

Chapter Ins 2

LIFE INSURANCE

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**Ins 2.01 Estoppel by report of medical examiner.** No company or fraternal benefit society shall issue in this state a contract, based on a medical examination, providing for disability benefits, the provisions of which are in conflict with section 209.07, Wis. Stats., or shall indulge in any practice which is at variance with said section.

**Ins 2.02 Stock companies writing participating policies.** (1) Section 206.13, Wis. Stats., sets out special requirements that must be met before a stock life insurance company issuing both participating and nonparticipating policies may be licensed to do business in this state. Briefly stated, the requirements are that: (a) Participating policies must " \* \* by their terms, give to the holders thereof full right to participate annually in the surplus accumulations from the participating business of such company as provided by law of this state."

(b) An agreement must be filed with the commissioner that " \* \* in consideration of being permitted to issue both participating and nonparticipating policies, the accounts of each class will be kept separate, and that no part of the funds accumulated or belonging to the participating class shall ever be voluntarily transferred to the nonparticipating class, except such as the existing charter of the company may require."

(2) Section 206.36, Wis. Stats., prescribes the payment of annual dividends on participating life insurance policies and is no doubt the "law of this state" referred to in section 206.13, Wis. Stats. This section authorizes " \* \* making provision for the payment of authorized dividends upon the capital stock \* \* " as a deduction from earnings on participating policies in the computation of the amount available for dividends to policyholders.

(3) (a) Section 206.14 (1), Wis. Stats., concerns stock companies "doing business on the participating plan" and provides that before such a company may secure a license to do business in this state, it must file with the commissioner a statement under oath of the president and secretary, stating "(a) the amount of the unassigned surplus of such company; (b) the amount of said surplus or the interest or right therein belonging to the policyholders; (c) the amount of such surplus or the interest or right therein belonging to the stockholders; (d) the method of ascertainment and the action determining the rights of such policyholders and stockholders respectively; (e) the agreement of the company that such method shall not be changed so as to affect policies issued thereunder."

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(b) Section 206.14 (2), Wis. Stats., provides that no license shall be issued to any such stock company “\* \* \* until the commissioner is satisfied that the rights of such policyholders are fully and legally determined.”

(4) (a) Both of these sections of the statutes were enacted in 1907, following the legislative investigation of life insurance companies in 1906. Both sections have since been amended with the result that earlier rulings construing the same cannot now be applied. It is our purpose in issuing this ruling to set out what we consider to be minimum general requirements that must be met in order that the commissioner of insurance may be “satisfied that the rights of such policyholders are fully and legally determined.”

(b) Section 206.13, Wis. Stats., recognizes that there may be a charter provision permitting the transfer of a part of the profits on the participating business to the nonparticipating department, hence available for dividends to stockholders. Section 206.14, Wis. Stats., implies that a portion of the profits on the participating business may be taken by the stockholders. Any stock life insurance company which issues any participating policies is required to file the statement required by section 206.14, Wis. Stats., and is subject to the further provision that a license shall not be issued “until the commissioner is satisfied that the rights of such policyholders are fully and legally determined.” Stock companies issuing participating policies as described in section 206.14, Wis. Stats., come within the language of section 206.13 (1), Wis. Stats., and therefore must issue contracts providing for full participation.

(c) The statutes thus requiring “full right to participate” to be granted participating policyholders and that the commissioner “be satisfied” that the rights of the policyholders are “fully and legally determined”, place upon the commissioner a duty to determine the value of the benefit, if any, the policyholders derive from the contributions made by the stockholders in the purchase of the capital stock. As the investment of the capital presents little underwriting hazard during the first few years because of recent medical examination of the policyholders, and in the course of time the amount of the capital is but a small proportion of the investment made by the policyholders, to hold that the stockholders are entitled to a certain rate of return, such as 5 per cent, on their total contributions, without regard to the payment or nonpayment of dividends to policyholders would result in great inequity to the policyholders. To avoid any inequities and to prevent nullification of the “full right to participate” provision of the law, the commissioner must be “satisfied that the rights of the policyholders are fully and legally determined.” The word “legally” may be taken to refer to the limitation of the amount that can be taken by the stockholders (who are in control of the management) as well as to the form of the agreement filed. The whole purpose of the law is to protect the policyholders and not to restrict the commissioner’s action to passing upon the form of an agreement regardless of its effect upon the vital interests of the policyholders. To act upon the premise that the commissioner’s action can deal only with the form of the agreement would be to work a fraud upon the policyholders who may rightfully expect to receive some degree of protection from those whom they have placed in positions of trust.

