

Chapter Ins 3

CASUALTY INSURANCE

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Ins 3.01 Accumulation benefit riders attached to health and accident policies. Except where such rider is used only on a policy replacing the company's own policy, and so recites, no rider providing for accumulations of benefits will be approved for use upon any policy of health and accident insurance, whether it is proposed to issue such rider with or without an additional premium. Such rider operates as an aid to twisting the policies of another company in such manner as to make its use a direct encouragement of this practice.

Ins 3.02 Automobile fleets, vehicles not included in. Individually owned motor vehicles cannot be included or covered by fleet rates. The determining factor for inclusion under fleet coverage must be ownership and not management or use.

Ins 3.03 Automobile policies, coverage extended. In accordance with the opinion of the attorney-general dated June 17, 1930, [19 Atty. Gen. 309] it is held to be unlawful to issue an automobile liability and property damage policy, other than a policy covering a public automobile garage or an automobile repair shop, sales agency, service station and/or the agents or employes thereof, to which is attached a "Named Driver" or "Owner Driven Only" endorsement or any other form of endorsement which would limit the protection contrary to the provisions of section 204.30 (3), Wis. Stats., which makes the omnibus coverage provision mandatory for all companies.

Ins 3.04 Dividends not deducted from premiums in computing loss reserves. Premiums returned to policyholders as dividends may not be deducted from the earned premiums in computing loss reserves under section 204.28, Wis. Stats.

Ins 3.05 Automobile policies, policy provisions. (1) All automobile liability policies issued or delivered in the state of Wisconsin are subject to provisions of sections 204.30, 204.34, 85.93, and 260.11, Wis. Stats.

(2) (a) Many policies now being issued in this state do not contain the provisions required by these statutes, or contain provisions which are inconsistent therewith, such as "no action" clauses postponing the right to bring an action directly against the insurer, or provisions denying coverage to an additional insured on account of injury to a fellow employe of the same employer.

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(b) So that the public may be protected, it will be necessary that each company doing an automobile liability insurance business in Wisconsin subscribe to the agreement below over signature of an officer of the company.

#### Agreement

This is to certify that the undersigned company will construe its automobile liability insurance policies as conforming to the applicable statutes and will adhere to the statutory provisions in handling claims and will notify its agents, adjusters, and attorneys accordingly.

(c) The use of any policy not strictly complying with the statutes by a company not certifying as herein provided will be considered a deliberate and intentional violation of the Wisconsin Statutes.

**Ins 3.06 Automobile policies, endorsements invalid.** (1) All automobile liability policies, including endorsements attached thereto, issued or delivered in the state of Wisconsin are subject to provisions of sections 204.30 and 204.34, Wis. Stats.

Sections 204.34 (1) and 204.30 (3), Wis. Stats., prohibit the issuance of any automobile liability insurance policy which excludes from the coverage:

Persons who are of an age authorized by law to drive.

Motor vehicles if used for unlawful purposes.

Persons under the influence of intoxicating liquors or narcotics.

Motor vehicles when engaged in transportation of liquor in violation of law.

Motor vehicles operated in a reckless manner.

The Named Insured.

Persons and organizations responsible for the operation of the automobile, if the automobile is used for the purposes and in the manner described in the policy, and if the automobile is operated or used with proper permission.

Companies, therefore, are prohibited, by virtue of the above described statutes, from contracting with the insured for less coverage than that demanded by the statutes. All endorsements which conflict with the foregoing requirement are invalid and, therefore, unenforceable.

*Note:* You may wish to refer to Olander vs. Klapprote, 263 Wis. 463, 57 N.W. 2d 734.

(2) Some companies, in the general exclusions, exclude coverage with respect to any obligation arising from injuries suffered by any person who is the named insured. The Wisconsin Supreme Court has declared this to be a valid limitation upon coverage, hence the statements contained in this rule are not to be construed as attacking the validity of such exclusions.

(3) (a) The final effect is that all reimbursement provisions which have limitations in violation of the statutes should be discontinued. The most widely used reimbursement endorsements are the "More Automobiles Than Operators" and the "Named Driver."

(b) The reimbursement clause included in the policy in connection with insurance with respect to financial responsibility laws is authorized by reason of sections 85.09 (21) (h) and 85.09 (23) (a), Wis. Stats., and is not in conflict with the statutes first above described.

