

2001 DRAFTING REQUEST

Bill

Received: 11/15/2000

Received By: kahlepj

Wanted: As time permits

Identical to LRB:

For: Russell Decker (608) 266-2502

By/Representing: Barb Worcester

This file may be shown to any legislator: NO

Drafter: kahlepj

May Contact:

Addl. Drafters: nelsorp1

Subject: Insurance - miscellaneous

Extra Copies:

Submit via email: NO

Pre Topic:

No specific pre topic given

Topic:

Prohibit insurer from collecting payments made in error after one year

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 11/16/2000	jdyer 11/17/2000		_____			
/P1			martykr 11/20/2000	_____	lrb_docadmin 11/20/2000		
/1	kahlepj 11/01/2001	jdyer 11/02/2001	jfrantze 11/02/2001	_____	lrb_docadmin 11/02/2001	lrb_docadmin 11/29/2001	

FE Sent For:

none needed

<END>

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FE Sent For:			11/2	Self 11/2			

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1/?	kahlepj	PI 11/17 jd	11/20	PA 11/20			

FE Sent For:

<END>

PJK?

B I L L REQUEST FORM

LEGISLATIVE REFERENCE BUREAU
Legal Section Telephone: 266-3561
5th Floor, 100 N. Hamilton Street

Use of this form is optional. It is often better to talk directly with the LRB attorney who will draft the bill.

Use this form only for **BILL** drafts. Attach more pages if necessary.

Legislator, agency or other body requesting this draft: Senator Decker

Date: 14 NOV 2000 Person submitting request (name, phone number): Barb Worcester
6-2502

Persons to contact for questions about this draft (names, phone numbers): Barb Worcester
6-2502

Describe the problem, including any helpful examples.

How do you want to solve the problem?

A constituent's insurance company paid a claim in error & after a long period of time elapsed billed the policyholder for the overpayment. We would like to have a bill drafted on behalf of Robert Warosh of Wausau to establish a time limit of one year on ins. companies to collect from policyholders for payment errors that were the fault of the ins. company.

Please attach a copy of any correspondence or other material that may help us.

If you know of any statute sections that might be affected, list them or provide a marked-up (not retyped) copy.

You may attach a marked-up (not retyped) copy of any LRB draft, or provide its number (e.g., 1997 LRB-2345/1 or 1995 AB-67):

Requests are confidential unless stated otherwise.

● May we tell others that we are working on this for you? Yes No

● If yes: Anyone who asks? Yes No Any legislator? Yes No Only the following persons: Gordon Anderson - 6-2230

Do you consider this request urgent? Yes No If yes, please indicate why: _____

Should we give this request priority over any other pending request of this legislator, agency or body? Yes No If yes, sign your name here: _____
Yes No



PI
Jld

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

D. note

you cut

1 AN ACT ~~...~~; relating to: limiting the amount of time for an insurer to recover an
2 overpayment of an insurance claim.

Analysis by the Legislative Reference Bureau

Under current law, most legal actions based on insurance policies, which are contracts, must be commenced within six years after the cause of action accrues, which means, generally, after the breach ~~of the~~ contract occurs. There are a few exceptions for actions based on specific types of insurance policies; for example, an action on a fire insurance policy must be commenced within 12 months after the inception of the loss.

This bill places a limit on the amount of time within which an insurer ~~must~~ commence an action for recovery of an overpayment of an insurance claim paid under any type of insurance policy, without fault on the part of the ~~payee~~. Such an action must be commenced within one year after the overpayment was made or it is barred.

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

3 SECTION 1. 631.83 (2m) ^X of the statutes is created to read:
4 631.83 (2m) LIMITATION FOR RECOVERY OF CLAIM OVERPAYMENT. [✓] Notwithstanding
5 subs. (1) and (2), [✓] s. 893.855 [✓] applies to an action by an insurer to recover overpayment

OK

man

insurer

SECTION 1

1 of an insurance claim, regardless of the type of insurance policy under which the
2 claim was paid.

3 **SECTION 2.** 893.855^x of the statutes is created to read:

4 **893.855 Action to recover insurance overpayment.** (1) Notwithstanding
5 ss. 631.83 (1) and (2)[✓] and 893.43[✓], an action to recover an overpayment of an insurance
6 claim that was paid without fault on the part of the insured or payee shall be
7 commenced within one year after the[✓] date on which the insurer made the
8 overpayment or be barred.

9 **SECTION 3. Initial applicability.**

← auto ref

10 (a) Except as provided in paragraph (b), this act first applies to claims made
11 under insurance policies on the effective date of this paragraph.[✓]

12 *auto ref*
→ (b) If an insurance policy that is in effect on the effective date of this paragraph[✓]
13 contains a provision that is inconsistent with this act, this act first applies to claims
14 made under that policy on the day the policy is renewed.

15 (END)

D-note

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1024/dn
PJK.&...:.....

JLD
PI

Under current law, the statute of limitation that applies to recovering a claim overpayment is most likely s. 893.43[✓], which allows six years. Section 631.83 (1) provides a few other limitations for actions under certain types of policies, but is drafted so broadly that I'm not sure whether it covers overpayments of claims under those policies. (Is an action to recover an overpayment of a claim made under a fire insurance policy an action *on* a fire insurance policy? I think there are arguments both ways.)

Under this draft, does the one-year limitation on recovery apply if an *entire* claim was paid in error? Is that an *overpayment*?

What if a person whose life is insured "disappears" for a time and then returns after one year after a death benefit has been paid and neither the insured nor the beneficiary of the proceeds were fraudulent. Would the one-year limitation for recovery of the proceeds apply? There is actually a uniform act on paying life insurance proceeds on the basis of the absence of the insured. See ss. 813.22 to 813.34[✓].

