

CHAPTER 61

INSURANCE DIVISION; LIFE INSURANCE

61.01 LIFE INSURANCE COMPANIES.

HISTORY. 1895 c. 175 s. 63; 1901 c. 143; R.L. 1905 s. 1687; G.S. 1913 s. 3459; G.S. 1923 s. 3372; M.S. 1927 s. 3372.

An annuity contract, authorized by statute to be issued, and issued by a life insurance company, is not a "security" of the sort dealt with by the blue sky law, and so is not subject to the administrative powers of the securities commission. *Bates v Equitable Life*, 206 M 482, 288 NW 834.

Provisions for distribution as dividends of divisible profits obtained by participating in life insurance policies designated by defendant company as "charter" policies, which prevented the exercise of a reasonable discretion by the board of directors as to how much of the earnings and profits should be allocated to the visible surplus, are invalid as a violation of section 61.16. *Lommen v Modern Life*, 212 M 577, 4 NW (2d) 640.

As against other participating policies based on the same mortality tables and assumption of interest, the "charter" policy provisions discriminated, in violation of sections 61.05 and 61.06, by giving an advantage in fact to the "charter" policies. *Lommen v Modern Life*, 212 M 577, 4 NW(2d) 640.

BANKRUPTCY. Where West Virginia corporation dealt exclusively in sale of annuity contracts for many years and assumed status of life insurance company only a short time before receivership, but corporation engaged in business of life insurance during its last three months of activity, while continuing to a limited extent its annuity business, and such combination of activities was precisely that which a life insurance company in West Virginia is authorized to perform, the corporation was an "insurance company" excluded from benefits of bankruptcy act. *Sims v Fidelity*, 129 F(2d) 442.

61.02 PREREQUISITES OF ALL LIFE COMPANIES.

HISTORY. R.L. 1905 s. 1688; G.S. 1913 s. 3460; G.S. 1923 s. 3373; M.S. 1927 s. 3373.

NATURE OF APPLICATION. An insurance company cannot contend that an application, which it procured for the purpose of complying with this section, was a mere unaccepted offer rather than a valid contract conditioned upon issuance of a charter. *Conley v Mod. L. Ins. Co.* 172 M 482, 215 NW 836.

61.03 FOREIGN COMPANIES MAY BECOME DOMESTIC.

HISTORY. 1897 c. 95 ss. 1, 2; R.L. 1905 s. 1696; G.S. 1913 s. 3486; G.S. 1923 s. 3374; M.S. 1927 s. 3374.

IMPLICATION. This section and section 61.12 imply that a foreign life insurance company could, by virtue of a license to transact business in this state, lawfully take a real estate mortgage and foreclose it by advertisement without complying with any other statute. *Morris v Penn Mut. L. Ins. Co.* 196 M 403, 265 NW 278.

61.04 RIGHTS OF MEMBERS OF DOMESTIC MUTUAL COMPANIES.

HISTORY. 1895 c. 175 s. 37; 1901 c. 143 s. 73; R.L. 1905 s. 1697; G.S. 1913 s. 3487; G.S. 1923 s. 3375; 1925 c. 53 s. 1; M.S. 1927 s. 3375.

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61.05 DISCRIMINATION IN ACCEPTING RISKS.

HISTORY. 1895 c. 175 ss. 66, 67; R.L. 1905 s. 1689; G.S. 1913 s. 3461; G.S. 1923 s. 3376; M.S. 1927 s. 3376.

Effect of dating contract of insurance in advance of payment of premium. *First National v New York Life*, 192 M 609, 255 NW 831, 258 NW 13, 592.

The prohibition is against discrimination not only in acceptance of risks, but also in "rates, premiums, dividends, or benefits of any kind, or by way of rebates, between persons of the same class". *Lommen v Modern Life*, 206 M 615, 289 NW 582; 212 M 577, 4 NW(2d) 639.

The commissioner properly disapproved the form of the policy reserving "a decreasing surrender charge having a maximum at the end of the first policy year if not more than three and one-half per cent of the face of the amount of the policy." *Hancock Life v Yetka*, 209 M 82, 295 NW 409.

Laws 1941, Chapter 208, prohibits discrimination in the issuance of automobile insurance policies between persons of the same class or on racial grounds. 26 MLR 230.

61.06 DISCRIMINATION, REBATES.

HISTORY. 1907 c. 277 ss. 1, 2; G.S. 1913 ss. 3462, 3463; G.S. 1923 ss. 3377, 3378; M.S. 1927 ss. 3377, 3378.

See notes under section 61.05.

