

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

**In Re: AMERICAN FINANCIAL SECURITY)
LIFE INSURANCE COMPANY)
SERFF TRACKING NUMBER) Case No. 140404385C
ICCI-129483055)**

ORDER DISAPPROVING FORM FILING

Upon review and consideration of the filing of American Financial Security Life Insurance Company, SERFF Tracking Number ICCI-129483055, specifically Forms AF FI POL 613 and AF FI CERT MS 613, the Deputy Director DISAPPROVES said forms 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-129483055 (“Filing”).
6. The Filing contains, in pertinent part, form AF FI POL 613, identified as the Group Limited Indemnity Health Insurance Policy (“Group Policy”) and AF FI CERT MS 613, identified as the Group Limited Indemnity Health Insurance Certificate (“Certificate”).

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

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.
8. American Financial filed the forms within SERFF as Group Health-Hospital Indemnity insurance.
9. 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.

10. On page 20 of the Certificate 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 the Policy shall remain in force. Coverage may terminate prior to the end of the grace period by giving Us at least 31 days advance written notice of cancellation. Failure to pay a premium within the grace period will cause coverage under the Policy to lapse as of the date for which the last premium payment has been made.

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 24 of the Certificate under the section titled General Provisions and the subsection Misstatement of Age, the form states:

If a Covered Person's age has been misstated, all benefits payable are those which the premium paid would have purchased at the correct age. If the Covered Person's correct age exceeds the maximum issue age, Our liability shall be limited to the refund of all premiums paid on that Covered Person's behalf.

13. On page 22 of the Certificate under the section titled Claim Provisions and the subsection titled Notice of Claim, the form states:

Written notice of claim must be given to Us within 60 days after the Occurrence of any loss covered by the Policy, or as soon thereafter as it is reasonably possible. Notice given by or on behalf of a Covered Person to Us or the Third Party Administrator, with information sufficient to identify the Covered Person, shall be deemed notice to Us.

14. On page 22 of the Certificate under the section title Claim Provisions and the subsection titled Time of Payment of Claims, the form states:

Subject to the provisions below, all benefits payable under the Policy for any loss, will be paid within 25 days after receipt of due written proof of such loss in the form of a clean claim where claims are submitted electronically, and will be paid within 35 days after receipt of due written proof of such loss in the form of clean claim where claims are submitted in paper format. Claims are overdue if not paid within 25 days or 35 days, whichever is applicable, after We receive a clean claim containing necessary medical information and other information essential for Us to administer a Pre-Existing Condition and coordination of benefits.

15. 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.

16. On page 7 of the Certificate under the section titled Definitions, American Financial defines dependent as:

The spouse and each unmarried child of the Member including an unmarried natural child, an unmarried child who is legally adopted or placed for adoption with the Member and an unmarried

stepchild; but excluding: (1) Any such child 25 or more years of age[.]

CONCLUSIONS OF LAW

17. 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.
18. 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

19. 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;

* * *

(8) A provision that written notice of claim must be given to the insurer within twenty days after the occurrence or commencement of any loss covered by the policy. Failure to give notice within such time shall not invalidate nor reduce any claim if it shall be shown not to have been reasonably possible to give such notice and that notice was given as soon as was reasonably possible;

* * *

(11) *A provision that all benefits payable under the policy other than benefits for loss of time shall be payable not more than thirty days after receipt of proof* and that, subject to due proof of loss, all accrued benefits payable under the policy for loss of time shall be paid not less frequently than monthly during the continuance of the period for which the insurer is liable, and that any balance remaining unpaid at the termination of such period shall be paid as soon as possible after receipt of such proof;

* * *

(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[.]

* * *

(17) *A provision* stating that if a policy provides that coverage of a dependent child terminates upon attainment of the limiting age for dependent children specified in the policy, such policy, so long as it remains in force, until the dependent child attains the limiting age, shall remain in force at the option of the certificate holder. *Eligibility for continued coverage shall be established where the dependent child is:*

- (a) *Unmarried and no more than that twenty-five years of age;* and
- (b) A resident of this state; and
- (c) Not provided coverage as a named subscriber, insured, enrollee, or covered person under any group or individual health benefit plan, or entitled to benefits under Title XVIII of the Social Security Act[.]

(Emphasis added.)

20. American Financial's Group Policy and Certificate are 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.” The Certificate provides that if the premium is not paid by the end of the grace period the policy will “lapse as of the date for which the last premium has been made.” 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 and Certificate do not meet the substantive requirements of §376.426(1). As such, the Group Policy and Certificate do not comply with the laws of this state as required by §376.405.

21. American Financial’s Group Policy and Certificate are not compliant with Missouri insurance laws. Under the section titled Misstatement of Facts, the Group Policy provides that if there is a misstatement of fact (which could include misstatement of age) “an adjustment of premiums will be made.” Under the section titled General Provisions and the subsection titled Misstatement of Age, the Certificate provides that if there is a misstatement of age “all benefits payable are those which the premium paid would have purchased as the correct age.” Neither the Group Policy nor the Certificate provides a clear statement of the method of adjustment. Section 376.426(6) requires such a clear statement when the misstatement goes to age. As such, the Group Policy and Certificate do not comply with the laws of this state as required by §376.405.
22. American Financial’s Certificate is not compliant with Missouri insurance laws. Under the section titled Claim Provisions and the subsection titled Notice of Claim, the Certificate excludes a required substantive notice provision. The form does not notify the insured that failure to give notice within the time frame “shall not invalidate nor reduce any claim” if it was not reasonably possible to do so, as required by §376.426(8). As such, the Certificate does not comply with the laws of this state as required by §376.405.
23. American Financial’s Certificate is not compliant with Missouri insurance laws. Under the section titled Claim Provisions and the subsection Time of Payment of Claims, the form notifies the insured that benefits “will be paid within 25 days after...claims are submitted electronically, and will be paid within 35 days after...claims are submitted in paper format.” Section 376.426(11) requires benefits to be paid no more than 30 days after receipt of written proof of loss and does not differentiate between claims that are submitted in electronic and paper formats. As such, the Certificate does not comply with the laws of this state as required by §376.405.

24. 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.

25. 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.

26. American Financial's Certificate is not compliant with Missouri insurance laws. Under the section titled Definitions, the Certificate provides that dependent children coverage excludes "[a]ny such child 25 or more years of age." Section 376.426(17) defines a dependent child as one no more than twenty-five years of age. Because the Certificate excludes dependent coverage for any "child 25 or more years of age," the language is not substantially similar to or more favorable than §376.426(17). As such, the Certificate does not comply with the laws of this state as required by §376.405.

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

27. After review and consideration of the forms included in the American Financial Filing, the company has failed to demonstrate its compliance with Missouri law as enumerated herein.
28. While there may be additional reasons as to why the forms do not comply with Missouri's insurance laws, the reasons stated herein are sufficient to disapprove the forms.
29. Each reason stated herein for disapproval of the forms are separate and sufficient causes to disapprove such forms.
30. American Financial's Group Policy and Certificate do not comply with Missouri law. As such, said forms are not in the public interest.
31. This Order is in the public interest.

IT IS THEREFORE ORDERED that forms AF FI POL 613 and AF FI CERT MS 613 are 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 forms.

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 these forms. 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