Another aspect to consider is whether the limitation in this draft might have an unintended effect of causing delays in claim payments. Insurers might be even more cautious than usual about paying claims if an erroneous payment must be discovered so much sooner (or at least might use that as an excuse for delaying payment).

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-1024/P1dn
PJK:jld:km

November 20, 2000

Under current law, the statute of limitation that applies to recovering a claim overpayment is most likely s. 893.43, which allows six years. Section 631.83 (1) provides a few other limitations for actions under certain types of policies, but is drafted so broadly that I'm not sure whether it covers overpayments of claims under those policies. (Is an action to recover an overpayment of a claim made under a fire insurance policy an action *on* a fire insurance policy? I think there are arguments both ways.)

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

Barb W - Sen. Decker

redraft LRB-1024

limit the type of insurance
policy to health insurance



r m is run

~~PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION~~

a health ✓

Regenerate

- 1 AN ACT to create 631.83 (2m) and 893.855 of the statutes; relating to: limiting
- 2 the amount of time for an insurer to recover an overpayment of ~~an~~ insurance
- 3 claim.

Analysis by the Legislative Reference Bureau

Under current law, most legal actions based on insurance policies, which are contracts, must be commenced within six years after the cause of action accrues, which means, generally, after the breach of contract occurs. There are a few exceptions for actions based on specific types of insurance policies; for example, an action on a fire insurance policy must be commenced within 12 months after the inception of the loss.

This bill places a limit on the amount of time within which an insurer may commence an action for recovery of an overpayment of an insurance claim paid under ~~an~~ insurance policy, without fault on the part of the insured or payee. Such an action must be commenced within one year after the overpayment was made or it is barred.

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

4 SECTION 1. 631.83 (2m) of the statutes is created to read.

a health

HEALTH INSURANCE

Section

1 631.83 (2m) LIMITATION FOR RECOVERY OF CLAIM OVERPAYMENT. ~~Notwithstanding~~

2 ~~Subs (1) and (2)~~ 893.855 applies to an action by an insurer to recover overpayment

3 of ~~an insurance~~ claim, ~~regardless of the type of insurance policy under which the~~

4 ~~claim was paid~~ *under a disability insurance policy, as*

5 SECTION 2. 893.855 of the statutes is created to read:

defined in S. 632.895(1)(a)

6 **893.855 Action to recover ^{health} insurance overpayment.** (1) Notwithstanding

7 ~~893.43~~ 893.43, an action to recover an overpayment of an insurance

8 claim that was paid without fault on the part of the insured or payee shall be

9 commenced within one year after the date on which the insurer made the

10 overpayment or be barred.

disability ✓

11 SECTION 3. Initial applicability.

12 (a) Except as provided in paragraph (b), this act first applies to claims made

13 under insurance policies on the effective date of this paragraph.

14 (b) If ~~an~~ *a disability* insurance policy that is in effect on the effective date of this paragraph

15 contains a provision that is inconsistent with this act, this act first applies to claims

16 made under that policy on the day the policy is renewed.

17 (END)

Insert 2-10 ✓

2001-2002 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1024/lins
PJK.&RPN;jld:km

INSERT ~~1-1~~ 2-10

1 SECTION 1. 631.83 (1) (b) of the statutes is amended to read:

2 631.83 (1) (b) *Disability insurance*. An Except as provided in par. (bp), an
3 action on disability insurance coverage must be commenced within 3 years from the
4 time written proof of loss is required to be furnished.

History: 1975 c. 375; 1979 c. 89, 102; 1983 a. 192; 1987 a. 247; 1989 a. 187 s. 29.

5 SECTION 2. 631.83 (1) (bp) of the statutes is created to read:

6 631.83 (1) (bp) *Disability insurance claim overpayment*. An action to recover
7 an overpayment of an insurance claim under a disability insurance policy, as defined
8 in s. 632.895 (1) (a), that was paid without fault on the part of the insured or payee
9 shall be commenced within one year after the date on which the insurer made the
10 overpayment or be barred.

(END OF INSERT ~~1-1~~) → 2-10



State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

100 NORTH HAMILTON STREET
5TH FLOOR
MADISON, WI 53701-2037

STEPHEN R. MILLER
CHIEF

LEGAL SECTION: (608) 266-3561
LEGAL FAX: (608) 264-6948

November 2, 2001

MEMORANDUM

To: Senator Decker

From: Pamela J. Kahler, Senior Legislative Attorney

Re: LRB-1024/1 Prohibit insurer from collecting payments made in error after one year

The attached draft was prepared at your request. Please review it carefully to ensure that it is accurate and satisfies your intent. If it does and you would like it jacketed for introduction, please indicate below for which house you would like the draft jacketed and return this memorandum to our office. If you have any questions about jacketing, please call our program assistants at 266-3561. Please allow one day for jacketing.

___ JACKET FOR ASSEMBLY JACKET FOR SENATE

If you have any questions concerning the attached draft, or would like to have it redrafted, please contact me at (608) 266-2682 or at the address indicated at the top of this memorandum.

If the last paragraph of the analysis states that a fiscal estimate will be prepared, the LRB will request that it be prepared after the draft is introduced. You may obtain a fiscal estimate on the attached draft before it is introduced by calling our program assistants at 266-3561. Please note that if you have previously requested that a fiscal estimate be prepared on an earlier version of this draft, you will need to call our program assistants in order to obtain a fiscal estimate on this version before it is introduced.

Please call our program assistants at 266-3561 if you have any questions regarding this memorandum.