

## Chapter Ins 2

## LIFE INSURANCE

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**Ins 2.01 Estoppel by report of medical examiner.** No company or fraternal benefit society shall issue in this state a contract, based on a medical examination, providing for disability benefits, the provisions of which are in conflict with section 209.07, Wis. Stats., or shall indulge in any practice which is at variance with said section.

*91* **Ins 2.02 Stock companies writing participating policies.** (1) Section 206.13, Wis. Stats., sets out special requirements that must be met before a stock life insurance company issuing both participating and nonparticipating policies may be licensed to do business in this state. Briefly stated, the requirements are that: (a) Participating policies must " \* \* \* by their terms, give to the holders thereof full right to participate annually in the surplus accumulations from the participating business of such company as provided by law of this state."

(b) An agreement must be filed with the commissioner that " \* \* \* in consideration of being permitted to issue both participating and nonparticipating policies, the accounts of each class will be kept separate, and that no part of the funds accumulated or belonging to the participating class shall ever be voluntarily transferred to the nonparticipating class, except such as the existing charter of the company may require."

(2) Section 206.36, Wis. Stats., prescribes the payment of annual dividends on participating life insurance policies and is no doubt the "law of this state" referred to in section 206.13, Wis. Stats. This section authorizes " \* \* \* making provision for the payment of authorized dividends upon the capital stock \* \* \*" as a deduction from earnings on participating policies in the computation of the amount available for dividends to policyholders.

(3) (a) Section 206.14 (1), Wis. Stats., concerns stock companies "doing business on the participating plan" and provides that before such a company may secure a license to do business in this state, it must file with the commissioner a statement under oath of the president and secretary, stating "(a) the amount of the unassigned surplus of such company; (b) the amount of said surplus or the interest or right therein belonging to the policyholders; (c) the amount of such surplus or the interest or right therein belonging to the stockholders; (d) the method of ascertainment and the action determining the rights of such policyholders and stockholders respectively; (e) the agreement of the company that such method shall not be changed so as to affect policies issued thereunder."

(b) Section 206.14 (2), Wis. Stats., provides that no license shall be issued to any such stock company "\* \* \* until the commissioner is satisfied that the rights of such policyholders are fully and legally determined."

(4) (a) Both of these sections of the statutes were enacted in 1907, following the legislative investigation of life insurance companies in 1906. Both sections have since been amended with the result that earlier rulings construing the same cannot now be applied. It is our purpose in issuing this ruling to set out what we consider to be minimum general requirements that must be met in order that the commissioner of insurance may be "satisfied that the rights of such policyholders are fully and legally determined."

(b) Section 206.13, Wis. Stats., recognizes that there may be a charter provision permitting the transfer of a part of the profits on the participating business to the nonparticipating department, hence available for dividends to stockholders. Section 206.14, Wis. Stats., implies that a portion of the profits on the participating business may be taken by the stockholders. Any stock life insurance company which issues any participating policies is required to file the statement required by section 206.14, Wis. Stats., and is subject to the further provision that a license shall not be issued "until the commissioner is satisfied that the rights of such policyholders are fully and legally determined." Stock companies issuing participating policies as described in section 206.14, Wis. Stats., come within the language of section 206.13 (1), Wis. Stats., and therefore must issue contracts providing for full participation.

(c) The statutes thus requiring "full right to participate" to be granted participating policyholders and that the commissioner "be satisfied" that the rights of the policyholders are "fully and legally determined", place upon the commissioner a duty to determine the value of the benefit, if any, the policyholders derive from the contributions made by the stockholders in the purchase of the capital stock. As the investment of the capital presents little underwriting hazard during the first few years because of recent medical examination of the policyholders, and in the course of time the amount of the capital is but a small proportion of the investment made by the policyholders, to hold that the stockholders are entitled to a certain rate of return, such as 5 per cent, on their total contributions, without regard to the payment or nonpayment of dividends to policyholders would result in great inequity to the policyholders. To avoid any inequities and to prevent nullification of the "full right to participate" provision of the law, the commissioner must be "satisfied that the rights of the policyholders are fully and legally determined." The word "legally" may be taken to refer to the limitation of the amount that can be taken by the stockholders (who are in control of the management) as well as to the form of the agreement filed. The whole purpose of the law is to protect the policyholders and not to restrict the commissioner's action to passing upon the form of an agreement regardless of its effect upon the vital interests of the policyholders. To act upon the premise that the commissioner's action can deal only with the form of the agreement would be to work a fraud upon the policyholders who may rightfully expect to receive some degree of protection from those whom they have placed in positions of trust.

