

It is evident that a stock insurance corporation should not have complete freedom in determining the amounts that are to be removed from the funds accumulated or belonging to the participating class of policyholders and used for the benefit of stockholders. A reasonable limitation in the amounts that shall inure to the benefit of stockholders is necessary for the fair and equitable treatment of stock life insurance corporations, stockholders, and policyholders. We find that section 216 (6) of the New York insurance statutes provides for a limitation comparable to that stated in the rule. The record in that state indicates such a limitation to be reasonable and workable and we believe it to be a proper safeguard of the interests of the people of this state.

History: 1-2-56; r. and recr. Register, August, 1962, No. 80, eff. 9-1-62; renum. (4) (d) to be (4) (f); cr. (4) (d), (4) (e), (5) and (6), Register, January, 1964, No. 97, eff. 2-1-64.

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.

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Ins 2.06 Credit life insurance. (1) **PURPOSE.** This rule implements and interprets applicable statutes for the purpose of establishing minimum requirements for the transaction of credit life insurance.

(2) **POLICY PROVISIONS.** (a) Credit life insurance policies may include total and permanent disability benefits or may include credit accident and health benefits as defined in section 201.04 (4a), Wis. Stats. Credit life insurance policies which include credit accident and health insurance benefits shall contain all of the appropriate required provisions relating to such insurance.

(b) Each individual policy or group certificate of credit life insurance shall, in addition to other filing requirements, set forth:

1. The name and home office address of the insurer.
2. The name of the debtor.
3. The amount and term of the coverage by description, formula, schedule, or by equating both to the amount and term of the indebtedness. An insurer may submit other methods for indicating amount and term, subject to the approval of the commissioner, which it believes are equally clear.
4. The amount of premium or identifiable charge separately for credit life insurance, for total and permanent disability benefits, and for credit accident and health insurance when the debtor has paid or obligated himself to pay all or any part of the premium or identifiable charge.
5. A description of the coverage, including any exceptions, limitations, or restrictions.
6. A provision that the benefits shall be paid to the creditor to reduce or extinguish the unpaid indebtedness.
7. A provision that the insurance on any debtor will be cancelled if his indebtedness is terminated through prepayment, refinancing, or otherwise.
8. A provision that a refund will be granted in the event of cancellation or termination. The individual policy or group certificate shall either describe the method of computing the refund or state that the formula or schedule for such computation has been filed with the commissioner of insurance. This provision shall not be required if the debtor has not paid or obligated himself to pay all or any part of the premium or identifiable charge.

(c) If a contract of credit life insurance provides for a limitation of the amount of coverage related to credit life insurance provided by other contracts in force on the life of the debtor, such limitation shall be explained to the debtor at the time the indebtedness is incurred and shall be acknowledged in writing by him in an instrument separate from the individual policy or group certificate. Alternatively, the individual policy or group certificate shall include a *brief description* or *separate statement* referring to the limitation of amount of coverage. The *brief description* or *separate statement*, if used to meet the foregoing requirement, shall be printed on the first page of the individual policy or group certificate in type more prominent than that used in the text of the policy or certificate and shall clearly indicate the limitation.

organized company and it is sold on the basis that its availability will be limited to a specific predetermined number of units of a fixed dollar amount. Such policies generally provide that the policyholder shall participate in the earnings resulting from either or both participating policies and non-participating policies. It is characteristic of such a policy that in its presentation to the public it is represented that the policyholder will receive a special advantage in any future distribution of earnings, profits, dividends or abatement of premium. It is also represented that such advantage will not be made available to the persons holding other types of policies issued by the company. Other names such as *Founders*, *President*, and *Executive Special* are frequently used for policies of the type herein described, and for the purpose of this rule when they are so used they shall be considered as *charter policies*.

