



State of Wisconsin
2007 - 2008 LEGISLATURE

LRB-3560/B1
PJK:kjf:nwn

Monday a.m.

P2
r m is run
kjf

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

(in 1-23)
D-vote
SOON

reorganize ↓

1 AN ACT *to renumber and amend* 600.03 (23c) and 635.01; *to amend* 618.28 (1)
2 (intro.), 618.36 (1), 625.03 (1m) (d), 625.03 (1m) (e) and 632.89 (2) (e); and *to*
3 *create* 600.03 (23c) (bm), 609.02, 618.02 (4), 618.11 (12m), 618.29, 625.03 (1m)
4 (f), 632.835 (10), 632.87 (7), 632.875 (5) (c), 632.895 (1m), 632.896 (7) and 635.01
5 (2) of the statutes; **relating to:** allowing out-of-state insurers to offer health
6 care plans that are exempt from certain laws to employers and individuals in
7 this state.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a later version.
For further information see the **state** fiscal estimate, which will be printed as
an appendix to this bill.

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

8 SECTION 1. 600.03 (23c) of the statutes is renumbered 600.03 (23c) (am), and
9 600.03 (23c) (am) (intro.), as renumbered, is amended to read:

1 600.03 (23c) (am) (intro.) “Health Except as provided in par. (bm), “health
 2 maintenance organization insurer” means an insurer that satisfies all of the
 3 following:

4 **SECTION 2.** 600.03 (23c) (bm) of the statutes is created to read:

5 600.03 (23c) (bm) “Health maintenance organization insurer” does not include
 6 a foreign insurer that engages in the types of insurance business described in s.
 7 609.03 (3) but that has elected to be exempt from ch. 609 under s. 618.29 (2) (a) 1.

8 **SECTION 3.** 609.02 of the statutes is created to read:

9 **609.02 Election by foreign insurer to be exempt.** This chapter does not
 10 apply to a foreign insurer, or to a health care plan offered by a foreign insurer, that
 11 has elected to be exempt from this chapter under s. 618.29 (2) (a) 1.

12 **SECTION 4.** 618.02 (4) of the statutes is created to read:

13 618.02 (4) “Health care plan” has the meaning given in s. 628.36 (2) (a) 1.

14 **SECTION 5.** 618.11 (12m) of the statutes is created to read:

15 618.11 (12m) If the insurer is a foreign insurer that intends to offer health care
 16 plans to employers or individuals in this state, any chapters or sections specified
 17 under s. 618.29 (2) (a) from which the insurer elects to be exempt and any proposed *the*
 18 ~~written explanation~~ required under s. 618.29 (2) (b); *(4)*

19 **SECTION 6.** 618.28 (1) (intro.) of the statutes is amended to read:

20 618.28 (1) EXEMPTIONS. (intro.) Any Except as provided in s. 618.29 (2) (a), any
 21 nondomestic insurer authorized to do business in this state may apply for and the
 22 commissioner may make an order exempting it from any requirement otherwise
 23 applicable to it, if the commissioner finds after a hearing:

24 **SECTION 7.** 618.29 of the statutes is created to read:

Insert 2-11

disclosures

Insert 2-23

1 **618.29 Sale by foreign insurer of health insurance that is exempt from**

2 **certain requirements.** (1) REQUIREMENTS FOR OFFERING COVERAGE. (a) A foreign

3 insurer may offer and provide coverage to employers in this state under group health

4 care plans, and may offer and provide coverage to individuals in this state under

5 individual health care plans, that are exempt from ~~any of~~ the requirements ~~under~~

6 ~~sub. (2) (a)~~, if all of the following are satisfied:

7 1. The insurer is in compliance with the laws and other requirements of its
8 domiciliary state that apply to the insurer.

9 2. The insurer has been issued a certificate of authority or a new certificate of
10 authority to do business in this state under s. 618.12 and, subject to sub. (2), is in
11 compliance with the laws and other requirements of this state that apply to the
12 insurer, including subch. III of ch. 76.

13 3. The insurer offers coverage in its domiciliary state under any group or
14 individual health care plan under which it offers coverage in this state.

15 (b) Notwithstanding par. (a) 1. and 2., if there is a conflict between an applicable
16 law or requirement of the insurer's domiciliary state and an applicable law or
17 requirement of this state, the law or requirement of (which state?) applies.

