CHAPTER 61

LIFE INSURANCE

HISTORICAL. Prior to 1872 there were no laws specifically regulating life insurance companies. L. 1872, c. 1, was a complete insurance code, article 5 containing the life insurance sections. The law was completely revised by L. 1895, c. 175, and as amended and supplemented is found in chapter 61.

Mutual companies are excepted from many of the financial requirements.

Cooperative life, endowment, and casualty associations were authorized by L. 1885, c. 184. Laws regulating such companies were enacted by L. 1907, c. 318, and as since modified are sections 61.47 to 61.58.

61.01 LIFE INSURANCE COMPANIES.

Policy holders of mutual life insurance companies are subject to the provisions of section 66.07 relating to assessments. 1944 OAG 142, Aug. 3, 1944 (253-A).

Effect of insured's suicide, execution, or death while violating the law upon the right of recovery on policy in the absence of a stipulation. 7 MLR 45.

Effect of falsification of application by soliciting agents. Waiver and estoppel. 16 MLR 422.

Insurance contracts. 17 MLR 567.

Taxation of life insurance proceeds. 28 MLR 199.

61.05 DISCRIMINATION IN ACCEPTING RISKS.

Provisions for distribution as dividends of divisible profits contained in participating 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 divisible surplus was invalid as a violation of section 61.16. The imposition of the lien for the entire amount of the discrimination on the earnings of the "charter" policies remaining in force but not upon the death benefits is sustained as the most equitable solution of the rights of the respective policy holders. Ofstedahl v Modern Life, 212 M 577, 4 NW(2d) 639.

Tort liability of an insurance company for failure to act upon an application within a reasonable time. 15 MLR 833.

61.06 DISCRIMINATION, REBATES.

Under a Minnesota policy the insurer may waive its right to cash payment and accept the insured's note as payment. The fact such note bears interest, raises a presumption the taking of the note was for the benefit of the party taking it. Where an insurer prepares the agreement and procures its execution and retains the note and cash until after the insured's death, it is estopped from saying the note was not given and accepted in payment of the premium. Coughlin v Reliance Life, 161 M 446, 201 NW 920.

Life insurance policies issued in this state in other than standard form are subject to the provision for participation required by section 61.30 (6). Lommen v Modern Life, 206 M 609, 289 NW 582.

Under the provisions of section 61.30 the limitation of a loan or surrender charge to two and one-half per cent of the amount insured is applicable to single premium life policies. John Hancock v Yetka, 209 M 82, 295 NW 409.

The policy provision for distribution as dividends of divisible profits in participating life policies being discriminated under section 61.16, as trial courts plan of accounting and adjusting the discrimination in favor of the "charter" policies based on the "net cost" theory, and its imposition of a lien on the earnings of the "charter" policies is sustained. Lommen v Modern Life, 212 M 578, 4 NW(2d) 639.

Life insurance at rates less than the sales on individual policies may be written on groups of less than 50 persons. OAG Jan. 17, 1946 (253-B-4).

61.08 SOLICITORS, AGENTS OF COMPANY.

It is the undoubted right of an insurance company, as in the case of any principal, to impose a limitation upon the authority of its agents. And it is as elementary as it is reasonable that if an agent exceeds his actual authority and the person dealing with him has notice of the fact, the principal is not bound. Rein v New York Life, 210 M 435, 299 NW 385.

Knowledge of the soliciting agent that there had been prior consultation by applicant with doctors could not be charged to the insurer where it was acquired outside of the scope of his duties. Lawien v Metropolitan Life, 211 M 211, 300 NW 823.

In an action upon a life insurance policy where the evidence established the applicant gave truthful answers to questions concerning his state of health which without his knowledge were falsified by the soliciting agent upon the application, the insurer is estopped from proving that statements were those of applicant notwithstanding fact that insurer is a mutual benefit society. Oredson v Woodmen of the World, 211 M 442, 1 NW(2d) 413.

61.11 INVESTMENT OF DOMESTIC LIFE INSURANCE COMPANIES' FUNDS.

Amended by L. 1947, c. 439, s. 1.

61.12 REAL ESTATE HOLDINGS OF DOMESTIC LIFE INSURANCE COMPANIES.

Amended by L. 1947, c. 439, s. 2.

Sections 61.03 and 61.12 construed together permit a foreign insurance company to take a real estate mortgage as security for a loan and foreclose by advertisement even after its license to do business in this state had expired. Morris v Penn Mutual, 196 M 403, 265 NW 278.