(c) A *profit-sharing policy* is any policy form which contains provisions representing that the policyholder will be eligible to participate, with special advantage not available to the persons holding other types of policies issued by the same company, in any future distribution of general corporate profits. Such policy forms are so drafted that it appears to a prospective policyholder that he is purchasing a preferential share of the future profit and earnings of the insurance corporation rather than purchasing a life insurance policy which may be subject to refund of excess premium payments. The provisions of the policy may incorrectly represent the amount and source of surplus that will be available for apportionment and return to policyholders in the form of dividends. Policy forms using such terms as *profits*, *surplus*, or *surplus-sharing* in the manner herein described shall, for the purpose of this rule, be considered as *profit-sharing policies*.

(4) PROHIBITIONS, REGULATIONS, AND DISCLOSURE REQUIREMENTS. In accordance with the purpose expressed in subsection (1) of this rule and in consideration of the apparent intent of the legislature, the use in this state of certain types of policy forms and policy provisions shall be subject to the following prohibitions and regulations:

(a) *Coupon policy* forms misrepresent, distort, and disguise the true nature of the insurance being purchased. Therefore, no *coupon policy* shall be approved for use and no *coupon policy* heretofore approved shall be issued or delivered in this state on or after June 15, 1962.

(b) Any policy containing a series of one-year pure endowments or a series of guaranteed periodic benefits maturing during the premium-paying period of the policy has special characteristics making such policy peculiarly susceptible to misrepresentation and misunderstanding. (As used in this rule the premium-paying period extends from the date the first premium is due to the end of the policy year in which the last premium is due.) Such policies are founded on the utmost good faith of the company, and the public interest requires that the premium charged for such benefits shall be fully and fairly disclosed to the policyholder without deception or misrepresentation. Therefore, on or after December 1, 1964, no policy containing either a series of one-year pure endowments or a series of guaranteed periodic benefits maturing during the premium-paying period of the policy shall be approved for use and no such policy heretofore approved shall be issued or delivered in this state unless:

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1. The policy is nonparticipating,
2. The payment of a pure endowment or guaranteed periodic benefit is not contingent on the payment of premiums falling due on or after the time such pure endowment has matured,
3. The gross premium for the pure endowment or guaranteed periodic benefits is shown prominently and separately in the policy distinct from the regular insurance premium,
4. The gross premium for the pure endowment or guaranteed periodic benefits is based on reasonable assumptions as to interest, mortality, and expense,
5. The number of one-year pure endowment or guaranteed periodic benefits provided by the policy equals the number of annual premiums for such benefits,
6. All advertisements, sales materials, agent's presentations, and other representations of the policy to the public represent the pure endowment or guaranteed periodic benefits of the policy to be nothing other than insurance benefits for which a premium is being paid,
7. All representations of the total premium for the policy contract also show the gross premium for the pure endowment or guaranteed periodic benefits to an extent such that the prospect or purchaser is fully informed as to the separate costs involved.

(c) *Charter policy* forms are defined by section 207.04 (1) (f), Wis. Stats., to be an unfair method of competition. They purport to provide a means to an end result that is not authorized by statute and an end result that is without reasonable expectation of achievement. Such policy forms misrepresent the responsibility and obligation of the company for equitable distribution of dividends or abatement of premiums. Therefore, no *charter policy* shall be approved for use and no *charter policy* heretofore approved shall be issued or delivered in this state on or after June 15, 1962.

(d) *Profit-sharing policy* forms are contrary to statute and the public interest by representing as an inducement to insurance that the person who purchases such a policy is procuring a preferential interest in the future profits and earnings of the insurance corporation. Any distribution to a policyholder of the company of earnings, profits, or surplus is a refund of the excess premiums paid by that policyholder. Such distribution must be fair and equitable to all policyholders, it must not discriminate unfairly between individuals of the same class and equal expectation of life, and it must be in the best interest of the company and its policyholders. Therefore, no *profit-sharing policy* shall be approved for use and no *profit-sharing policy* heretofore approved shall be issued or delivered in this state on or after June 15, 1962. Further, on or after June 15, 1962, no participating policy shall be approved and no participating policy heretofore approved shall be issued or delivered in this state unless the policy provides without deception or misrepresentation that the source of any dividends or abatement of premium is limited to the divisible surplus derived from participating business.