Insert 3-14

Insert 3-17

******NOTE:** How do you want to deal with conflicts?

and laws that apply

18 (2) ~~ELECTION OF EXEMPTIONS~~ (a) A foreign insurer that satisfies the
19 requirements under sub. (1) may, with respect to any health care plan that the
20 insurer offers or intends to offer in this state, do any or all of the following:

21 1. Elect to be exempt from chs. 609, 625, and 635, or any of those chapters.

22 2. Elect to be exempt from ss. 632.835 (4), (5), (6m), (7), (8), and (9), 632.87,
23 632.875, 632.89, and 632.895, excluding sub. (5) (a) to (d), and from ss. 632.896 and
24 632.897 (1m) and (4) (bm), or any of those sections.

specified in this section

Insert 3-20

1 (b) A foreign insurer that elects to be exempt from any of the chapters or
 2 sections specified in par. (a) with respect to a health care plan that the insurer offers
 3 or intends to offer in this state, shall provide with an application form for the health
 4 care plan, and to each policyholder and certificate holder under any health care plan
 5 under which the insurer provides coverage, a written explanation, in plain language,
 6 of the differences between the coverage and benefits provided under the health care
 7 plan and the coverage and benefits that would be provided under the health care plan
 8 if the insurer had not elected to be exempt from any of the chapters or sections under
 9 par. (a) from which the insurer has elected to be exempt. A foreign insurer that
 10 intends to offer a health care plan under this section to employers or individuals in
 11 this state and that elects to be exempt from any of the chapters or sections specified
 12 in par. (a) shall obtain the approval of the commissioner of any written explanation
 13 required under this paragraph before the insurer offers the health care plan.

Insert 4-13

14 SECTION 8. 618.36 (1) of the statutes is amended to read:

Subject to

15 618.36 (1) CONTINUANCE OF REGULATION. ~~A. Except as provided in s. 618.29 (2)~~
 16 (a), a nondomestic insurer authorized under this chapter is subject to regulation
 17 under the applicable provisions of chs. 600 to 646 until released from regulation
 18 under this section.

19 SECTION 9. 625.03 (1m) (d) of the statutes is amended to read:

20 625.03 (1m) (d) Variable and fixed annuities; and

21 SECTION 10. 625.03 (1m) (e) of the statutes is amended to read:

22 625.03 (1m) (e) Group and blanket accident and sickness insurance other than
 23 credit accident and sickness insurance; and

****NOTE: This is somewhat dated language, but I believe it refers to group health care plans, making them exempt from ch. 625 anyway.

1 SECTION 11. 625.03 (1m) (f) of the statutes is created to read:

2 625.03 (1m) (f) Individual health care plans, as defined in s. 628.36 (2) (a) 1.,
3 offered by a foreign insurer that has elected to be exempt from this chapter under s.
4 618.29 (2) (a) 1. with respect to those health care plans.

5 SECTION 12. 632.835 (10) of the statutes is created to read:

6 632.835 (10) INAPPLICABILITY. Subsections (?) do not apply to a foreign insurer
7 that has elected to be exempt from those subsections under s. 618.29 (2) (a) 2., or to
8 a health care plan offered by a foreign insurer that has elected to be exempt from
9 those subsections under s. 618.29 (2) (a) 2. with respect to the health care plan.

***NOTE: See my d-note. I have some questions about why you want to be exempt from certain subsections.

10 SECTION 13. 632.87 (7) of the statutes is created to read:

11 632.87 (7) This section does not apply to a foreign insurer that has elected to
12 be exempt from this section under s. 618.29 (2) (a) 2., or to a health care plan, as
13 defined in s. 628.36 (2) (a) 1., offered by a foreign insurer that has elected to be exempt
14 from this section under s. 618.29 (2) (a) 2. with respect to the health care plan.

15 SECTION 14. 632.875 (5) (c) of the statutes is created to read:

16 632.875 (5) (c) A health care plan, as defined in s. 628.36 (2) (a) 1., offered by
17 a foreign insurer that has elected to be exempt from this section under s. 618.29 (2)
18 (a) 2. with respect to the health care plan.

