

Chapter Ins 2
LIFE INSURANCE

Ins 2.07 Replacement of life ins pol; disclosure req

- Ins 2.01 Estoppel by report of medical examiner
- Ins 2.02 Stock life insurance corporations writing participating policies
- Ins 2.03 Policies not dated back to lower insurance age
- Ins 2.04 Substandard risk rates
- Ins 2.05 Separate statement of premiums for certain disability insurance benefits included in life or endowment insurance policies
- Ins 2.06 Credit life insurance
- Ins 2.07 Replacement of life insurance policies; disclosure requirements
- Ins 2.08 Special policies and provisions; prohibitions, regulations, and disclosure requirements
- Ins 2.09 Separate and distinct representations of life insurance
- Ins 2.10 "In the same industry", definition of
- Ins 2.11 Franchise life insurance
- Ins 2.12 Exceptions to unfair discrimination
- Ins 2.13 Separate accounts and variable contracts

2.065

2.14 Sale of life insurance policies; disclosure requirements and deceptive practices

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.

Ins 2.02 Stock life insurance corporations writing participating policies. (1) **PURPOSE.** The repeal of the rule previously in effect and the adoption of this rule is for the purpose of revising the formal interpretation of certain statutes consistent with statutes and business methods now in existence. This rule implements and interprets applicable statutes including sections 201.045, 201.34, 201.50, 201.54, 206.13, 206.27 to 206.32, 206.36, 206.48, 206.51 (1), and 207.04 (1) (a), Wis. Stats. ✓

(2) **SCOPE.** This rule shall apply to stock insurance corporations when transacting the kinds of insurance authorized by section 201.04 (3), Wis. Stats., in the form of participating policies. ✓

(3) **LIMITATION OF PROFITS INURING TO THE BENEFIT OF STOCKHOLDERS.** The protection of the interest of the public purchasing participating policies and contracts issued by stock life insurance corporations requires a reasonable limitation of the profits on participating business that shall be made available to stockholders. In consideration of the amount of life insurance customarily transacted in relation to the capital contribution of stockholders and to safeguard the interest of policyholders in this state, no profits on participating policies and contracts in excess of the larger of (a) 10% of such profits or (b) 50¢ per year per \$1,000 of participating life insurance in force at the end of the year shall inure to the benefit of stockholders.

(4) **LICENSE REQUIREMENTS.** No stock life insurance corporation doing business in this state in which policyholders are entitled to share in the surplus shall be licensed or relicensed to transact business in this state unless the corporation shall file an agreement (evidenced by a resolution of its board of directors or other appropriate body having the power to bind such corporation and its stockholders) to the effect that:

(a) no profits on participating policies and contracts in excess of the larger of

1. 10% of such profits or
 2. 50¢ per year per \$1,000 of participating life insurance in force at the end of the year
- shall inure to the benefit of stockholders

(b) the profits on its participating policies and contracts shall be ascertained annually by allocating to such policies and contracts specific items of gain, expense, or loss attributable to such policies and contracts and an equitable proportion of the general gains or outlays of the company

(c) such profits as shall inure to the benefit of stockholders shall be determined and apportioned annually

(d) The accounts of the participating and nonparticipating classes will be kept separate.

(e) No part of the funds accumulated or belonging to the participating class shall be transferred to the nonparticipating class.

(f) The agreement shall remain in effect so long as any outstanding participating policies or contracts of such company are held by persons resident in Wisconsin except as the applicable requirements of statute or administrative rule may be modified or superseded by subsequent enactments.

(5) EXCEPTIONS. In accordance with section 206.13 (3), Wis. Stats., the agreement required by subsection (4) (e) of this rule may be modified to the extent necessary to be consistent with the existing charter of the stock life insurance corporation.

(6) ANNUAL FILING. No stock life insurance corporation doing business in this state in which policyholders are entitled to share in the surplus shall be licensed or relicensed to transact business in this state unless the corporation shall annually file the information required by sections 206.14 (1), 206.27 (Schedule 14, S.), and 206.48, Wis. Stats. Section 206.14 (1), Wis. Stats., does not apply to domestic stock life insurance corporations.

Note: Before issuing a new or renewal license to transact insurance in this state, the commissioner of insurance is required by sections 201.045 and 201.34, Wis. Stats., to be satisfied that the methods and practices of the insurer adequately safeguard the interests of its policyholders and the people of this state. Section 206.13, Wis. Stats., provides for the issuance of participating life insurance policies by stock companies.

