



State of Wisconsin / OFFICE OF THE COMMISSIONER OF INSURANCE

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Via katie.robinson@uniformlaws.org

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Drafting Committee to Revise the *Uniform Unclaimed Property Act*
c/o Katie Robinson
Uniform Law Commissioners
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RE: Comments Regarding Revision of the *Uniform Unclaimed Property Act*

Thank you for the opportunity to provide comments regarding the revision of the *Uniform Unclaimed Property Act*. Our comments focus on those aspects of the Act that impact the concerns of the Office of the Commissioner of Insurance (OCI), Wisconsin's insurance industry regulator. In our view, a general unclaimed property law is not the appropriate vehicle with which to make profound changes to well-settled insurance law. Specifically:

- Any changes to insurance law should be made only by state legislatures specifically addressing the insurance laws of their state; Insurers should be regulated only by their state's insurance department and not subject to conflicting dual regulation;
- Any requirement for insurers to search the Social Security Death Master File (DMF) should be made as an amendment to the state's insurance laws and not as part of a general unclaimed property law; and
- Changes that would impact the definition of when a life insurance policy becomes due and payable, while indirectly affecting unclaimed property laws, is really a function of insurance laws and regulation, particularly as it relates to the contracts governed by these same insurance laws and regulations. It is our opinion that changing the definition of when the dormancy period begins to be the date of death of the insured would harm beneficiaries under the policy.

Each of these points is addressed below.

Any Changes to Insurance Law Should Be Made Only by State Legislatures Specifically Addressing the Insurance Laws of their State

Unclaimed property laws and insurance laws serve fundamentally different purposes. Unclaimed property laws determine when property becomes legally considered “unclaimed” and set out a regime for notifying the owners and, where appropriate, transferring the property to the state. In the summary to the 1995 Uniform Unclaimed Property Act (UUPA), the Uniform Law Commissioners state:

The scheme of UUPA (1995) and its predecessors is fairly simple. Its rules determine when eligible property is unclaimed. Once property may be identified as unclaimed, the holder is required to report that property to the state unclaimed property administrator. After the report is made, and notice to owners is formally attempted by the holder, the property is transferred to the unclaimed property administrator.

Insurance laws, on the other hand, serve a very different purpose: To protect the public through regulation of the insurance industry. As the National Association of Insurance Commissioners (NAIC) has stated:

The fundamental reason for government regulations of insurance is to protect American consumers. State systems are accessible and accountable to the public and sensitive to local social and economic conditions. State regulation has proven that it effectively protects consumers and ensures that promises made by insurers are kept. Insurance regulation is structured around several key functions, including company licensing, producer licensing, product regulation, market conduct, financial regulation and consumer services.¹

Thus, the reason for amending the UUPA is to align the Act with the realities of current practice, products and technology:

While the UUPA (1995) has been adopted in 16 states, and about 40 states have enacted a version of one of the Uniform Acts, there have been few recent adoptions and various states in recent years have adopted revisions to their unclaimed property acts that are not consistent with the Uniform Act. There also have been many technological developments in recent years that are not addressed in the current Uniform Act, as well as new types of potential unclaimed property, such as gift cards.²

¹ NAIC, State Insurance Regulation: History, Purpose and Structure, http://www.naic.org/documents/consumer_state_reg_brief.pdf.

² Uniform Law Commissioners, “Committees; Revise the Uniform Unclaimed Property Act; Description,” <http://www.uniformlaws.org/Committee.aspx?title=Revise%20Uniform%20Unclaimed%20Property%20Act>

Amendments to insurance laws are undertaken in furtherance of their particular purpose: To enhance public protection in light of current social and economic conditions affecting the insurance industry. As explained below, any attempt to force together two fundamentally different laws with fundamentally different purposes will only lead to needless confusion, duplication and public and private expense.

Insurers should be Regulated Only by Their State's Insurance Department and Not Subject to Potentially Conflicting Dual Regulation

Because of the nature of its product – a promise to pay money – insurance is one of our nation's most heavily regulated industries. As a result, the insurance departments of every state are charged with closely monitoring insurers' compliance with closely monitoring all aspects of the business of insurance, including licensing, form filing, and the payment of claims. In Wisconsin, the Insurance Commissioner is also charged with verifying that the insurer's change of beneficiary forms include the appropriate identifying information.

In response to this high degree of regulation, all licensed insurers devote a great deal of time, effort, and capital to compliance. Of necessity the focus of all of this time, effort, and capital is compliance with the statutes, rules, and directives of the insurer's regulator in each state where the insurer does business: The state's insurance department.