19 SECTION 15. 632.89 (2) (e) of the statutes is amended to read:

20 632.89 (2) (e) *Exclusion.* This subsection does not apply to a health care plan
21 offered by a limited service health organization, as defined in s. 609.01 (3), or to a
22 health care plan, as defined in s. 628.36 (2) (a) 1., offered by a foreign insurer that

or by a domestic insurer exempted under A. 618.29(6)

1 has elected to be exempt from this subsection under s. 618.29 (2) (a) 2. with respect
2 to the health care plan.

3 **SECTION 16.** 632.895 (1m) of the statutes is created to read:

4 632.895 (1m) EXEMPTION. Except for sub. (5), this section does not apply to a
5 health care plan, as defined in s. 628.36 (2) (a) 1., offered by a foreign insurer that
6 has elected to be exempt from this section, except for sub. (5), under s. 618.29 (2) (a)
7 2. with respect to the health care plan.

8 **SECTION 17.** 632.896 (7) of the statutes is created to read:

9 632.896 (7) EXEMPTION. This section does not apply to a health care plan, as
10 defined in s. 628.36 (2) (a) 1., offered by a foreign insurer that has elected to be exempt
11 from this section under s. 618.29 (2) (a) 2. with respect to the health care plan.

***NOTE: I may need to amend some parts of s. 632.897, but first I need to understand the exemptions you want. See my d-note.

12 **SECTION 18.** 635.01 of the statutes is renumbered 635.01 (1) and amended to
13 read:

14 635.01 (1) This Except as provided in sub. (2), this chapter applies to all group
15 health insurance plans, policies, or certificates, written on risks or operations in this
16 state, providing coverage for employees of a small employer, or employees of a small
17 employer and the employer, and to individual health insurance policies, written on
18 risks or operations in this state, providing coverage for employees of a small
19 employer, or employees of a small employer and the employer when 3 or more are sold
20 to or through a small employer.

21 **SECTION 19.** 635.01 (2) of the statutes is created to read:

22 635.01 (2) This chapter does not apply to a group or individual health care plan,
23 as defined in s. 628.36 (2) (a) 1., that is offered by a foreign insurer that has elected

Insert 6 - 11

1 to be exempt from this chapter under s. 618.29 (2) (a) 1. with respect to the health

2 care plan *or by a domestic insurer exempted under s. 618.29(6)*

3 **SECTION 20. Initial applicability.**

4 (1) This act first applies to *all of the following: 4(a)* foreign insurers that apply for a certificate of
5 authority under section 618.11 of the statutes, as affected by this act, or that apply
6 for a new certificate of authority under section 618.12 (4) of the statutes, on the
7 effective date of this *subsection.* *paragraph*

8 (END)

Insert 7-7

Insert 7-2

D-note

nonstat: po

2007-2008 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3560/P2ins
PJK:.....

INSERT 2-11

1 **SECTION 1.** 149.10 (5) of the statutes is amended to read:

2 149.10 (5) "Insurer" means any person or association of persons, including a
3 health maintenance organization, limited service health organization, or preferred
4 provider plan offering or insuring health services on a prepaid basis, including, but
5 not limited to, policies of health insurance issued by a currently licensed insurer, as
6 defined in s. 600.03 (27), nonprofit hospital or medical service plans under ch. 613,
7 cooperative medical service plans under s. 185.981, or other entity whose primary
8 function is to provide diagnostic, therapeutic or preventive services to a defined
9 population in return for a premium paid on a periodic basis. "Insurer" includes any
10 person providing health services coverage for individuals on a self-insurance basis
11 without the intervention of other entities, as well as any person providing health
12 insurance coverage under a medical reimbursement plan to persons. "Insurer"
13 includes a foreign insurer that issues health care plans in this state under s. 618.29
14 or a domestic insurer exempted under s. 618.29 (6). "Insurer" does not include a plan
15 under ch. 613 which offers only dental care.

16 History: 1997 a. 27 ss. 3014 to 3024, 4814, 4817 to 4824; Stats. 1997 s. 149.10; 1999 a. 9; 2001 a. 38; 2003 a. 33; 2005 a. 74.

16 **SECTION 2.** 600.01 (1) (b) 12. of the statutes is created to read:

17 600.01 (1) (b) 12. Health care plans offered by a foreign insurer under s. 618.29
18 or by a domestic insurer exempted under s. 618.29 (6).

