State of Wisconsin / OFFICE OF THE COMMISSIONER OF INSURANCE

Scott Walker, *Governor*
Theodore K. Nickel, *Commissioner*

Wisconsin.gov

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RECEIVED
JUN 25 2014
Legislative Reference Bureau

TO: Bruce Hoesly
Legislative Reference Bureau
1 East Main Street, Suite 200
Madison, WI 53701-2037

FROM: Richard B. Wicka, Deputy Chief Legal Counsel
Office of the Commissioner of Insurance

DATE: June 24, 2014

SUBJECT: Sections Ins 2.80 and 50.79, Wis. Adm. Code, relating to reserve and reporting requirements for life and fraternal insurers and affecting small business

Clearinghouse Rule No. 14-008

Enclosed are two originals of the above-referenced order of the Commissioner of Insurance promulgating a rule. The first is to be filed with the Legislative Reference Bureau and the other to be stamped by the Bureau and be retained by OCI.

I have e-mailed you an electronic copy of the rule. For additional information or if you did not get the e-mail, please contact Julie E. Walsh at (608) 264-8101 or e-mail at julie.walsh@wisconsin.gov. Pursuant to s. 227.114 (6), Wis. Stat., I am providing you with the following:

Summary of Final Regulatory Flexibility Analysis

The Office of the Commissioner of Insurance has determined that this rule will not have a significant economic impact on a substantial number of small businesses and therefore a final regulatory flexibility analysis is not required.

Summary of Comments of Legislative Standing Committees

The legislative standing committees had no comments on this rule.

Attachments: 2 Original copies of the rule

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STATE OF WISCONSIN

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OFFICE OF THE COMMISSIONER OF INSURANCE

RECEIVED
JUN 25 2014
Legislative Reference Bureau

I, Theodore K. Nickel, Commissioner of Insurance and custodian of the official records, certify that the annexed rule affecting sections Ins 2.80 and 50.79, Wis. Adm. Code, relating to reserve and reporting requirements for life and fraternal insurers and affecting small business, is duly approved and adopted by this Office on June 24, 2014.

I further certify that I have compared this copy with the original on file in this Office and that it is a true copy of the original, and the whole of the original.

IN TESTIMONY WHEREOF, I have hereunto set my hand at 125 South Webster Street, Madison, Wisconsin, on June 24, 2014.

Theodore K. Nickel
Commissioner

ORDER AMENDING RULES AND REPEALING A TABLE

Office of the Commissioner of Insurance

Rule No. 145:
To repeal s. Ins 2.80 (4) (b) 3. b. and c. and ch. Ins 2 (table); to amend ss. Ins 2.80 (4) (b) 3. g. and i. and 50.79 (3) (a) 4.; and to create s. Ins 50.79 (1) (f).

Relating to:
Reserve and Reporting Requirements for Life and Fraternal Insurers and Affecting Small Business.

Prior approval and publication:
The proposed rule's Statement of Scope, SS 071-12, was approved by the Governor on September 13, 2012, published in Wisconsin Administrative Register No. 681 on September 30, 2012, and approved by the Commissioner on October 15, 2012. The proposed rule was approved by the Governor on March 28, 2014 to submit to the legislature.

ANALYSIS PREPARED BY THE OFFICE OF THE COMMISSIONER OF INSURANCE (OCI)

1. **Statutes interpreted:**

   ss. 600.01, 623.06, Wis. Stats.

2. **Statutory authority:**

   ss. 227.11 (2), 601.41 (3), 601.42 (1g), 623.04, and 623.11, Wis. Stats.

3. **Explanation of OCI's authority to promulgate the proposed rule under these statutes:**

The statutory authority for this rule is ss. 227.11 (2) (a) and 601.41 (3), Wis. Stats., that provides for the commissioner's rule making authority in general. More specifically, ss. 601.42 (1g), and 623.04, Wis. Stats., authorize the commissioner to "promulgate rules specifying the liabilities required to be reported by insurers in the financial statements submitted under s. 601.42 (1g) (a) and the methods shall be consistent with s. 623.06."

The changes are authorized pursuant to ss. 623.04 and 601.42 (1g), Wis. Stats. Under s. 601.42 (1g) (a), Wis. Stat., the commissioner may request "statements, reports, answers to questionnaires and other information, and evidence thereof, in whatever reasonable form the commissioner designates, and at such reasonable intervals as the commissioner chooses, or from time to time."