The insured not having exercised the option given by the terms of his life insurance policy within the stipulated time after lapse for non-payment of premium, the policy became automatically a paidup policy for the amount that the then cash value of the policy would purchase as a net single premium. *Moshou v Berkshire Life*, 203 M 90, 280 NW 14.

61.07 DISBURSEMENTS, HOW TO BE EVIDENCED.

HISTORY. 1907 c. 40; G.S. 1913 s. 3500; G.S. 1923 s. 3379; M.S. 1927 s. 3379.

61.08 SOLICITORS, AGENTS OF COMPANY.

HISTORY. 1907 c. 41; G.S. 1913 s. 3485; G.S. 1923 s. 3380; M.S. 1927 s. 3380.

PURPOSE. This section was enacted solely to prevent a life insurance company from contending, in controversies upon policies issued by it, that the soliciting agent was the agent of the insured. *Hertz v Sec. Mut. Ins. Co.* 131 M 147, 154 NW 745.

SCOPE. This section and section 72.05 are not so broad as to prevent the insurance company's insistence on the payment of a cash premium as a condition precedent in special cases as where a soliciting agent may be authorized to make effective a contract of present insurance. *Braman v Mut. L. Ins. Co.* 73 F(2d) 391.

See also Prosser, Making of a Contract of Insurance in Minnesota, 17 MLR 567, 597, and Note, 16 MLR 422.

61.09 POLITICAL CONTRIBUTIONS PROHIBITED.

HISTORY. 1907 c. 42; G.S. 1913 s. 3501; G.S. 1923 s. 3381; M.S. 1927 s. 3381.

61.10 MISREPRESENTATION.

HISTORY. 1907 c. 43 ss. 1, 2; G.S. 1913 ss. 3488, 3489; G.S. 1923 ss. 3382, 3383; M.S. 1927 ss. 3382, 3383.

61.11 INVESTMENT OF DOMESTIC LIFE INSURANCE COMPANIES' FUNDS.

HISTORY. 1929 c. 111 s. 1; 1935 c. 365 ss. 1, 2; 1937 c. 87 ss. 1, 2; M. Supp. s. 3384-1; 1941 c. 140; 1945 c. 557 s. 1.

61.12 REAL ESTATE HOLDINGS OF DOMESTIC LIFE COMPANIES.

HISTORY. 1907 c. 163 s. 2; G.S. 1913 s. 3491; G.S. 1923 s. 3385; M.S. 1927 s. 3385; 1945 c. 558 s. 1.

IMPLICATION. This section and section 61.03 imply that a foreign life insurance company could, by virtue of a license to transact life insurance business in this state, lawfully take a real estate mortgage and foreclose it by advertisement without complying with any other statute. *Morris v Penn Mut L. Ins. Co.* 196 M 403, 265 NW 278.

61.13 REINSURANCE.

HISTORY. 1895 c. 175 s. 70; R.L. 1905 s. 1690; G.S. 1913 s. 3464; G.S. 1923 s. 3386; 1927 c. 52; M.S. 1927 s. 3386.

61.14 PROCEEDS OF LIFE POLICY, WHO ENTITLED TO.

HISTORY. 1895 c. 175 s. 71; R.L. 1905 s. 1691; G.S. 1913 s. 3465; G.S. 1923 s. 3387; M.S. 1927 s. 3387.

SCOPE. Since the statute is one of exemption, creditors cannot reach the cash surrender value of a policy even though the insured has retained the right to change beneficiaries. *Murphy v Casey*, 150 M 107, 184 NW 783; *Ralph v Cox*, 1 F(2d) 435, discussed in 9 MLR 279, overruling *Aberle v McQuid*, 283 F 779, discussed in 7 MLR 163; *In re Johnson*, 176 F 591.

This section does not apply where the payment is to be made to the insured's executors, administrators, and assigns. *Remley v Trav. Ins. Co.* 108 M 31, 121 NW 230.

A savings plan annuity contract in which the insurance feature is nothing more than the return of the cash surrender value does not come within this section. *In re Walsh*, 18 F Supp. 567.

PLEADINGS AND PROOF. To maintain an action by creditors of a deceased insured to recover premiums paid while he was insolvent, fraud must not only be alleged but proved. *Ross v Minn. Mut. L. Ins. Co.* 154 M 186, 191 NW 428, 31 ALR 46; *Cook v Prud. Ins. Co.* 182 M 496, 235 NW 9.

