Chapter Ins 15

EXEMPTIONS FROM APPLICATION OF INSURANCE CODE

Ins 15.01 Exemption of warranty plans

Ins 15.01 Exemption of warranty plans. (1) PURPOSE. This rule establishes procedures which provide for exemption from provisions of the insurance code under s. 600.01 (1) (b) 5., Stats., of warranty plans which have the characteristics of insurance, while providing for the regulation necessary to protect the public of Wisconsin which may rely upon these plans. Such exemptions will be conditioned upon the submission of such plans to the regulatory provisions of this rule, and an appropriate finding by the commissioner under this rule. The need for the rule arises out of the fact that the business of offering and operating such plans is one for which it would be impractical in some instances to require total compliance with the insurance code, when necessary expenses and efforts are compared with the possible benefits of compliance. Warranty plans not excepted under subsection (2) nor exempted under subsection (3) shall be presumed to be subject to all of the insurance code.

(2) EXCEPTIONS. This rule does not apply to:

(a) A warranty plan offered or operated by an insurer authorized to transact business in this state if the warranty plan is part of the insurance business so authorized and subject to regulation under the insurance code; or

(b) The provision of services under a maintenance services contract which may include some repairs and replacements as a part of the maintenance program if the services are provided by the entity issuing the contract and are not, except on limited occasions, performed by outside organizations and do not involve the creation of obligations by a third party; or

(c) Warranties by manufacturers or sellers of products or by providers of services relating to the quality, merchantability or characteristics of the products or services, which do not involve the creation of obligations by third parties.

(3) EXEMPTION. Warranty plans not encompassed in subsection (2) may be exempted from application of the insurance code, subject to the terms and conditions of this rule, and upon a finding by the insurance commissioner that:

(a) The warranty plan appears reasonable to the public and to its potential subscribers;

(b) The sponsor is financially responsible; and

(c) The advantages to the public and the potential subscribers of the plan, operated in conformity with this rule, are sufficient to outweigh the value to the public of requiring the plan to comply with the entire

insurance code, when necessary expenses and efforts are compared with the possible benefits of compliance.

(4) DEFINITIONS. (a) *Warranty plan* means any program, however denominated, involving a warranty which has the characteristics of insurance.

(b) *Offer or operate* means to conduct a warranty plan as a principal.

(c) *Seller's representative* is a person who in the course of selling a product or a service offers a warranty plan for that product or service.

(d) *Sponsor* means the person who offers or operates a warranty plan. Sponsor shall not include the dealer, seller's representative or other person through whom the warranty contract is issued unless such person has the primary financial obligation for performance of the warranty contract.

(e) *Subscriber* means a person to whom or for whose benefit the warranty is given.

(f) *Warranty contract* means the agreement pursuant to which the sponsor undertakes the obligations of the warranty plan.

(5) CERTIFICATE OF AUTHORITY. No person offering or operating a warranty plan in this state may have the benefit of the exemption offered by this rule unless such plan holds a valid limited certificate of authority from the commissioner granted under this rule.

(6) APPLICATION. (a) The application for a limited certificate of authority under this rule shall be in a form specified by the commissioner. It shall contain such relevant information as the commissioner reasonably requires and shall be signed and acknowledged by or on behalf of the sponsor of the warranty plan.

(b) The application shall be accompanied by a statement submitting the warranty plan to the terms and conditions of this rule, a statement naming the commissioner as agent for service of process on the sponsor in actions related to its warranty plans, security as set forth in subsection (7), and the filing fee under s. 601.31 (1) (a), Stats.

(7) SECURITY. (a) To compensate any person sustaining injury due to the failure of the sponsor to perform its obligations under a warranty contract as a result of its insolvency, the sponsor shall provide security in one or a combination of the following:

1. Deposit of securities under s. 601.13, Stats.;

2. A bond underwritten by an insurer authorized to transact surety business in this state;

3. An irrevocable letter of credit from a properly chartered bank acceptable to the commissioner issued for a term of at least 5 years, with provision for renewal 2 years before termination for successive 5 year terms.

