

Clearinghouse Rule 18-094

**STATE OF WISCONSIN
OFFICE OF THE COMMISSIONER OF INSURANCE**

**PROPOSED ORDER OF THE OFFICE OF THE COMMISSIONER OF INSURANCE
REPEALING A RULE**

The Office of the Commissioner of Insurance is petitioning the Joint Committee for Review of Administrative Rules to repeal rules the office has determined to be an unauthorized rule using the process under s. 227.26(4), Stats.

PROPOSED ORDER

An order of the Office of the Commissioner of Insurance to repeal Ins 2.02, Wis. Adm. Code, relating to stock life insurance corporations writing participating policies.

ANALYSIS PREPARED BY THE OFFICE OF THE COMMISSIONER OF INSURANCE (OCI)

Statutes interpreted:

ss. 227.10(2), Stats., 227.26(4), Stats., and 632.62 (1)(b), Stats.

Statutory authority:

ss. 227.26(4), Stats., and 632.62(1)(b), Stats.

Explanation of OCI's authority to promulgate the proposed rule under these statutes:

Pursuant to s. 227.26(4), Stats., OCI may petition for repeal of an unauthorized rule. An unauthorized rule is one that "an agency lacks the authority to promulgate due to the repeal or amendment of the law that previously authorized its promulgation." Pursuant to s. 227.10(2), no agency may promulgate a rule which conflicts with state law.

Section 632.62, Stats., regulates participating and nonparticipating life insurance policies and the issuance of dividends. Pursuant to s. 632.62(4)(b), Stats., as modified by 2015 Wis. Act 90, the board of directors of a stock insurer may determine the payment of reasonable dividends upon capital stock by a stock insurer's board of directors.

Section Ins. 2.02, Wis. Adm. Code, is unauthorized because it is in conflict with the discretion granted in Act 90 and restricts the discretion granted to the board of directors to determine the distribution of dividends.

The plain language analysis and summary of the proposed rule:

The proposed rule repeals s. Ins 2.02, Wis. Adm. Code, relating to the stock life insurance corporations writing participating policies. Section Ins 2.02, places limitations of the profits on participating business that shall be made available to stockholders, including explicit limits dollar amount limitations, licensing limitations, and annual filing requirements. Section Ins 2.02 was originally promulgated in 1962, and last modified in 1979.

2015 Wis. Act 90 granted discretion to the stock insurer's board of directors to determine the amount of reasonable dividends on capital stock. Act 90 supersedes the limitations and regulatory framework of s. Ins 2.02, rendering that provision unauthorized.

Agency contact person:

Karyn Culver, Paralegal, at:

Phone: (608) 267-9586

Email: karyn.culver@wisconsin.gov

Address: 125 South Webster St – 2nd Floor, Madison WI 53703-3474

Mail: PO Box 7873, Madison, WI 53707-7873

The proposed rule changes are:

SECTION 1. Ins 2.02 is repealed.

SECTION 2. EFFECTIVE DATE. The rules repealed in this order shall take effect on the first day of the month following publication in the Wisconsin Administrative Register, pursuant to s. 227.22 (2) (intro.), Stats.

(END OF TEXT OF RULE)