NAMED BENEFICIARY'S RIGHTS. Although an irrevocable beneficiary has vested rights in a policy, they are subject to the terms of the contract. When one of these is a provision for loans to the insured, the beneficiary cannot have cancellation of loans so made. *Stahel v Prud. Ins. Co.* 189 M 405, 249 NW 713.

Under the provisions of sections 61.14, 61.15, the allegation offered by way of amendment if proven would not be a defense to plaintiff's cause of action. *Kassmir v Prudential Insurance*, 191 M 350, 254 NW 446.

Statutory exemption of proceeds of life insurance does not extend to property purchased therewith. *Ross v Simser*, 193 M 407, 258 NW 582.

Claim that the premiums on the insurance were paid in defraud of creditors. *State ex rel v District Court*, 195 M 170, 262 NW 155.

In a suit upon a life insurance policy, the trial court's refusal to exercise its inherent power to order in as additional defendants the four creditors of insured's estate who claimed that premiums upon the policy were paid in fraud of them, was an abuse of judicial discretion. *Minnesota National v Equitable-Life*, 197 M 340, 267 NW 202.

Cash surrender value of life policies naming wife as beneficiary is not an asset to bankrupt's estate, notwithstanding bankrupt's right to change the beneficiary. *Harrison v Miller*, 74 F(2d) 88; *In re Horwitz*, 3 F. Supp. 18; *In re Walsh*, 19 F. Supp. 567.

This point is discussed in 17 MLR 217.

See note, 23 MLR 616, 624; note, 6 MLR 304; 6 MLR 170; 8 MLR 549; and 21 MLR 857.

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61.15 EXEMPTION IN FAVOR OF FAMILY; CHANGE OF BENEFICIARY.

HISTORY. 1895 c. 175 s. 71; R.L. 1905 s. 1692; G.S. 1913 s. 3466; G.S. 1923 s. 3388; M.S. 1927 s. 3388.

See cases and citations under section 61.14.

Ex Laws 1937, Chapter 50, does not violate Minnesota constitution, article 4, section 27. It authorizes the imposition of an inheritance or transfer tax upon the proceeds of the life insurance policy above the exemption. *DeCoster v Commissioner*, 216 M 5, 11 NW(2d) 489.

Inheritance taxation; taxation of life insurance proceeds. 28 MLR 200.

61.16 ANNUAL APPORTIONMENT AND ACCOUNTING OF SURPLUS ON POLICIES.

HISTORY. 1907 c. 198 s. 1; G.S. 1913 s. 3492; G.C. 1923 s. 3389; M.S. 1927 s. 3389.

So-called "charter" policies may be sustained under the plan for accounting and adjusting based on the "net cost" theory and the trial court's imposition of a lien on the earnings of the "charter" policies. The so-called "charter" policies are, however, in violation of the provisions of sections 61.05, 61.06, and 61.16. *Lommen v Modern Life*, 212 M 577, 4 NW(2d) 639.

61.17 CONTINGENCY RESERVE.

HISTORY. 1907 c. 198 s. 2; G.S. 1913 s. 3493; G.S. 1923 s. 3390; 1925 c. 37; M.S. 1927 s. 3390.

61.18 POLICYHOLDER TO CHOOSE METHOD OF APPLYING SURPLUS.

HISTORY. 1907 c. 198 s. 3; G.S. 1913 s. 3494; G.S. 1923 s. 3391; M.S. 1927 s. 3391.

EFFECT OF EXERCISING OPTION. If the insured has exercised an option to have his apportioned surplus carried as an interest-bearing savings fund, it would be a breach of contract for the company to apply it in payment of overdue premiums to prevent the policy's lapsing. *Elton v N. W. Nat. L. Ins. Co.* 192 M 116, 255 NW 857.

61.19 AUTOMATIC PAID-UP OR EXTENDED INSURANCE, IN CERTAIN CASES.

HISTORY. 1907 c. 198 s. 4; G.S. 1913 s. 3495; G.S. 1923 s. 3392; M.S. 1927 s. 3392.

TIME OF TAKING EFFECT. Plaintiff's contention, that the paid-up insurance did not begin to run during the 90 days which were, by the policy, given the insured after default to exercise an option as to the method of applying the cash surrender value, and that this 90 days did not begin to run during the 31 days grace, overruled. *Erickson v Equit. L. Assur. Soc.* 193 M 273, 258 NW 736; *Schoonover v Prud. Ins. Co.* 187 M 343, 245 NW 476.

DEDUCTION OF INDEBTEDNESS. The notice required when the policy is avoided for failure to repay advances made in the form of a policy note is not required in order that the so-called indebtedness shall be deducted from the cash surrender value when this is applied to purchase extended insurance. *Palmer v Cent. Life Assur. Soc.* 193 M 306, 258 NW 732.