As to taxation the legislature clearly recognizes a distinction between real property held for the purposes of the insurance business, as an office building, and real property acquired through mortgage foreclosure. 1944 OAG 382, July 20, 1943 (254).

61.13 REINSURANCE.

Amended by L. 1947, c. 202, s. 1.

Assignment of insurance contracts by insurer; liability of new insurer to agents for renewal commissions. 26 MLR 562.

61.14 PROCEEDS OF LIFE POLICY, WHO ENTITLED TO.

Defendant procured and paid for insurance on the life of his son, the latter's estate being the beneficiary. The policies were forthwith assigned unconditionally to defendant, but upon an oral promise, it is claimed, that if he survived the insured and collected the insurance he would hold the proceeds for plaintiff, wife of the insured. Considered as a whole the transaction was but an executory gift not to be judicially enforced. There was no enrichment which would justify a constructive trust ex maleficio. Wunder v Wunder, 187 M 108, 244 NW 682.

Soper abandoned his wife and family and removed to Minneapolis where he married. This second wife having died he married a third wife under the name

of Young. He was never divorced from his first wife. Young and Karstens owned the stock in a corporation. Each took out policies of life insurance payable to a trustee who on the death of one of the parties was to pay the money collected on the policy to the named widow of the deceased in consideration of the stock in the corporation being transferred to the surviving partner. It was held in a suit instituted by the heirs of Soper against the trustee and the party to whom the money was paid, that a conventional life insurance trust is contractual, and inter vivos rather than testamentary in character. Estate of Soper, 196 M 60, 264 NW 427.

Where two persons perish in a common disaster there is no presumption that because of age, health, sex, or strength the one survives the other. In the instant case the burden was on the representative of the wife's estate to prove that she survived her husband. Miller v McCarthy, 198 M 497, 270 NW 559.

Although a life insurance policy provided that no assignment thereof should be binding upon the company unless in writing and filed with the company, such policy might be pledged as collateral security without such writing. Janesville Bank v Aetna Life, 200 M 312, 274 NW 232.

Like any other chose in action, a policy of life insurance may be the subject of a gift. The provision in the master policy that no assignment by the employee of his personal insurance "shall be binding upon the company until the original or a duplicate thereof shall be filed at the Company's Home Office" is for the benefit of the insurer. It does not otherwise limit the power of the insured to dispose of his certificate by assignment or gift. Peel v Reibel, 205 M 474, 286 NW 345.

In an action by a divorced wife against divorced husband's widow to recover money due under divorce decree on theory that lack of an estate and husband's failure to provide for obligations to divorced wife was a result of conspiracy between defendant and the husband to effect fraudulent conveyances from husband to widow in joint tenancy, divorced wife had the burden of establishing fraud. That the debtor procures insurance for his wife does not constitute fraud upon his creditors, even if debtor is insolvent, in absence of fraudulent intent. Pauling v Pauling, 65 F. Supp. 814.

When does the interest of a beneficiary in a fraternal benefit certificate vest. 5 MLR 316.

Presumption of survivorship when death is caused by common disaster. Burden of proof. 11 MLR 80.

Right of representatives of insured to proceeds of insurance policies as against payee under facility of payment clause. 16 MLR 110.

Necessity of insurable interest. 16 MLR 569.

Right to proceeds of insurance policy where premiums were paid with funds fraudulently procured. 18 MLR 366.

Effect of death of insured while committing a felony where policy is silent as to such risk. '18 MLR 747.

Validity and effect of statute exempting the proceeds and avails of life insurance policies from the claims of creditors. 22 MLR 1052.

Recovery of future instalments on insurer's refusal to pay disability benefits. 22 MLR 754.

61.15 EXEMPTION IN FAVOR OF FAMILY; CHANGE OF BENEFICIARY.

A policy of insurance effected in favor of another is exempt from claims of creditors of the insured, and his rights and interests under the contract are as to creditors seeking to acquire them subordinate to those of the beneficiary. Neither can the contingent interest of the insured be attached by the creditor during the life of, or before, the rights of the beneficiary have been lawfully terminated. Murphy v Casey, 50 M 107, 184 NW 783.