(5) (a) [A thorough consideration of the purpose and intent of sections 206.13, 206.14 and 206.36, Wis. Stats., convinces us that the following general limitations are just, reasonable and in keeping with the tenor of the statutes and may properly serve as a basis for action by the commissioner of insurance in passing upon applications for license by stock life insurance companies issuing participating policies, to wit:

(b) All policies purporting to be issued on the participating basis shall in fact be fully participating in the surplus developed on the total participating business of the company. In the determination of the surplus accruing upon the participating business, such class shall be charged annually only with the actual losses and expenses properly chargeable thereto and such amount as may be transferred to the account of the stockholders in keeping with this ruling.

(c) The agreement to be filed by the company shall limit the amount that may be taken in any year from the earnings on the participating business for the benefit of stockholders or be credited to their account to 5 per cent simple interest on their contributions to the capital and surplus accounts or 10 per cent of the profits on the participating business, whichever method of computation produces the lower amount. It shall also provide that upon mutualization or liquidation of the company, the total available to the stockholders shall not exceed their cash contribution to capital and surplus plus the amounts credited annually by the foregoing rule accumulated with interest at a rate not in excess of 5 per cent simple interest and less dividends paid in cash similarly accumulated on the same interest basis.

(d) The limitations on the amount available to stockholders from the surplus produced by the participating business which may be adopted by the company in conformity with subsection (5) (c) above, shall also be set out in the charter or articles of incorporation.

**Ins 2.03 Policies not dated back to lower insurance age.** (1) No company shall issue for delivery in this state any policy or contract of life insurance which purports to be issued or to take effect as of a date more than six months before the application therefor was made, if thereby the premium on such policy or contract is reduced below the premium which would be payable thereon as determined by the nearest birthday of the insured at the time when such application was made. The date of application must be considered to be the date on which the application (Part I) or the medical examination (Part II) is completed, whichever is the later.

(2) This ruling does not prohibit the exchange, alteration or conversion of policies of life insurance as of the original date of such policies if the amount of insurance provided under the new policy does not exceed the amount of insurance under the original policy or the amount of insurance which the premium paid for the original policy would have purchased if the new policy had been originally applied for, whichever is greater; nor prohibit the exercise of any conversion privilege contained in any policy or contract.

**Ins 2.04 Substandard risk rates.** Life insurance companies may charge premiums in excess of the maximum premiums as defined in section 206.26, Wis. Stats., provided the addition to the maximum

premium is made to cover the extra risk owing to the fact that the person is a substandard risk, or is engaged in a hazardous occupation.

**Ins 2.05 Total permanent disability benefits in life insurance premiums and reserves.** (1) A policy of life insurance which provides for waiver of premium or special surrender value, not exceeding the face of the policy, in case of the total and permanent disability of the insured, by reason of accidental bodily injury or sickness, is permitted under the laws of this state. Such policies are required to have printed or stamped thereon a statement specifying separately the amount of premium charged for such benefits; provided, however, if such provision or provisions are incorporated in life policies now being issued, without additional premium charge, the ultimate cost thereof to be charged against the surplus accruing on such policy, a statement setting forth that fact printed or stamped upon the policy will be sufficient.

(2) Reserve values on account of such provisions will be based upon such standards as this department may prescribe. The company issuing such policies will be required to file in this department such data concerning such policies and such provisions as the commissioner may direct.