

## COMMISSIONER OF INSURANCE

23

(3) **ACCOUNTING.** All premiums paid in connection with franchise life insurance on Wisconsin residents shall be reported for annual statement purposes as Wisconsin business and shall be subject to the applicable Wisconsin premium tax.

**History:** Cr. Register, May, 1964, No. 101, eff. 6-1-64; emerg. am. (1) and (2), eff. 6-22-76; am. (1) and (2), Register, September, 1976, No. 249, eff. 10-1-76; am. (1) (a), Register, March, 1979, No. 279, eff. 4-1-79.

**Ins. 2.12 Exceptions to unfair discrimination.** The following practices, without being all-inclusive, shall not be considered unfairly discriminatory as considered by s. 628.34, Stats.:

(1) Issuing life insurance policies or life annuity contracts on a salary savings, salary allotment, bank draft, pre-authorized check, or payroll deduction plan or other similar plan at a reduced rate or with special underwriting considerations reasonably related to the savings made by use of such plan.

(2) Issuing life insurance policies or annuity contracts at premiums determined by rating plans which provide for modification of premiums based on the amount of insurance; but any such rating plans shall not result in reduction in premiums in excess of the savings reasonably related to the savings made by use of the plan. All cost factors must be given proper recognition in order to preserve equity between various classes of policyholders.

(3) Issuing so-called 'family plan' life insurance policies which include insured, spouse, and their children with the premium calculated on the basis of the family unit. The rating plan must give recognition to all cost factors in order to preserve equity between various classes of policyholders.

(4) Issuing policies under the authority of section Ins 6.75 (1) (a), with the premium calculated on the basis of the average age of those insured or calculated in some other manner which is appropriate for the coverage offered, provided that the rate must be reasonably related to the coverage provided and to the savings made by use of the rating procedure.

(5) Issuing life insurance policies or life annuity contracts at special rates or with special underwriting considerations, reasonably related to the savings made, in connection with:

(a) Employee benefit trusts or plans conforming to the requirements of s. 815.18 (31) (a), Stats.

(b) Plans used to fund retirement benefits under the Federal Self-Employed Individuals Tax Retirement Act of 1962.

(c) Plans used to fund retirement benefits for employees of certain organizations exempt from Federal income tax and public schools (so-called tax sheltered annuity plans).

(d) Franchise life insurance provided under the provisions of s. 600.03 (3m) (d), Stats.

**History:** Cr. Register, May, 1964, No. 101, eff. 6-1-64; emerg. am. (intro.), (4) and (5) (d), eff. 6-22-76; am. (intro.), (4) and (5) (d), Register, September, 1976, No. 249, eff. 10-1-76; am. (4) and (5) (a), Register, March, 1979, No. 279, eff. 4-1-79.

**Ins 2.13 Separate accounts and variable contracts.** (1) **PURPOSE.** This rule creates standards for establishing separate accounts and for issuing contracts on a variable basis, both as provided by ss. 611.25 and 632.45 (1), Stats.

(2) **DEFINITION.** (a) The term "contract on a variable basis" or "variable contract," when used in this rule, shall mean any policy or contract which provides for insurance or annuity benefits which may vary according to the investment experience of any separate account or accounts maintained by the insurer as to such policy or contract, as provided for in s. 632.45 (1), Stats.

(b) "Individual intermediary agent," when used in this rule, shall mean any person licensed as an individual intermediary life insurance agent.

(c) "Individual intermediary variable contract agent," when used in this rule, shall mean an agent who sells or offers to sell any contract on a variable basis.

(d) A "satisfactory alternative securities examination" shall include any securities examination which is declared by the commissioner to be an equivalent examination on the basis of content and administration. The following examinations are deemed to be a satisfactory alternative examination:

1. The state securities sales examination;
2. The National Association of Securities Dealers, Inc. examination for principals, or examination for qualification as a registered representative;
3. The various securities examinations required by the New York Stock Exchange, the American Stock Exchange, Pacific Stock Exchange, or any other registered national securities exchange;
4. The securities and exchange commission test given pursuant to section 15 (b) (8) of the Securities Exchange Act of 1934 (15 U.S.C. section 780 (8));

(3) **QUALIFICATION OF INSURANCE COMPANIES TO ISSUE VARIABLE CONTRACTS.** (a) No company shall deliver or issue for delivery variable contracts within this state unless:

1. It is licensed or organized to do a life insurance or annuity business in this state; and
2. The commissioner is satisfied that its condition or method of operation in connection with the issuance of such contracts will not render its operation hazardous to the public or its policyholders in this state. In determining the qualification of a company requesting authority to deliver such contracts within this state, the commissioner shall consider among other things:
  - a. The history and financial condition of the company;
  - b. The character, responsibility and fitness of the officers and directors of the company, and
  - c. The law and regulation under which the company is authorized in the state of domicile to issue variable contracts.