The husband effected a "twenty-year endowment" policy payable in the event of his death within twenty years to the wife, but if he lived, to himself at the end of the twenty years. Should the wife die within twenty years the policy was pay-

able to the personal representatives of the husband. During the pendency of divorce proceedings the parties stipulated the court might award to the wife certain specified property, the wife relinquishing all claim to other property arising out of the relation. It was held the wife acquired a vested interest in the policy not divested by the divorce decree, her interest being her separate property not affected by the contract. Wallace v Mutual Benefit, 97 M 27, 106 NW 84.

The rights of plaintiff, an irrevocable beneficiary named in life insurance policies, although vested, were subject to a policy provision granting insured the right to borrow money from the insurer, pledging the policies as security therefor, the beneficiary's consent to such loans not being necessary. Stobel v Prudential Insurance, 189 M 405, 249 NW 713.

Defendant issued a policy upon the life of plaintiff's husband wherein it was provided that if the insured became totally and permanently disabled while the policy was in force, the insured less than 60 years of age, before any nonforfeiture provisions became operative, upon proof would waive premiums due after receipt of the proof. Neither notice or proof of disability were furnished during life of the insured. The evidence justified the trial court in submitting to the jury the doctrines of waiver and estoppel as to failure to give timely notice and furnishing proof. Kassmir v Prudential Insurance, 191 M 340, 254 NW 446.

Policies taken out by insured were not, considering his earnings, unreasonable or immoderate in amount. In naming his wife as beneficiary his creditors were in the instant case defrauded. Cook v Prudential, 182 M 496, 235 NW 9.

Where a policy reserves to the insured the unrestricted right to change the beneficiary therein, and provides that such change shall take effect upon receipt by the insurance company of due application for such change and upon the indorsement thereof by the company on the certificate, the indorsement is but a ministerial act, and the change becomes effective upon receipt by the insurance company of due application. Brajovich v Metropolitan Life, 189 M 123, 248 NW 711.

Mere mental weakness does not incapacitate a person from contracting. It is sufficient if he has enough mental capacity to understand what he is doing. Evidence sustains the verdict that a change of beneficiary made by the insured was valid. Timm v Schneider, 203 M 1, 279 NW 754.

A change of beneficiary in an old-line insurance policy in which the insured reserves the right to make such change may be effectuated without a strict and formal compliance with the common policy provision which requires that "Every change of beneficiary must be made by written notice to the company at its home office accompanied by the policy, and shall take effect only when endorsed on this policy by the company." Boehne v Guardian Life, 224 M —, 28 NW(2d) 55.

At the date of adjudication of the bankrupt, there was a policy of insurance in which he was the insured and his wife named as beneficiary. This policy under Minnesota applicable statutes was exempt, so that the trustee has no interest therein. In re Johnson, 176 F 591.

A policy on the life of the bankrupt, payable to his wife, though reserving to insured the right to change the beneficiary, which right had not been exercised is exempt from the debts of the bankrupt and does not pass to his trustee. Huron-Clinton v Board of Superiors, 1 F(2d) 435.

Whatever right a bankrupt corporation had in life insurance policies as an asset passed to the corporation's trustee as part of the assets. In re American Range and Foundry Co. 14 F(2d) 308.

Where divorced husband lived with his second wife for 13 years during which time his annual earnings averaged $12,000, that he maintained $35,000 of insurance in which the second wife was beneficiary, did not under the circumstances constitute fraud on the divorced wife. Pauling v Pauling, 65 F. Supp. 814.

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

Repealed by L. 1947, c. 182, s. 16.

61.21 EXTENSION OF TIME FOR PAYMENT OF PREMIUMS.

Failure to pay premiums for 60 days after due was not, under the circumstances in the instant case, an unreasonable time. Seamans v Northwestern Mutual, 3 F 325.

61.22 ANNUAL APPORTIONMENT OF SURPLUS ON EXISTING POLICIES.

See, Lommen v Modern Life, 206 M 208, 289 NW 582.

61.24 MISSTATEMENT, WHEN NOT TO INVALIDATE POLICY.

A solicitating agent appointed by the general state agent of a foreign life insurance company to take applications for such insurance, while taking applications, is the agent of the insurer and not of the insured; and where the insured correctly states the facts, which the agent incorrectly transcribes the company is not relieved from liability as in the instant case. Enge v John Hancock Co. 183 M 117, 236 NW 207.

