



State of Wisconsin
2001 - 2002 LEGISLATURE

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2001 ASSEMBLY BILL 870

February 26, 2002 - Introduced by Representative MONTGOMERY, cosponsored by Senator BRESKE. Referred to Committee on Health.

1 **AN ACT** *to repeal* 628.097 (1) (title) and 628.097 (2); *to renumber* 601.41 (3),
2 628.097 (1) (a) and 628.097 (1) (b); *to renumber and amend* 628.46 (2m); *to*
3 **amend** 227.21 (2) (a), 227.21 (2) (b), 600.03 (19) (b) 1., 612.33 (2) (a), 612.33 (2)
4 (b), 618.43 (7), 628.09 (1), 628.09 (4), 628.09 (5), 628.097 (title), 632.05 (2),
5 632.435 (4) (a), 632.68 (2) (e), 632.68 (4) (c), 655.27 (5) (a) 1. and 655.27 (5) (a)
6 2.; and *to create* 601.41 (3) (b), 604.04 (8), 618.39 (3) and 628.46 (2m) (b) of the
7 statutes; **relating to:** miscellaneous changes to the insurance laws related to
8 the confidentiality of personal information obtained in the course of
9 administering a state insurance fund, the statute of limitations for bringing an
10 action against the patients compensation fund, the applicability of a timeliness
11 requirement for the payment of insurance claims for chiropractic services, an
12 exception from a requirement to obtain consent to incorporate certain
13 publications by reference in administrative rules, the type of property for which
14 the loss amount is the insurance limits, the renewal date for viatical settlement

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1 brokers' licenses, eliminating the requirement to keep a separate account for
2 surplus lines taxes, issuance of temporary licenses for intermediaries,
3 specifying by rule the amount of stop-loss reinsurance that a town mutual must
4 obtain, standards related to assisting unauthorized insurers, reducing the
5 minimum nonforfeiture interest rate for fixed individual annuities, and
6 defining extraordinary dividends for life insurers; and granting rule-making
7 authority.

Analysis by the Legislative Reference Bureau

This bill makes a variety of minor and technical changes in the insurance statutes, including the following:

1. Under current law, a person with a claim against a health care provider may recover from the patient's compensation fund only if the health care provider has coverage under the fund and the fund is named as a party in the action. The bill provides that, in addition, the fund must be named as a party in the action within the time limit that applies to naming the health care provider in the action.

2. Current law provides that, if real property that is owned and occupied as a dwelling is wholly destroyed, the amount of the loss, for insurance purposes, is the limits of any policy covering the property. A Wisconsin administrative rule provides that, if property owned and occupied as a dwelling is also used for commercial purposes, except on an incidental basis, the statute regarding the amount of loss in case of destruction does not apply to the property. The Wisconsin supreme court, in *Seider v. O'Connell*, 236 Wis. 2d 211, 612 N.W. 2d 659 (2000), determined that the administrative rule is invalid because it exceeds the statutory authority of the office of the commissioner of insurance (OCI), which promulgated the rule. The bill limits the applicability of the statute to real property that is owned and occupied *primarily* as a dwelling.

3. Under current law, the commissioner of insurance (commissioner) may issue a temporary license to a person to act as an insurance agent, other than a life insurance agent, in various specified situations, such as when an agent dies or enters active duty in the armed services. A temporary license may be issued for up to three months, with extensions of up to three months each, not exceeding 12 months in all. The bill authorizes a temporary license to be issued for life insurance agents also, and changes the period for which any temporary agent's license may be issued to no more than 12 months, with no extensions.

4. Under current law, the annual license renewal for viatical settlement providers and viatical settlement brokers occurs on the anniversary date of the original issuance of each individual license. To simplify administration, the bill changes the annual renewal date of both types of licenses to July 1.

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5. The bill authorizes the commissioner, as manager of the state life insurance fund and the local government property insurance fund, to keep confidential personally identifiable information obtained by the commissioner in the course of operating such a fund.