The nature of participating policies is that the premium charge includes an additional loading which acts as the safety factor to provide for various contingencies that may develop during the term of the policy. The additional premium thus collected is then returned to the policyholder in the form of dividends. Section 201.36, Wis. Stats., provides for the annual apportionment and return of such sums after making provision for required reserves and liabilities.

In respect to those policies in which the policyholder is entitled to share in the surplus, section 206.36, Wis. Stats., provides for the payment of authorized dividends on capital stock from the surplus accumulations of the participating business of the company. Section 201.54, Wis. Stats., authorizes distribution of savings, earnings, or surplus to any class of policyholder by filing a schedule thereof with the commissioner in those cases where such a distribution was not specified in the policy. In such cases the commissioner has an obligation to be satisfied that the methods and practices of the company are such as to safeguard the interest of the policyholders.

The principal portion of the earnings on participating policies is due to the additional loading in the premium charged for the policy. It would be a misrepresentation of the participating provisions of any such policy or contract if a substantial portion of the profits accruing from such policies or contracts were not to be returned to the policyholders. Sections 206.51 (1) and 207.04 (1) (a), Wis. Stats., prohibit the misrepresentation of the dividends or share in surplus to be received on any policy.

3. An indication of the anticipated benefits payable under the policy, including loss ratio.

4. If the rate filing is a revision of a prior filing, the new filing shall be accompanied by a statement of the experience on the form and the anticipated loss ratio under the revised rate filing.

(d) If an identifiable charge is made to the debtor under a policy of credit life insurance, such identifiable charge shall not exceed the premium set forth in the rate schedule filed with the commissioner of insurance.

(e) On or before February 16, 1959, each insurer authorized to do business in Wisconsin shall furnish the commissioner of insurance a list of all policies, riders, endorsements, certificates, applications, notices of proposed insurance, or any other instruments which it intends to issue to insure residents of Wisconsin for credit life insurance.

(8) ACCOUNTING. Insurers shall maintain records regarding premiums, losses, and other benefits and expenses separately for credit life insurance, for total and permanent disability benefits, and for credit accident and health insurance provided by a policy form so that such experience may be filed with the commissioner of insurance at such times and in such manner as may be prescribed by him. The commissioner of insurance may require insurers to file with him such other information as he may deem necessary for the administration of credit life insurance.

(9) NONWAIVER OF OTHER REQUIREMENTS. This rule does not confer any rights on lenders or other creditors which are not permitted by the laws which apply to them.

History: Cr. Register, December, 1958, No. 36, eff. 1-1-59; am. (5) (c), Register, March, 1959, No. 39, eff. 4-1-59; am. (2) (b) 3 and 8; (2) (c) and (d); (5) (e); (6) and (7) (b), Register, October, 1961, No. 70, eff. 11-1-61; am. (3), Register, August, 1962, No. 80, eff. 9-1-62.

Ins 2.07 Replacement of life insurance policies; disclosure requirements. (1) PURPOSE. The interest of life insurance policyholders involved with replacement must be safeguarded by making available full and clear information on which to make decisions in their own best interest, by reducing the opportunity for misrepresentation in replacement situations, and by precluding unfair methods of competition and unfair practices in the business of insurance. This rule implements and interprets sections 201.53 (13), 206.41 (10) (a) 8, 207.04 (1) (a), and 208.33, Wis. Stats., by establishing minimum standards for replacement of life insurance.

(2) SCOPE. This rule shall apply to the solicitation of insurance described by section 201.04 (3), Wis. Stats., covering residents of this state, and issued by insurance corporations, fraternal benefit societies, the federal government or the state life insurance fund. In respect to the solicitation of such insurance, the procedures required by this rule shall not apply to group, industrial or credit life insurance described by subsections (3a), (3b) and (3c) of section 201.04, Wis. Stats., nor to life insurance for which the cost or a part thereof is paid by the employer, nor to policy changes or conversion of term insurance to permanent insurance within the same company, nor to insurance which is not in force but which may be purchased under a guaranteed insurability option, nor to short term nonrenewable life insurance policies written for periods not in excess of 31 days.

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(3) DEFINITION. For the purpose of this rule, "replacement" includes any transaction wherein new life insurance is to be purchased and it is known to the agent that, as a part of the transaction, existing life insurance has been or is to be lapsed, surrendered, converted into paid-up insurance, become extended insurance, be subjected to substantial borrowing of loan values whether in a single loan or under a schedule of borrowing over a period of time, or changed to a lower cash value plan of insurance. Whenever the terms life insurance, insurance, or insurance described by section 201.04 (3), Wis. Stats., are used in this rule they shall be construed to include all insurance itemized under section 201.04 (3), Wis. Stats., including annuities.