4. Providers' contracts ensuring performance of the warranty contracts to be issued.

(b) Such security shall be no less than $50,000 and the commissioner may require this amount to be increased at any time depending upon the sponsor's exposure to loss.

(c) Such security shall continue irrespective of any action under subsection (10). Such security may be continued by order of the commissioner following the termination of business in this state by the sponsor of a warranty plan for the period necessary to reasonably protect subscribers.

(d) Security shall be provided in a manner which permits the commissioner to act against the sponsor of a warranty plan as a representative of its subscribers.

(8) ISSUANCE OF CERTIFICATE OF AUTHORITY. (a) The commissioner may issue a limited certificate of authority under this rule, upon an appropriate finding, if he finds that all requirements of this rule have been met.

(b) Upon issuance of the limited certificate of authority the sponsor shall pay the fee required under s. 601.31 (2) (a), Stats.

(9) REPORTS AND EXAMINATION; FORMS; RATES. (a) The sponsor shall by March 31 of each year submit a report to the commissioner effective as of the preceding December 31 which shall include such relevant information about the warranty plan as the commissioner shall reasonably require.

(b) Accompanying the annual report shall be the annual continuation fee required under s. 601.31 (3) (a), Stats.

(c) The commissioner may examine any warranty plan granted a limited certificate of authority under this rule under the procedures of ss. 601.43 to 601.45, Stats.,

(d) The provisions of s. 631.20, Stats., apply to warranty contracts with the added provision that all warranty contracts, applications, and advertising literature issued under the rule shall contain the following caption: CAUTION: THIS WARRANTY IS NOT AN INSURED PLAN AND IS SUBJECT ONLY TO LIMITED REGULATION BY THE OFFICE OF THE COMMISSIONER OF INSURANCE.

(e) The rates to be charged by the sponsor and any compensation to be paid to or service charge to be imposed by seller's representatives for warranty contracts shall be filed with the commissioner for approval 30 days prior to their effective date, which period may be extended up to 30 additional days by written notice to the sponsor before the initial period expires. A filing not disapproved during the initial or extended period shall be deemed to be approved. Rates shall not be excessive, inadequate or unfairly discriminatory and if determined to be so shall be disapproved.

(f) If the commissioner finds, after a hearing, that a rate, previously approved under paragraph (e), does not meet the requirements set out in that paragraph, he shall order that its use be discontinued for any contract issued after the date specified in the order.

(10) SANCTIONS. (a) A limited certificate of authority previously granted under this rule may be revoked or suspended if:

1. There is any material misstatement of fact relating to the sponsor's ability to conduct a warranty plan in a manner consistent with the protection of the public and its subscribers in its application, annual reports, or in connection with any examination conducted by the commissioner;

2. The financial condition of the warranty plan is such that the interests of the public and its subscribers are threatened with imminent and substantial injury;

3. The sponsor violates section Ins 6.11 (3) or (4), Wis. Adm. Code;

4. The sponsor, in the operation of its warranty plan in this state, violates this rule or any lawful order of the commissioner.

(b) The commissioner may remove the exemption previously granted by this rule as to a particular warranty plan in whole or part and make applicable any or all relevant provisions of the insurance code to such plan (with the exception of ch. 646, Stats., which does not apply in any case), including ch. 645, Stats., if:

1. Any of the grounds for suspension or revocation in paragraph (a) are found to exist;

2. The sponsor has made any misstatement of fact in its application, annual reports or in connection with an examination of the plan by the commissioner;

3. The sponsor fails to provide in timely fashion the reports and information required under this rule;

4. Unapproved warranty contracts have been used in this state;

5. Its financial condition is such that the interests of the public and its subscribers may be threatened with substantial injury;

6. It is conducted in such a manner that the commissioner finds it is not or may be reasonably expected not to be able to meet its obligations fully and on a timely basis; or

7. There is a pattern of misrepresentation, fraudulent or dishonest practices in the conduct of the plan by the sponsor or its agents.

(c) Any sanctions imposed by order of the commissioner shall be subject to review and appeal as provided by law.

History: Cr. Register, January, 1978, No. 265, eff. 2-1-78.