

Chapter Ins 15

EXEMPTIONS FROM APPLICATION OF INSURANCE CODE

Ins 15.01 Warranty plans.

Note: Chapter Ins 15 as it existed on May 31, 1991 was repealed and a new chapter Ins 15 was created effective June 1, 1991.

Ins 15.01 Warranty plans. (1) PURPOSE. This section interprets ss. 600.01 (1) (b) 5., 601.04 (2), (3) and (4) and 600.03 (25) (a), Stats., by substituting requirements more specifically appropriate to the characteristics of the business of the issuance of warranties in lieu of the full application of chs. 600 to 646, Stats. The commissioner finds that the making of a contract relating to repair, replacement or restoration to a prescribed condition of any good, product or object is the transaction of insurance, subject to full application of chs. 600 to 646, Stats., unless the person making the contract submits to the jurisdiction of the commissioner and to the provisions of this section.

(2) SCOPE. (a) Subject to sub. (3), this section applies to all warrantors operating or offering to operate a warranty plan in this state.

(b) This section does not apply to licensed insurers who operate or offer to operate a warranty plan pursuant to an authorization to transact insurance in this state or who issue mechanical breakdown coverage insurance policies in this state.

(3) EXEMPTION. This section and chs. 600 to 646, Stats., do not apply to:

(a) The provision of services under a maintenance services contract which may include some repairs and replacements as a part of the maintenance program if the services are provided by the entity issuing the contract and claiming the exemption and are not, except on limited occasions, performed by outside organizations and do not involve the creation of obligations including acting as a warranty plan administrator by a third party; or

(b) Warranties by manufacturers of products which relate to the quality, merchantability or characteristics of the products manufactured by the entity claiming exemption; or

(c) Warranties by a seller of services which relate to the quality or characteristics of such services performed by the entity claiming exemption.

(4) DEFINITIONS. In this section:

(a) "Certificate of authority" means a limited certificate of insurance authority issued by the commissioner to operate a warranty business in this state.

(b) "Consumer" means any person who has purchased a warranty contract to whom or for whose benefit the warranty is given.

(c) "Warrantor" means a person, other than an insurer authorized to do business in this state under chs. 611 and 618, Stats., who operates a warranty business as principal. "Warrantor" includes a warranty plan administrator who operates a warranty business as a principal.

(d) "Warranty contract" means the written agreement setting forth the obligations of the warranty plan.

(e) "Warranty plan" means a program or business, however denominated, involving the sale and issuance of a warranty contract wherein a warrantor assumes responsibility to repair, replace or restore to a prescribed condition a good, product or object purchased or owned by a consumer.

(f) "Warranty plan administrator" means a person, other than an insurer authorized to do business in this state under chs. 611 and 618, Stats., who operates a warranty business as a principal or who functions in a fiduciary capacity by:

1. Receiving, holding, channelling or otherwise controlling monies connected with the warranty plan, including premium dollars collected from providers of services or sellers of products; or

2. Approving or disapproving claims, paying claims or controlling the claim adjustment process; or

3. Arranging for or the controlling of the purchase of insurance associated with warranty plan coverages.

(5) AUTHORIZATION FOR TRANSACTION OF WARRANTY BUSINESS. (a) No warrantor or warranty plan administrator may transact a warranty business or function in a fiduciary capacity as defined in sub. (4) (f) without having been issued a valid limited certificate of insurance authority from the commissioner pursuant to sub. (10).

(b) In the event that identical warranty plans are offered or sold by warrantors, which plans are prepared and administered by a common warranty plan administrator, the commissioner may authorize the warranty plan administrator to apply for and may issue a group limited certificate of insurance authority covering the warranty plan administrator and each warrantor named as offering or selling such warranty plan. The application for such authorization and the acceptance of the authorization by the warranty plan administrator constitutes an agreement by the administrator to assume the obligations of the warrantor under subs. (6), (7), (8), (9), and (11).

(6) APPLICATION. (a) An applicant for a limited certificate of insurance authority shall submit a warranty plan or warranty plan administrator application form prescribed by the commissioner. The warrantor, another person on the warrantor's behalf, or warranty plan administrator shall sign and acknowledge the application. The commissioner may request any additional relevant information in order to make a determination of the applicant's eligibility for a certificate of authority. An applicant shall pay the fee required by s. 601.31 (1) (a) 1., Stats.

(b) The application shall include a statement that the warrantor or warranty plan administrator is subject to the terms and conditions of this section and a statement naming the commissioner as agent for service of process on the warrantor or warranty plan administrator in actions related to the warrantor's or warranty plan administrator's transaction of a warranty business in this state.