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(4) So that the public and policyholders may be protected, it will be necessary for each company doing automobile liability insurance business in Wisconsin to submit any policy or endorsement which contains a reimbursement clause, other than the reimbursement clause described in the paragraph next above, to this department for examination before any such policy or endorsement may be used.

**Ins 3.07 Rules in chapter 4, fire and allied lines insurance, applicable to casualty insurance.** The following captioned rules under chapter 4, FIRE AND ALLIED LINES INSURANCE, are applicable to casualty insurance:

**Ins 4.01 Mutual insurance companies operating on a post mortem assessment plan cannot limit assessments to a specified amount.**

**Ins 4.02 Nonassessable policies of mutual companies.**

**Ins 4.03 Policy, inspection and similar fees.**

**Ins 3.08 Advertisements of accident and sickness insurance.** (1) **PURPOSE** (a) The purpose of these rules is to implement and interpret the statutory standards governing the advertisements of accident and sickness insurance. Section 204.31, Wis. Stats., provides that the commissioner of insurance may disapprove a form ". . . if it contains a provision which is unjust, unfair, inequitable, misleading, deceptive or encourages misrepresentation of such policy . . ." Section 207.04 (1) (b), Wis. Stats., defines false information and advertising which is untrue, deceptive or misleading as an unfair method of competition and as an unfair and deceptive act or practice in the business of insurance.

(b) It is the intent of these rules to create a set of standards which are to be adhered to by the several insurers within the jurisdiction of this department which engage in the advertising of their accident and sickness insurance policies.

(c) When interpreting these rules as related to a specific advertisement, this department will consider the type of policy to which the advertisement refers; the content of the advertisement; and the detail, character, and purpose of such advertisement.

(d) Advertising material should have a reasonable relation to the policy it represents in regard to the content, purpose, and use of said policy. The test is whether or not the advertisement has the capacity or tendency to mislead or deceive.

(2) **DEFINITIONS.** (a) An advertisement for the purpose of these rules shall include: 1. Printed and published material and descriptive literature of an insurer used in newspapers, magazines, radio and TV scripts, billboards and similar displays; and

2. Descriptive literature and sales aids of all kinds issued by an insurer for presentation to members of the public, including but not limited to circulars, leaflets, booklets, depictions, illustrations, and form letters; and

3. Prepared sales talks, presentations of material for use by agents, and representations made by agents in accordance therewith.

(b) Policy for the purpose of these rules shall include any policy, plan, certificate, contract, agreement, statement of coverage, rider or endorsement which provides accident or sickness benefits or medical, surgical or hospital expense benefits, whether on a cash indemnity, reimbursement, or service basis, except when issued in connection with another kind of insurance other than life and except disability and double indemnity benefits included in life insurance and annuity contracts.

(c) Insurer for the purpose of these rules shall include any person, individual, corporation, association, partnership, reciprocal exchange, inter-insurer, Lloyds, fraternal benefit society, and any other legal entity engaged in the advertisement of a policy as herein defined.

(d) These rules shall also apply to agents to the extent that they are responsible for the advertisement of any policy.

(3) ADVERTISEMENTS IN GENERAL. Advertisements shall be truthful and not misleading in fact or in implication. Words or phrases the meaning of which is clear only by implication or by familiarity with insurance terminology shall not be used.

(4) ADVERTISEMENTS OF BENEFITS PAYABLE, LOSSES COVERED, OR PREMIUMS PAYABLE. (a) *Deceptive words, phrases or illustrations.* Words, phrases or illustrations shall not be used in a manner which misleads or has the capacity and tendency to deceive as to the extent of any policy benefit payable, loss covered, or premium payable. An advertisement relating to any policy benefit payable, loss covered, or premium payable shall be sufficiently complete and clear as to avoid deception or the capacity and tendency to deceive.

(b) *Examples of deceptive words and phrases prohibited by paragraph (a).* 1. The words and phrases "all", "full", "complete", "comprehensive", "unlimited", "up to", "as high as", "this policy will pay your hospital and surgical bills", or "this policy will replace your income", or similar words and phrases shall not be used so as to exaggerate any benefit beyond the terms of the policy, but may be used only in such manner as fairly to describe such benefit.