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

Note: The above rule is the end product of a careful study and evaluation of the transcript of the hearing on January 16 and January 17, 1962, on the proposed rule. Due consideration was given to the exhibits and the prepared statements presented at the hearing and to the several briefs filed subsequent to the hearing. This is the first time since the

passage of Public Law 15 that such a large amount of legal and actuarial talent was focused on these specific matters of the life insurance business. The number and size of the briefs and exhibits reflect the substantial time involved with their preparation, and the information they contained cast considerable light on the issues under consideration.

It is of interest to note that the first coupon-type life insurance policy was accepted for use in Wisconsin about 1940. Chapter 207, Wisconsin Statutes, relating to Unfair Insurance Business Methods, was enacted in 1947. In 1959 a newly organized company commenced the use of a charter-type coupon policy with profit or surplus sharing provisions. Because of the infrequent submission of such a type of life insurance policy, the Insurance Department personnel did not fully appreciate the impact of the provisions of Chapter 207 (1947, c. 520) on the provisions of life insurance policies filed pursuant to section 206.17, Wisconsin Statutes. The information made available as a result of the hearing serves to bring the issues and the requirements of statutes more clearly in focus.

An administrative agency has a responsibility to correct any errors in administration of the statutes which are brought to its attention. The premise suggested at the hearing by the opponents of the proposed rule that a previous administrative ruling (acceptance of the policy) should be controlling and should not be reversed is not supported by the Wisconsin Supreme Court. In *Universal Underwriters vs. Rogan*, 6 Wis. (2d) 623, the court in effect said that, in case of ambiguity in a statute, practical interpretation over a long period by the agency charged with administration of an act or statute may be deemed controlling, but where there is no ambiguity in the law, a previous administrative ruling thereon cannot be given any weight as an administrative interpretation. The basic responsibility for the drafting and construction of lawful policy forms rests with an insurance company and its actuaries and lawyers. In reviewing policy forms, the Insurance Department, while seeking to protect the public interest to the best of its ability, does not inherit any basic responsibility for the lawfulness of any part or all of an insurance contract. Therefore, it appears proper to make a determination of the matters at hand based on the merits of the issues and without an obligation to be controlled by a previous ruling.

Life insurance contracts, more than any other kind of insurance, are made on the basis of the utmost good faith of the insurance company. It is fundamental that the provisions of such contracts be devised with clarity and precision. The commissioner has an obligation to see that the public interest be served and the statute complied with by refusing to accept policies that are or tend to be misleading or deceptive. Section 201.53 (1), Wisconsin Statutes, states that: "No insurance company shall make any agreement of insurance other than as plainly expressed in the policy."

The principal issues involved are whether or not life insurance coupon policies, charter policies, and profit-sharing policies are consistent with and are authorized by statute. Some life insurance companies issue policy forms embodying one or more of these features in a single policy. It is necessary that each of these types of policies be discussed separately even though there is some overlapping of the issues involved and some of the same considerations are present in two or more of these policies.

In respect to the so-called coupon policies, wherein a series of coupons are sold in conjunction with conventional life insurance, there is no dispute but that the coupons are a series of one-year pure endowments. This being true, they should be properly identified as such. To print the coupon in the color and format of interest coupons commonly attached to investment bonds disguises the true nature of the product being purchased by the public. A series of one-year endowments affords a special type of benefit which the average life insurance buyer would seldom purchase if he were in possession of the full information concerning the premiums paid for the pure endowment benefits provided.

The gross premium cost to the policyholder for the pure endowment benefits can be readily determined by the company by loading the benefits to be afforded with the applicable expense items such as premium taxes, acquisition cost, and company administration expenses, with consideration for items such as interest, mortality, policy lapses, etc. It has been argued that it is only necessary to disclose the net premium cost, which is the premium needed to provide the benefits, without recognition and inclusion of the company administration expenses and overhead. These other expenses do exist and if not shown with the pure endowment premium they then are an additional load on the life insurance being purchased in conjunction with the pure endowment benefit. To argue that it is only necessary to disclose a portion of the premium cost is to argue that it is legal and proper to deceive the public into believing that they are purchasing the endowment benefit at a premium cost that is attractive in relation to the benefits. It is a fact that the gross premium cost will frequently be substantially in excess of benefits returned to the policyholder. At best, the total of the

face value of the pure endowment benefits would approximate or be only slightly greater than the total gross premium paid by the policyholder. It is not in the public interest, nor is it consistent with sections 201.53 (1), 206.51 (1), and 207.04 (1) (a), Wisconsin Statutes, to permit such a deception and misrepresentation of the gross premium cost of a series of one-year pure endowments or of any series of guaranteed periodic benefits maturing during the premium-paying period of the policy.