6. Under current law, if a town mutual provides coverage against windstorm or hail or other perils with a similar potential for catastrophic losses, the town mutual is required to obtain stop-loss reinsurance to an extent reasonably adequate to cover the risk of loss. If a town mutual provides nonproperty insurance, the town mutual must obtain reinsurance of at least a 90% proportional share of each risk. An administrative rule, however, requires unlimited aggregate excess of loss reinsurance for all risks covered by either property or nonproperty insurance. The bill brings the rule and statute into conformity by requiring a town mutual that covers potentially catastrophic losses to obtain stop-loss reinsurance to an extent or in an amount specified by the commissioner by rule, and by authorizing the commissioner to require, by rule, other reinsurance than that specified for risks covered by nonproperty insurance provided by a town mutual.

7. Under current law, an agency may, with the consent of the revisor of statutes and the attorney general, adopt standards established by technical societies and organizations of recognized national standing through incorporation of the standards by reference in an administrative rule of the agency. The bill authorizes OCI to adopt standards of the National Association of Insurance Commissioners through incorporation of the standards by reference in an administrative rule of OCI without having to obtain the consent of the revisor or the attorney general.

8. Current law provides that a person may not do an insurance business in this state if the person knows or should know that the result is or might be the illegal placement of insurance with an unauthorized insurer or the subsequent servicing of an insurance policy illegally placed with an unauthorized insurer. The bill provides that OCI may by rule promulgate standards for establishing that a person should have known that the result of the insurance business is or might be the illegal placement of insurance with an unauthorized insurer or the subsequent servicing of an insurance policy illegally placed with an unauthorized insurer and standards for imposing sanctions or remedial measures for a violation of the provision.

9. Current law requires that insurance claims be promptly paid and imposes interest at the rate of 12% per year on overdue payments. Under current law, a claim for payment for chiropractic services is overdue if not paid within 30 days after the insurer receives clinical documentation that the services were provided. The bill provides that this provision regarding when payment of a claim for chiropractic services is overdue does not apply to worker's compensation insurance or any line of property and casualty insurance except disability insurance, which specifically does not include uninsured or underinsured motorist coverage or medical payment coverage.

10. The bill eliminates a requirement that premium taxes collected by an agent or broker or by an insurer in trust for the state must be kept in a separate account.

11. Under current law, the definition of "extraordinary dividend," with respect to a distribution of cash or other property by an insurer, contains an error in the

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formula in that it requires calculation of a life insurer's net gain from operations, which applies to certain kinds of insurance other than life insurance. The bill corrects the formula by substituting "net income" for "net gain from operations," with respect to a life insurer.

12. The bill changes, from 3% to 1.5%, the interest rate that applies to individual annuity contracts that are paid out before the commencement of any annuity payments.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 227.21 (2) (a) of the statutes is amended to read:

2 227.21 (2) (a) ~~To~~ Except as provided in s. 601.41 (3) (b), to avoid unnecessary
3 expense, an agency may, with the consent of the revisor and the attorney general,
4 adopt standards established by technical societies and organizations of recognized
5 national standing by incorporating the standards in its rules by reference to the
6 specific issue or issues of the publication in which they appear, without reproducing
7 the standards in full.

8 **SECTION 2.** 227.21 (2) (b) of the statutes is amended to read:

9 227.21 (2) (b) The revisor and the attorney general shall consent to
10 incorporation by reference only in a rule of limited public interest and in a case where
11 the incorporated standards are readily available in published form. Each rule
12 containing an incorporation by reference shall state how the material incorporated
13 may be obtained and, except as provided in s. 601.41 (3) (b), that the standards are
14 on file at the offices of the agency, the secretary of state, and the revisor.

15 **SECTION 3.** 600.03 (19) (b) 1. of the statutes is amended to read:

16 600.03 (19) (b) 1. With respect to a life insurer, the total net gain ~~from~~
17 operations income of the insurer for the calendar year preceding the date of the
18 dividend or distribution, minus realized capital gains for that calendar year.

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1 **SECTION 4.** 601.41 (3) of the statutes is renumbered 601.41 (3) (a).

2 **SECTION 5.** 601.41 (3) (b) of the statutes is created to read:

3 601.41 **(3)** (b) The commissioner may, without the consent of the revisor or the
4 attorney general as required under s. 227.21 (2), adopt standards of the National
5 Association of Insurance Commissioners by incorporating by reference in rules
6 promulgated by the commissioner any materials published, adopted, or approved by
7 the National Association of Insurance Commissioners, without reproducing the
8 standards in full. The standards referred to in this paragraph do not include any
9 model act or model regulation proposed or adopted by the National Association of
10 Insurance Commissioners. Any materials of the National Association of Insurance
11 Commissioners that are incorporated by reference in rules promulgated by the
12 commissioner shall be obtainable from, and are only required to be kept on file at,
13 the office, which shall be stated in any rule containing such an incorporation by
14 reference. Nothing in this paragraph prohibits the commissioner from adopting
15 standards of the National Association of Insurance Commissioners through
16 incorporation by reference in rules in the manner provided under s. 227.21 (2).