(4) DUTY OF THE AGENT. (a) The agent must secure with or as a part of each application for insurance a statement signed by the applicant as to whether such insurance will replace existing insurance, and he must leave a copy of the statement with the applicant for his records.

(b) The agent must submit to the company with or as a part of each application for insurance a statement as to whether, to the best of his knowledge, replacement is involved with the transaction.

(c) Where replacement is involved, the agent must:

1. Present a written proposal to each prospect solicited not later than at the time of taking the application and leave it with the applicant for his records;

2. Submit with the application to his company a copy of the proposal and the name of every company which issued the insurance being replaced;

3. Immediately notify every such company of the possibility of replacement, and promptly furnish a copy of the proposal to each company;

4. Present the notice required by subsection (9) of this rule to each prospect solicited not later than at the time of taking the application and leave it with the applicant for his records.

(5) DUTY OF THE COMPANY. (a) Every authorized company must inform its agents involved with the solicitation of life insurance on residents of this state of the requirements of this rule.

(b) Every such company must secure with or as a part of each application for life insurance a statement signed by the applicant as to whether such insurance will replace existing insurance, and the company must ascertain that a copy of the statement was left with the applicant.

(c) Where replacement is involved, the company to which application is made must:

1. Secure a copy of the proposal and the name of every company which issued the insurance being replaced;

2. Immediately ascertain that a copy of the proposal and notice of the possibility of replacement has been furnished to every company which issued the insurance being replaced;

3. Examine the proposal and be satisfied that it meets the requirements of this disclosure rule;

4. Keep a copy of the proposal and the applicant's signed statement in its home office for at least 3 years where it shall be available to the Department of Insurance;

5. Keep records of such proposals and replacements indexed so as to be readily available to the Department of Insurance.

(6) CONTENTS OF PROPOSAL. The written proposal required by this rule must:

- (a) Be dated and signed by the agent;
- (b) State the name of the company in which the insurance is to be written;
- (c) Describe the existing insurance and state the proposed disposition of or the effect of the replacement on it;
- (d) State the facts upon which the agent makes his recommendation to the applicant for replacement of his insurance or state the facts upon which the applicant made his decision to replace his insurance;
- (e) Contain no misrepresentation or false or misleading statements.

(7) VIOLATION. Any violation of this rule shall be deemed to be a misrepresentation for the purpose of inducing a person to purchase insurance.

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

(9) NOTICE TO POLICYHOLDER. When replacement is involved, the agent must attach the following notice to the written proposal which is delivered to the prospect:

NOTICE TO POLICYHOLDER

This notice to you is for your protection and is required by Wisconsin Administrative Code section Ins 2.07, Rules of Department of Insurance.

- I. If you are urged to purchase life insurance and it is suggested that you surrender or lapse or in any other way change the status of your existing insurance in the process, you are entitled to request and receive from the person soliciting insurance a written proposal signed by him setting forth all the pertinent facts bearing on the transaction and the advantages and disadvantages of changing to the proposed coverages.
- II. In every case, it is to your advantage to secure the advice and recommendations of your present life insurance company regarding the proposed replacement or change in such existing policies. You may secure this information by notifying your present insurance company or its agent about the proposed replacement or change. In the event the replacement or change suggested is presented by a person representing the company in which you already have existing insurance, you are entitled to secure the views of the home office or of a management representative of this company regarding the desirability of such replacement or change.
- III. If you are considering replacement of your present insurance, you are advised that, as a general rule, it is not to your advantage to drop or change any of your existing

life insurance for the purpose of replacing it with new life insurance in the same or another company. Some of the reasons for this are as follows:

- A. When a new policy is issued, its acquisition costs must be paid. Almost invariably such costs are higher on a new policy than the current costs on an existing policy.
 - B. The incontestable and suicide clauses begin anew in a new policy. This could result in a claim under a new policy being denied by the company which would have been paid under the policy which was replaced.
 - C. A new policy usually will be issued at an age higher than that of the existing policy and thus usually will have a higher premium rate.
 - D. Existing policies often have more favorable provisions than new policies in such areas as settlement options and disability benefits.
 - E. Your present insurance company can often make a desired change on terms which would be more favorable to you than if you replaced your existing insurance with new insurance.
- IV. For the above reasons it is also generally not to the policyholder's advantage to put the original policy on reduced paid-up or extended insurance or to borrow its loan value beyond ability or expectation to repay in order to have sufficient funds to pay premiums on a new policy in the same or another company.
- V. There may be a few very occasional cases where a replacement might be to your advantage. However, your best protection in every case is to secure the comments and views of your present insurance company before arriving at any decision on such an important matter.