(END OF INSERT 2-11)

INSERT 2-23

19 **SECTION 3.** 618.12 (5) of the statutes is created to read:

20 618.12 (5) SPECIAL CONSIDERATION FOR FOREIGN HEALTH INSURERS. When
21 determining whether to issue a certificate of authority or a new certificate of

Ins 2-23 contd

1 authority to an applicant under sub. (4) or s. 618.11 who intends to offer health care
2 plans under s. 618.29, the commissioner may consider the applicant's financial
3 condition, marketing practices, and compliance with the applicable laws and
4 regulations of the applicant's domiciliary state. However, the commissioner may not
5 apply these factors in a manner that would place a greater burden on these foreign
6 insurers than on domestic insurers.

7 **SECTION 4.** 618.21 (6) of the statutes is created to read:

8 618.21 (6) FOREIGN HEALTH INSURERS. This section does not apply to foreign
9 insurers offering health care plans under s. 618.29.

***NOTE: Is this how you want to treat s. 618.21?

10 **SECTION 5.** 618.26 (5) of the statutes is created to read:

11 618.26 (5) FOREIGN HEALTH INSURERS. This section does not apply to foreign
12 insurers offering health care plans under s. 618.29.

***NOTE: Is this how you want to treat s. 618.26? I don't know if any of the foreign
insurers offering health care plans would be fraternal.

(END OF INSERT 2-23)

INSERT 3-14

***NOTE: Do you want to retain this requirement? It was not mentioned in the
latest redraft instructions.

(END OF INSERT 3-14)

INSERT 3-17

***NOTE: I think you still need to address this issue. It seems to me that the only
conflicts that could arise would involve this state's laws that the insurer is specifically
subject to, i.e., those specified in proposed s. 618.29 (2)(a) 1. Electing to comply with any
part of chs. 600 to 646, as was suggested, would not resolve such a conflict.

(END OF INSERT 3-17)

INSERT 3-20

10/11 *Ins, 3-20*

1 shall be exempt from chs. 600 to 646, and any rules promulgated under those
2 chapters, except as otherwise provided in this chapter and except as follows:

3 1. The insurer and health care plan, as applicable, are subject to ss. 610.70,
4 631.27 with respect to rules of law that are applicable to the insurer or health care
5 plan, 631.28, 631.90, 631.93, 632.715, and 632.785, subch. I of ch. 631, and chs. 618
6 and 628, and any rules promulgated under any of them.

****NOTE: Most of ch. 628 relates to requirements for insurance intermediaries and would, I believe, apply to any intermediaries in this state, even if the insurer is a foreign insurer. See s. 628.03, for example. Perhaps subch. III of ch. 628 would be more specific to what you want the insurer to comply with.

****NOTE: I added ch. 618, which is the chapter that relates to nondomestic insurers, to the list of provisions that apply to these foreign insurers. The provision authorizing the offering of health care plans is drafted in ch. 618, and I have amended ch. 618 to be consistent with its application to a foreign insurer offering health care plans that are not subject to numerous requirements. It wouldn't make sense for the insurers not to be subject to ch. 618.

7 2. If the insurer's domiciliary state does not require the insurer to establish and
8 follow grievance and independent claims review procedures, the insurer and health
9 care plan are subject to ss. 632.83 and 632.835 and any rules promulgated under
10 them.

11 (b) An insurer under par. (a) is subject to assessment under ch. 149.

(END OF INSERT 3-20)

INSERT 4-13 *10/4*

12 (3) REQUIREMENTS FOR HEALTH CARE PLANS. (a) In this subsection, "health care
13 provider" has the meaning given in s. 146.81 (1).

****NOTE: Is this definition okay?

14 (b) A health care plan offered under this section may not exclude coverage for
15 the diagnosis or treatment of a condition or complaint by a licensed health care
16 provider within the scope of the licensed health care provider's professional license
17 if the health care plan covers the diagnosis or treatment of the condition or complaint

Ins 4-13 contd 2004

1 by another type of licensed health care provider, even if different nomenclature is
2 used to describe the condition or complaint.

