats., or to any fiscal estimate prepared under s. 227.14 (4), Stats.

Fees for the approval of the online prelicensing courses were added. This fee is the same as the fee currently required of providers for continuing education.

(f) The response to the Legislative Council staff recommendations indicating acceptance of the recommendations and a specific reason for rejecting any recommendation:

All comments were complied with.

(g) The response to the report prepared by the small business regulatory review board:

The small business regulatory review board did not prepare a report.

(h) Final Regulatory Flexibility Analysis

A Final Regulatory Flexibility Analysis is Not Required because the rule will not have a significant economic impact on a substantial number of small businesses.

(i) Fiscal Effect

See fiscal estimate attached to proposed rule. This was updated to reflect fees to be paid by the prelicensing providers for course approval.

Attachment: Legislative Council Staff Recommendations
May 1, 2009