Note: It is the position of the department that the changing of a policy to one with lower cash values is replacement if the freed premium dollars are to be used to purchase additional life insurance in either the original company or another company. This position is not intended to discourage the programming of life insurance as the department recognizes that insurance needs change. Rather, it is intended that the insured should be given as many facts as possible to aid him in making his decisions.

Subsection (4) (a) requires that a copy of the replacement statement be left with the applicant for his records. The department has interpreted that this requirement is satisfied if the statement is included in the application and the application is made a part of the policy.

The rule under paragraphs (a) and (b) of subsection (4) requires a distinct and separate statement by the applicant as to his knowledge of replacement and a distinct and separate statement by the agent as to his knowledge of replacement. A statement made by the applicant and subscribed to by the agent does not meet this requirement.

Subsection (4) (c) 3 makes a purposeful distinction between the "immediate" notice and the "prompt" submission of the proposal. It is important that "immediate" notice of replacement be sent to the company whose policy is being replaced. That company may then offer recommendations to its policyholder before the replacement policy is issued. In some cases the replacement proposal may contain some inadvertent errors which should be corrected before the proposal is forwarded. If notice of replacement were held up until these corrections were made, the transaction might be completed before the original company has an opportunity to make its recommendations to its policyholder. To give effect to the distinction between immediate notice and prompt submission of the proposal:

(1) The immediate notice required by subsection (4) (c) 3 must include the applicant's name and date of birth and the name of the replacing company. Other data such as policy number, type of policy, date of issuance,

etc., should also be included if available from the applicant. Compliance with the requirement of immediate notification under the rule will be deemed sufficient if the notice is forwarded within 24 hours of the taking of the application, or if such forwarding precedes all other steps, such as ordering an inspection report or medical examination.

(2) The replacing company may, by written agreement, assume the agent's responsibility of immediate notification. In so doing, however, the company must delay policy issuance for a period commensurate with the delay resulting from its action and must be prepared to handle any dissatisfaction of the applicant with appropriate remedy as, for example, cancellation with full return of premium.

(3) The replacing company may, by written agreement, assume the agent's duty of furnishing the proposal as set forth in subsection (4) (c) 3. It is reasonable to expect that the proposal will be sent to the replacing company within 3 working days of the time the application is received at the home office unless the proposal has to be returned to the agent for corrections or additional information. In no event should the replacement policy be issued until after the replacement proposal has been sent to the other company.

The procedures in (1) and (2) comprise a prima facie means of compliance but do not preclude such other means as may prove to give immediate notification and which would come within the generally accepted definition of "immediate".

It is recognized that the present "Notice to Policyholder" is not entirely appropriate for use in cases involving annuities. The department is making no attempt to revise the wording of this notice because of the expense involved in reprinting the form in relation to the few replacement cases that are contemplated. However, it is expected that the company will assume the responsibility of adapting the notice to fit annuity cases when they arise.

History: Cr. Register, March, 1962, No. 75, eff. 5-15-62; am. (3) and (9) (intro. par.), Register, April, 1965, No. 112 eff. 5-1-65; am. (2), Register, June, 1968, No. 150, eff. 7-1-68.

Ins 2.08 Special policies and provisions; prohibitions, regulations, and disclosure requirements. (1) **PURPOSE.** The interest of the public and the maintenance of a fair and honest life insurance market must be safeguarded by identifying and prohibiting certain types of policy forms and policy provisions and by requiring certain insurance premiums to be separately stated. This rule implements and interprets applicable statutes including sections 200.03 (2), 206.13, 206.17, 206.18, 206.33, 206.36, 206.51 (1) and 207.04 (1) (a), (b), (f), (g), (h), and (i), Wis. Stats.

(2) **SCOPE.** This rule shall apply to the kinds of insurance authorized by section 201.04 (3), Wis. Stats., and shall also apply to fraternal benefit societies.

