

**IN THE MISSOURI DEPARTMENT OF INSURANCE,
FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION**

**In Re: AMERICAN FINANCIAL SECURITY)
LIFE INSURANCE COMPANY)
SERFF TRACKING NUMBER) Case No. 140404383C
ICCI-129469943)**

ORDER DISAPPROVING FORM FILING

Upon review and consideration of the filing of American Financial Security Life Insurance Company, SERFF Tracking Number ICCI-129469943, specifically Form AF FI POL 613, the Deputy Director DISAPPROVES said form for the reasons stated below.

FINDINGS OF FACT

1. John M. Huff is the Director of the Department of Insurance, Financial Institutions and Professional Registration, State of Missouri ("Director" of the "Department").
2. American Financial Security Life Insurance Company ("American Financial"), NAIC Number 69337, is a domestic life and health insurance company organized pursuant to the laws of the state of Missouri and transacting insurance business in this state pursuant to a Certificate of Authority issued by the Director.
3. Pursuant to §376.405,¹ insurance companies licensed to transact business in this state may not deliver or issue for delivery in this state a policy of group accident or group health insurance unless the form has been approved.
4. The Division of Market Regulation (the "Division") is designated pursuant to §374.075 with the review of forms that are filed by insurance companies.
5. Insurance Compliance Consultants, Inc., on behalf of American Financial filed, forms with the Director via the System for Electronic Rate and Form Filing ("SERFF") on April 2, 2014. The SERFF Tracking Number is ICCI-129469943 ("Filing").
6. The Filing contains, in pertinent part, form AF FI POL 613, identified as the Group Limited Indemnity Health Insurance Policy ("Group Policy").
7. Brackets ([...]) within a form reviewed by the Division indicate that the language within the brackets may be included or excluded from the policy form, or the brackets may indicate a numeric range.

¹ All statutory citations are to RSMo (Supp. 2013).

8. American Financial filed the forms within SERFF as Group Health-Hospital Indemnity insurance.
9. American Financial submitted the Group Policy and attempted to submit what it identified as a Group Limited Indemnity Health Insurance Certificate ("Certificate"); however, the Group Policy was submitted twice and the Certificate was not included within the Filing. Therefore, only the Group Policy was reviewed for compliance with Missouri insurance laws.
10. On page 3 of the Group Policy under the section titled Premiums and the subsection titled Grace Period, the form states:

A grace period of 31 days is allowed for payment of each premium (except the first) during which coverage under this Policy shall remain in force. Coverage may terminate prior to the end of the grace period by the Member giving at least 31 days advance written notice of cancellation to the Insurer or the Third Party Administrator. Unless the Member so notifies the Insurer, or the Third Party Administrator, failure by the Member to pay a premium within the grace period will cause coverage under this Policy to automatically terminate at the end of the period for which the last premium has been paid.

11. On page 2 of the Group Policy under the section titled General Provisions and the subsection titled Misstatement of Facts, the form states:

If it is discovered that relevant facts about a Member or other Covered Person have been misstated:

- (1) If the error has an effect on premium, an adjustment of the premiums will be made; and
- (2) The correct facts will determine whether and in what amount insurance is valid under the contract for such person.

12. On page 3 of the Group Policy under the section titled Termination of Policy, the form states:

After the first anniversary date of this Policy, the Insurer has the right to terminate this Policy and all coverage hereunder on any premium due date by giving 90 days written notice in advance to this Policyholder. In the case of any individual Member, the Insurer has the right to terminate coverage on any premium due date by giving the Member [30] days advance notice.

CONCLUSIONS OF LAW

13. The Director shall approve only those policy forms that are in compliance with Missouri insurance laws, and “which contain such words, phraseology, conditions, and provisions which are specific, certain and unambiguous and reasonably adequate to meet needed requirements for the protection of those insured,” pursuant to §376.405.
14. The Director may disapprove a form filed with the Department, and in doing so must state the reasons for the disapproval in writing, pursuant to §376.405.

American Financial’s Filing Does Not Substantively Provide All Provisions Required In All Group Policies Under Section 376.426

15. Section 376.426 states in relevant part:

No policy of group health insurance shall be delivered in this state unless it contains in substance the following provisions, or provisions which ... are more favorable...:

(1) *A provision that the policyholder is entitled to a grace period of thirty-one days for the payment of any premium due except the first, during which grace period the policy shall continue in force*, unless the policyholder shall have given the insurer written notice of discontinuance in advance of the date of discontinuance and in accordance with the terms of the policy. The policy may provide that the policyholder shall be liable to the insurer for the payment of a pro rata premium for the time the policy was in force during such grace period;

* * *

(6) *If the premiums or benefits vary by age, there shall be a provision specifying an equitable adjustment of premiums or of benefits, or both, to be made in the event the age of the covered person has been misstated, such provision to contain a clear statement of the method of adjustment to be used;*

* * *

(15) *A provision specifying the conditions under which the policy may be terminated. Such provision shall state that except for nonpayment of the required premium or the failure to meet continued underwriting standards, the insurer may not terminate the policy prior to the first anniversary date of the effective date of the policy as specified therein, and a notice of any intention to terminate the policy by the insurer must be given to the policyholder at least thirty-one days prior to the effective date of the termination.* Any termination by the insurer shall be without prejudice to any expenses originating

prior to the effective date of termination. An expense will be considered incurred on the date the medical care or supply is received[.]