(b) If the company is a subsidiary of an admitted life insurance company, or affiliated with such company by common management or ownership, it may be deemed by the commissioner to have satisfied the provisions of subsection (3) (a) 2. of this rule if either it or such admitted life company satisfies the aforementioned provisions; provided, further, that companies licensed and having a satisfactory record of doing business in this state for a period at least 3 years may be deemed to have satisfied the commissioner with respect to subsection (3) (a) 2. of this rule.

(c) Before any company shall deliver or issue for delivery variable contracts within this state it shall submit to the commissioner:

1. A general description of the kinds of variable contracts it intends to issue;

2. If requested by the commissioner, a copy of the statutes and regulations of its state of domicile under which it is authorized to issue variable contracts and

3. If requested by the commissioner, biographical data with respect to officers and directors of the company.

(4) SEPARATE ACCOUNTS. (a) A domestic company issuing variable contracts shall establish one or more separate accounts pursuant to s. 611.25, Stats., subject to the following provisions:

1. Except as hereinafter provided, amounts allocated to any separate account and accumulation thereon may be invested and reinvested without regard to any requirements or limitations prescribed by the laws of this state governing the investments of life insurance companies; provided, that to the extent that the company's reserve liability with regard to a. benefits guaranteed as to dollar amount and duration, and b. funds guaranteed as to principal amount or stated rate of interest is maintained in any separate account, a portion of the assets of such separate account at least equal to such reserve liability shall be, except as the commissioner may otherwise approve, invested in accordance with the laws of this state governing the investments of life insurance companies. The investments in such separate account or accounts shall not be taken into account in applying the investment limitations applicable to the investments of the company.

2. With respect to 75% of the market value of the total assets in a separate account, no company shall purchase or otherwise acquire the securities of any issuer, other than securities issued or guaranteed as to principal or interest by the United States, if immediately after such purchase or acquisition the market value of such investment, together with prior investments of such separate account in such security taken at market, would exceed 10% of the market value of the assets of said separate account; provided, however, that the commissioner may waive such limitation if, in his opinion, such waiver will not render the operation of such separate account hazardous to the public or the policyholders in this state.

3. No company shall, whether for its separate accounts or otherwise, invest in the voting securities of a single issuer in an amount in excess of 10% of the total issued and outstanding voting securities of such issuer provided that the foregoing shall not apply with respect to securities held in separate accounts, the voting rights in which are exercisable only

in accordance with instructions from persons having interests in such accounts.

4. The limitations provided in subsection (4) (a) 2. and 3. of this rule shall not apply to the investment with respect to a separate amount in the securities of an investment company registered under the Investment Company Act of 1940, as amended provided that the investments of such investment company comply in substance with subsection (4) (a) 2. and 3. of this rule.

(b) Unless otherwise approved by the commissioner, assets allocated to a separate account shall be valued at their market value on the date of valuation, or if there is no readily available market, then as provided under the terms of the contract or the rules or other written agreement applicable to such separate account; provided, that the portion of the assets of such separate account equal to the company's reserve liability with regard to the benefits guaranteed and funds guaranteed referred to in subsection (4) (a) 1. a. and b. of this rule, if any, shall be valued in accordance with the rules otherwise applicable to the company's assets.

(c) If and to the extent so provided under the applicable contracts, that portion of the assets of any such separate account equal to the reserves and other contract liabilities with respect to such account shall not be chargeable with liabilities arising out of any other business the company may conduct.

(d) Notwithstanding any other provision of law, a company may:

1. With respect to any separate account registered with the securities and exchange commission as a unit investment trust exercise voting rights in connection with any securities of a regulated investment company registered under the Investment Company Act of 1940, as amended, and held in such separate accounts in accordance with instructions from persons having interests in such accounts ratably as determined by the company, or

2. With respect to any separate account registered with the securities and exchange commission as a management investment company, establish for such account a committee, board, or other body, the members of which may or may not be otherwise affiliated with such company and may be elected to such membership by the vote of persons having interests in such account ratably as determined by the company. Such committee, board, or other body may have the power, exercisable alone or in conjunction with others, to manage such separate account and the investment of its assets.