4. **Related statutes or rules:**

Sections 623.15 and 623.21, Wis. Stats., establish accounting and reserve requirements for all insurers authorized to do business in this states.

5. **The plain language analysis and summary of the proposed rule:**

The proposed rule changes modify the reserve requirements for life and fraternal insurers, and revise and clarify the reporting requirements related to the life reserves. The proposed rule changes also repeal a table that is both outdated and unnecessary.

The proposed rule changes specifically address the four items described below. Changes contemplated in items (a) and (b) would allow Wisconsin regulations to align with the model regulations of the National Association of Insurance Commissioners (NAIC) and the regulations of 18 other states. This consistency would assist domestic insurers specifically, as a significant number of life insurers are doing business in several of the states that have implemented the NAIC model regulations. Changes contemplated in item (c) would ease the administrative burden on the Office of the Commissioner of Insurance (OCI) and foreign insurers doing business in Wisconsin by eliminating an unnecessary filing requirement. Finally, changes contemplated in item (d) would correct an outdated and unnecessary table contained in existing regulation.

(a) Section Ins 2.80, Wis. Admin. Code, establishes the minimum standards for life insurance policy reserves and the method for calculating the reserves. The existing rule includes requirements for a premium deficiency reserve, under which the company can incorporate "X" factors to adjust the mortality factor to a level that is based on the company's own mortality experience. Currently, under s. Ins 2.80 (4), Wis. Admin. Code, the X factors used in the calculation of deficiency reserves are subject to a minimum of 20% and cannot be decreased in any successive policy years. The changes contemplated for the proposed rule would remove these limits on the X factors. When the rule was first enacted, the limits were included to provide additional conservatism. Subsequently, the industry has demonstrated to the NAIC and OCI that the conservative limits are no longer needed. This change could result in a reduction of reserves for some insurers and would create a more level playing field with the 18 states that have already adopted the NAIC model regulation.

(b) Section Ins 50.79 (3) (a) and s. Ins 2.80 (4) (b) 3., Wis. Admin. Code, would be better understood with the addition of clarifying language specifying that the Regulatory Asset Adequacy Issues Summary, a confidential document filed annually with the Commissioner, must disclose the impact of cash flow insufficiencies projected to occur during the interim periods prior to the end of the test period. The current wording is somewhat ambiguous regarding the reporting requirements with respect to deficiencies in interim periods. The anticipated changes would improve the rule by eliminating reporting inconsistencies.

(c) Currently, all licensed life and fraternal insurers must submit a confidential Regulatory Asset Adequacy Issues Summary annually to the Commissioner. Proposed changes to the language of s. Ins 50.79, Wis. Admin. Code, would not require foreign insurers (approximately 450 companies) to submit the Summary unless specifically requested by the Commissioner.

(d) The proposed rule would repeal the table of select mortality factors at the end of ch. Ins 2, Wis. Admin. Code, which is outdated and unnecessary. Since the original rule was adopted a more accurate table contained in a NAIC model rule has been released, and is referenced in two places in s. Ins 2.80 (4), Wis. Admin. Code, pursuant to s. 601.41 (3)(b), Wis. Stats., which specifically grants OCI the authority to cross-reference NAIC tables. The mortality factors for calculating reserves contained

within sub. (4) are more accurate, and are the correct factors insurers should use for their reserve calculations. Therefore the table at the end of ch. Ins. 2, Wis. Admin. Code, should be removed as it is likely to cause confusion and incorrect reserve calculations.

6. Summary of and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule:

The OCI is not aware of any existing or proposed federal regulations intended to address the activities to be regulated by the proposed rule changes.

7. Comparison of similar rules in adjacent states as found by OCI:

Illinois: 215 ILCS 5/223 (1a) (B) contains reserve and reporting provisions comparable to Wisconsin's existing rules.

Iowa: IAC § 508.36 and § 512B.23; § 191-47.4 (508), IA Admin. Code contain reserve provisions more stringent than Wisconsin's existing rules and reporting requirements comparable to the proposed rule change.

Michigan: MCLS § 500.837 (2013) and § 500.8186 (2013), and R. 500.853, Rule 13, Mich. Admin. Code and R. 500.995, Rule 5, Mich. Admin. Code, contain reserve and reporting provisions comparable to Wisconsin's existing rules. In addition, Michigan is considering the adoption of NAIC Model Law 530 with the 2009 revisions comparable to the proposed Wisconsin rule changes.

