

Chapter Ins 8

EMPLOYEE WELFARE FUNDS; EMPLOYEE BENEFIT PLAN ADMINISTRATORS; SMALL EMPLOYER HEALTH INSURANCE

Subchapter I — Employee Welfare Funds

- Ins 8.01 Receipt of payments from funds by parties-in-interest (p. 447)
- Ins 8.02 "Trust fund or other fund", definition (p. 448-1)
- Ins 8.03 "Employee benefits", definition (p. 450)
- Ins 8.04 Registration requirements (p. 450)
- Ins 8.05 Registration cancellation (p. 451)
- Ins 8.06 Annual statement and notice of number of fund participants in Wisconsin, when required (p. 451)
- Ins 8.07 "Persons employed in this state" (p. 452)
- Ins 8.08 Availability of information to fund participants (p. 452)
- Ins 8.09 Preservation of records (p. 453)
- Ins 8.10 Advisory council on employee welfare plans (p. 453)
- Ins 8.11 County and school district self-insured employee health care benefits; excess or stop-loss insurance requirements (p. 454)

- Ins 8.22 Definitions (p. 464)
- Ins 8.24 Exemptions (p. 465)
- Ins 8.26 Licensing (p. 465)
- Ins 8.28 Performance bond requirements (p. 466)
- Ins 8.30 Notification to office (p. 467)
- Ins 8.32 Audit (p. 468)

Subchapter III — Small Employer Health Insurance

- Ins 8.40 Purpose (p. 468)
- Ins 8.42 Definitions (p. 468)
- Ins 8.44 Applicability; exclusion (p. 468)
- Ins 8.46 Required policy provisions (p. 468-1)
- Ins 8.48 Solicitation; disclosure requirements (p. 468-1)
- Ins 8.50 Underwriting restriction (p. 468-1)
- Ins 8.52 Regulation of rates and rate changes (p. 468-1)
- Ins 8.54 Guaranteed renewability; cancellation and renewal restrictions (p. 468-3)
- Ins 8.56 Certification of compliance; additional information required (p. 468-5)

Subchapter II — Employee Benefit Plan Administrators

- Ins 8.20 Purpose (p. 464)

Note: Sections Ins 8.20 to 8.32 were created as emergency rules effective October, 1, 1991. Sections Ins 8.40 to 8.56 were created as emergency rules effective February 12, 1992.

Ins 8.01 Receipt of payments from funds by parties-in-interest. (1) Section 641.19 (2), Stats., prohibits certain persons who are or may be in a position to influence the operations of an employee welfare fund from engaging in certain transactions with such fund or which affect such fund directly or indirectly. The parties to whom the prohibition is directed are the trustees of the fund, the participating employers, the labor organizations representing any employees covered by the fund; and the officers, agents and employees of such trustees, employers and labor organizations. One of the prohibitions placed upon such parties is the receipt of any payment, commission, loan, service or any other thing of value from the fund or which is charged against the fund or would otherwise be payable to the fund, either directly or indirectly. This prohibition does not extend to the receipt of benefits from the fund by any such party who is entitled thereto under the plan nor does the statute prohibit a trustee or officer, agent or employee from receiving from the fund reasonable compensation for necessary services and expenses rendered or incurred in connection with official duties in respect to the fund.

(2) The prohibition applied to receipts by the specified parties from the fund. The penalties for engaging in a transaction prohibited by s. 641.19 (2), Stats., would be enforceable against the persons named therein rather than against the fund. Accordingly it may be said that s. 641.19

(2), Stats., does not govern investments by a fund but rather governs the specified parties in their dealings with a fund.

(3) The law does not prohibit the trustees of a fund from investing fund monies in any certain way but it does prohibit trustees and other specified persons who may be in a position to influence the transactions of a fund from using their positions to enrich themselves at the expense of a fund either directly or indirectly. At the same time, the law does not alter the duty of trustees clearly established in other laws, both statutory and common, to manage funds exclusively for the purpose of providing the employee benefit promised.

(4) At the time of the enactment of this law, transactions between funds and participating employers, employes and labor organizations were an established practice. The internal revenue code of the United States recognizes that many such transactions may be entered into without impairing the tax status of such funds. Many of the trust agreements under which such funds are established and maintained specifically authorize the trustees to engage in such transactions on behalf of the funds. We do not interpret the law to prohibit all such transactions. What is prohibited is the receipt by any specified party of a payment, commission, loan, service or any other thing of value from a fund under such circumstances that at least an equivalent value in money's worth is not received by the fund from such person as a part of such transaction.

Note: In the following examples the receipt of a valuable consideration by the party as specified would not appear to be prohibited in the stated circumstances. These examples are not intended to be all-inclusive.