17 **SECTION 6.** 604.04 (8) of the statutes is created to read:

18 604.04 **(8)** NONDISCLOSURE OF PERSONAL INFORMATION. The manager may refuse
19 to disclose, and may prevent any other person from disclosing, any personally
20 identifiable information, as defined in s. 19.62 (5), that is obtained by the manager
21 in the course of administering a fund under chs. 605 to 607.

22 **SECTION 7.** 612.33 (2) (a) of the statutes is amended to read:

23 612.33 **(2)** (a) *Windstorm and hail insurance.* If a town mutual provides
24 coverage against windstorm or hail, or other perils involving a similar potential for
25 catastrophic losses, which are designated by the commissioner by rule, it shall obtain

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1 reinsurance for each such risk or else stop-loss reinsurance with an insurer
2 authorized to do such business in this state, to an extent ~~reasonably adequate to~~
3 ~~cover the risk of catastrophic losses~~ or in an amount specified by the commissioner
4 by rule. The commissioner may prescribe detailed requirements for such
5 reinsurance by rule or by order.

6 **SECTION 8.** 612.33 (2) (b) of the statutes is amended to read:

7 612.33 (2) (b) *Nonproperty insurance.* To the extent that a town mutual
8 provides insurance under s. 612.31 (3), it shall obtain reinsurance of at least a 90%
9 proportional share of each risk with an insurer authorized to do such business in this
10 state. The commissioner may permit a town mutual to retain a larger percentage if
11 he or she finds that the interests of the members will not be endangered thereby, or
12 may require it to reinsure a larger percentage if he or she finds that the interests of
13 the members make it advisable. The commissioner may by rule require other
14 reinsurance.

15 **SECTION 9.** 618.39 (3) of the statutes is created to read:

16 618.39 (3) STANDARDS BY RULE. (a) The office may by rule promulgate standards
17 for any of the following:

18 1. Establishing that a person should know that the result of insurance business
19 is or might be the illegal placement of insurance with an unauthorized insurer or the
20 subsequent servicing of an insurance policy illegally placed with an unauthorized
21 insurer.

22 2. Imposing requirements under s. 601.42 or 628.04 or sanctions or remedial
23 measures under sub. (2) or s. 601.64, or any other applicable penalty or remedial
24 provision of chs. 600 to 646, for a violation of this section.

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1 (b) Notwithstanding par. (a) 1., it is not necessary for the office to promulgate
2 a rule under par. (a) 1. to establish that a person violated sub. (1).

3 **SECTION 10.** 618.43 (7) of the statutes is amended to read:

4 618.43 (7) TAXES AS TRUST FUNDS. All premium taxes collected under this section
5 by an agent or broker or by an insurer are the property of this state. ~~They shall be~~
6 ~~kept in a separate account and may not be commingled with funds belonging to~~
7 ~~anyone else, to be held in trust for the state.~~

8 **SECTION 11.** 628.09 (1) of the statutes is amended to read:

9 628.09 (1) ISSUANCE OF LICENSE. Except as provided in s. 628.095 or 628.097,
10 the commissioner may issue a temporary license as an intermediary for a period of
11 not more than ~~3~~ 12 months to the personal representative of a deceased or mentally
12 disabled intermediary, or to a person designated by an intermediary who is otherwise
13 disabled or has entered active duty in the U.S. armed forces, in order to give time for
14 more favorable sale of the goodwill of a business owned by the intermediary, for the
15 recovery or return of the intermediary, or for the orderly training and licensing of new
16 personnel for the intermediary's business. ~~This subsection does not apply to life~~
17 ~~insurance agents.~~

18 **SECTION 12.** 628.09 (4) of the statutes is amended to read:

19 628.09 (4) DURATION OF LICENSE. The commissioner may by order revoke a
20 temporary license if the interests of insureds or the public are endangered. ~~Except~~
21 ~~as provided in s. 628.097, a~~ A temporary license may not be extended beyond the
22 initial period specified under sub. (1), ~~for additional periods of not more than 3~~
23 ~~months each, with the total period not to exceed 12 months in the aggregate.~~ A
24 temporary license may not continue after the owner or the personal representative
25 disposes of the business.