3 (c) A health care plan offered under this section shall do all of the following:

4 1. Apply deductibles, copayments, coinsurance, and any other type of
5 cost-sharing equally without regard to the type of health care service covered.

6 2. Apply cost containment and quality assurance measures consistently
7 without regard to the type of health care service covered.

8 (4) Disclosures ^{CS} REGARDING PLAN DIFFERENCES. Each application form for, and

9 each policy of, a health care plan under this section shall disclose, in plain language,
10 all of the following:

11 (a) The differences between the health care plan under this section and a health
12 care plan issued in compliance with chs. 600 to 646, including in bold type or
13 otherwise highlighted print the differences with respect to all of the following:

14 1. The treatment of preexisting conditions.

***NOTE: It might be impossible to specify the differences here. Wisconsin law has no statute regarding preexisting conditions for individual policies, so each could differ from all others. The treatment of preexisting conditions for employer group plans is governed by HIPAA, so those provisions would apply to all such policies in every state.

15 2. Renewability.

***NOTE: The problem here is similar to the problem for preexisting conditions.

16 3. Portability.

***NOTE: Exactly the same problem as for preexisting conditions, i.e., HIPAA governs employer group policies and no provision in Wisconsin law for individual policies.

17 4. Contract termination.

***NOTE: The problem here is similar to the problem for preexisting conditions.

18 5. Coverage and benefits.

***NOTE: "Coverage" is too broad a term. It pretty much applies to everything, and so it would be very difficult, if not impossible, to address every policy that is issued in compliance with the insurance chapters.

Ins 4-13 contd

384

1 6. Rate regulation.

 ***NOTE: I don't believe there is really any rate regulation under Wisconsin law, except for policies issued to small employers. Otherwise, rates simply must not be "excessive, inadequate, or unfairly discriminatory," and even *this* standard does not apply to group health insurance.

2 (b) What state's laws govern the issuance of and requirements under the health
3 care plan offered under this section.

4 (5) RULES. The commissioner may promulgate rules for the administration of
5 this section. The commissioner may not promulgate a rule that does any of the
6 following:

7 (a) Requires a foreign insurer under this section to modify coverage or benefit
8 requirements or to restrict rate increases in any way that exceeds the insurer's
9 domiciliary state's laws or regulations.

10 (b) Expands the commissioner's authority over foreign insurers in a way that
11 conflicts with this section.

12 (c) Conflicts with the purpose of exempting foreign insurers under this section
13 from requirements under chs. 600 to 646.

 ***NOTE: The above provisions relating to rules are paraphrased. Please modify if I was unable to capture your intent.

14 (6) EXEMPTIONS FOR DOMESTIC INSURERS. The commissioner may make an order
15 exempting from the requirements from which a foreign insurer offering health care
16 plans under this section is exempt any domestic insurer authorized to do business
17 in this state in one or more lines of insurance that includes health insurance that
18 applies for such an exemption on the basis that the insurer believes that the
19 exemption will enable it to be more competitive with foreign insurers offering health
20 care plans under this section.

 ***NOTE: I assumed you wanted to limit this to health insurers and with respect to competition with foreign insurers under this section. Is that correct?

Ins 4-13 contd 404

****NOTE: Usually the commissioner takes action on the basis of standards that the commissioner applies, not on the basis of what the applicant wants or believes. Conceivably, all domestic insurers could apply for this exemption. The commissioner is not required to make an order exempting an insurer, but the provision gives the commissioner no guidelines upon which to base a decision other than a belief stated by the insurer.

X

Wisconsin
****NOTE: An additional problem with this provision is that a domestic insurer would be subject to almost no insurance regulation at all because it would only be subject to the WI stats. that specifically apply to a foreign insurer. A foreign insurer is subject to the laws of its domiciliary state, in addition to those specifically mentioned in proposed s. 618.29 (2) (a) 1. A domestic insurer would be exempt from all Wisconsin stats. except for those specifically mentioned; there would be no other laws of its domiciliary state (WI) that would apply. Thus, it would have no financial requirements, no requirements relating to its organization, no requirements relating to policies and forms, etc., because these are all Wisconsin requirements that a foreign insurer is exempt from but subject to under the laws of its domiciliary state.