A company, committee, board, or other body may make such other provisions in respect to any such separate account as may be deemed appropriate to facilitate compliance with requirements of any federal or state law now or hereafter in effect; provided that the commissioner approves such provisions as not hazardous to the public or the company's policyholders in this state.

(e) No sale, exchange, or other transfer of assets may be made by a company between any of its separate accounts or between any other investment account and one or more of its separate accounts unless, in case of a transfer into a separate account, such transfer is made solely to establish the account or to support the operation of the contracts with

respect to the separate account to which the transfer is made, and unless such transfer, whether into or from a separate account, is made

1. By a transfer of cash, or

2. By a transfer of securities having a valuation which could be readily determined in the marketplace, provided that such transfer of securities is approved by the commissioner. The commissioner may authorize other transfers among such accounts if, in his opinion, such transfers would not be inequitable.

(f) The company shall maintain in each such separate account assets with a value at least equal to the reserves and other contract liabilities with respect to such account, except as may otherwise be approved by the commissioner.

(g) Section 611.60, Stats., shall apply to the members of any separate account's committee, board, or other similar body. No officer or director of such company nor any member of the committee, board, or body of a separate account shall receive directly or indirectly any commission or any other compensation with respect to the purchase or sale of assets of such separate account.

(5) FILING OF CONTRACT FORMS. (a) No variable contract may be issued or delivered in this state until the commissioner has approved the form or until the form and rates have been filed with the commissioner for 30 days.

(b) The filing letter shall be in duplicate and shall contain the following information:

1. An identifying form number and title for each form submitted.
2. A general description of the form (s).
3. A listing of the types of policies to which rider or endorsement forms will be attached.
4. The form number and date of approval by the commissioner of any form to be superseded.

(c) One copy of all forms or rates submitted or approval shall be submitted with a copy of the application attached if the application is to be a part of the contract. If the application was previously approved, the form number and date of approval will suffice.

(d) All forms should be completed with hypothetical data to show their use and should include a correct table of values. Variable information in forms should be explained.

(e) An actuarial statement of methods used to calculate values in the contract should be included.

(6) CONTRACTS PROVIDING FOR VARIABLE BENEFITS. (a) Any variable contract providing benefits payable in variable amounts delivered or issued for delivery in this state shall contain a statement of the essential features of the procedures to be followed by the insurance company in determining the dollar amount of such variable benefits. Any such contract, including a group contract and any certificate issued thereunder, shall state that such dollar amount will vary to reflect investment experience and shall contain on its first page, in a prominent position, a clear

statement to the effect that the benefits thereunder are on a variable basis, with a statement where in the contract the details of the variable provisions may be found.

(b) Illustrations of benefits payable under any contract providing benefits payable in variable amounts shall not include projections of past investment experience into the future or attempted predictions of future investment experience; provided that nothing contained herein is intended to prohibit use of hypothetical assumed rates of return to illustrate possible levels of annuity payments.

(c) No individual variable annuity contract calling for the payment of periodic stipulated payments shall be delivered or issued for delivery in this state unless it contains in substance the following provisions or provisions which in the opinion of the commissioner are more favorable to the holders of such contracts:

1. A provision that there shall be a period of grace of 30 days or of one month, within which any stipulated payment to the insurer falling due after the first may be made, during which period of grace the contract shall continue in force. The contract may include a statement of the basis for determining the date as of which any such payment received during the period of grace shall be applied to produce the values under the contract arising therefrom;

2. A provision that, at any time within 3 years from the date of default, in making periodic stipulated payments to the insurer during the life of the annuitant and unless the cash surrender value has been paid, the contract may be reinstated upon payment to the insurer of such overdue payments as required by the contract, and of all indebtedness to the insurer on the contract, including interest. The contract may include a statement of the basis for determining the date as of which the amount to cover such overdue payments and indebtedness shall be applied to produce the values under the contract arising therefrom;

3. A provision specifying the options available in the event of default in a periodic stipulated payment. Such options may include an option to surrender the contract for a cash value as determined by the contract, and shall include an option to receive a paid-up annuity if the contract is not surrendered for cash, the amount of such paid-up annuity being determined by applying the value of the contract at the annuity commencement date in accordance with the terms of the contract.

(d) Any individual variable annuity contract delivered or issued for delivery in this state shall stipulate the expense, mortality, and investment increment factors to be used in computing the dollar amount of variable benefits or other contractual payments or values thereunder, and may guarantee that expense and/or mortality results shall not adversely affect such dollar amounts. "Expense," as used in this paragraph, may exclude some or all taxes, as stipulated in the contract. In computing the dollar amount of variable benefits or other contractual payments or values under an individual variable annuity contract:

1. The annual net investment increment assumption shall not exceed 5%, except with the approval of the commissioner;

2. To the extent that the level of benefits may be affected by mortality results, the mortality factor shall be determined from the Annuity Mortality Table for 1949, Ultimate, or any modification of that table not having a higher mortality rate at any age.