(3) **DEFINITIONS.** For the purpose of this rule certain life insurance policy forms and provisions referred to herein shall have the following meaning:

(a) *Coupon policy* is any policy form which includes a series of coupons prominently and attractively featured in combination with an insurance contract. Such coupons are one-year pure endowments whether or not so identified and whether or not physically attached to the insurance contract. The coupons are devised to give the appearance of the interest coupons that are frequently attached to investment bonds. Although the face amount of the coupon benefit is essentially a refund of premium previously paid by a policyholder, it is frequently represented that it is the earnings or return on the investment of the policyholder in life insurance.

(b) *Charter policy* is a term or name assigned by an insurance company to a policy form. Such a policy is usually issued by a newly

again until 60 days after taking the second examination. After a third and any subsequent such failure, such applicant may not take the examination again until 90 days after the third and any subsequent examinations.

2. Any applicant failing to pass part II of the examination may take part II again 20 days after the first and any subsequent examinations.

(h) Every request to take a variable contract examination (see subsection (9) (b) 1. of this rule) shall be accompanied by an examination fee of \$5. A fee of \$5 will be charged for each re-examination administered to an applicant.

(i) Report of the results of any examination given pursuant to this rule shall be made on Notice of Examination Grades form 11-4B. (See Wis. Adm. Code section Ins 7.01 (4) (m)). Notice will also be given to the Securities and Exchange Commission on forms supplied.

(j) Except as modified by this rule, the rules of the commissioner of insurance governing the licensing of life insurance agents, including examinations therefor, shall apply to subsection (9).

(k) Part I of the written examination provided for in paragraph (c) of this subsection shall also be administered to other persons who are not required to be licensed to sell life insurance in this state upon their submission of the forms required in subsection (9) (b) 1. of this rule and payment of the examination fee.

(l) 1. Results of the examination administered pursuant to paragraph (c) of this subsection will be reported by the commissioner to the applicant's company. In addition, examination results will be reported by the commissioner to any other state insurance department requesting confirmation of the examination grade, either upon request of such department or upon request of the applicant or his company.

2. A charge of \$1 shall be made for the second and each subsequent report of examination results.

(m) Records of the examination grade of each applicant upon an examination administered by the office of the commissioner of insurance, or upon an examination deemed to be a satisfactory alternative examination and administered by another agency or authority and reported to the commissioner, will be retained in the file pertaining to said applicant.

(n) Any person licensed in this state as a variable contract agent shall immediately report to the commissioner:

1. Any suspension or revocation of his variable contract agent's license or life insurance agent's license in any other state or territory of the United States,

2. The imposition of any disciplinary sanction (including suspension or expulsion from membership, suspension or revocation of or denial of registration) imposed upon him by any national securities exchange, or national securities association, or any federal, state, or territorial agency with jurisdiction over securities or contracts on a variable basis,

3. Any judgment or injunction entered against him on the basis of conduct deemed to have involved fraud, deceit, misrepresentation, or violation of any insurance or securities law or regulation.

(o) The commissioner may reject any application or suspend or revoke or refuse to renew any variable contract agent's license upon

any ground that would bar such applicant or such agent from being licensed to sell life insurance contracts in this state. The rules governing any proceeding relating to the suspension or revocation of a life insurance agent's license shall also govern any proceeding for suspension or revocation of a variable contract agent's license.

(p) Renewal of a variable contract agent's license shall follow the same procedure established for renewal of an agent's license to sell life insurance contracts in this state.

Note: Copies of the Securities Act of 1933, May 27, 1933, 48 Stat. 74, Pub. L. 22, ch. 38, Title 15, U.S.C., as amended; Section 15 (b) (3) Securities Exchange Act of 1934, as amended August 20, 1964, Pub. L. 88-467, sec. 6, 78 Stat. 570, 15 U.S.C., sec. 780 (8); and the Investment Company Act of 1940, August 22, 1940, Pub. L. 768, ch. 686, Title 15, U.S.C., as amended, are available for inspection at the Office of the Commissioner of Insurance, or the enactments may be procured for personal use from the U. S. Government Printing Office, Washington, D. C.

Copies of the Annuity Mortality Table for 1949, Ultimate are available for inspection at the office of the commissioner of insurance, the secretary of state and the revisor of statutes, and may be procured for personal use from the Society of Actuaries, 208 South La Salle Street, Chicago, Illinois 60604.

The examination given to meet the requirements of subsection (9) (c) will be based upon the examination recommended for testing of variable contract agents by the National Association of Insurance Commissioners in its present form or as it may be amended.

History: Cr. Register, October, 1968, No. 154, eff. 11-1-68.

Cr. Ins. 2.1st Reg. Mar 1972

Next page is numbered 35