

CR 91-175

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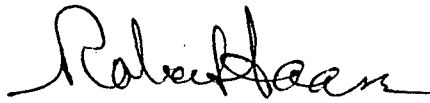
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Revisor of Statutes
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STATE OF WISCONSIN)
)
OFFICE OF THE COMMISSIONER OF INSURANCE)

I, Robert D. Haase, Commissioner of Insurance and custodian of the official records of this Office, certify that the attached rule-making order affecting subch. II of ch. Ins 8, Wis. Adm. Code, relating to licensing and regulation of employe benefit plan administrators, was issued by this Office on February 21, 1992.

I further certify that I have compared this copy with the original on file in this Office and that it is a true copy of the whole of the original.

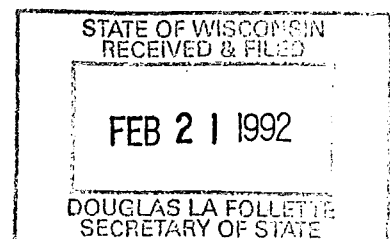
Dated at Madison, Wisconsin, this 21st day of February, 1992.



Robert D. Haase
Commissioner of Insurance

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5-1-92



FEB 21 1992
DOUGLAS LA FOLLETTE
SECRETARY OF STATE

ORDER OF THE OFFICE OF THE COMMISSIONER OF INSURANCE

AMENDING AND CREATING A RULE

To amend ch. Ins 8 (title) and to create subch. I (title) of ch. Ins 8 and subch. II of ch. Ins 8, relating to licensing and regulation of employe benefit plan administrators.

ANALYSIS PREPARED BY THE OFFICE OF THE COMMISSIONER OF INSURANCE

Statutory authority: ss. 633.13 (2), 633.14 (3), 633.15 (1) (b) and 633.17, Stats.

Statutes Interpreted: ch. 633, Stats.

1991 Wisconsin Act 39 requires the office of the commissioner of insurance (OCI) to license and regulate certain administrators of insured or wholly or partially self-insured plans that provide, to state residents, benefits that include, but are not limited to, benefits for medical, surgical or hospital care, benefits for sickness, accident, disability or death, or unemployment or retirement benefits (employe benefit plans). An administrator is an individual, corporation or partnership that solicits or collects premiums, effects coverage or adjusts or settles claims for an employe benefit plan. Certain persons, including employers that administer their own employe benefit plans, unions acting on behalf of their members, attorneys who settle

claims as part of their professional practice and certain insurers and other entities are exempt from the licensing requirement.

The statute gives the commissioner of insurance (commissioner) authority to exempt certain classes of administrators from the licensing requirement if the commissioner makes a determination that other safeguards make the licensing requirement unnecessary. The commissioner has determined that because the department of industry, labor and human relations regulates employers with self-insured, partially-insured or divided insurance worker's compensation plans, there are regulatory safeguards in place for those plans that make licensing by OCI unnecessary. The commissioner has also determined that existing OCI rules provide adequate safeguards that apply to warrantors and warranty plan administrators that hold a certificate of authority issued by the commissioner. Therefore, those administrators are exempt from this rule, but only for the portion of their business that is subject to existing regulation.

This rule establishes the licensing requirements and procedures for administrators that are subject to regulation by OCI. An administrator must submit an annual application with a \$100 nonrefundable license fee to OCI. With an initial application, the administrator must submit a performance bond, continuous in nature and issued by a Wisconsin-licensed surety, in favor of the commissioner and payable to any Wisconsin resident or any employe benefit plan on behalf of covered Wisconsin residents in the event of injury caused by the administrator's failure to fulfill its duties as an administrator. For an administrator that collects premiums or commingles the funds of various plans, the rule requires a bond in the amount of \$25,000 or 10% of the projected premiums, charges and claim funds the administrator expects to handle in the next fiscal year, whichever is greater, except that no administrator is

required to file a bond exceeding \$500,000. For an administrator that does not collect premiums or commingle funds, the amount of the bond must be the greater of \$15,000 or 5% of the claim funds the administrator expects to handle in the next fiscal year, up to a maximum of \$250,000. In calculating the amount of the bond, an administrator may exclude the worker's compensation and warranty plan portions of its business. If an administrator's business increases so as to require an increase in the bond amount, the administrator must file, with a renewal application, proof that the bond has been increased.

An administrator, or applicant for an administrator's license, must submit with the application a financial statement prepared according to generally accepted accounting principles which includes the information specified in the rule. Each application must also include biographical information on the applicant himself or herself if an individual, or on the administrator's officers, directors, partners and other persons having comparable responsibilities within the corporation or partnership, including information on any previous criminal and administrative actions against any such individual. The information provided will enable OCI to determine whether each individual is competent and trustworthy, as required by the statute.