(e) The reserve liability for variable annuities shall be established pursuant to the requirements of s. 623.06, Stats., in accordance with actuarial procedures that recognize the variable nature of the benefits provided.

(7) **REQUIRED REPORTS.** (a) Any company issuing individual variable contracts providing benefits in variable amounts shall mail to the contractholder at least once in each contract year after the first at his last address known to the company, a statement or statements reporting the investments held in the separate account and, in the case of contracts under which payments have not yet commenced, a statement reporting as of a date not more than 4 months previous to the date of mailing:

1. The number of accumulation units credited to such contracts and the dollar value of a unit, or

2. The value of the contractholder's account.

(b) The company shall submit annually to the commissioner a statement of the business of its separate account (s) in such form as required by the annual statement form designated as Life and Accident and Health—Separate Account Business (22-46). (See Wis. Adm. Code section Ins 7.01 (5) (e)).

(8) **FOREIGN COMPANIES.** If the law or regulation in the place of domicile of a foreign company provides a degree of protection to the policyholders and the public which is substantially equal to that provided by this rule, the commissioner, to the extent deemed appropriate by him in his discretion, may consider compliance with such law or regulation as compliance with this rule.

(9) **EXAMINATION OF INDIVIDUAL INTERMEDIARY AGENTS AND OTHER PERSONS.** (a) 1. No individual intermediary agent shall be eligible to sell or offer for sale a contract on a variable basis unless prior to making any solicitation or sale of such a contract, he also be licensed as an individual intermediary variable contract agent.

2. Any individual intermediary agent who participates only in the sale or offering for sale of variable contracts that are not registered under the Federal Securities Act of 1933, as amended, need not be licensed as an individual intermediary variable contract agent.

(b) Any individual intermediary agent applying for a license as an individual intermediary variable contract agent shall do so by filing with the commissioner:

1. Application for Permanent Individual Intermediary Insurance Agent License, Form 11-41 Resident or Form 11-41a Resident or 11-42 Nonresident. (See Wis. Adm. Code section Ins 6.59 (1)).

2. Application for Resident Intermediary-Agent Listing, forms 11-1 and Insurance Agent Listing, form 11-17. (See Wis. Adm. Code section Ins 6.57 (1)).

3. (c) The licensing as an individual intermediary variable contract agent of any individual intermediary agent complying with paragraph

(b) shall not become effective until such individual intermediary agent shall have satisfactorily passed a written examination upon securities and variable contracts. Such examination shall be divided into two parts. Part I shall be on securities generally and may be any of the satisfactory alternative securities examinations listed in subsection (2) (d). Part II shall deal with variable contracts and shall be composed of at least 15 questions but not more than 50 questions concerning the history, purpose, regulation and sale of contracts on a variable basis.

(d) The examination will be given in such places and at such times as the commissioner shall from time to time designate (see Ins 6.59 (8)). Upon application for license as an individual intermediary variable contract agent, the applicant shall be notified of the date of the next examination.

(e) Any applicant for license as an individual intermediary variable contract agent shall not be required to take the securities part of the examination if, at the time of application, evidence is presented that the applicant

1. Has previously passed a satisfactory alternative examination as defined in subsection (2) (d) of this rule or

2. Is currently registered with the Federal Securities and Exchange Commission as a broker dealer, or is currently associated with a broker dealer and has met qualification requirements with respect to such association.

(f) Every applicant applying for license as an individual intermediary variable contract agent shall satisfactorily complete part II of the examination required by paragraph (c) of this subsection with a grade of at least 70% or shall present evidence of successful completion, prior to July 1, 1968, of either a variable contract examination given under the supervision of an insurance department of any state or territory of the United States which has adopted part II of the examination recommended for the testing of variable contract agents by the National Association of Insurance Commissioners or has been examined and licensed by any such department prior to its adoption of the National Association of Insurance Commissioners model regulation approved by that association at its June, 1968, meeting.

(g) If an applicant fails to pass part II of the examination twice in a 6-month period, a third application will not be accepted from that applicant prior to 6 months after the second examination date. (See Wis. Adm. Code section Ins 6.59 (6)).

(h) The fees listed in Ins 6.57 and 6.59 will apply to the licensing of individual intermediary variable contract agents.

