

2001 DRAFTING REQUEST**Bill**Received: **11/14/2000**Received By: **kahlepj**Wanted: **As time permits**

Identical to LRB:

For: **Roger Breske (608) 266-2509**By/Representing: **Vaughn Vance**This file may be shown to any legislator: **NO**Drafter: **kahlepj**

May Contact:

Addl. Drafters:

Subject: **Insurance - other insurance**

Extra Copies:

Submit via email: **NO**

Requester's email:

Pre Topic:

No specific pre topic given

Topic:

Require property to be occupied solely as a dwelling for insurance policy limits to be taken as amount of loss

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	kahlepj 11/15/2000	jdyer 11/16/2000		_____			
/P1			jfrantze 11/16/2000	_____	lrb_docadmin 11/16/2000		
/P2	kahlepj	jdyer	martykr	_____	lrb_docadmin		

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
	04/06/2001	04/09/2001	04/10/2001	_____	04/10/2001		
/1	kahlepj 04/30/2001	jdye 05/01/2001	martykr 05/01/2001	_____	lrb_docadmin 05/01/2001	lrb_docadmin 05/01/2001	

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1/?	kahlepj	1/16 jld	10/11/16	10/11/16			

FE Sent For:

<END>

ROGER BRESKE

STATE SENATOR

12th District

Capitol Address:

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(608) 266-2509

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(715) 454-6575

E-Mail Address:

Sen.Breske@legis.state.wi.us

MEMORANDUM

November 13, 2000

TO: Pamela J. Kahler, Senior Attorney
Legislative Reference Bureau
FR: Vaughn L. Vance for
Senator Roger Breske
RE: Seider Fix Legislation

Roger is requesting that the attached statutory change be made to correct the recent Supreme Court decision in Seider. Please let me know if you have questions or concerns.

Thank you for your assistance with regard to this matter.

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

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

(113187)

WISBAR

WISCONSIN SUPREME COURT CASELAW



2000 WI 76

SUPREME COURT OF WISCONSIN

Case No.: 98-1223

Complete Title

of Case:

236 Wis 2d 211

Richard Seider and Jean Seider,

Plaintiffs-Appellants,

v.

Connie O'Connell, Commissioner of Insurance,

Defendant-Respondent-Petitioner.

ON REVIEW OF A DECISION OF THE COURT OF APPEALS

Reported at: 222 Wis.2d 80, 585 N.W.2d 885

(Ct. App. 1998-Published)

Opinion Filed: June 30, 2000

Submitted on Briefs:

Oral Argument: September 8, 1999

Source of APPEAL

COURT: Circuit

COUNTY: Dane

JUDGE: P. Charles Jones

JUSTICES:

Concurred:



State of Wisconsin
2001 - 2002 LEGISLATURE

LRB-0995/PI
PJK.....
JLD

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

D-note

gen cat

1
2

AN ACT relating to: limiting to noncommercial property the type of property for which ^{the} amount of loss is insurance policy limits.

Analysis by the Legislative Reference Bureau

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. ~~The~~ Wisconsin administrative ~~code~~ ^{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*, 222 Wis. 2d 80, 585 N.W. 2d 885 (2000), determined that the administrative ~~code provision~~ is invalid because it exceeds the statutory authority of the office of the commissioner of insurance, which promulgated the rule. Thus, if a property that is used for both commercial and residential purposes, such as a business over which the business owner lives, is wholly destroyed, the amount of the loss is the policy limits of any insurance policy covering the property. This bill incorporates the administrative ~~code provision~~ into the statutes. The bill provides that the statute requiring the policy limits to be the loss amount for wholly destroyed property used as a dwelling does not apply to real property any part of which is used for commercial purposes other than on an incidental basis.

rule

language of the rule

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

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0995/7dn

PJK.....

PI
Jld

because it exceeded

that

rule

I drafted this request using the language of the administrative ~~code~~ (s. Ins 4.01 (2) (e), Wis. Adm. Code) ~~which~~ was found by the Wisconsin Supreme Court in the *Seider* case to be invalid ~~for exceeding~~ the statutory authority of OCI. The reason I drafted it ~~in~~ this way is because, if the word "solely" is inserted in front of "as a dwelling" in s. 632.05 (2), there will be a question, which might result in further litigation, about whether the statute applies to someone who incidentally carries on some form of commercial activity in his or her home, such as teaching piano lessons. As drafted, the statute would apply to such a person. If this is not your intention, however, I will redraft the request in a much more limited manner.

Pamela J. Kahler
Senior Legislative Attorney
Phone: (608) 266-2682
E-mail: pam.kahler@legis.state.wi.us

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-0995/P1dn
PJK:jld:jf

November 16, 2000

I drafted this request using the language of the administrative rule (s. Ins 4.01 (2) (e), Wis. Adm. Code) that was found by the Wisconsin supreme Court in the *Seider* case to be invalid because it exceeded the statutory authority of OCI. The reason I drafted it this way is because, if the word "solely" is inserted in front of "as a dwelling" in s. 632.05 (2), there will be a question, which might result in further litigation, about whether the statute applies to someone who incidentally carries on some form of commercial activity in his or her home, such as teaching piano lessons. As drafted, the statute would apply to such a person. If this is not your intention, however, I will redraft the request in a much more limited manner.