(5) (a) A thorough consideration of the purpose and intent of sections 206.13, 206.14 and 206.36, Wis. Stats., convinces us that the following general limitations are just, reasonable and in keeping with the tenor of the statutes and may properly serve as a basis for action by the commissioner of insurance in passing upon applications for license by stock life insurance companies issuing participating policies, to wit:

(b) All policies purporting to be issued on the participating basis shall in fact be fully participating in the surplus developed on the total participating business of the company. In the determination of the surplus accruing upon the participating business, such class shall be charged annually only with the actual losses and expenses properly chargeable thereto and such amount as may be transferred to the account of the stockholders in keeping with this ruling.

(c) The agreement to be filed by the company shall limit the amount that may be taken in any year from the earnings on the participating business for the benefit of stockholders or be credited to their account to 5 per cent simple interest on their contributions to the capital and surplus accounts or 10 per cent of the profits on the participating business, whichever method of computation produces the lower amount. It shall also provide that upon mutualization or liquidation of the company, the total available to the stockholders shall not exceed their cash contribution to capital and surplus plus the amounts credited annually by the foregoing rule accumulated with interest at a rate not in excess of 5 per cent simple interest and less dividend paid in cash similarly accumulated on the same interest basis.

(d) The limitations on the amount available to stockholders from the surplus produced by the participating business which may be adopted by the company in conformity with subsection (5) (c) above, shall also be set out in the charter or articles of incorporation.

**Ins 2.03 Policies not dated back to lower insurance age.** (1) No company shall issue for delivery in this state any policy or contract of life insurance which purports to be issued or to take effect as of a date more than six months before the application therefor was made, if thereby the premium on such policy or contract is reduced below the premium which would be payable thereon as determined by the nearest birthday of the insured at the time when such application was made. The date of application must be considered to be the date on which the application (Part I) or the medical examination (Part II) is completed, whichever is the later.

(2) This ruling does not prohibit the exchange, alteration or conversion of policies of life insurance as of the original date of such policies if the amount of insurance provided under the new policy does not exceed the amount of insurance under the original policy or the amount of insurance which the premium paid for the original policy would have purchased if the new policy had been originally applied for, whichever is greater; nor prohibit the exercise of any conversion privilege contained in any policy or contract.

**Ins 2.04 Substandard risk rates.** Life insurance companies may charge premiums in excess of the maximum premiums as defined in section 206.26, Wis. Stats., provided the addition to the maximum

premium is made to cover the extra risk owing to the fact that the person is a substandard risk, or is engaged in a hazardous occupation.

**Ins 2.05 Total permanent disability benefits in life insurance premiums and reserves.** (1) A policy of life insurance which provides for waiver of premium or special surrender value, not exceeding the face of the policy, in case of the total and permanent disability of the insured, by reason of accidental bodily injury or sickness, is permitted under the laws of this state. Such policies are required to have printed or stamped thereon a statement specifying separately the amount of premium charged for such benefits; provided, however, if such provision or provisions are incorporated in life policies now being issued, without additional premium charge, the ultimate cost thereof to be charged against the surplus accruing on such policy, a statement setting forth that fact printed or stamped upon the policy will be sufficient.

(2) Reserve values on account of such provisions will be based upon such standards as this department may prescribe. The company issuing such policies will be required to file in this department such data concerning such policies and such provisions as the commissioner may direct.

**Ins 2.06 Credit life insurance.** (1) **PURPOSE.** This rule implements and interprets applicable statutes for the purpose of establishing minimum requirements for the transaction of credit life insurance.

(2) **POLICY PROVISIONS.** (a) Credit life insurance policies may include total and permanent disability benefits or may include credit accident and health benefits as defined in section 201.04 (4a), Wis. Stats. Credit life insurance policies which include credit accident and health insurance benefits shall contain all of the appropriate required provisions relating to such insurance.

(b) Each individual policy or group certificate of credit life insurance shall, in addition to other filing requirements, set forth:

1. The name and home office address of the insurer.
2. The name of the debtor.
3. The amount and term of the coverage by description, formula, schedule, or by equating both to the amount and term of the indebtedness. An insurer may submit other methods for indicating amount and term, subject to the approval of the commissioner, which it believes are equally clear.
4. The amount of premium or identifiable charge separately for credit life insurance, for total and permanent disability benefits, and for credit accident and health insurance when the debtor has paid or obligated himself to pay all or any part of the premium or identifiable charge.
5. A description of the coverage, including any exceptions, limitations, or restrictions.
6. A provision that the benefits shall be paid to the creditor to reduce or extinguish the unpaid indebtedness.
7. A provision that the insurance on any debtor will be cancelled if his indebtedness is terminated through prepayment, refinancing, or otherwise.
8. A provision that a refund will be granted in the event of cancellation or termination. The individual policy or group certificate shall either describe the method of computing the refund or state that the

formula or schedule for such computation has been filed with the commissioner of insurance. This provision shall not be required if the debtor has not paid or obligated himself to pay all or any part of the premium or identifiable charge.