(i) Every request to take a variable contract examination (see paragraphs (b) and (c)) shall be subject to the provisions of section Ins 6.59 (1), (2), (3) (a) and (b), (4), (5), (6) and (7) Wis. Adm. Code.

(j) Any person licensed in this state as an individual intermediary 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.

(k) The commissioner may reject any application or suspend or revoke or refuse to renew any individual intermediary 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.

**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) (8) 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; emerg. am. (1), (2) (a), (4) (a) and (g), eff. 6-22-76; am. (1), (2) (a), (4) (a) and (g), Register, September, 1976, No. 249, eff. 10-1-76; am. (6) (e), Register, March, 1979, No. 279, eff. 4-1-79; r. (2) (d) 5., (9) (g), to (m) and (p), am. (2) (b) to (d) (intro.), (6) (a), (9) (a) to (f), cr. (9) (g) to (i), renum. (9) (n) and (o) to be (9) (j) and (k), Register, May, 1979, No. 281, eff. 6-1-79.

**Ins 2.14 Life insurance solicitation.** (1) **PURPOSE.** The purpose of this rule is to require insurers to deliver to purchasers of life insurance information which will improve the buyer's ability to select the most appropriate plan of life insurance for his or her needs, improve the buyer's understanding of the basic features of the policy which has been purchased or which is under consideration and improve the ability of the buyer to evaluate the relative costs of similar plans of life insurance. This rule does not prohibit the use of additional material which is not in violation of this rule or any other Wisconsin statute or rule. This rule interprets and implements, including but not limited to the following Wisconsin Statutes: ss. 601.01 (3) (b), (c), (g) and (j) and 628.34.

(2) **SCOPE.** (a) Except as hereafter exempted, this rule shall apply to any solicitation, negotiation, or procurement of life insurance occurring within this state. This rule shall apply to any issuer of life insurance contracts including fraternal benefit societies and the State Life Insurance Fund.

(b) Unless otherwise specifically included, this rule shall not apply to:

1. Annuities.
2. Credit life insurance.
3. Group life insurance.

4. Life insurance policies issued in connection with pension and welfare plans as defined by and which are subject to the federal Employee Retirement Income Security Act of 1974 (ERISA).

5. Variable life insurance under which the death benefits and cash values vary in accordance with unit values of investments held in a separate account.

(3) **DEFINITIONS.** For the purposes of this rule, the following definitions shall apply:

(a) *Wisconsin Buyer's Guide to Life Insurance.* The Wisconsin Buyer's Guide to Life Insurance is a document which contains, and is limited to, the language within the current edition of the "The Wisconsin Buyer's Guide to Life Insurance" put out by the insurance commissioner of the state of Wisconsin. This pamphlet shall be reviewed periodically for accuracy and appropriateness. Appendix 3 to this rule contains the current edition of "The Wisconsin Buyer's Guide to Life Insurance."

(b) *Cash dividend.* A Cash Dividend is the current illustrated dividend which can be applied toward payment of the gross premium.

(c) *Equivalent Level Death Benefit.* The Equivalent Level Death Benefit of a policy or term life insurance rider is an amount calculated as follows:

1. Accumulate the guaranteed amount payable upon death, regardless of the cause of death, at the beginning of each policy year for 10 and 20 years at 5% interest compounded annually to the end of the tenth and twentieth policy years, respectively.

2. Divide each accumulation of step 1 by an interest factor that converts it into one equivalent level annual amount that, if paid at the beginning of each year, would accrue to the value in step 1 over the respective periods stipulated in step 1. If the period is 10 years, the factor is 13.207 and if the period is 20 years, the factor is 34.719.

(d) *Generic name.* Generic Name means a short title which is descriptive of the premium and benefit patterns of a policy or a rider.

(e) *Life insurance indexes.* 1. Surrender Cost Index. The Surrender Cost Index is calculated by applying the following steps:

a. Determine the guaranteed cash surrender value, if any, available at the end of the tenth and twentieth policy years.

b. For participating policies, add the terminal dividend payable upon surrender, if any, to the accumulation of the annual Cash Dividends at 5% interest compounded annually to the end of the period selected and add this sum to the amount determined in step a.

c. Divide the result of step b (step a for guaranteed-cost policies) by an interest factor that converts it into an equivalent level annual amount that if paid at the beginning of each year, would accrue to the value in step b (step a for guaranteed-cost policies) over the respective periods stipulated in step a. If the period is 10 years, the factor is 13.207 and if the period is 20 years, the factor is 34.719.

d. Determine the equivalent level premium by accumulating each annual premium payable for the basic policy or rider (if the annual pre-