1. Receipt from a fund by a participating employer or labor organization of reasonable compensation for the fair value of necessary services rendered to the fund or for the actual cost of necessary expenses incurred for or on behalf of the fund.

2. Receipt from a fund by a participating employer or labor organization of payment for necessary real property or equipment sold or leased to the fund for use in the operations of the fund in an amount not in excess of the fair market value of such property or equipment at the date of sale or the fair rental value at the date of lease. Any facts known to such an employer or labor organization which would influence such market or rental value must necessarily be considered in determining the fair value at such date.

3. Purchase or lease of real estate or equipment from a fund by a participating employer or labor organization if such purchase or lease is made at arms-length on such terms and conditions as would be required at such time by an independent financial institution or other business organization engaged in such transactions which has knowledge of all facts pertinent thereto which are known by such employer or labor organization. If the terms and conditions required by such organizations cannot be established, the terms and conditions should be equivalent to those which would be granted by any independent vendor or lessor having knowledge of all pertinent facts known to such employer or labor organization and considering both the probable income and probable safety of his or her capital.

4. Receipt by a participating employer or labor organization of a loan from a fund if such loan is made at arms-length according to such terms and conditions, including the rate of interest and duration of the loan and the nature and amount of security pledged therefor, as would be required at such time by an independent financial institution or other business organization engaged in making such loans which has knowledge of all facts pertinent thereto which are known by such employer or labor organization.

5. Receipt by a participating employe of a loan from a fund if such loan would meet the requirements of a loan to a participating employer or labor organization as specified in example 4. above.

6. Purchase of securities or other investments from a fund by a participating employer or labor organization if made for not less than an adequate consideration to the fund. An "adequate consideration" means the price which would be paid at such time by an independent buyer having knowledge of all facts pertinent thereto which are known to such employer or labor organization. Such value may be established by an impartial appraisal of the invest-

COMMISSIONER OF INSURANCE

448-1

Ins 8

ment if such value cannot be established by reference to bid and asked prices or by reference to sales prices.

7. Sale of securities or other investments to a fund by a participating employer or labor organization if made for not more than an adequate consideration as defined by example 6. above.

8. Purchase from or sale to a fund by a participating employer of its capital stock if in accord with conditions described in examples 6. and 7. above.

History: Cr. Register, August, 1960, No. 56, eff. 9-1-60; am. (1) and (2), Register, November, 1978, No. 275, eff. 12-1-78; corrections made under s. 13.93 (2m) (b) 5., Stats., Register, April, 1992, No. 436.

Ins 8.02 "Trust fund or other fund", definition. (1) A "trust fund or other fund" constituting an employe welfare fund subject to ch. 641,

Next page is numbered 449

insurance regulatory agency in each state in which an affected insured individual resides. The notice shall include all of the following:

1. The reason for the decision to terminate coverage for the class of business.

2. The date on which coverage will terminate.

(e) In addition to the requirement under par. (d), the small employer insurer shall, at least 60 days but not more than 75 days before the date coverage will terminate, provide each affected small employer with written notice, complying with s. 631.36 (6) and (7), Stats., of the intent not to renew the policy. The notice shall also comply with the notice requirements of ss. 632.79 and 632.897, Stats.

(6) **CONVERSION OF ASSUMED CLASS OF BUSINESS.** A small employer insurer that assumes a class of business from another small employer insurer shall, by the 2nd renewal date for each policy or one year from the date of assumption, whichever is later, convert each policy in the assumed class of business to a policy with the same or similar benefit design characteristics in another class of business specified under sub. (2) (a).

History: Cr. Register, October, 1992, No. 442, eff. 11-1-92.

Ins 8.56 Certification of compliance; additional information required. (1) The annual certification of compliance required under s. 635.13, Stats., shall be submitted in the form prescribed by the office.

(2) In addition to the annual certification required under sub. (1), the commissioner may require a small employer insurer to furnish additional information including, but not limited to, the following, using the form and method of transmittal prescribed by the commissioner:

(a) Rate manuals or exhibits of all rating factors used for each class of business.

(b) Sample data of small employers including premiums charged and rating factors applied for case characteristics and benefit design characteristics.

(c) An inventory of case characteristics used by the small employer insurer since the last certification date.

(d) An exhibit showing the difference in new business premium rates between the current certification date and the last certification date.

(e) A description of how midpoint rates are determined.

Note: The form required under sub. (1), OCI 26-051, may be obtained from the Office of the Commissioner of Insurance, P. O. Box 7873, Madison, WI 53707-7873.

History: Cr. Register, October, 1992, No. 442, eff. 11-1-92.