DOUBLE INDEMNITY BENEFITS. Policy provisions that the double indemnity benefit would not be included in the extended insurance after the policy lapsed are not contrary to this section. *Johnson v Cent. L. Assur. Soc.*, 187 M 611, 246 NW 354, 91 ALR 1058.

The insured not having exercised the option given by the terms of the life insurance policy within the stipulated time after lapse for non-payment of premiums, the policy became automatically a paid-up policy for the amount of the then cash value of the policy would purchase as a net single premium. *Moshou v Berkshire*, 203 M 90, 280 NW 14.

61.20 NO WAIVER OF PROVISIONS.

HISTORY. 1907 c. 198 s. 5; G.S. 1913 s. 3496; G.S. 1923 s. 3393; M.S. 1927 s. 3393.

61.21 EXTENSION OF TIME FOR PAYMENT OF PREMIUMS.

HISTORY. 1925 c. 343 s. 1; M.S. 1927 s. 3393-1.

61.22 ANNUAL APPORTIONMENT OF SURPLUS ON EXISTING POLICIES.

HISTORY. 1907 c. 201 s. 1; G.S. 1913 s. 3497; G.S. 1923 s. 3394; M.S. 1927 s. 3394.

"Reserve funds required by law", within the provision for deduction in federal tax statutes, does not include "solvency reserves" which state law or state officer requires insurance companies in sound financial condition to maintain. *Continental v United States*, 8 F. Supp. 475, 481.

61.23 EXCEPTIONS FROM PROVISIONS OF PREVIOUS SECTION.

HISTORY. 1907 c. 201 s. 2; G.S. 1913 s. 3498; G.S. 1923 s. 3395; M.S. 1927 s. 3395.

61.24 MISSTATEMENT, WHEN NOT TO INVALIDATE POLICY.

HISTORY. 1895 c. 175 s. 71; R.L. 1905 s. 1693; G.S. 1913 s. 3467; G.S. 1923 s. 3396; M.S. 1927 s. 3396.

CONSTRUCTION. This section, rather than section 60.85, applies to an insurance policy issued without a medical examination even though the application is oral, not written. *Kueppers v Met. L. Ins. Co.* 199 M 248, 271 NW 453.

This section prevents the application of the rule that a policy without medical examination procured by one person on the life of another is void. *Dight v Palladium L. Ins. Co.* 201 M 247, 276 NW 3.

The rule of *Shaughnessy v N. Y. L. Ins. Co.* 163 M 134, 203 NW 600, that where the insured has the opportunity and ability to read the application, he will not be permitted to show ignorance of what the application contained, does not apply to policies issued without previous examination. *Hafner v Prud. Ins. Co.* 188 M 481, 247 NW 576.

Section 60.85, rather than this section, governs the reinstatement of a life policy, even though no physical examination is required for the reinstatement. *Robbins v N. Y. L. Ins. Co.*, 195 M 205, 262 NW 210, 872.

WILFULLY FALSE, WHAT IS. A wilfully false and intentionally misleading answer under this section is one which is consciously made with a premeditated design to so falsify the facts as to lead the insurer to act where otherwise he would not. *Schmidt v Prud. Ins. Co.* 190 M 239, 251 NW 683.

CONDITION PRECEDENT. The insurer cannot circumvent this section by inserting in the policy a condition that the policy will not take effect unless the insured is in sound health at the date of insurance. *Thompson v Prud. Ins. Co.* 196 M 372, 265 NW 28; *Schmidt v Prud. Ins. Co.* 190 M 239, 251 NW 683; *Haan v Palladium Nat. L. Ins. Co.* 201 M 135, 275 NW 689.

This section applies to a policy of life insurance issued without a medical examination; and such policy is not avoided because of false representation unless they are wilfully false or intentionally misleading. *Elness v Prudential*, 190 M 169, 251 NW 183; *Thompson v Prudential*, 196 M 374, 265 NW 28.

The normal and true function of an application is as a proposal to enter into an insurance contract with the setting forth of information thought material by the insurer to enable it to determine the desirability of making such a contract. Whether an insurer will enter into the contract is entirely voluntary. *First Trust v Kansas City Life*, 79 F(2d) 51.

Delivery in good health clause; effect thereon of statute limiting the effect of warranties. 20 MLR 684.

Knowledge by insurer of breach of condition in "non-medical" life policy that insured shall be in sound health when policy delivered and effect of notice of limitation on agent's authority. 24 MLR 874.