(END OF INSERT 4-13)

INSERT 6-11

1 **SECTION 6.** 631.01 (1) (a) of the statutes is amended to read:
2 631.01 (1) (a) As provided in ss. 600.01, 618.29, and 618.42;

History: 1975 c. 375, 421; 1985 a. 29; 1987 a. 247; 1991 a. 250; 1995 a. 242; 1997 a. 27.

(END OF INSERT 6-11)

INSERT 7-2

3 **SECTION 7.** 645.02 (3) of the statutes is amended to read:
4 645.02 (3) All Except as provided in s. 618.29 (2) (a) 1. and (6), all insurers who
5 have insureds resident in this state.

History: 1975 c. 223, 373, 374; 1979 c. 93, 261, 355; 1985 a. 29.

6 **SECTION 8.** 646.01 (1) (a) 1. m. of the statutes is created to read:
7 646.01 (1) (a) 1. m. Foreign insurers offering health care plans under s. 618.29
8 or domestic insurers exempted under s. 618.29 (6).

9 **SECTION 9.** 646.01 (1) (b) 19. of the statutes is created to read:

Ins 7-2 cont'd

1 646.01 (1) (b) 19. Health care plans offered by foreign insurers under s. 618.29 ✓
2 or by domestic insurers exempted under s. 618.29 (6). ✓

(END OF INSERT 7-2)

INSERT 7-7

3 **b** (a) Domestic insurers that apply for an exemption under section 618.29 (6) of ✓
4 the statutes, as created by this act, on the effective date of this paragraph. ✓

(END OF INSERT 7-7)

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

LRB-3560/P2dn

PJK: *kgf*

Date

In this draft, the insurer is exempt from chs. 600 to 646, except for certain specified statutes. The exemption covers the financial requirements under chs. 620 and 623, so presumably the financial requirements of the insurer's domiciliary state apply. Is it your intention that the exemption applies to the reporting and examination requirements under ch. 601? These provisions give the commissioner the ability to examine and investigate the affairs of insurers licensed in this state.

If ch. 601 does not apply to an insurer under this draft, what fees apply, for example, for issuing a certificate of authority? See s. 601.31 (1) (a) 1.

Is it your intention that the tax requirements related to insurers under ch. 76 apply to these insurers?

In this draft, I have retained the requirement that the commissioner must approve the disclosures in the applications and policies. Is that what you intended?

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

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3560/P2dn
PJK:kjf:jf

January 28, 2008

In this draft, the insurer is exempt from chs. 600 to 646, except for certain specified statutes. The exemption covers the financial requirements under chs. 620 and 623, so presumably the financial requirements of the insurer's domiciliary state apply. Is it your intention that the exemption applies to the reporting and examination requirements under ch. 601? These provisions give the commissioner the ability to examine and investigate the affairs of insurers licensed in this state.

If ch. 601 does not apply to an insurer under this draft, what fees apply, for example, for issuing a certificate of authority? See s. 601.31 (1) (a) 1.

Is it your intention that the tax requirements related to insurers under ch. 76 apply to these insurers?

In this draft, I have retained the requirement that the commissioner must approve the disclosures in the applications and policies. Is that what you intended?

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

- ✓ p5, l 6-16
 ① make them
 subject 632.87 on p. 4, l 13
 but limit to
 do 632.87C. ~~to~~ create a 632.87(i)
 + then limit to (2) to
 (5)
- ② ✓ ch 601 add it as a ch that applies
- ③ ✓ ch 76 s/apply
- ④ ✓ add 600.03 (def) to s. subject &
- ⑤ ✓ w/ law applies if there is a conflict
- ⑥ ✓ under subj to ~~ch 632.628~~ under III + IV
- ⑦ ✓ add only to 632.74955 HIPAA
 632.745 to stuff
- ⑧ ✓ p7 → offer policies that are ~~comparable~~ comparable
 in plan design
 Policy ~~that~~ is not subject to all
 laws; insurer is subj but ↑



State of Wisconsin
2007 - 2008 LEGISLATURE

LRB-3560/P2
PJK:kjfjf

rmis

~~PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION~~

*D-date
Fri, if possible*

regenerate ↓

1 AN ACT *to renumber and amend* 635.01; *to amend* 149.10 (5), 618.36 (1),
2 625.03 (1m) (d), 625.03 (1m) (e), 631.01 (1) (a) and 645.02 (3); and *to create*
3 600.01 (1) (b) 12., 618.02 (4), 618.11 (12m), 618.12 (5), 618.21 (6), 618.26 (5),
4 618.29, 625.03 (1m) (f), 635.01 (2), 646.01 (1) (a) 2. m. and 646.01 (1) (b) 19. of
5 the statutes; **relating to:** allowing out-of-state insurers to offer health care
6 plans that are exempt from certain laws to employers and individuals in this
7 state.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a later version.
For further information see the **state** fiscal estimate, which will be printed as
an appendix to this bill.