Pamela J. Kahler
Senior Legislative Attorney
Phone: (608) 266-2682
E-mail: pam.kahler@legis.state.wi.us

Kahler, Pam

From: Vance, Vaughn
Sent: Thursday, April 05, 2001 11:49 AM
To: Kahler, Pam
Subject: FW: valued policy law change



VPLdraft1_.doc

Pam:

Thanks for the help on the previous draft. I am forwarding you a revised draft of the Seider fix. Please let me know if you have questions. Also, please feel free to call Noreen (below).

Thanks again.

VAUGHN

-----Original Message-----

From: Eric Englund [mailto:eenlund@tds.net]
Sent: Thursday, April 05, 2001 10:25 AM
To: Vance Vaughn (E-mail)
Cc: Ron Kuehn (E-mail); Eileen Mallow (E-mail); Noreen Parrett (E-mail); Smyrski Rose (E-mail)
Subject: valued policy law change

Vaughn

Attached is the language change for the valued policy law that responds to Seider and works for us and the agent groups. Could you send it over to have it drafted. I know you had an earlier draft...but we need it this way. If the drafter has technical questions/concerns they can contact Attorney Noreen Parrett at 284 2615...assuming the drafter is Pam she has worked with Noreen in the past.

We have sent the draft to OCI for review/comment. We are not inclined to request introduction until OCI has signed off on the draft.

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

- 1 **Section 1: 632.05(2)** of the statutes as amended to read:
- 2 (2) TOTAL LOSS. Whenever any policy insures real property which is owned and occupied
- 3 by the insured primarily as a dwelling and the property is wholly destroyed, without criminal
- 4 fault on the part of the insured or the insured's assigns, the amount of the loss shall be taken
- 5 conclusively to be the policy limits of the policy insuring the property. In this subsection,
- 6 "primarily" means that the property's chief or main use is as a dwelling.



State of Wisconsin
2001 - 2002 LEGISLATURE

LRB-0995/PZ
PJK:jld:jf
v m is run

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

D-note

regenerate



that is primarily residential

1 AN ACT to renumber and amend 632.05 (2); and to create 632.05 (2) (b) of the
2 statutes; relating to: limiting to ~~wholly destroyed~~ property the type of property
3 for which the amount of loss is ^{the} insurance policy limits.

Analysis by the Legislative Reference Bureau

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*, 222 Wis. 2d 80, 585 N.W. 2d 885 (2000), determined that the administrative rule is invalid because it exceeds the statutory authority of the office of the commissioner of insurance, which promulgated the rule. Thus, if a property that is used for both commercial and residential purposes, such as a business over which the business owner lives, is wholly destroyed, the amount of the loss is the policy limits of any insurance policy covering the property. This bill ~~amends the~~ ~~language of the administrative rule into the statute~~ provides that the statute requiring the policy limits to be the loss amount for wholly destroyed

property ~~that~~ as a dwelling ~~does not include real property which is used for commercial purposes other than on an incidental basis~~
only *applies to property that is owned and*

change component

occupied primarily

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

SECTION 1. 632.05 (2) of the statutes is ~~renumbered 632.05 (2)(a) and~~ amended to read:

632.05 (2) (a) ~~Whenever~~ *plain* ~~except as specified in par. (b), whenever~~ any policy insures real property which that is owned and occupied by the insured as a dwelling and the property is wholly destroyed, without criminal fault on the part of the insured or the insured's assigns, the amount of the loss shall be taken conclusively to be the policy limits of the policy insuring the property.

SECTION 2. 632.05 (2) (b) of the statutes is created to read:
632.05 (2) (b) Paragraph (a) does not apply to real property any part of which is used for commercial purposes other than on an incidental basis.

(END)

primarily

D-note

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-0995/P2dn
PJK:jld:jf

We normally do not define terms in the statutes if the definition is the common or dictionary meaning of the term, which the definition of "primarily" is in this case. If you are concerned that "primarily" will be taken to mean something other than "mainly" or "chiefly," then we should use "mainly" or "chiefly" in place of "primarily" in s. 632.05 (2). ✓

Pamela J. Kahler
Senior Legislative Attorney
Phone: (608) 266-2682
E-mail: pam.kahler@legis.state.wi.us

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0995/P2dn
PJK:jld:km

April 9, 2001

We normally do not define terms in the statutes if the definition is the common or dictionary meaning of the term, which the definition of "primarily" is in this case. If you are concerned that "primarily" will be taken to mean something other than "mainly" or "chiefly," then we should use "mainly" or "chiefly" in place of "primarily" in s. 632.05 (2).

Pamela J. Kahler
Senior Legislative Attorney
Phone: (608) 266-2682
E-mail: pam.kahler@legis.state.wi.us



~~PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION~~

Change to analysis only

Regen

- 1 AN ACT to amend 632.05 (2) of the statutes; relating to: limiting to property that
- 2 is primarily residential the type of property for which the amount of loss is the
- 3 insurance policy limits.

Analysis by the Legislative Reference Bureau

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*, ~~202~~ Wis. 2d ~~80~~, ~~205~~ N.W. 2d ~~805~~ (2000), determined that the administrative rule is invalid because it exceeds the statutory authority of the office of the commissioner of insurance, which promulgated the rule. Thus, if a property that is used for both commercial and residential purposes, such as a business over which the business owner lives, is wholly destroyed, the amount of the loss is the policy limits of any insurance policy covering the property. This bill provides that the statute requiring the policy limits to be the loss amount for wholly destroyed property applies only to property that is owned and occupied primarily as a dwelling.

236 ✓

→ 211 → 612 → 659 ✓

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