(c) If a contract of credit life insurance provides for a limitation of the amount of coverage related to credit life insurance provided by other contracts in force on the life of the debtor, such limitation shall be explained to the debtor at the time the indebtedness is incurred and shall be acknowledged in writing by him in an instrument separate from the individual policy or group certificate. Alternatively, the individual policy or group certificate shall include a *brief description* or *separate statement* referring to the limitation of amount of coverage. The *brief description* or *separate statement*, if used to meet the foregoing requirement, shall be printed on the first page of the individual policy or group certificate in type more prominent than that used in the text of the policy or certificate and shall clearly indicate the limitation.

(d) If a contract of credit life insurance provides for a limitation of coverage related to the age of the debtor, such limitation shall be explained to the debtor at the time the indebtedness is incurred and shall be acknowledged in writing by him in an instrument separate from the individual policy or group certificate. Alternatively, the individual policy or group certificate shall include a *brief description* or *separate statement* referring to the age limitation. The *brief description* or *separate statement*, if used to meet the foregoing requirement, shall be printed on the first page of the individual policy or group certificate in type more prominent than that used in the text of the policy or certificate and shall clearly indicate the limitation.

(3) **TERM OF CREDIT LIFE INSURANCE.** The term of any credit life insurance shall, subject to acceptance by the insurer, commence on the date when the debtor becomes obligated to the creditor, except that, where a group policy provides coverage with respect to existing obligations, the insurance on a debtor with respect to such indebtedness shall commence on the effective date of the policy. The term of such insurance shall not extend more than 15 days beyond the scheduled maturity date of the indebtedness except when extended without additional cost to the debtor.

(4) **AMOUNT OF CREDIT LIFE INSURANCE.** The amount of credit life insurance shall not exceed the maximum set forth in section 206.63 (2) (a), Wis. Stats.

(5) **REFUNDS IN EVENT OF CANCELLATION OF INSURANCE.** Schedules for computing refunds in event of cancellation of credit life insurance prior to the scheduled maturity date of the indebtedness must meet the following minimum requirements:

(a) Schedules used to compute the refund in connection with decreasing life insurance contracts must provide for a return at least equal to that which would be provided by application of the so-called "Rule of 78" sometimes referred to as the "sum of the digits rule."

(b) Schedules used to compute the refund in connection with level amount credit life insurance written on single payment, irregular, or balloon note transactions must provide for a refund at least equal to the amount which would be granted if the so-called "calendar pro rata method" were used.

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(c) Refunds shall be based upon the number of full months prepaid from the maturity date of the policy, counting a fractional month of 16 days or more as a full month.

(d) Upon termination of indebtedness repayable in a single sum prior to the scheduled maturity date, the refund shall be computed from the date of termination to the maturity date with allowance for a full month for an unexpired fractional period of 15 days or more. For example, consider a credit life insurance policy issued in connection with an indebtedness incurred January 1, 1958, to be repaid January 1, 1959. If the indebtedness terminated June 15, 1958, use June 1, 1958, to compute the refund for 7 months. If the indebtedness terminated June 16, 1958, use July 1 to compute the refund for 6 months.

(e) Credit must be given to the debtor for all refunds, regardless of amount, provided that no refund or credit need be made by an insurer if the amount thereof is less than one dollar. If credit life insurance and credit accident and health insurance have been in force on the same indebtedness, the sum of the refunds due on all such contracts shall be used to determine if a refund is due the debtor.

(6) EVIDENCE OF INSURANCE. If an individual policy or group certificate of insurance is not delivered to the debtor at the time the indebtedness is incurred, a copy of the application for such policy or a notice of proposed insurance shall be delivered at such time to the debtor. The copy of the application for, or notice of proposed insurance, shall be signed by the debtor and shall set forth the name of the debtor, a description of the coverage, the amounts of premium or identifiable charge separately in connection with credit life insurance and credit accident and health insurance. The copy of the application for or notice of proposed insurance shall also refer exclusively to insurance coverage, and shall be separate and apart from the loan, sale or other credit statement of account, instrument or agreement unless the information required by this subsection is prominently set forth therein. Upon acceptance of the insurance by the insurer and within 30 days of the date upon which the indebtedness is incurred the insurer shall cause the individual policy or group certificate of insurance to be delivered to the debtor. Said application or notice of proposed insurance shall state that upon acceptance by the insurer the insurance shall become effective as provided in subsection (3) of this rule.