The rule requires an administrator to notify OCI if it ceases doing business as an administrator, changes its address or the location of its business records or is the subject of administrative action or a criminal conviction in this state or another state.

The rule gives the commissioner authority to order an administrator to submit financial statements that have been audited by a certified public accountant in order to determine whether the administrator's financial resources are adequate to protect the interests of the public and persons

covered by the employe benefit plans it administers, or to determine the appropriate bond amount.

An emergency rule corresponding to this rule took effect on October 1, 1991. That rule requires administrators to file their initial applications on or before January 2, 1992. The bond amount required by the emergency rule was at least \$50,000, but not more than \$1,000,000. However, a transitional provision of this rule provides that a bond meeting the lower amounts established in the permanent rule will satisfy the bonding requirements, even if the bond was submitted before the effective date of the permanent rule.

SECTION 1. Chapter Ins 8 (title) is amended to read:

CHAPTER INS 8

EMPLOYE WELFARE FUNDS; EMPLOYE BENEFIT PLANS

SECTION 2. Subchapter I (title) of chapter Ins 8, preceding s. Ins 8.01, is created to read:

SUBCHAPTER I

EMPLOYE WELFARE FUNDS

SECTION 3. Subchapter II of chapter Ins 8 is created to read:

SUBCHAPTER II

EMPLOYE BENEFIT PLAN ADMINISTRATORS

Ins 8.20 PURPOSE. This subchapter interprets and implements ch. 633, Stats.

Ins 8.22 DEFINITIONS. In this subchapter:

- (1) "Administrator" has the meaning given in s. 633.01 (1), Stats.
- (2) "Commissioner" means the commissioner of insurance.
- (3) "Employe" has the meaning given in s. 633.01 (2), Stats.
- (4) "Office" means the office of the commissioner.

(5) "Plan" has the meaning given in s. 633.01 (4), Stats.

(6) "Principal" has the meaning given in s. 633.01 (5), Stats.

Ins 8.24 EXEMPTIONS. (1) Each of the following is exempt from ch. 633, Stats., and this subchapter for the portion of its business subject to regulation under the specified sections:

(a) An administrator of one or more self-insured, partially insured or divided insurance worker's compensation plans subject to s. Ind 80.60 or 80.61.

(b) A warrantor or warranty plan administrator, as defined in s. Ins 15.01 (4) (c) or (e), that holds a valid certificate of authority under ch. Ins 15.

(2) An administrator that is partially exempt under sub. (1) (a) or (b) is subject to ch. 633, Stats., and this subchapter for any portion of its business that is outside the scope of the exemption.

Ins 8.26 LICENSING. (1) APPLICATION. A person applying for a new or renewal license as an administrator shall submit an application to the office in the form prescribed by the office. With the application, the person shall submit all of the following:

(a) With the initial application, a performance bond meeting the requirements of s. Ins 8.28.

(b) With a renewal application, proof that the bond continues to meet the requirements of s. Ins 8.28, if the amount required for the bond has changed.

(c) A financial statement for the administrator's most recently completed fiscal year, prepared according to generally accepted accounting principles. The financial statement shall report the administrator's assets, liabilities and net worth, the results of operations and the changes in net worth for the fiscal year on the accrual basis.

(d) A statement as to whether the administrator does any of the following:

1. Collects premiums or employe contributions on behalf of any principal.
2. Maintains separate fiduciary accounts for each principal.

(e) All of the following information about the administrator, if an individual, or about each officer, director, partner or other individual having comparable responsibilities in the organization, if a corporation or partnership:

1. Whether the individual has been fined or reprimanded or has been the subject of a consent decree in any state by any agency that regulates the business of administrators, insurance, real estate, securities or financial institutions.

2. Whether the individual has had a license to solicit insurance, real estate or securities or to act as an administrator refused, suspended, denied or revoked in any state.

3. Whether the individual has been convicted of a felony or misdemeanor, other than a misdemeanor related to the use of a motor vehicle or the violation of a fish and game regulation.

4. If the individual has ever been employed by an administrator or insurance company, or in the business of real estate, securities or financial institutions, whether his or her employment has been terminated or nonrenewed because of allegations of misconduct or wrongdoing.

(f) If the administrator is an individual, his or her insurance intermediary agent's license number and social security number and a statement that he or she intends to act as an administrator in good faith and in compliance with all applicable laws of this state and rules and orders of the commissioner.

(g) If the administrator is a corporation or partnership, its federal identification number, the state and year of its incorporation or year of its formation and a statement that it intends to act as an administrator in good faith and in compliance with all applicable laws of this state and rules and orders of the commissioner and that it has designated or will designate an individual with direct responsibility for each plan it administers.

