

visions of section 207.04 (g) and (h) do not prevent the abatement of premium out of surplus accumulated from nonparticipating business provided that such abatement of premium shall be fair and equitable to policyholders and for the best interest of the company and its policyholders. This statute is the only authorization for payment of dividends from the surplus accumulated from nonparticipating business. The impact of this statute is that any distribution of surplus accumulated from nonparticipating business must be fair and equitable to both participating and nonparticipating policyholders and for the best interest of the company and the participating and nonparticipating policyholders. Thus, a participating policy which purports to provide by its own terms or by the net result of the application of its terms that the policyholder will participate in the surplus accumulated on nonparticipating business is not a true representation of fact since the participating policy can only participate to an extent that is equitable with the participation of the nonparticipating policy, and to be equitable and not misrepresent the rights of the policyholder the nonparticipating policy should have the same provision for participation in the earnings on the nonparticipating business. If such a provision were to be inserted in all nonparticipating policies, such policies then, by their own terms, become participating policies and the distribution of dividends would be governed by the statutes cited above and the purported special advantage would not exist. It can be concluded that participating policy forms issued by life insurance companies should accurately state the conditions imposed by statute for distribution of surplus accumulations.

It is also worthy of mention that the Wisconsin Securities Law, in section 189.02 (1), defines a security as including "any interest, share or participation in any profits, earnings, profit-sharing agreement, . . ." There appears to be substantial evidence that if the profit-sharing or surplus-sharing type of policy were to be considered as complying with the insurance statutes it would then be considered as within the definition of a security and subject to regulation as such.

The provisions of Wisconsin Administrative Code section Ins 2.08 are intended to apply only to policies issued on or after its effective date, and it does not apply to contracts issued prior to the effective date. The adoption of the rule should not disturb or cast doubt about the validity of previously issued contracts of the type described in the rule. Such contracts were issued in good faith by the insurance companies, and there is no retroactive impact of the rule.

**History:** Cr. Register, May, 1962, No. 77, eff. 6-15-62.

**Ins 2.09 Separate and distinct representations of life insurance. (1) PURPOSE.** The interests of policyholders and purchasers of life insurance which is sold in connection with any security must be safeguarded by providing them with clear and unambiguous written proposals and statements in which all material relating to life insurance is set forth separately from any other material. This rule implements and interprets sections 201.05 (3) (a); 201.53 (1), (2), (8), and (13); 206.41 (11) (a) 7 and 8; 206.51; 207.04 (1) (a), (f) and (h); and 208.33, Wis. Stats., by establishing minimum standards for the form of proposals and statements used to solicit, service, or collect premiums for life insurance which is sold in connection with a mutual fund or other security.

(2) **SCOPE.** This rule shall apply to the solicitation of, negotiation for, procurement of, or joint billing of any insurance specified in section 201.04 (3), Wis. Stats., within this state or involving a resident of this state where it is known to the insurer or the insurance agent that the sale of any mutual fund or other security has been, may become, or is a part of any such transaction.

(3) **DEFINITIONS.** For the purposes of this rule:

(a) "Proposal" includes any estimate, illustration, or statement which involves a representation of any premium charge, dividends, terms, or benefits of any policy of life insurance within subsection (2).

(b) "Life insurance" includes life insurance, annuities, and endowments.

(4) **RESPONSIBILITY OF INSURER AND AGENT.** No insurer and no insurance agent shall make, in connection with any transaction within

subsection (2), a proposal or billing other than in accordance with this rule. Every insurer must inform its agents involved with the solicitation of life insurance on residents of this state of the requirements of this rule.

(5) **WRITTEN PROPOSAL.** In any solicitation or sale within subsection (2), the prospect or policyholder must be furnished with a copy of a clear and unambiguous written proposal not later than at the time the solicitation or proposal is made.