Misrepresentation by applicant. 28 MLR 156.

61.25 DESCRIPTION OF POLICY ON ITS FACE.

HISTORY. 1895 c. 175 s. 72; R.L. 1905 s. 1694; G.S. 1913 s. 3468; G.S. 1923 s. 3397; M.S. 1927 s. 3397.

61.26 POLICIES.

HISTORY. 1907 c. 220 s. 1; G.S. 1913 s. 3470; G.S. 1923 s. 3398; M.S. 1927 s. 3398.

61.27 FORMS.

HISTORY. 1907 c. 220 s. 2; G.S. 1913 s. 3471; G.S. 1923 s. 3399; M.S. 1927 s. 3399.

CONSTRUCTION. While it is the general rule that insurance contracts will be construed most favorably to the insured, this does not apply to standard provisions required by statutes. These are to be construed as are other contracts. *Johnson v Cent. L. Assur. Soc.* 187 M 611, 246 NW 354, 91 ALR 1058; *Palmer v Cent. L. Assur. Soc.* 193 M 309, 258 NW 732.

PREMIUMS. Policies not in the form provided in this section must include a provision that all premiums shall be payable in advance. Where there is no acknowledgment in the policy of receipt of the premium, the delivery of the policy merely gives rise to a rebuttable presumption that there had been a payment of the first premium or an extension of time for its payment. *Reagan v Phil. L. Ins. Co.* 165 M 186, 206 NW 162.

DOUBLE INDEMNITY. Policies providing for double indemnity in case of death by accident are not standard form policies. *Johnson v Cent. L. Assur. Soc.* 187 M 611, 246 NW 354, 91 ALR 1058.

SURRENDER CHARGE. This section authorizes the deduction of a surrender charge from the cash surrender value whether that value be paid the insured upon surrender of the policy or secondary term insurance is purchased with it. *Erickson v Equit. L. Assur. Soc.*, 193 M 269, 258 NW 736.

POLICY LOANS are really payments to the insured against the reserve on the policy and do not create a personal liability of the insured but are merely deducted from the amount the insurer must ultimately pay. They never could be sued for. *Palmer v Cent. L. Assur. Soc.* 193 M 306, 258 NW 732.

MISCELLANEOUS. Extension contract provision concerning use of an accrued annual dividend construed. *Mickelson v Equit. L. Assur. Soc.* 190 M 28, 251 NW 1.

The commissioner of insurance is required to approved the forms of all contracts proposed to be issued. *Bates v Equitable*, 206 M 486, 288 NW 834.

In general, sections 61.26 and 61.27 are permissible. They are mandatory as to requiring participation and in prohibiting discrimination. *Lommen v Modern Life*, 206 M 615, 289 NW 582.

Legality of a single premium policy. 1936 OAG 273, June 24, 1935 (254a).

Under the admitted facts the certificate was a term life insurance contract and there can be no recovery. *Mohne v American Union*, 216 M 303, 12 NW(2d) 615.

General questions in applications for insurance concerning former ailments do not require the disclosure of ailments of a trivial, temporary, or unimportant nature, but only those of a serious, dangerous, or permanent character. A material misrepresentation in an application for insurance, made with intent to deceive and defraud, avoids the policy, and even though a misrepresentation is made without intent to deceive or defraud, if the risk of loss is increased thereby, the policy is avoided. *Sanne v Metropolitan Life*, 218 M 181, 15 NW(2d) 524.

Double indemnity provisions in a life policy must be construed and applied as written; but any construction so unduly restrictive that it would defeat the ends of accident insurance, must be avoided. *Kundiger v Metropolitan*, 218 M 273, 15 NW(2d) 487.

Where life policy named insured's wife as beneficiary but permitted change of beneficiary, insured had right to change the beneficiary without wife's consent. *Banker Life v Doering*, 54 F. Supp. 303.

Generally, an insured, in making a change of beneficiary in a life policy, must follow the method prescribed in the policy. In an action involving the question whether insured's acts were sufficient to change beneficiary of life policy, all written communications between insured and insurance company relative to attempted change of beneficiary were admissible for the purpose of showing the insured's intent, extent of efforts to effect the change, and insured's asserted reasons for failing to send in the policy to company for endorsement. *Doering v Buechler*, 146 F(2d) 784.

Under Minnesota law, a surety bond is governed by laws applicable to contracts of insurance. Any misrepresentation or concealment with intent to deceive and defraud or any misrepresentation or concealment regardless of intent which increases the risk of loss, avoids a surety bond. *Northwestern Jobbers v Nat'l Surety*, 54 F. Supp. 716.