The OCI certainly recognizes that state treasury departments and unclaimed property administrators have no intent or desire to become involved in the regulation of insurance carriers. There are, however, instances where the concerns and responsibilities of multiple state agencies can overlap. One of those instances is where the proceeds of a life insurance policy potentially become unclaimed property. The state insurance department is responsible for ensuring that the state's life insurance carriers pay claims in a fair and timely manner, while the unclaimed property administrator is responsible for ensuring that the state's citizens receive the property that lawfully belongs to them. If, as part of that responsibility, the unclaimed property administrator is given the authority to audit insurance carriers' compliance with the rules regarding when and how policy proceeds become unclaimed property, the unclaimed property administrator, per force, becomes an additional regulator of the carrier.

For regulatory clarity and consumer protection, it is important to establish a priority in which the insurance products are allowed to function according to insurance code/regulations. Only when proceeds are truly unclaimed should they become subject to the unclaimed property laws. Insurance commissioners and laws should regulate insurers and insurance contracts. Unclaimed property administrators and laws should work in concert with the insurance regulatory scheme of the state to identify and collect unclaimed life insurance proceeds. When properly applied, the two work in close conjunction

with each other and do not conflict. Changes that have been proposed would alter that interaction to likely create a conflict between insurance code and unclaimed property laws. The state legislatures, in conjunction with the insurance regulators in each respective state, have determined the appropriate mechanism and timing for the processing and payment of insurance benefits to beneficiaries. Only when that process is allowed to proceed according to those regulatory requirements is the balance between insurer activity and beneficiary protection achieved. After that regulatory process has been allowed to conclude, where a beneficiary remains unpaid, should the unclaimed property statutes seek to capture those proceeds.

Proposing to add additional regulation, or an additional regulator, to the business of life insurance requires a balancing test: Is the potential increase in the cost of life insurance by adding additional regulation offset by an increase in consumer protection? The increase in cost would result from the insurer needing to devote additional resources to complying with the requirements of that new regulator. This increase in the insurer's administrative costs would, in turn, ultimately be borne by the consumer in the form of higher life insurance premiums. The question then is whether there is an increased consumer benefit to offset the higher premiums. The OCI does not believe there is. The OCI, like other state insurance departments, carefully scrutinizes all licensed life insurers' compliance with all claims payment requirements, including the obligation to turn over unclaimed benefits to the state. Adding an additional regulator with jurisdiction over those practices would result in a duplication of efforts with little or no resulting benefit.

Any Requirement for Insurers to Search the Social Security Death Master File (DMF) should be Made as an Amendment to the State's Insurance Laws and Not as Part of a General Unclaimed Property Law

Insofar as any requirement to search the Social Security Death Master File (DMF) is concerned, all states that have enacted this requirement have done so through the vehicle of the National Conference of Insurance Legislators (NCOIL) Model Unclaimed Life Insurance Benefits Act or substantially similar legislation. That legislation places enforcement of the DMF search requirement squarely within the authority of the state's insurance department and not with any additional regulator. The Uniform Law Commissioners should accede to this common sense delegation of duty and not create needlessly duplicative regulation by adding a DMF search requirement to a general, uniform law on unclaimed property.

Changes that would impact the definition of when a life insurance policy becomes due and payable, while indirectly affecting unclaimed property laws, are really a function of insurance laws and regulation, particularly as it relates to the contracts governed by these same insurance laws and regulations. It is our opinion that changing the definition of when the

dormancy period begins to be the date of death of the insured would harm beneficiaries under the policy.

Long-settled insurance law holds that an insurer's obligation to pay a life insurance claim does not begin until the insurer receives notice of the claim and proof of the policyholder's death. In keeping with the well-settled law, all life insurance policy contracts provide that the obligation to pay benefits does not begin until notice of claim and proof of death is submitted. The 1995 UUPA recognizes this principle by providing that the dormancy period for unclaimed property purposes begins when the insurer receives proof of death. Thus, the UUPA recognizes that, although this principle indirectly affects unclaimed property in terms of timing, the question of when insurance claims can be considered dormant is primarily a question of insurance law and regulation. The OCI believes that this principle remains correct today and agrees that the inclusion of a provision which commences dormancy when the insurance company knows of the death is appropriate.

Beginning the dormancy period when the insurer learns of the death of the policyholder protects beneficiaries under the policy in two important ways. First, the beneficiaries may not have immediate knowledge of the policyholder's death. Even if they have such knowledge, this rule affords the beneficiaries sufficient time to attend to the deceased person's affairs without having to hastily file insurance claims. Second, moving the dormancy period to the date of death increases the potential for early escheatment, especially if neither the beneficiaries nor the insurer is aware of the policyholder's death. In this regard, it should be noted that the impetus behind the requirement to search the DMF in the NCOIL model law was to protect beneficiaries, in that insurers would proactively obtain the proof of death. The model act's purpose was not to accelerate the dormancy period and, consequently, escheatment of the policy proceeds to the state. Therefore, we strongly recommend that the dormancy triggers contained in the UUPA **not** be amended to be the date of death of the insured, although the addition of a provision in which dormancy is commenced if the company knows of the death is appropriate.

Sincerely,

Daniel J. Schwartzer
Deputy Commissioner