



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

Ronald Sklansky
Clearinghouse Director

Richard Sweet
Clearinghouse Assistant Director

Terry C. Anderson
Legislative Council Director

Laura D. Rose
Legislative Council Deputy Director

CLEARINGHOUSE RULE 04-133

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated October 2002.]

1. Statutory Authority

Section 601.31 (1) (km), Stats., provides that the Office of the Commissioner of Insurance (OCI) must set a fee by rule for processing and maintaining registration records of vehicle protection product warrantors, not to exceed \$250 annually. The proposed rule does so. However, s. Ins 14.20 (2) also imposes a late filing fee of an additional \$100 for each week or partial week that the registration form is not filed or the renewal fee is not timely paid. The statutory authority for the \$100 per week late fee should be explained.

2. Form, Style and Placement in Administrative Code

a. Not all of the titles in the rule follow the format required in s. 1.05, Manual. The title to the chapter should be in solid capital letters, and section titles should be in bold print. Also, a title is required for s. Ins 14.80. In addition, a period is required following the title to s. Ins 14.01.

b. In SECTIONS 2 and 3, “changes” should be changed to “rules.” [See s. 1.02 (3m) and (4), Manual.]

3. Conflict With or Duplication of Existing Rules

Current s. Ins 15.01 relates to warranty plans. Proposed ch. Ins 14 relates to vehicle protection product warranty plans. It appears that current s. Ins 15.01 (3) (exemptions) should be

amended to indicate that vehicle protection product warranties that are covered under ch. Ins 14 are exempt under ch. Ins 15.

4. Adequacy of References to Related Statutes, Rules and Forms

a. The analysis indicates that s. 628.34 (12), Stats., is interpreted and provides statutory authority for the rule. That statute relates to unfair trade practices and requires certain findings by OCI. The rule does not mention such findings and does not appear to be related to unfair trade practices. Moreover, s. 628.34 (12), Stats., is not mentioned in s. Ins 14.01 (1). Therefore, it is unclear why s. 628.34 (12), Stats., is cited in the analysis.

b. In item 5. of the analysis, “agencies costs” should be changed to “agency’s costs.”

c. Section 100.203 (2) (a), Stats., requires that a vehicle protection product warrantor register with OCI by filing a “form prescribed by [OCI]” before operating as a warrantor or representing to the public that the person is such a warrantor. Section Ins 14.10 requires that an initial warranty registration be filed with OCI. However, the rule does not refer to the initial registration form that OCI must prescribe.

Section 1.09 (2), Manual, requires that a reference to a new form be included in a note to the rule indicating the address and phone number that may be used to obtain the form. Also, the note should indicate the website from which the form may be obtained. Section 1.09 (2), Manual, also requires that a copy of the form be attached to the rule or a statement must be included indicating where a copy of the form may be obtained at no charge. Similar comments apply to s. Ins 14.20, which refers to the warrantor renewal registration form.

Also, it appears that ch. Ins 7 should be amended to include a reference to this form.

d. Section 601.01 (1) (b) 11., Stats., states that chs. 600 to 646, Stats., do not apply to warrantors, sellers, and administrators of vehicle protection product warranties under s. 100.203, Stats., unless otherwise expressly provided. Section Ins 14.01 (1) indicates that “making” a vehicle protection plan is the “transaction of insurance,” subject to chs. 600 to 646, Stats., “unless [the person] submits to the jurisdiction of the commissioner and to the provisions of these statutes and this chapter.”

Section Ins 14.01 (1) is confusing as it suggests that there is some formal process for submitting to the jurisdiction of OCI. If this is the case, the process should be specified as it is not clear what is intended.

It is also confusing as it is unclear if the “unless” clause in s. Ins 14.01 modifies “transaction of insurance” or “full application of chs. 600 to 646, Stats.” Again, the statutes do not state that the plans are not transacting insurance; the statutes simply state that such persons are not subject to chs. 600 to 646, Stats., unless expressly provided. (They are subject to s. 100.203, Stats.)

e. Section Ins 14.80 indicates that ch. Ins 14 may be enforced under several specified statutes, or “any other enforcement provision of chs. 600 to 646, Stats.” Section 601.01 (1) (b)

11., Stats., states that chs. 600 to 646, Stats., do not apply to warrantors, sellers, and administrators of vehicle protection product warranties under s. 100.203, Stats., *unless otherwise expressly provided*. Is there a statutory provision, other than the statutes already specified in s. Ins 14.80, that expressly provides that the enforcement provisions in chs. 600 to 646, Stats., apply to such persons?

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. Chapter Ins 14 is entitled “Vehicle Protection Plans,” and that term is used throughout the chapter. However, that term is not used in the statutes, and no definition of the term is provided in ch. Ins 14. This creates confusion and will be especially problematic for those conducting computerized word searches and for those who presume a “vehicle protection plan” refers to automobile insurance. The statutory term should be used.

Also, it is not clear what “the making of a vehicle protection plan” refers to in s. Ins 14.01 (1). Chapter Ins 14 is primarily interpreting s. 100.203, Stats., which relates to “vehicle protection product warranties.” That term should be used in ch. Ins 14. For example, it appears that it would be more appropriate if s. Ins 14.01 (1) referred to selling or offering to sell a vehicle protection product warranty. If a different term is used, the term selected should be defined.

b. In s. Ins 14.01 (1), it is not clear who “the person making the contract” refers to. A contract is made between two or more parties. Presumably, only one of the parties, that is, the vehicle protection product warrantor, is subject to the requirement. This should be clarified.

c. In s. Ins 14.10, it appears that “initial warranty registration” should be changed to “initial warrantor registration” to be consistent with s. Ins 14.20.

d. In s. Ins 14.20 (1), the reference to “s. 100.203 (2) (b)” should be followed by “, Stats.”.

e. Section Ins 14.20 (2) imposes a late filing fee of an additional \$100 for each week or part of a week beyond April 30 that the registration form is not filed and the renewal fee is not paid. If OCI has authority to impose such a fee, it is not clear if a week is measured in terms of seven consecutive days or a calendar week. For example, if April 30 fell on a Thursday and payment was not made until Tuesday, May 12, that is part of three calendar weeks but falls within two periods of seven consecutive days. Thus, it is not clear if the late filing fee would be \$200 or \$300.

f. In s. Ins 14.20 (2), the references to “30th” should be changed to “30.”

g. In s. Ins 14.80, the phrase “601.65, Stats., 632.185, Stats.,” should be changed to “601.65 or 632.185, Stats.”.