Innocent misrepresentation of health in insurance applications. 28 MLR 157.

See Prosser, Making of a Contract of Insurance in Minnesota, 17 MLR 566, 575; 11 MLR 254; Note, 3 MLR 525.

61.28 EXCEPTIONS.

HISTORY. 1907 c. 220 s. 3; G.S. 1913 s. 3475; G.S. 1923 s. 3400; M.S. 1927 s. 3400.

61.29 PRELIMINARY TERM PROVISIONS.

HISTORY. 1907 c. 220 s. 4; G.S. 1913 s. 3476; G.S. 1923 s. 3401; M.S. 1927 s. 3401.

61.30 PROVISIONS INCLUDED IN EVERY POLICY.

HISTORY. 1907 c. 220 s. 5; 1913 c. 152; G.S. 1913 s. 3477; G.S. 1923 s. 3402; 1925 c. 247 s. 1; M.S. 1927 s. 3402.

(1) A promissory note may be given in payment of a premium. The rule that a note given for an antecedent debt does not discharge the debt unless expressly given and received as an absolute payment does not apply since this section requires that the premium be paid in advance. *Coughlin v Reliance L. Ins. Co.* 161 M 446, 201 NW 920.

(3) Although a clause making a policy incontestable after one year from its date of issue unless the insured dies in such year, in which case it shall be incontestable after two years from its date of issue, is more restrictive than that required by this section, it is a valid provision. *Mut. L. Ins. Co. v Conley*, 55 F(2d) 421.

At death all rights under the policy become fixed and if the insured died during the period when the policy is contestable, the insurer may set up its defenses although the suit is actually brought after the period of contestability has expired. *Mut. L. Ins. Co. v Conley*, 55 F(2d) 421; *Mut. L. Ins. Co. v Stevens*, 157 M 253, 195 NW 913; *Indianapolis L. Ins. Co. v Aaron*, 158 M 359, 197 NW 757, 31 ALR 100, discussed in 8 MLR 624; *N. W. Mut. L. Ins. Co. v Laury*, 174 M 498, 219 NW 759.

Where the holder of a life insurance policy dies before the policy becomes incontestable there is an adequate remedy at law to the company and an action in equity to cancel the policy will not be entertained. *N. W. Mut. L. Ins. Co. v Laury*, 174 M 498, 219 NW 759.

(7) This provision is applicable to single premium policies. *John Hancock Mut. L. Ins. Co. v Yetka*, 209 M 82, 295 NW 409.

(8) The legislature did not, by this section, intend to require notice prior to the deduction of existing indebtedness on the policy upon lapse for nonpayment of premiums. *Palmer v Cent. L. Assur. Soc.* 193 M 306, 258 NW 732.

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By a loan application, the insured stipulated that all dividends be applied on the loan. As the loan was never made, the dividend should be applied as stated in the original policy. There was no election that it be applied otherwise than by purchase of extended insurance. *Mickleson v Equitable*, 190 M 28, 251 NW 1.

Construction and application of section 61.30, enumerations (3) and (6). *Joyce v New York Life*, 199 M 74, 250 NW 674, 252 NW 427.

In an action to recover instalment payments under policy providing for certain "benefits" in event of insured becoming totally and permanently disabled words employed in insurance contract must be so construed as to make effective the general insurance purpose. *Bahneman v Prudential*, 193 M 32, 257 NW 514.

A surrender charge of not exceeding two and one-half per cent is authorized by this section. *Erickson v Equitable*, 193 M 273, 258 NW 736.

In the instant case the incontestability provision was excepted as to benefits for total disability. *Schoedler v New York Life*, 201 M 333, 276 NW 235.

The participation provision is not required in non-participating policies, nor those on under-average lives, nor those issued in exchange for lapsed or surrendered policies: *Lommen v Modern Life*, 206 M 615, 289 NW 582.

Under Minnesota law, word "policy" as applied to insurance, may be an ambiguous term and may mean entire contract between parties, or it may mean that part of the contract excluding attached papers which define none of the terms of insurance. *First Trust Co. v Kansas City Life*, 79 F(2d) 48.

A single premium policy is legal. 1936 OAG 273, June 24, 1935 (254a).

Terms of contract. 17 MLR 575.

Incontestability clauses; effect on action for damages based on fraud of insured. 21 MLR 455.

Effect of incontestable clause on disability provisions. 22 MLR 569.

Laws 1941, Chapter 208, prohibits discrimination in the issuance of automobile insurance policies between persons of the same class on racial grounds. 26 MLR 230.