*Insert
A*

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

8 SECTION 1. 149.10 (5) of the statutes is amended to read:
9 149.10 (5) "Insurer" means any person or association of persons, including a
10 health maintenance organization, limited service health organization, or preferred

1 provider plan offering or insuring health services on a prepaid basis, including, but
 2 not limited to, policies of health insurance issued by a currently licensed insurer, as
 3 defined in s. 600.03 (27), nonprofit hospital or medical service plans under ch. 613,
 4 cooperative medical service plans under s. 185.981, or other entity whose primary
 5 function is to provide diagnostic, therapeutic or preventive services to a defined
 6 population in return for a premium paid on a periodic basis. "Insurer" includes any
 7 person providing health services coverage for individuals on a self-insurance basis
 8 without the intervention of other entities, as well as any person providing health
 9 insurance coverage under a medical reimbursement plan to persons. "Insurer"
 10 includes a foreign insurer that issues health care plans in this state under s. 618.29
 11 or a domestic insurer exempted under s. 618.29 (6). "Insurer" does not include a plan
 12 under ch. 613 which offers only dental care.

13 SECTION 2. 600.01 (1) (b) 12. of the statutes is created to read:

14 600.01 (1) (b) 12. Health care plans offered by a foreign insurer under s. 618.29
 15 or by a domestic insurer exempted under s. 618.29 (6).

16 SECTION 3. 618.02 (4) of the statutes is created to read:

17 618.02 (4) "Health care plan" has the meaning given in s. 628.36 (2) (a) 1.

18 SECTION 4. 618.11 (12m) of the statutes is created to read:

19 618.11 (12m) If the insurer is a foreign insurer that intends to offer health care
 20 plans to employers or individuals in this state, the proposed disclosures required
 21 under s. 618.29 (~~4~~); → 3

22 SECTION 5. 618.12 (5) of the statutes is created to read:

23 618.12 (5) SPECIAL CONSIDERATION FOR FOREIGN HEALTH INSURERS. When
 24 determining whether to issue a certificate of authority or a new certificate of
 25 authority to an applicant under sub. (4) or s. 618.11 who intends to offer health care

1 plans under s. 618.29, the commissioner may consider the applicant's financial
2 condition, marketing practices, and compliance with the applicable laws and
3 regulations of the applicant's domiciliary state. However, the commissioner may not
4 apply these factors in a manner that would place a greater burden on these foreign
5 insurers than on domestic insurers.

6 SECTION 6. 618.21 (6) of the statutes is created to read:

7 618.21 (6) FOREIGN HEALTH INSURERS. This section does not apply to foreign
8 insurers offering health care plans under s. 618.29.

9 ***NOTE: Is this how you want to treat s. 618.21?

10 SECTION 7. 618.26 (5) of the statutes is created to read:

11 618.26 (5) FOREIGN HEALTH INSURERS. This section does not apply to foreign
12 insurers offering health care plans under s. 618.29.

13 ***NOTE: Is this how you want to treat s. 618.26? I don't know if any of the foreign
14 insurers offering health care plans would be fraternal.

15 SECTION 8. 618.29 of the statutes is created to read:

16 **618.29 Sale by foreign insurer of health insurance. (1) REQUIREMENTS**
17 **FOR OFFERING COVERAGE.** (a) A foreign insurer may offer and provide coverage to
18 employers in this state under group health care plans, and may offer and provide
19 coverage to individuals in this state under individual health care plans, that are
20 exempt from the requirements specified in this section, if all of the following are
21 satisfied:

22 1. The insurer is in compliance with the laws, regulations, and other
23 requirements of its domiciliary state that apply to the insurer.