Minnesota: Minn. R. 2747.0030 Subp. 2., Admin. Code and § 61A.258 Subd. (1), Minn. Stat. (2013) address the use of minimum standards for life insurance policy reserves, the method for calculating the reserves, and the select mortality factor tables for both basic and deficiency reserves using the 2001 CSO mortality table, comparable to Wisconsin's current law, and Minn. R. 2711.0070, Admin. Code contains reporting requirements comparable to the proposed rule change.

8. A summary of the factual data and analytical methodologies that OCI used in support of the proposed rule and how any related findings support the regulatory approach chosen for the proposed rule:

The OCI is proposing these rule changes based on the NAIC model laws, the financial information of insurers, the need to ensure reporting consistency and the requirement to remove incorrect information. The changes will bring Wisconsin's requirements for life insurers into line with the NAIC model regulations and those of 18 other states.

9. Any analysis and supporting documentation that OCI used in support of OCI's determination of the rule's effect on small businesses under s. 227.114:

Based upon revenue and ownership structure, there may be an effect on small businesses, but any such effect would be minimal. Very few, if any, insurers meet the definition of small businesses, and those that might would be assisted by the more

uniform, less-stringent reserve and reporting requirements. Any effect on non-insurance small businesses would be beneficial, in that insurance regulations would be more understandable, accurate, and uniform.

10. See the attached Private Sector Fiscal Analysis.

11. A description of the Effect on Small Business:

This rule will have little or no effect on small businesses.

12. Agency contact person:

A copy of the full text of the proposed rule changes, analysis and fiscal estimate may be obtained from the Web site at: **http://oci.wi.gov/ocirules.htm** or by contacting Inger Williams, OCI Services Section, at:

Phone:	(608) 264-8110
Email:	inger.williams@wisconsin.gov
Address:	125 South Webster St – 2nd Floor, Madison WI 53703-3474
Mail:	PO Box 7873, Madison, WI 53707-7873

13. Place where comments are to be submitted and deadline for submission:

The deadline for submitting comments is 4:00 p.m. on March 7, 2014.

Mailing address:

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Legal Unit - OCI Rule Comment for Rule s. Ins 071-12
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Timothy.Cornelius@wisconsin.gov

Web site: **http://oci.wi.gov/ocirules.htm**

The proposed rule changes are:

SECTION 1. Ins 2.80 (4) (b) 3. b. and c. are repealed.

SECTION 2. Ins 2.80 (4) (b) 3. g. and i. are amended to read:

Ins 2.80 (4) (b) 3. g. The appointed actuary may decrease X at any valuation date as long as X ~~does not decrease in any successive policy years and as long as it~~ continues to meet all the requirements of this subdivision.

Ins 2.80 (4) (b) 3. i. If X is less than 100% at any duration for any policy, the appointed actuary shall annually prepare an actuarial opinion and memorandum for the company in conformance with the requirements of s. Ins 50.78; the appointed actuary shall disclose in the regulatory asset adequacy issues summary the impact of any insufficiency of assets to support the payment of benefits and expenses and the establishment of statutory reserves during one or more interim periods; and the appointed actuary shall annually offer an opinion for all policies subject to this section as to whether the mortality rates resulting from the application of X meet the requirements of this subdivision. This opinion shall be supported by an actuarial report, subject to appropriate actuarial standards of practice promulgated by the actuarial standards board of the American academy of actuaries. It shall reflect anticipated future mortality, without recognition of mortality improvement beyond the valuation date, taking into account relevant emerging experience.

SECTION 3. Chapter Ins 2 (table) is repealed.

SECTION 4. Ins 50.79 (1) (f) is created to read:

Ins 50.79 (1) (f) An insurer licensed but not domiciled in this state shall provide the office of the commissioner of insurance a regulatory asset adequacy issues summary described under par. (e) upon request.

SECTION 5. Ins 50.79 (3) (a) 4. is amended to read:

Ins 50.79 (3) (a) 4. Comments on any interim results that may be of significant concern to the appointed actuary, including, the impact of any insufficiency of assets to support the payment of benefits and expenses and the establishment of statutory reserves during one or more interim periods.

SECTION 6. EFFECTIVE DATE. These changes shall take effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in s. 227.22 (2) (intro.), Stats.

Dated at Madison, Wisconsin, this 24th day of June, 2014.

Theodore K. Nickel
Commissioner