Charter policy is a name given to a life insurance policy, usually by a newly organized insurance company. Its basic purpose is to provide the company agents with a policy form that is especially attractive to the purchaser in order that the new company will have a competitive advantage. The nature of the charter-type policy is that it is profit-sharing or that the policyholder will participate in the long-term earnings of the company. The usual representation is that the policies will be issued to the extent of a predetermined fixed number of units and that the policyholder will be one of a relatively small and limited number of the original policyholders of the company who will ultimately share in the business success of the company. While this may be a useful device to aid a new company in getting started in business, the technique, if it is to be permitted, must be consistent with the requirements of statute. Section 207.04 (1) (f) states that "Issuing . . . any special or advisory board contracts or other contracts of any kind promising returns and profits as an inducement to insurance" is an unfair method of competition and is an unfair and deceptive act or practice in the business of insurance. Such trade practices are prohibited by section 207.03. The technique of offering returns or profits to a small group of the first policyholders of a company is clearly contrary to statute. It is a characteristic of charter policies that they represent that the policyholder will participate with special advantage in the long-term earnings of the company. This is a misrepresentation when viewed in the light of the requirement of section 206.33 (1) that "No life insurance company shall make or permit any distinction or discrimination between insureds of the same class and equal expectation of life in the amount or payment of premiums or in any return of premium, dividends or other advantages." After consideration of the issues involved it cannot be concluded that charter-type life insurance contracts are consistent with the requirement of statute.

Profit-sharing is a name used to describe any life insurance contract which provides that the policyholder will participate with special advantage in the general surplus accumulations of a life insurance company. If the company issuing such policies issues participating policies exclusively, then the right of each policyholder to participate in the surplus of the company is the same as the right of every other policyholder of the company. In such cases the statutes (206.13 (1), 206.33, 206.36, and 207.04 (1) (g)) require equitable and nondiscriminatory annual apportionment and return of the surplus accumulations.

However, the matters involved are much more complex when a life insurance company issues both participating and nonparticipating policies. Underlying the matters to be considered is the fact that any dividend on a participating policy is essentially a return of excess premium paid by the policyholder. Section 206.13 (1) provides that the participating policy, by its terms, must give the policyholder the full right to participate annually in the surplus accumulations from the participating business of the company. The issue in question is whether the statutes authorize a life insurance company to issue contracts which provide that a class of participating policyholders will participate with special advantage in the long-term corporate earnings of the company on both participating and nonparticipating business. Section 207.04 (1) (g) 1 defines as a prohibited unfair discrimination the "making or permitting any unfair discrimination between individuals of the same class and equal expectation of life in the rates charged for any contract of life insurance or of life annuity or in the dividends or other benefits payable thereon, . . ." Section 207.04 (1) (h) defines as rebating, prohibited by section 207.03, the "paying or allowing or giving or offering to pay, allow or give, directly or indirectly, as inducement to such insurance or annuity, any rebate of premiums payable on the contract, or any special favor or advantage in the dividends or other benefits thereon, . . ." From this it can be concluded that the statutes do not permit the issuance of a contract which gives the policyholder a promise of rebate of premium or a special advantage in dividend. Section 207.04 (1) (i) provides that, in respect to discrimination and rebates, the provisions of section 207.04 (1) (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.

The amendment to subsection (4) (b) of this rule, effective December 1, 1964, does not impair the validity of any contracts in force prior to the effective date and does not prevent a company from performing on any such contracts.

History: Cr. Register, May, 1962, No. 77, eff. 6-15-62; am. (4) (b), Register, August, 1964, No. 104, eff. 12-1-64.

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 (10) (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 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