(7) APPROVAL OF FORMS AND RATES. (a) All forms of policies, riders, endorsements, certificates, applications, notices of proposed insurance, or other instruments which will be issued or delivered in Wisconsin as a part of a credit life insurance contract shall be submitted to the commissioner of insurance for approval under the terms of this rule.

(b) No policy, rider, endorsement, certificate, application, notice of proposed insurance or other form pertaining to a credit life insurance contract shall be issued or delivered nor shall a refund schedule be used in Wisconsin on or after the effective date of this rule unless such form and refund schedule are filed with the commissioner of insurance and approved by him. No credit life insurance shall be effected on a debtor under an existing group policy, commencing with the policy anniversary date on or after the effective date of this regulation, unless a certificate of group insurance or a notice of proposed group

insurance, as required herein, is delivered to the debtor on a form filed with the commissioner of insurance and approved by him.

(c) In considering a form of policy, rider, or endorsement for approval, the commissioner of insurance will also consider information submitted in the rate schedule which shall accompany such form. The rate schedule shall also be subject to approval by the commissioner of insurance and shall contain or be accompanied by the following information:

1. The form number or identification symbol of each policy, rider, or endorsement to which the rates apply.
2. A schedule of rates including variations, if any, based on age, sex, occupation, or other classification.
3. An indication of the anticipated benefits payable under the policy, including loss ratio.
4. If the rate filing is a revision of a prior filing, the new filing shall be accompanied by a statement of the experience on the form and the anticipated loss ratio under the revised rate filing.

(d) If an identifiable charge is made to the debtor under a policy of credit life insurance, such identifiable charge shall not exceed the premium set forth in the rate schedule filed with the commissioner of insurance.

(e) On or before February 16, 1959, each insurer authorized to do business in Wisconsin shall furnish the commissioner of insurance a list of all policies, riders, endorsements, certificates, applications, notices of proposed insurance, or any other instruments which it intends to issue to insure residents of Wisconsin for credit life insurance.

(8) **ACCOUNTING.** Insurers shall maintain records regarding premiums, losses, and other benefits and expenses separately for credit life insurance, for total and permanent disability benefits, and for credit accident and health insurance provided by a policy form so that such experience may be filed with the commissioner of insurance at such times and in such manner as may be prescribed by him. The commissioner of insurance may require insurers to file with him such other information as he may deem necessary for the administration of credit life insurance.

(9) **NONWAIVER OF OTHER REQUIREMENTS.** This rule does not confer any rights on lenders or other creditors which are not permitted by the laws which apply to them.

**History:** Cr. Register, December, 1958, No. 36, eff. 1-1-59; am. (5) (c), Register, March, 1959, No. 39, eff. 4-1-59; am. (2) (b) 3 and 8; (2) (c) and (d); (5) (e); (6) and (7) (b), Register, October, 1961, No. 70, eff. 11-1-61.

**Ins 2.07 Replacement of life insurance policies; disclosure requirements.** (1) **PURPOSE.** The interest of life insurance policyholders involved with replacement must be safeguarded by making available full and clear information on which to make decisions in their own best interest, by reducing the opportunity for misrepresentation in replacement situations, and by precluding unfair methods of competition and unfair practices in the business of insurance. This rule implements and interprets sections 201.53 (13), 206.41 (11) (a) 8, 207.04 (1) (a), and 208.33, Wis. Stats., by establishing minimum standards for replacement of life insurance.

(2) SCOPE. This rule shall apply to the solicitation of insurance described by section 201.04 (3), Wis. Stats., covering residents of this state, and issued by insurance corporations, fraternal benefit societies, the federal government or the state life insurance fund. In respect to the solicitation of such insurance, the procedures required by this rule shall not apply to group, industrial or credit life insurance described by subsections (3a), (3b) and (3c) of section 201.04, Wis. Stats., nor to life insurance for which the cost or a part thereof is paid by the employer, nor to policy changes or conversion of term insurance to permanent insurance within the same company, nor to insurance which is not in force but which may be purchased under a guaranteed insurability option.

(3) DEFINITION. For the purpose of this rule, "replacement" includes any transaction wherein new life insurance is to be purchased and it is known to the agent that, as a part of the transaction, existing life insurance has been or is to be lapsed, surrendered, converted into paid-up insurance, become extended insurance or be subjected to substantial borrowing of loan values whether in a single loan or under a schedule of borrowing over a period of time.

(4) DUTY OF THE AGENT. (a) The agent must secure with or as a part of each application for insurance a statement signed by the applicant as to whether such insurance will replace existing insurance, and he must leave a copy of the statement with the applicant for his records.