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1 **SECTION 13.** 628.09 (5) of the statutes is amended to read:

2 628.09 (5) FEES. The fees for a temporary license are the same as for a
3 permanent license. ~~No additional fee may be charged for extensions under sub. (4),~~
4 ~~nor for the issuance of a subsequent license under s. 628.04 if that license is issued~~
5 ~~while the temporary license remains in effect.~~

6 **SECTION 14.** 628.097 (title) of the statutes is amended to read:

7 **628.097 (title) Refusal to issue license; failure to pay support or to**
8 **comply with subpoena or warrant; tax delinquency.**

9 **SECTION 15.** 628.097 (1) (title) of the statutes is repealed.

10 **SECTION 16.** 628.097 (1) (a) of the statutes is renumbered 628.097 (1m).

11 **SECTION 17.** 628.097 (1) (b) of the statutes is renumbered 628.097 (2m).

12 **SECTION 18.** 628.097 (2) of the statutes is repealed.

13 **SECTION 19.** 628.46 (2m) of the statutes, as created by 2001 Wisconsin Act 16,
14 is renumbered 628.46 (2m) (a) and amended to read:

15 628.46 (2m) (a) Notwithstanding subs. (1) and (2) and except as provided in
16 par. (b), a claim for payment for chiropractic services is overdue if not paid within 30
17 days after the insurer receives clinical documentation from the chiropractor that the
18 services were provided unless, within those 30 days, the insurer provides to the
19 insured and to the chiropractor the written statement under s. 632.875 (2).

20 **SECTION 20.** 628.46 (2m) (b) of the statutes is created to read:

21 628.46 (2m) (b) Paragraph (a) does not apply to any of the following:

22 1. Worker's compensation insurance.

23 2. Any line of property and casualty insurance except disability insurance. In
24 this subdivision, "disability insurance" does not include uninsured motorist
25 coverage, underinsured motorist coverage, or medical payment coverage.

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1 **SECTION 21.** 632.05 (2) of the statutes is amended to read:

2 632.05 (2) Whenever any policy insures real property which that is owned and
3 occupied by the insured primarily as a dwelling and the property is wholly destroyed,
4 without criminal fault on the part of the insured or the insured's assigns, the amount
5 of the loss shall be taken conclusively to be the policy limits of the policy insuring the
6 property.

7 **SECTION 22.** 632.435 (4) (a) of the statutes is amended to read:

8 632.435 (4) (a) With respect to contracts providing for flexible considerations,
9 the minimum nonforfeiture amount at any time at or prior to the commencement of
10 any annuity payments shall be equal to an accumulation up to such time at a rate
11 of interest of ~~3%~~ 1.5% per year of percentages of the net considerations paid prior to
12 such time, decreased by the sum of any prior withdrawals from or partial surrenders
13 of the contract accumulated at a rate of interest of ~~3%~~ 1.5% per year and the amount
14 of any indebtedness to the company on the contract, including interest due and
15 accrued, and increased by any existing additional amounts credited by the company
16 to the contract. The net considerations for a given contract year for purposes of this
17 subsection shall be an amount not less than zero and shall be equal to the
18 corresponding gross considerations credited to the contract during the contract year
19 less an annual contract charge of \$30 and less a collection charge of \$1.25 per
20 consideration credited to the contract during that contract year. The percentages of
21 net considerations shall be 65% of the net consideration for the first contract year and
22 87.5% of the net considerations for the 2nd and later contract years, except that the
23 percentage shall be 65% of the portion of the total net consideration for any renewal
24 contract year which exceeds by not more than 2 times the sum of those portions of
25 the net considerations in all prior contract years for which the percentage was 65%.