2. A policy covering only one disease or a list of specified diseases shall not be advertised so as to imply coverage beyond the terms of the policy. Synonymous terms shall not be used to refer to any disease so as to imply broader coverage than is the fact.

3. The benefits of a policy which pays varying amounts for the same loss occurring under different conditions or which pay benefits only when a loss occurs under certain conditions shall not be advertised without disclosing the limited conditions under which the benefits referred to are provided by the policy.

4. Phrases such as "this policy pays \$1,800 for hospital room and board expenses" are incomplete without indicating the maximum daily benefit and the maximum time limit for hospital room and board expenses.

(c) *Exceptions, reductions, and limitations.* When an advertisement refers to any dollar amount, period of time for which any benefit is payable, cost of policy, or specific policy benefit or the loss for which such benefit is payable, it shall also disclose those exceptions, reduc-

tions and limitations affecting the basic provisions of the policy without which the advertisement would have the capacity and tendency to mislead or deceive.

(d) *Definitions of terms used in paragraph (c).* 1. The term "exception" shall mean any provision in a policy whereby coverage for a specified hazard is entirely eliminated; it is a statement of a risk not assumed under the policy.

2. The term "reduction" shall mean any provision which reduces the amount of the benefit; a risk of loss is assumed but payment upon the occurrence of such loss is limited to some amount or period less than would be otherwise payable had such reduction clause not been used.

3. The term "limitation" shall mean any provision which restricts coverage under the policy other than an exception or a reduction.

(e) *Waiting, elimination, probationary, or similar periods.* When a policy contains a time period between the effective date of the policy and the effective date of coverage under the policy or a time period between the date a loss occurs and the date benefits begin to accrue for such loss, an advertisement covered by subsection (4) (c) shall disclose the existence of such periods.

(f) *Pre-existing conditions.* 1. An advertisement covered by subsection (4) (c) shall disclose the extent to which any loss is not covered if the cause of such loss is traceable to a condition existing prior to the effective date of the policy.

2. When a policy does not cover losses traceable to pre-existing conditions no advertisement of the policy shall state or imply that the applicant's physical condition or medical history will not affect the issuance of the policy or payment of a claim thereunder. This limits the use of the phrase "no medical examination required" and phrases of similar import.

(5) **NECESSITY FOR DISCLOSING POLICY PROVISIONS RELATING TO RENEWABILITY, CANCELLABILITY AND TERMINATION.** An advertisement which refers to renewability, cancellability or termination of a policy, or which refers to a policy benefit, or which states or illustrates time or age in connection with eligibility of applicants or continuation of the policy, shall disclose the provisions relating to renewability, cancellability and termination and any modification of benefits, losses covered, or premiums because of age or for other reasons, in a manner which shall not minimize or render obscure the qualifying conditions.

(6) **METHOD OF DISCLOSURE OF REQUIRED INFORMATION.** All information required to be disclosed by these rules shall be set out conspicuously and in close conjunction with the statements to which such information relates or under appropriate captions of such prominence that it shall not be minimized, rendered obscure or presented in an ambiguous fashion or intermingled with the context of the advertisement so as to be confusing or misleading.

(7) **TESTIMONIALS.** Testimonials used in advertisements must be genuine, represent the current opinion of the author, be applicable to the policy advertised, and be accurately reproduced. The insurer,

in using a testimonial makes as its own all of the statements contained therein, and the advertisement including such statements is subject to all of the provisions of these rules.

(8) USE OF STATISTICS. An advertisement relating to the dollar amounts of claims paid, the number of persons insured, or similar statistical information relating to any insurer or policy shall not be used unless it accurately reflects all of the relevant facts. Such an advertisement shall not imply that such statistics are derived from the policy advertised unless such is the fact.

(9) INSPECTION OF POLICY. An offer in an advertisement of free inspection of a policy or offer of a premium refund is not a cure for misleading or deceptive statements contained in such advertisement.

(10) IDENTIFICATION OF PLAN OR NUMBER OF POLICIES. (a) When a choice of the amount of benefits is referred to, an advertisement shall disclose that the amount of benefits provided depends upon the plan selected and that the premium will vary with the amount of the benefits.