See 21 MLR 454.

61.31 ADDITIONAL CONDITIONS IN POLICIES.

HISTORY. 1913 c. 426 s. 1; G.S. 1913 s. 3472; G.S. 1923 s. 3403; M.S. 1927 s. 3403.

61.32 RIDERS ATTACHED TO POLICIES.

HISTORY. 1913 c. 426 s. 2; G.S. 1913 s. 3473; G.S. 1923 s. 3404; M.S. 1927 s. 3404.

61.33 RIDERS ATTACHED TO EXISTING POLICIES.

HISTORY. 1913 c. 426 s. 3; G.S. 1913 s. 3474; G.S. 1923 s. 3405; M.S. 1927 s. 3405.

61.335 POLICIES MAY CONTAIN CERTAIN PROVISIONS.

HISTORY. 1943 c. 156 s. 1; 1945 c. 346 s. 1.

61.34 PROVISIONS WHICH NO POLICY MAY INCLUDE.

HISTORY. 1907 c. 220 s. 6; G.S. 1913 s. 3478; G.S. 1923 s. 3406; M.S. 1927 s. 3406; 1941 c. 218.

That portion of the dividend not used as a premium was sufficient to carry the insurance beyond the date of insured's death so that the beneficiaries may recover as a matter of law. *Mickleson v Equitable*, 190 M 28, 251 NW 1.

61.35 PRELIMINARY TERM POLICIES.

HISTORY. 1907 c. 220 s. 7; G.S. 1913 s. 3479; G.S. 1923 s. 3407; M.S. 1927 s. 3407.

61.36 FORMS OF POLICY, APPROVAL.

HISTORY. 1907 c. 220 s. 8; G.S. 1913 s. 3480; G.S. 1923 s. 3408; M.S. 1927 s. 3408.

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APPLICATION FORM is not required to be filed and approved. First Trust Co. of St. Paul v Kansas City L. Ins. Co. 79 F(2d) 48.

Statute requiring form of life policy to be approved by the insurance commissioner as condition of its issuance, does not apply to portion of application containing questions, answers and signature of the insured. First Trust v Kansas City Life, 79 F(2d) 48.

61.37 RECIPROCAL PROVISIONS IN POLICIES.

HISTORY. 1907 c. 220 s. 9; G.S. 1913 s. 3481; G.S. 1923 s. 3409; M.S. 1927 s. 3409.

61.38 EXCEPTIONS.

HISTORY. 1907 c. 220 s. 10; 1909 c. 295 s. 1; G.S. 1913 s. 3482; G.S. 1923 s. 3410; M.S. 1927 s. 3410; 1945 c. 602 s. 1.

The sum received by taxpayer as monthly payments under an annuity policy and as principal sum on surrender thereof, in excess for amount paid for policy was taxable as "ordinary income" rather than as "net capital gain". Bodine v Commissioner, 103 F(2d) 985.

Effect of distinction between "industrial insurance", "term insurance", and "group" insurance. OAG Feb. 21, 1944 (253b-4).

61.39 COMPANY DEFINED.

HISTORY. 1907 c. 220 s. 11; G.S. 1913 s. 3483; G.S. 1923 s. 3411; M.S. 1927 s. 3411.

61.40 LIFE POLICIES TO CONTAIN ENTIRE CONTRACT.

HISTORY. 1907 c. 44 s. 1; G.S. 1913 s. 3469; G.S. 1923 s. 3412; M.S. 1927 s. 3412.

WHEN APPLICABLE. This section does not apply only at the time of issuing the policy. A provision in a note given for a subsequent premium that there shall be a forfeiture of the policy for nonpayment of the note is nugatory if the policy does not contain language declaring a forfeiture for nonpayment of notes given for a premium. Coughlin v Reliance L. Ins. Co. 161 M 446, 201 NW 920.

61.41 COUPON POLICIES FORBIDDEN.

HISTORY. 1913 c. 443 s. 1; G.S. 1913 s. 3484; G.S. 1923 s. 3413; M.S. 1927 s. 3413.

61.42 ADDITIONAL DATA IN ANNUAL STATEMENTS.

HISTORY. 1907 c. 243 s. 1; G.S. 1913 s. 3296; G.S. 1923 s. 3414; M.S. 1927 s. 3414.

61.43 STOCK AND MUTUAL LIFE INSURANCE COMPANIES.

HISTORY. 1927 c. 54 s. 1; M.S. 1927 s. 3414-1.

61.44 APPLICATION.

HISTORY. 1927 c. 54 s. 2; M.S. 1927 s. 3414-2.