Death of an insured while committing a felony is not ground of exemption from liability or for forfeiture of a life insurance policy issued for the benefit of a third person, in the absence of a provision in the policy excepting such risk, unless it appears the policy was procured in contemplation of the commission of the felony. Domico v Metropolitan Life, 191 M 215, 253 NW 538.

False statement as to consultation with doctor within five years, ground of defense to collection of policy. Lawien v Metropolitan Life, 211 M 211, 300 NW 823.

The incontestable clause. 3 MLR 525, 11 MLR 254.

Relative interests of insured and beneficiary as affecting the admissibility of statements made by the insured in a suit by the beneficiary on the policy. 4 MLR 359.

61.26 POLICIES.

Repealed by L. 1947, c. 182, s. 16.

Function and scope of the delivery concept for conflict of laws purposes. 26 MLR 50, 177.

Contracts made in name of one party for the benefit of another. 29 MLR 436.

61.261 CITATION.

HISTORY. 1947, c. 182, s. 1.

61.262 VALUATION OF RESERVES.

HISTORY. 1947, c. 182, s. 2.

61.263 MINIMUM STANDARDS OF VALUATION.

HISTORY. 1947, c. 182, s. 3.

61.264 RESERVE VALUATION OF LIFE INSURANCE AND ENDOWMENT BENEFITS; MODIFIED PREMIUMS.

HISTORY. 1947, c. 182, s. 4.

61.265 MINIMUM AGGREGATE RESERVES.

HISTORY. 1947, c. 182, s. 5.

61.266 CALCULATION OF RESERVES.

HISTORY. 1947, c. 182, s. 6.

61.267 DEFICIENCY RESERVES.

HISTORY. 1947, c. 182, s. 7.

61.27 FORMS.

Repealed by L. 1947, c. 182, s. 16.

Where insured at time he sustained injuries, not necessarily fatal in their consequences, was afflicted with leukemia, considered as invariably fatal, causal connection between injuries and death could only be established by expert medical testimony; but weight of such testimony, where in conflict, was for the jury, to be determined by the same rules as apply to ordinary issues of fact. Accidental injuries of such severity as to have caused death of insured regardless of soundness of his health must be considered as sole cause of death within meaning of such insurance policy, notwithstanding insured was suffering from leukemia, a fatal disease. Kundiger v Prudential Co. 219 M 25, 17 NW(2d) 49.

Unexplained and otherwise unexplainable absence for seven years compels a decision that the absentee is dead, but where there is evidence to rebut the presumption of death, which is for the trial judge to determine as a matter of law, the fact of death should be submitted to the jury upon all the evidence without considering the presumption. Donea v Massachusetts Mutual, 220 M 204, 19 NW(2d) 377.

Where insurer filed two forms of policy with the state commissioner of insurance for his approval, but the commissioner neither approved nor disapproved them, the fact that endowment policy, which contained provisions contrary to statute, was in conformity with one of the forms so filed did not validate such provisions. Shank v Fidelity Mutual, 221 M 124, 21 NW(2d) 235.

Where life policy provided for change of beneficiary by filing a written request therefor at insurer's home office, accompanied by policy for endorsement; and providing the change should take effect as of date of execution of request, and insured forwarded executed form of change of beneficiary to insurer, fact that policy was held by original beneficiary and was not surrendered for endorsement did not prevent a change of beneficiary, since endorsement of change of policy was but a formal or ministerial act which insurer was obligated to perform. McCloud v Aetna Life, 221 M 184, 21 NW(2d) 478.

Section 66.07 applies only to mutual fire insurance companies. 1944 OAG 142, Aug. 3, 1944 (253-A).

Effect of falsification of application by soliciting agent. 16 MLR 422.

The making of a contract of insurance in Minnesota. 17 MLR 566.

Insurance trust as non-testamentary disposition. 18 MLR 391.

61.28 EXCEPTIONS.

Repealed by L. 1947, c. 182, s. 16.

61.281 CITATION.

HISTORY. 1947, c. 182, s. 8.

61.282 PROVISIONS IN POLICIES.

HISTORY. 1947, c. 182, s. 9.

61.283 CASH SURRENDER VALUE.

HISTORY. 1947, c. 182, s. 10.

61.284 PAID-UP NON-FORFEITURE BENEFIT.

HISTORY. 1947, c. 182, s. 11.

61.285 CALCULATION OF ADJUSTED PREMIUMS.

HISTORY. 1947, c. 182, s. 12.