(b) When an advertisement refers to various benefits which may be contained in two or more policies, other than group master policies, the advertisement shall disclose that such benefits are provided only through a combination of such policies.

(11) DISPARAGING COMPARISONS AND STATEMENTS. An advertisement shall not directly or indirectly make unfair or incomplete comparisons of policies or benefits or otherwise falsely disparage competitors, their policies, services, or business methods.

(12) JURISDICTIONAL LICENSING. (a) An advertisement which is intended to be seen or heard beyond the limits of the jurisdiction in which the insurer is licensed shall not imply licensing beyond those limits.

(b) Such advertisements by direct mail insurers shall indicate that the insurer is licensed in a specified state or states only, or is not licensed in a specified state or states, by use of some language such as "This Company is licensed only in State A" or "This Company is not licensed in State B".

(13) IDENTITY OF INSURER. The identity of the insurer shall be made clear in all of its advertisements. An advertisement shall not use a trade name, service mark, slogan, symbol or other device which has the capacity and tendency to mislead or deceive as to the true identity of the insurer.

(14) GROUP OR QUASI-GROUP IMPLICATIONS. An advertisement of a particular policy shall not state or imply that prospective policyholders become group or quasi-group members and as such enjoy special rates or underwriting privileges, unless such is the fact.

(15) INTRODUCTORY, INITIAL, OR SPECIAL OFFERS. An advertisement shall not state or imply that a particular policy or combination of policies is an introductory, initial, or special offer and that the applicant will receive advantages by accepting the offer, unless such is the fact.

(16) APPROVAL OR ENDORSEMENT BY THIRD PARTIES. (a) An advertisement shall not state or imply that an insurer or a policy has been approved or an insurer's financial condition has been examined and found to be satisfactory by a governmental agency, unless such is the fact.

(b) An advertisement shall not state or imply that an insurer or a policy has been approved or endorsed by any individual, group of individuals, society, association or other organization, unless such is the fact.

(17) SERVICE FACILITIES. An advertisement shall not contain untrue statements with respect to the time within which claims are paid or statements which imply that claim settlements will be liberal or generous beyond the terms of the policy.

(18) STATEMENTS ABOUT AN INSURER. An advertisement shall not contain statements which are untrue in fact or by implication misleading with respect to the insurer's assets, corporate structure, financial standing, age or relative position in the insurance business.

(19) SPECIAL ENFORCEMENT PROCEDURES FOR RULES GOVERNING THE ADVERTISEMENT OF ACCIDENT AND SICKNESS INSURANCE. (a) *Advertising file.* Each insurer shall maintain at its home or principal office a complete file containing every printed, published, or prepared advertisement of individual policies and typical printed, published, or prepared advertisements of blanket, franchise, and group policies hereafter disseminated in this or any other state whether or not licensed in such other state, with a notation attached to each such advertisement which shall indicate the manner and extent of distribution and the form number of any policy advertised. Such file shall be subject to regular and periodical inspection by this department. All such advertisements shall be maintained in said file for a period of not less than 3 years.

(b) *Certificate of compliance.* Each insurer required to file an annual statement which is now or which hereafter becomes subject to the provisions of this regulation must file with this department together with its annual statement, a certificate executed by an authorized officer of the insurer wherein it is stated that to the best of his knowledge, information, and belief the advertisements which were disseminated by the insurer during the preceding statement year complied or were made to comply in all respects with the provisions of the insurance laws of this state as implemented by this regulation.

**History:** Cr. Register, October, 1956, No. 10, eff. 11-1-56.

**Ins 3.09 Mortgage guaranty insurance.** (1) PURPOSE. This rule is intended to implement and interpret applicable statutes for the purpose of establishing minimum requirements for the transaction of Mortgage Guaranty insurance.

(2) DEFINITION. Mortgage guaranty insurance is defined as insurance of mortgage lenders against loss by reason of nonpayment of mortgage indebtedness by the borrower, and is authorized by section ✓ 201.04 (8), Wis. Stats.

(3) ACCOUNTING. (a) The financial statement required by section ✓ 201.50, Wis. Stats., shall be furnished on the Fire and Casualty annual statement form.

Register, March, 1957, No. 15.