(Emphasis added.)

16. American Financial's Group Policy is not compliant with Missouri insurance laws. Under the section titled Premiums and the subsection titled Grace Period, the Group Policy properly provides the 31-day grace period as required by §376.426(1), but then states if the premium is not paid by the end of the grace period the policy will "automatically terminate at the end of the period for which the last premium has been paid." Section 376.426(1) requires the policy to stay in full force during the grace period. The policy does not stay in full force because the policy ends the last date for which the premium was paid. Because the policy is not in full force and retroactively terminates, the Group Policy does not meet the substantive requirements of §376.426(1). As such, the Group Policy does not comply with the laws of this state as required by §376.405.
17. American Financial's Group Policy is not compliant with Missouri insurance laws. Under the section titled Misstatement of Facts, the form provides that if there is a misstatement of fact (which could include misstatement of age) "an adjustment of premiums will be made;" however, the Group Policy does not contain a clear statement of the method of adjustment to be used. Section 376.426(6) requires such a clear statement when the misstatement goes to age. As such, the Group Policy does not comply with the laws of this state as required by §376.405.
18. American Financial's Group Policy is not compliant with Missouri insurance laws. Under the section titled Termination of Policy, the Group Policy notifies the insured that "the Insurer has the right to terminate coverage on any premium due date by giving the Member [30] days advance notice;" this is not compliant. Section 376.426(15) requires the insurer to give the insured at least a 31 day notice. As such, the Group Policy does not comply with the laws of this state as required by §376.405.
19. American Financial's Group Policy is not compliant with Missouri insurance laws. Under the section titled Termination of Policy, the Group Policy states:

After the first anniversary date of this Policy, the Insurer has the right to terminate this Policy and all coverage hereunder on any premium due date by giving 90 days written notice in advance to this Policyholder. In the case of any individual Member, the Insurer has the right to terminate coverage on any premium due date by giving the Member [30] days advance notice.

Section 376.426(15) requires American Financial to notify those insured that the insurer may not terminate the policy prior to the first anniversary date. The Group Policy makes such a statement with respect to the Policyholder and it *may* make such a statement with respect to the Member. The Group Policy can also be read to provide the Member mere notice that American Financial must only give 30-days' notice of termination. In the later possible reading, American Financial fails to notify the Member that the company may not cancel the coverage prior to the first anniversary date.

American Financial does not provide the required notice in an unambiguous way. "An ambiguity exists when there is...uncertainty in the meaning of the language of the policy. Language is ambiguous if it is reasonably open to different constructions."² Because there are at least two plausible readings of the provision, the Group Policy uses words, phraseology, conditions, and provisions which are not specific, certain and unambiguous and reasonably adequate to meet needed requirements for the protection of those insured as required by §376.405.

20. After review and consideration of the form included in the American Financial Filing, the company has failed to demonstrate its compliance with Missouri law as enumerated herein.
21. While there may be additional reasons as to why the form does not comply with Missouri's insurance laws, the reasons stated herein are sufficient to disapprove the form.
22. Each reason stated herein for disapproval of the form is a separate and sufficient cause to disapprove such form.
23. American Financial's Group Policy does not comply with Missouri law. As such, said form is not in the public interest.
24. This Order is in the public interest.

² *Seeck v. Geico General Ins. Co.*, 212 S.W.3d 129 at 132 (Mo. banc 2008).

IT IS THEREFORE ORDERED that form AF FI POL 613 is hereby **DISAPPROVED**. American Financial Security Life Insurance Company is hereby prohibited from delivering or issuing for delivery any policies of group health insurance utilizing said form.

SO ORDERED, SIGNED AND OFFICIAL SEAL AFFIXED THIS 16th day of May, 2014.



JAMES R. McADAMS
DEPUTY DIRECTOR

NOTICE

TO: American Financial Security Life Insurance Company and any unnamed persons aggrieved by this Order:

You may request a hearing on the disapproval of this form. You may do so by filing a pleading with the Director of the Department of Insurance, Financial Institutions and Professional Registration, P.O. Box 690, Jefferson City, MO 65102, within 30 days after the mailing of this notice pursuant to 20 CSR 800-1.030.

CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of May, 2014, a copy of the foregoing Order and Notice was

1) Delivered via electronic mail to:

Brenda Dawson
Brendadawson@inscompliance.com

2) Served via certified mail addressed to:

Michael Camilleri
President
American Financial Security Life Insurance Company
3925 East State Street, Suite 200
Rockford, Illinois 61108

Amy Feele