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1 **SECTION 23.** 632.68 (2) (e) of the statutes is amended to read:

2 632.68 (2) (e) Except as provided in sub. (3), a license issued under this
3 subsection shall be renewed annually on ~~the anniversary date~~ July 1 upon payment
4 of the fee specified in s. 601.31 (1) (mp) and upon providing the licensee's social
5 security number, unless the licensee does not have a social security number, or
6 federal employer identification number, as applicable, if not previously provided on
7 the application for the license or at a previous renewal of the license. If the licensee
8 is a natural person who does not have a social security number, the license shall be
9 renewed annually on ~~the anniversary date~~ July 1 upon payment of the fee specified
10 in s. 601.31 (1) (mp) and upon providing to the commissioner a statement made or
11 subscribed under oath or affirmation, on a form prescribed by the department of
12 workforce development, that the licensee does not have a social security number.

13 **SECTION 24.** 632.68 (4) (c) of the statutes is amended to read:

14 632.68 (4) (c) Except as provided in sub. (5), a license issued under this
15 subsection shall be renewed annually on ~~the anniversary date~~ July 1 upon payment
16 of the fee specified in s. 601.31 (1) (ms) and upon providing the licensee's social
17 security number, unless the licensee does not have a social security number, or
18 federal employer identification number, as applicable, if not previously provided on
19 the application for the license or at a previous renewal of the license. If the licensee
20 is a natural person who does not have a social security number, the license shall be
21 renewed annually, except as provided in sub. (5), on ~~the anniversary date~~ July 1 upon
22 payment of the fee specified in s. 601.31 (1) (ms) and upon providing to the
23 commissioner a statement made or subscribed under oath or affirmation, on a form
24 prescribed by the department of workforce development, that the licensee does not
25 have a social security number.

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1 **SECTION 25.** 655.27 (5) (a) 1. of the statutes is amended to read:

2 655.27 (5) (a) 1. Any person may file a claim for damages arising out of the
3 rendering of medical care or services or participation in peer review activities under
4 s. 146.37 within this state against a health care provider or an employee of a health
5 care provider. A person filing a claim may recover from the fund only if the health
6 care provider or the employee of the health care provider has coverage under the fund
7 and, the fund is named as a party in the action, and the action against the fund is
8 commenced within the time limitation under s. 893.55 within which the action
9 against the health care provider or employee of the health care provider must be
10 commenced.

11 **SECTION 26.** 655.27 (5) (a) 2. of the statutes is amended to read:

12 655.27 (5) (a) 2. Any person may file an action for damages arising out of the
13 rendering of medical care or services or participation in peer review activities under
14 s. 146.37 outside this state against a health care provider or an employee of a health
15 care provider. A person filing an action may recover from the fund only if the health
16 care provider or the employee of the health care provider has coverage under the fund
17 and, the fund is named as a party in the action, and the action against the fund is
18 commenced within the time limitation under s. 893.55 within which the action
19 against the health care provider or employee of the health care provider must be
20 commenced. If the rules of procedure of the jurisdiction in which the action is brought
21 do not permit naming the fund as a party, the person filing the action may recover
22 from the fund only if the health care provider or the employee of the health care
23 provider has coverage under the fund and the fund is notified of the action within 60
24 days of service of process on the health care provider or the employee of the health
25 care provider. The board of governors may extend this time limit if it finds that

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1 enforcement of the time limit would be prejudicial to the purposes of the fund and
2 would benefit neither insureds nor claimants.

3 **SECTION 27. Initial applicability.**

4 (1) RENEWAL OF VIATICAL SETTLEMENT PROVIDER AND BROKER LICENSES. The
5 treatment of section 632.68 (2) (e) and (4) (c) of the statutes first applies to licenses
6 renewed in 2002.

7 (2) ISSUANCE OF TEMPORARY INTERMEDIARY LICENSES. The treatment of sections
8 628.09 (1), (4), and (5) and 628.097 (title), (1) (title), (a), and (b), and (2) of the statutes
9 first applies to temporary licenses issued on the effective date of this subsection.

10 (3) PATIENTS COMPENSATION FUND STATUTE OF LIMITATIONS. The treatment of
11 section 655.27 (5) (a) 1. and 2. of the statutes first applies to claims arising out of
12 injuries occurring on the effective date of this subsection.

13 (4) INTEREST RATE FOR INDIVIDUAL DEFERRED ANNUITIES. The treatment of section
14 632.435 (4) (a) of the statutes first applies to annuity contracts issued on the effective
15 date of this subsection.

16 (END)