(6) **CONTENTS OF PROPOSAL.** Any proposal referred to in this rule must:

- (a) Be dated and signed by the insurance agent or by the insurer if no agent is involved;
- (b) State the name of the company in which the life insurance is to be written;
- (c) Be accurate and complete;
- (d) Contain no misrepresentations or false, deceptive or misleading statements;
- (e) Show the premium charge for life insurance separately from any other charge;
- (f) If values which may accrue prior to the death of the insured are involved in the presentation, show the value of the life insurance separately from any other values;
- (g) Show, if it is involved in the presentation, the amount of the death benefit for the life insurance separately from any other benefit which may accrue upon the death of the insured;
- (h) Set forth all matters pertaining to life insurance separately from any matter not pertaining to life insurance;
- (i) Contain only such representations as will accurately reflect the actual conditions applicable to the proposed insured.

(7) **STATEMENTS TO BE SEPARATE.** Any bill, statement, or representation sent or delivered to any prospect or policyholder must show the premium charge for the life insurance and any other information mentioned concerning life insurance separately from any other charges or values shown in the same billing.

(8) **VIOLATION.** Any violation of this rule shall be deemed to be a misrepresentation of the nature of the life insurance involved.

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

**History:** Cr. Register, October, 1963, No. 94, eff. 11-1-63.

**Ins 2.10 "In the same industry", definition of.** (1) The phrase "in the same industry", as used in section 206.60 (4), Wis. Stats., may be construed so that establishments engaged in one of the following activities may be considered as being in the same industry: (a) retail trade, (b) wholesale trade, (c) service, (d) mining, (e) contract construction, (f) finance, insurance and real estate, and (g) transportation, communication and other public utilities.

(2) The principal activity of an establishment shall control its classification.

(3) An insurer may submit other classifications of establishments, subject to the approval of the commissioner, which it believes may

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properly be considered as engaging in activities which are "in the same industry".

*Note:* The above rule is an outgrowth of the hearings held by the department on December 17, 1963, to consider the formulation of rules and guide lines which insurance companies could use to determine what groupings of employers might be permitted by the phrase "in the same industry" in sections 206.60 (4) and 204.321 (1) (c), Wis. Stats., to obtain group insurance coverage for their employees through the establishment of a trust. As a result of the hearing, the department has reviewed the background and history of the "in the same industry" provision which was adopted as a part of the "Group Life Insurance Definition" and "Group Life Insurance Standard Provisions", revised at New York on December 15, 1948, by the National Association of Insurance Commissioners and enacted as a part of the Wisconsin Statutes in 1949. The department has concluded that the phrase "in the same industry" should be liberally construed. It provides a means whereby a small employer, not having a sufficient number of employees to qualify for a group plan of his own, may join with others and provide the benefits of group insurance to his employees and thereby compete in the labor market with the large employer. It has been emphasized to the department that the statutes involved are insurance statutes and that there is no underwriting reason which dictates greater detail or narrower classifications under the law. To require a more detailed breakdown only has the effect of adding to the administrative detail and expense of setting up such a plan, and such does not appear to be required nor in the public interest.

The rule applies only to organizations engaged in activities other than manufacturing. Companies underwriting multiple employer trusts for employees engaged in manufacturing shall be guided by the opinions of the attorney general of the state of Wisconsin, dated January 16, 1958, and December 30, 1958 (47 OAG 16 and 47 OAG 326).

For a general guide as to the types of organizations which fall within each of the groupings listed in subsection (1) of this rule, the department suggests that insurers refer to the division headings found in the "Standard Industrial Classification Manual" prepared by the United States Bureau of the Budget, Technical Committee on Industrial Classification, Office of Statistical Standards, 1957, and to other similar material such as the industrial classification starting on page XI of the "U.S. Census of Population 1960—Classified Index of Occupations and Industries," published by the United States Department of Commerce, Bureau of the Census, 1960; and Volume V, No. 1, "Wisconsin Commerce Reports," Bureau of Business Research and Service, Madison, Wisconsin, April 1, 1957.

**History:** Cr. Register, February, 1964, No. 98, eff. 3-1-64.

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