

State of Wisconsin



1995 Senate Bill 362

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1995 WISCONSIN ACT 259

AN ACT to renumber and amend 631.11 (1) (a), 631.11 (1) (b), 631.11 (1) (c), 631.11 (2) and 631.11 (4); to amend 631.11 (1) (title), 631.11 (3) and 631.36 (1) (e); and to create 631.11 (1) (a) 3., 631.11 (4m) (title) and 631.11 (6) of the statutes; relating to: grounds, and notice requirements, for rescission of insurance contracts.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 631.11 (1) (title) of the statutes is amended to read:

631.11 (1) (title) ~~ENTIRE EFFECT OF NEGOTIATIONS FOR CONTRACT.~~

SECTION 2. 631.11 (1) (a) of the statutes is renumbered 631.11 (1) (a) (intro.) and amended to read:

631.11 (1) (a) (title) ~~Signed application for policy Statement or warranty.~~ (intro.) No statement, representation or warranty made by ~~any a~~ any a person other than the insurer or an agent of the insurer in the negotiation for an insurance contract affects the insurer's obligations under the policy unless it is stated in ~~the~~ any of the following:

1. ~~The policy, or in a~~

2. A written application signed by such the person, provided that a copy of which the written application is made a part of the policy by attachment or endorsement.

SECTION 3. 631.11 (1) (a) 3. of the statutes is created to read:

631.11 (1) (a) 3. A written communication provided by the insurer to the insured within 60 days after the effective date of the policy.

SECTION 4. 631.11 (1) (b) of the statutes is renumbered 631.11 (4m) (a) and amended to read:

631.11 (4m) (a) (title) Copy of application to be made available. The policyholder under a life or disability insurance policy and any person whose life or health is insured under the policy may request in writing a copy of the application if he or she did not receive the policy or a copy of it, or if the policy has been reinstated or renewed without attachment of a copy of the original application. If the insurer does not deliver or mail a copy as requested within 15 working days after receipt of the request by the insurer or its agent, or, in the case of a group policy certificate holder, does not inform such person within the same period how he or she may inspect the policy and application during normal business hours at a place reasonably convenient to the certificate holder, nothing in the application affects the insurer's obligations under the policy to the person making the request. The A person whose life or health is insured under a group life or disability insurance policy has the same right to request a copy of any document subject to specified in par. (e) (b), including the certificate.

SECTION 5. 631.11 (1) (c) of the statutes is renumbered 631.11 (4m) (b) and amended to read:

631.11 (4m) (b) (title) ~~Signed application or enrollment form for group insurance certificate Statement or warranty.~~ No statement, representation or warranty made by or on behalf of a particular certificate holder

* Section 991.11, WISCONSIN STATUTES 1993-94: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

under a group life or disability insurance policy affects the insurer's obligations under the certificate unless it is stated in the certificate, or in a written document signed by the certificate holder, a copy of which is supplied to the certificate holder or the beneficiary whose rights would be affected.

SECTION 6. 631.11 (2) of the statutes is renumbered 631.11 (1) (b) (intro.) and amended to read:

631.11 (1) (b) (title) *Effect of Misrepresentation or breach of affirmative warranty.* (intro.) No misrepresentation ~~or, and no~~ breach of an affirmative warranty, that is made by a person other than the insurer or an agent of the insurer in the negotiation for or procurement of an insurance contract constitutes grounds for rescission of, or affects the insurer's obligations under, the policy unless the, if a misrepresentation, the person knew or should have known that the representation was false, and unless any of the following applies:

1. The insurer relies on it the misrepresentation or affirmative warranty and it the misrepresentation or affirmative warranty is either material or is made with intent to deceive, or unless the,

2. The fact misrepresented or falsely warranted contributes to the loss.

SECTION 7. 631.11 (3) of the statutes is amended to read:

631.11 (3) **EFFECT OF FAILURE OF CONDITION OR BREACH OF PROMISSORY WARRANTY.** No failure of a condition prior to the a loss and no breach of a promissory warranty constitutes grounds for rescission of, or affects the an insurer's obligations under the, an insurance policy unless it exists at the time of the loss and either increases the risk at the time of the loss or contributes to the loss. This subsection does not apply to failure to tender payment of premium.

SECTION 8. 631.11 (4) of the statutes is renumbered 631.11 (4) (a) and amended to read:

631.11 (4) (a) (title) *Knowledge when policy issued.* No misrepresentation made by or on behalf of the a policyholder and no breach of an affirmative warranty or failure of a condition constitutes grounds for rescission of, or affects the an insurer's obligations under the, an insur-

ance policy if at the time the policy is issued the insurer has either constructive knowledge of the facts under s. 631.09 (1) or actual knowledge. If the application is in the handwriting of the applicant, the insurer does not have constructive knowledge under s. 631.09 (1) merely because of the agent's knowledge.

(b) (title) *Knowledge acquired after policy issued.* If after issuance of a an insurance policy ~~the an~~ insurer acquires knowledge of sufficient facts to constitute grounds for rescission of the policy under this section or a general defense to all claims under the policy, the insurer may not rescind the policy and the defense is not available unless the insurer notifies the insured within 60 days after acquiring such knowledge of its intention to either rescind the policy or defend against a claim if one should arise, or within 120 days if the insurer determines that it is deemed necessary by the insurer to secure additional medical information.

SECTION 9. 631.11 (4m) (title) of the statutes is created to read:

631.11 (4m) (title) LIFE AND DISABILITY CONTRACTS.

SECTION 10. 631.11 (6) of the statutes is created to read:

631.11 (6) **INCONTESTABILITY PROVISIONS.** This section is subject to ss. 632.46 and 632.76.

SECTION 11. 631.36 (1) (e) of the statutes is amended to read:

631.36 (1) (e) (title) *Construction Rescission or reformation.* ~~Nothing in this This section prevents~~ does not apply to the rescission or reformation of any life or disability insurance contract not otherwise denied by the terms of the contract or by any other statute.

SECTION 12. Initial applicability.

(1) The treatment of section 631.11 (1) (title), (a), (b) and (c) and (4m) (title) of the statutes and the creation of section 631.11 (1) (a) 3. of the statutes first apply to insurance contracts that are issued or renewed on the effective date of this subsection.

(2) The treatment of sections 631.11 (2), (3) and (4) and 631.36 (1) (e) of the statutes first applies to actions for the rescission of an insurance contract that are commenced on the effective date of this subsection.