(b) The agent must submit to the company with or as a part of each application for insurance a statement as to whether, to the best of his knowledge, replacement is involved with the transaction.

(c) Where replacement is involved, the agent must:

1. Present a written proposal to each prospect solicited not later than at the time of taking the application and leave it with the applicant for his records;

2. Submit with the application to his company a copy of the proposal and the name of every company which issued the insurance being replaced;

3. Immediately notify every such company of the possibility of replacement, and promptly furnish a copy of the proposal to each company;

4. Present the notice required by subsection (9) of this rule to each prospect solicited not later than at the time of taking the application and leave it with the applicant for his records.

(5) DUTY OF THE COMPANY. (a) Every authorized company must inform its agents involved with the solicitation of life insurance on residents of this state of the requirements of this rule.

(b) Every such company must secure with or as a part of each application for life insurance a statement signed by the applicant as to whether such insurance will replace existing insurance, and the company must ascertain that a copy of the statement was left with the applicant.

(c) Where replacement is involved, the company to which application is made must:

1. Secure a copy of the proposal and the name of every company which issued the insurance being replaced;

2. Immediately ascertain that a copy of the proposal and notice of the possibility of replacement has been furnished to every company which issued the insurance being replaced;

3. Examine the proposal and be satisfied that it meets the requirements of this disclosure rule;

4. Keep a copy of the proposal and the applicant's signed statement in its home office for at least 3 years where it shall be available to the Department of Insurance;

5. Keep records of such proposals and replacements indexed so as to be readily available to the Department of Insurance.

(6) CONTENTS OF PROPOSAL. The written proposal required by this rule must:

(a) Be dated and signed by the agent;

(b) State the name of the company in which the insurance is to be written;

(c) Describe the existing insurance and state the proposed disposition of or the effect of the replacement on it;

(d) State the facts upon which the agent makes his recommendation to the applicant for replacement of his insurance or state the facts upon which the applicant made his decision to replace his insurance;

(e) Contain no misrepresentation or false or misleading statements.

(7) VIOLATION. Any violation of this rule shall be deemed to be a misrepresentation for the purpose of inducing a person to purchase insurance.

(8) SEPARABILITY. If any provision of this rule shall be held invalid, the remainder of the rule shall not be affected thereby.

(9) NOTICE TO POLICYHOLDER. When replacement is involved, the agent must deliver to the prospect the following notice:

#### NOTICE TO POLICYHOLDER

This notice to you is for your protection and is required by Wisconsin Administrative Code section Ins 2.07, Rules of Department of Insurance.

- I. If you are urged to purchase life insurance and it is suggested that you surrender or lapse or in any other way change the status of your existing insurance in the process, you are entitled to request and receive from the person soliciting insurance a written proposal signed by him setting forth all the pertinent facts bearing on the transaction and the advantages and disadvantages of changing to the proposed coverages.
- II. In every case, it is to your advantage to secure the advice and recommendations of your present life insurance company regarding the proposed replacement or change in such existing policies. You may secure this information by notifying your present insurance company or its agent about the proposed replacement or change. In the event the replacement or change suggested is presented by a person representing the company in which you already have existing insurance, you are entitled to secure

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the views of the home office or of a management representative of this company regarding the desirability of such replacement or change.

III. If you are considering replacement of your present insurance, you are advised that, as a general rule, it is not to your advantage to drop or change any of your existing life insurance for the purpose of replacing it with new life insurance in the same or another company. Some of the reasons for this are as follows:

- A. When a new policy is issued, its acquisition costs must be paid. Almost invariably such costs are higher on a new policy than the current costs on an existing policy.
- B. The incontestable and suicide clauses begin anew in a new policy. This could result in a claim under a new policy being denied by the company which would have been paid under the policy which was replaced.
- C. A new policy usually will be issued at an age higher than that of the existing policy and thus usually will have a higher premium rate.
- D. Existing policies often have more favorable provisions than new policies in such areas as settlement options and disability benefits.
- E. Your present insurance company can often make a desired change on terms which would be more favorable to you than if you replaced your existing insurance with new insurance.

IV. For the above reasons it is also generally not to the policyholder's advantage to put the original policy on reduced paid-up or extended insurance or to borrow its loan value beyond ability or expectation to repay in order to have sufficient funds to pay premiums on a new policy in the same or another company.

V. There may be a few very occasional cases where a replacement might be to your advantage. However, your best protection in every case is to secure the comments and views of your present insurance company before arriving at any decision on such an important matter.

**History:** Cr. Register, March, 1962, No. 75, eff. 5-15-62.

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