(7) FINANCIAL SECURITY REQUIREMENTS. (a) The commissioner shall condition the issuance of a limited certificate of insurance authority and its continuation upon the warrantor or warranty plan administrator providing security to compensate any consumer in this state who sustains loss due to the failure of such warrantor or warranty plan administrator to perform its obligations under a warranty contract as a result of insolvency or other financial impairment. The commissioner shall approve the amount and form of the security. The security shall be in one or a combination of the following:

1. Deposit of securities under s. 601.13, Stats. The deposit of securities shall be for the benefit of Wisconsin consumers.

2. An irrevocable letter of credit from a bank properly chartered by the federal government or any state and that is acceptable to the commissioner and issued for a term of at least 5 years with provision for renewal 2 years before termination. The letter of credit shall be payable to the commissioner or the commissioner's designee for the benefit of Wisconsin consumers upon a finding by the commissioner that a warrantor or warranty plan administra-

tor is insolvent or financially impaired and unable to meet its obligations under warranty contracts issued in Wisconsin. The warrantor or warranty plan administrator shall notify the commissioner in writing of the nonrenewal of a letter of credit within 30 days after receiving a notice of nonrenewal. No warrantor or warranty plan administrator whose letter of credit has been nonrenewed may offer or sell or renew any warranty contract under the warranty plan on or after the date of nonrenewal until the warrantor obtains security satisfying the requirements of this subsection or alternative security satisfying the requirements of sub. (8) and the warrantor or warranty plan administrator receives written approval from the commissioner that the security or alternative security satisfies the requirements of this section.

(b) The security prescribed in par. (a) shall be not less than \$50,000 plus 15% of the warranty fees and charges collected from consumers for all unexpired warranty contracts in force in Wisconsin on January 1 of the current year.

(c) The security shall continue until released by the commissioner pursuant to a finding that it is not necessary for the reasonable protection of Wisconsin consumers.

(8) ALTERNATE SECURITY REQUIREMENTS. (a) In lieu of the financial security requirements in sub. (7), the warrantor may file an insurance contract procured from an insurer authorized to transact business in Wisconsin under which the insurer assumes the obligations of the warrantor arising out of warranty contracts issued in Wisconsin to the extent that the obligations are not fulfilled by the warrantor due to insolvency or other financial impairment of the warrantor.

(b) In lieu of the financial security requirements in sub. (7), the warranty plan administrator may file an insurance contract procured from an insurer authorized to transact business in Wisconsin under which the insurer assumes the obligations of the warranty plan administrator arising out of warranty contracts issued in Wisconsin to the extent that the obligations are not fulfilled by the warranty plan administrator due to insolvency or other financial impairment of the warranty plan administrator.

(c) The warranty contract shall contain a statement providing the name and address of the insurer assuming the obligation of the warrantor in the event of insolvency or other financial impairment, and instructions on how the consumer may file a claim with such insurer.

(d) The insurance contract furnished under this section shall contain a provision under which the insurer shall notify the commissioner in writing of the termination or nonrenewal of the insurance contract at least 60 days prior to the termination or nonrenewal.

(e) The insurance contract shall cover the obligations under the warranty contracts issued during the period of time that the insurance contract is in force.

(9) CONTRACTS: FILING, REVIEW AND REQUIRED LANGUAGE. (a) 1. As a condition for obtaining a limited certificate of insurance authority to transact a warranty business in Wisconsin, an applicant shall file a copy of all contracts which are an essential or integral part of the conduct of the applicant's business. Contracts which an applicant shall file with the commissioner include, but are not limited to:

- a. Warranty contracts.
- b. Insurance contracts procured and furnished pursuant to sub. (8).
- c. Contracts with any administrator, marketing agent or other entity.
- d. Contracts with providers of any service to be performed pursuant to the obligations assumed under the warranty contract.
- e. Any other contract as may be requested by the commissioner.

2. As a condition of maintaining a limited certificate of insurance authority to transact a warranty business in this state, the warrantor or warranty plan administrator shall file a copy of any modification to a contract filed under subd. 1. prior to using the contract as modified.

(b) The contract shall satisfy the conditions set forth in s. 631.20, Stats., and shall clearly present the obligations being assumed by the warrantor and the obligations being transferred by the warrantor to other parties.

(c) 1. All warranty contracts issued under a warranty plan subject to this section shall contain the following statement, printed in bold type: "THIS WARRANTY IS SUBJECT TO LIMITED REGULATION BY THE OFFICE OF THE COMMISSIONER OF INSURANCE."

2. All warranty contracts issued under a warranty plan subject to this section shall contain a provision under which the purchaser may, within 15 calendar days of the delivery of the warranty contract, reject and return the warranty contract for a full refund less actual costs or charges needed to issue and service the warranty contract.

(10) CERTIFICATE OF AUTHORITY; ISSUANCE AND SUSPENSION OR REVOCATION. (a) Within 90 days of receipt of the completed application, the commissioner shall issue a certificate of authority to transact a warranty business in this state upon finding that all of the requirements of this section have been met and that the applicant is sound, reliable and entitled to public confidence and that the commissioner may reasonably expect the applicant to perform its obligations continuously in the future. Upon issuance of the certificate of authority, the warrantor or warranty plan administrator shall pay the fee required by s. 601.31 (1) (b) 1., Stats.