61.286 DEFAULT IN PREMIUM PAYMENT.

HISTORY. 1947, c. 182, s. 13.

61.287 APPLICATION OF SECTIONS 9 to 13.

HISTORY. 1947, c. 182, s. 14.

61.29 PRELIMINARY TERM PROVISIONS.

Repealed by L. 1947, c. 182, s. 16.

61.30 PROVISIONS INCLUDED IN EVERY POLICY.

Amended by L. 1947, c. 182, s. 15.

As to life insurance policies issued in this state in other than standard forms, the provision for participation required by clause (6) of this section is mandatory. Lommen v Modern Life Co. 206 M 608, 289 NW 582.

The failure of the engrossing staff of the senate to delete from H. F. No. 767 the words or lines stricken by amendment No. 8, shown by the senate journal of April 4, 1941, was a clerical error and vitiates L. 1941, c. 218. Minnesota Mutual v Johnson, 212 M 571, 4 NW(2d) 625.

The commissioner cannot change or waive plain statutory provisions specifying the provisions which must be contained in a policy of life insurance. Shank v Fidelity Mutual, 221 M 124, 21 NW(2d) 238.

The commissioner of insurance has received from certain life insurance companies, organized under the laws of other states, policies for his approval containing the following incontestability clause:

> "This policy shall be incontestable after it has been in force during the life time of the insured for a period of two years, except for the nonpayment of premiums and except for violation of the conditions of the policy relating to military or naval service in time of war."

The statute construed literally would unjustly discriminate against domestic companies and in favor of foreign companies, giving advantages to foreign companies which are not enjoyed by the domestic. It would incorporate into the laws of Minnesota and permit in policies issued in this state by foreign companies any provision or condition that may be prescribed by the state under the laws of which the foreign company is organized. A law which attempts to so discriminate contravenes both federal and state constitutions.

Minn. Const. s. 2, art. 1; s. 33, art. 4;
Fed. Const. s. 2, art. 4; s. 1, art. 14;
State v Nolan, 108 Minn. 170;
State v Wagener, 69 Minn. 206;
Connolly v Union Sewer Pipe Co. 184 U.S. 540, 558 to 560;
Leonard v Am. Life & Annuity Co. (Ga.) 77 S.E. 41.

It would in effect delegate to other states the powers of our legislature. Such delegation is not permitted by the constitution.

Anderson v Manchester Fire Assurance Co., 59 Minn. 182.

The language of the section under consideration is susceptible of two meanings. One makes it not only absurd and unjust but unconstitutional; the other makes it just, reasonable and not repugnant to the provisions of the constitution. The courts will apply that meaning which leads to a reasonable result and leaves the law constitutional.

Our present opinion is that the policies submitted do not conform to the laws of this state and should not be approved. OAG Sept. 10, 1921 (249a).

61.31 ADDITIONAL CONDITIONS IN POLICIES.

Assignment of a life insurance policy to a trustee for her benefit by the irrevocable, named beneficiary, who is also the assignee of the insured, transfers to the trustee all the rights, privileges, and options of the beneficiary under the policy, which the trustee may use and exercise for the benefit of the beneficiary the same as she could have done had there been no assignment. First Trust Co. v N. W. Mutual, 204 M 244, 283 NW 236.

61.34 PROVISIONS WHICH NO POLICY MAY INCLUDE.

Where policy fails to provide for forfeiture for non-payment of premium notes, a provision in the notes is nugatory. Coughlin v Reliance Life, 161 M 446, 201 NW 920.

The failure of the engrossing staff of the senate to delete from H.F. No. 767 the words or lines stricken by amendment No. 8, shown by the senate journal of April 4, 1941, was a clerical error and vitiates L. 1941, c. 218. Minnesota Mutual v Johnson, 212 M 571, 4 NW(2d) 625.

Effect of statute of limitations when proof of death is by presumption arising from seven years' unexplained absence of insured. 12 MLR 662.

61.35 PRELIMINARY TERM POLICIES.

Repealed by L. 1947, c. 182, s. 16.

61.37 RECIPROCAL PROVISIONS IN POLICIES.

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Our present opinion is that the policies submitted do not conform to the laws of this state and should not be approved. OAG Sept. 10, 1921 (249a).

61.38 EXCEPTIONS.

There is a distinction between industrial and group insurance. Groups of less than fifty may obtain special rates. OAG Jan. 17, 1946 (253-B-4).