(h) If the administrator is an individual who is not a resident of this state or a corporation or partnership that is not organized under the laws of this state, a statement that the administrator agrees to be subject to the jurisdiction of the commissioner and the courts of this state with respect to all matters pertaining to activities as an administrator and to accept service of process as provided under ss. 601.72 and 601.73, Stats.

(i) Any other information requested by the office.

(j) The fee specified under s. 601.31 (1) (w), Stats., which shall be nonrefundable.

(2) RENEWAL APPLICATION DEADLINE. An administrator shall submit a renewal application on or before August 1 of each year.

(3) APPLICATION REVIEW. The office shall review and approve or disapprove each complete application within 60 days after its receipt.

Note: The application form, which includes a sample performance bond format, OCI 30-001, may be obtained from the Office of the Commissioner of Insurance, P.O. Box 7872, Madison, Wisconsin 53707-7872.

Ins 8.28 PERFORMANCE BOND REQUIREMENTS. (1) A performance bond required under s. 633.14 (1) (b) or (2) (b), Stats., shall be continuous in form, shall be issued by an insurer authorized to do a surety business in this state and shall be in favor of the commissioner and payable to any resident of this state who is the beneficiary of an employe benefit plan administered by

the administrator and to any such employe benefit plan on behalf of the residents of this state who are its beneficiaries in the event of injury caused by a failure of the administrator to fulfill its responsibilities as an administrator.

(2) If the administrator collects premiums or employe contributions on behalf of any principal, or commingles funds belonging to more than one principal, the performance bond shall be in the greater of the following amounts:

(a) \$25,000.

(b) Ten percent of the total amount of projected premiums, charges and claim funds the administrator expects to handle on behalf of residents of this state during the fiscal year following the year for which a financial statement is submitted under s. Ins 8.26 (1) (c). A bond under this paragraph need not exceed \$500,000.

(3) If the administrator does not collect premiums or employe contributions on behalf of any principal, and maintains a separate fiduciary account for each principal, the performance bond shall be in the greater of the following amounts:

(a) \$15,000.

(b) Five percent of the total amount of projected claim funds the administrator expects to handle on behalf of residents of this state during the fiscal year following the year for which a financial statement is submitted under s. Ins 8.26 (1) (c). A bond under this paragraph need not exceed \$250,000.

(4) An administrator may exclude from the calculations required under sub. (2) (b) or (3) (b) all amounts handled as administrator for any of the following:

(a) Self-insured, partially insured or divided insurance worker's compensation plans subject to s. Ind 80.60 or 80.61.

(b) Warranty plans subject to ch. Ins 15.

Ins 8.30 NOTIFICATION TO OFFICE. An administrator shall notify the office in writing of any of the following within 30 days after the date of the occurrence:

(1) The cessation of business activities as an administrator. A notification under this subsection shall include the name and address of the custodian of the administrator's business records and the location of those records.

(2) Any change in the administrator's business mailing address or the location of its business records.

(3) Formal administrative action in this state or another state by an agency that regulates the business of administrators, insurance, real estate, securities or financial institutions against the administrator or any officer, director, partner or other individual having comparable responsibilities in the corporation or partnership.

(4) The conviction in this state or another state of a felony or misdemeanor, other than a misdemeanor related to the use of a motor vehicle or the violation of a fish and game regulation, of the administrator or any of the officers, directors, partners or other persons having comparable responsibilities in the corporation or partnership.

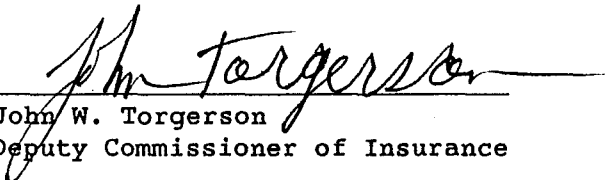
Ins 8.32 AUDIT. In order to determine whether the financial resources of an administrator are adequate to safeguard the interests of the public and persons covered by a plan, or to determine the appropriate bond amount under s. Ins 8.28, the office may order the administrator to submit financial statements that have been audited by a certified public accountant.

SECTION 4. TRANSITIONAL PROVISIONS. (1) Notwithstanding section Ins 8.28, as created by an emergency rule of the office of the commissioner of insurance to take effect on October 1, 1991, a bond meeting the requirements of section Ins 8.28, as created by this rule, shall satisfy the bond requirements for an administrator required to submit an initial license application before the effective date of this rule.

(2) Notwithstanding section Ins 8.26 (2), as created by this rule, a license issued to an administrator under section 633.14, Stats., before August 1, 1992, remains in effect until August 1, 1993.

SECTION 5. EFFECTIVE DATE. This rule will take effect on the first day of the month beginning after publication, as provided in s. 227.22 (2) (intro.), Stats.

Dated at Madison, Wisconsin, this 21 day of FEB 1992.


John W. Torgerson
Deputy Commissioner of Insurance