61.45 RIGHTS OF STOCKHOLDERS.

HISTORY. 1927 c. 54 s. 3; M.S. 1927 s. 3414-3.

61.46 EXISTING COMPANIES; AMENDMENT TO ARTICLES OF INCORPORATION.

HISTORY. 1927 c. 54 s. 4; M.S. 1927 s. 3414-4.

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61.461 LIFE INSURANCE

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61.461 DOMESTIC COMPANIES MAY BECOME MUTUAL.

HISTORY. 1943 c. 231 s. 1.

61.462 ACQUISITION OF CAPITAL STOCK.

HISTORY. 1943 c. 231 s. 2.

61.47 COOPERATIVE LIFE AND CASUALTY COMPANIES.

HISTORY. 1907 c. 318 s. 1; G.S. 1913 s. 3502; G.S. 1923 s. 3428; M.S. 1927 s. 3428.

61.48 QUALIFICATIONS FOR LICENSE; NUMBER OF MEMBERS.

HISTORY. 1907 c. 318 s. 2; G.S. 1913 s. 3503; G.S. 1923 s. 3429; 1927 c. 238; M.S. 1927 s. 3429; 1931 c. 287.

61.49 RESERVE FUND; RECIPROCAL PROVISIONS.

HISTORY. 1907 c. 318 s. 3; 1911 c. 211 s. 1; G.S. 1913 s. 3504; 1915 c. 365 s. 1; G.S. 1923 s. 3430; M.S. 1927 s. 3430.

61.50 PAYMENTS; LIENS; ASSESSMENTS; POLICIES TO BE LABELED.

HISTORY. 1907 c. 318 s. 4; G.S. 1913 s. 3505; G.S. 1923 s. 3431; M.S. 1927 s. 3431.

61.51 ACCUMULATIONS; AMENDMENT TO ARTICLES OR BY-LAWS.

HISTORY. 1919 c. 371 s. 1; G.S. 1923 s. 3432; M.S. 1927 s. 3432.

61.52 LIMITATION ON EXPENSES; LIFE INSURANCE.

HISTORY. 1907 c. 318 s. 5; 1913 c. 377 s. 1; G.S. 1913 s. 3506; G.S. 1923 s. 3433; M.S. 1927 s. 3433.

61.53 LIMITATION ON EXPENSES; COMPANIES WITH RESERVE DEPOSITS.

HISTORY. 1907 c. 318 s. 6; G.S. 1913 s. 3507; G.S. 1923 s. 3434; 1927 c. 336; M.S. 1927 s. 3434.

61.54 NET RATES; RESERVE FUND; LIMITATION OF EXPENSES.

HISTORY. 1907 c. 318 s. 7; G.S. 1913 s. 3508; G.S. 1923 s. 3435; 1927 c. 41; M.S. 1927 s. 3435; 1933 c. 216.

61.55 REINSURANCE OR CONSOLIDATION.

HISTORY. 1907 c. 318 s. 8; G.S. 1913 s. 3509; G.S. 1923 s. 3436; M.S. 1927 s. 3436.

61.56 MAY CHANGE TO LEGAL RESERVE OR LEVEL PREMIUM COMPANIES.

HISTORY. 1907 c. 318 s. 9; G.S. 1913 s. 3510; G.S. 1923 s. 3437; M.S. 1927 s. 3437.

61.57 EXEMPTION FROM TAXATION.

HISTORY. 1907 c. 318 s. 10; G.S. 1913 s. 3511; G.S. 1923 s. 3438; M.S. 1927 s. 3438.

61.58 REPEALS.

HISTORY. 1907 c. 318 s. 11; G.S. 1913 s. 3512; G.S. 1923 s. 3439; M.S. 1927 s. 3439.

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LIFE INSURANCE 61.61

61.59 INSOLVENCY.

HISTORY. 1885 c. 184 s. 19; 1899 cc. 113, 344; R.L. 1905 s. 1704; G.S. 1913 s. 3515; G.S. 1923 s. 3441; M.S. 1927 s. 3441.

61.60 RESERVE REQUIRED.

HISTORY. 1915 c. 318 s. 1; G.S. 1923 s. 3442; M.S. 1927 s. 3442.

61.61 COMMERCIAL TRAVELER INSURANCE COMPANIES.

HISTORY. 1899 cc. 113, 394; 1913 c. 410 s. 1; G.S. 1913 s. 3536; 1917 c. 183 s. 1; G.S. 1923 s. 3443; M.S. 1927 s. 3443; 1939 c. 216.