(b) The commissioner may revoke or suspend a certificate of authority previously granted under this section if:

1. There is any violation of any applicable statute, rule or order.
2. The commissioner finds that the warrantor or warranty plan administrator is unable to conduct a warranty plan in a manner consistent with the protection of Wisconsin citizens and consumers.
3. The financial condition of the warranty plan is such that the interests of Wisconsin citizens and consumers are threatened with imminent and substantial injury.
4. The warrantor or warranty plan administrator makes a material misstatement of fact in the application, annual reports or in connection with any examination conducted by the commissioner.

(11) REPORTS AND EXAMINATION. (a) As a condition prerequisite to the continuation of a limited certificate of insurance authority to transact a warranty business in Wisconsin, every warrantor and warranty plan administrator shall, by March 31 of each year, submit financial statements prepared on an accrual basis in accordance with generally accepted accounting principles and audited by an independent certified public accountant on the financial condition of such warrantor or warranty plan administrator for the preceding calendar year ending December 31 and which shall also include such additional information as the commissioner may require. An annual continuation fee required under s. 601.31 (1) (c) 1., Stats., shall accompany the annual report.

(b) The commissioner may examine the applicant for a certificate of authority and may examine any warrantor or warranty plan administrator who holds a certificate of authority under this section under the procedures of ss. 601.43 to 601.45, Stats.

(12) APPLICABLE STATUTES. In addition to statutes previously set forth in this section, ss. 601.41 to 601.45, 601.61 to 601.73, 628.34, 628.46 and ch. 645, Stats., apply to a warrantor, a warranty plan administrator and the transaction of a warranty business in this state.

(13) TRANSITION REQUIREMENTS. Plans which hold a limited certificate of insurance authority under the current rule on June 1, 1991 need not reapply for a license but shall comply with subs. (7) and (8) effective June 1, 1991, and shall file all contracts under sub. (9) within 60 days of June 1, 1991.

Note: This rule requires use of an application form for warranty plans which may be obtained from the Office of the Commissioner of Insurance, Financial Examinations Bureau, P.O. Box 7873, Madison, Wisconsin 53707-7873.

This rule was first promulgated in 1978 and it was revised in December 1984. This revision is an attempt to update the rule such as to provide more effective regulation and also to more effectively recognize the complexities that currently exist in the warranty plan marketplace. In general, the sale of warranty contracts is clearly the transaction of an insurance business under the provisions of Wisconsin Statutes. The rule as adopted in 1978 exempts warranty plans and contracts from a major portion of the Wisconsin insurance regulatory statutes and administrative rules. Warranty plan corporations have been established in Wisconsin and foreign corporations have been authorized to do business in this state under the limited regulation provided by the administrative rule in existence up until this current revision. It would be unrealistic to significantly change the 1978 plan of exemption from the insurance statutes.

The rule now being promulgated regulates the content of Wisconsin contracts and the rule imposes basic requirements for solvency protection of Wisconsin consumers. The rule makes no attempt to regulate the countrywide operations of entities issuing warranty contracts but it does require periodic financial reports from any such entity and the commissioner has the authority and the responsibility to remove from the

marketplace those companies that are unable to demonstrate reasonable financial and operational solidity.

The regulation of warranty plans and warranty contracts even to the limited extent provided in the revised administrative rule, is complex and difficult because of a number of factors which are unique to warranty contracts and which present the insurance commissioner with a kind of business that has little or no similarity to the traditional insurance mechanism. For example, there is no countrywide system of regulation of warranty plans and warranty contracts. In many states there is no regulation whatsoever and in other states there is partial regulation somewhat comparable to that imposed by the Wisconsin administrative rule. In addition, there is no uniform accounting standard or system applicable to the financial reports submitted to the regulatory authorities. The financial reports that OCI receives are of limited value because of the difficulty in determining or measuring the liabilities assumed under contracts issued in Wisconsin and in the other states in which the company does business. Similarly, the value of the assets held by the warranty company in various locations throughout the country is often difficult to determine. Warranty plan companies are quite often an integral part of a holding company system with intricate contractual relationships between various corporate entities involved with the marketing, the sale of the product that is the subject of the warranty, claims adjustment, and the processing of warranty payments. This revised administrative rule attempts to accomplish reasonable regulatory objectives while at the same time recognizing the difficulties of asserting the entire scheme of insurance regulation.

History: Cr. Register, January, 1978, No. 265, eff. 2-1-78; cr. (6) (c), Register, December, 1984, No. 348, eff. 1-1-85; r. and recr. Register, May, 1991, No. 425, eff. 6-1-91.