24 2. The insurer has been issued a certificate of authority or a new certificate of
25 authority to do business in this state under s. 618.12 and is in compliance with the
26 laws and other requirements of this state that apply to the insurer.

1 3. The insurer offers coverage in its domiciliary state under any group or
2 individual health care plan under which it offers coverage in this state.

***NOTE: Do you want to retain this requirement? It was not mentioned in the latest redraft instructions.

3 (b) Notwithstanding par. (a) 1. and 2., if there is a conflict between an applicable
4 law or requirement of the insurer's domiciliary state and an applicable law or
5 requirement of this state, the law or requirement of (which state?) applies

***NOTE: I think you still need to address this issue. It seems to me that the only conflicts that could arise would involve this state's laws that the insurer is specifically subject to, i.e., those specified in proposed s. 618.29 (2) (a) 1. Electing to comply with any part of chs. 600 to 646, as was suggested, would not resolve such a conflict.

6 (2) EXEMPTIONS AND LAWS THAT APPLY. (a) A foreign insurer that satisfies the
7 requirements under sub. (1), and any health care plan that the insurer offers or
8 intends to offer in this state, shall be exempt from chs. 600 to 646, and any rules
9 promulgated under those chapters, except as otherwise provided in this chapter and
10 except as follows:

11 1. The insurer and health care plan, as applicable, are subject to ss. 610.70,
12 631.27 with respect to rules of law that are applicable to the insurer or health care
13 plan, 631.28, 631.90, 631.93, 632.715, and 632.785, subch. I of ch. 631, and chs. 618
14 and 628, and any rules promulgated under any of them.

***NOTE: Most of ch. 628 relates to requirements for insurance intermediaries and would, I believe, apply to any intermediaries in this state, even if the insurer is a foreign insurer. See s. 628.03, for example. Perhaps subch. III of ch. 628 would be more specific to what you want the insurer to comply with.

***NOTE: I added ch. 618, which is the chapter that relates to nondomestic insurers, to the list of provisions that apply to these foreign insurers. The provision authorizing the offering of health care plans is drafted in ch. 618, and I have amended ch. 618 to be consistent with its application to a foreign insurer offering health care plans that are not subject to numerous requirements. It wouldn't make sense for the insurers not to be subject to ch. 618.

15 2. If the insurer's domiciliary state does not require the insurer to establish and
16 follow grievance and independent claims review procedures, the insurer and health

REQUIREMENTS, CS

this state
insert 4-5

600.03,
601 and
632.745 to 632.7495,
subchs. III and IV of ch. 628,

insert 5-2

subd. III of ch. 146

1 care plan are subject to ss. 632.83 and 632.835 and any rules promulgated under
2 them.

and taxation under

3 (b) An insurer under par. (a) is subject to assessment under ch. 149.

4 **(3) REQUIREMENTS FOR HEALTH CARE PLANS.** (a) In this subsection, "health care
5 provider" has the meaning given in s. 146.81 (1).

****NOTE: Is this definition okay?

6 (b) A health care plan offered under this section may not exclude coverage for
7 the diagnosis or treatment of a condition or complaint by a licensed health care
8 provider within the scope of the licensed health care provider's professional license
9 if the health care plan covers the diagnosis or treatment of the condition or complaint
10 by another type of licensed health care provider, even if different nomenclature is
11 used to describe the condition or complaint.

12 (c) A health care plan offered under this section shall do all of the following:

13 1. Apply deductibles, copayments, coinsurance, and any other type of
14 cost-sharing equally without regard to the type of health care service covered.

15 2. Apply cost containment and quality assurance measures consistently
16 without regard to the type of health care service covered.

17 **34** (4) DISCLOSURES REGARDING PLAN DIFFERENCES. Each application form for, and
18 each policy of, a health care plan under this section shall disclose, in plain language,
19 all of the following:

20 (a) The differences between the health care plan under this section and a health
21 care plan issued in compliance with chs. 600 to 646, including in bold type or
22 otherwise highlighted print the differences with respect to all of the following:

IRS: add a period at the end

23 1. The treatment of preexisting conditions.

****NOTE: It might be impossible to specify the differences here. Wisconsin law has no statute regarding preexisting conditions for individual policies, so each could differ

from all others. The treatment of preexisting conditions for employer group plans is governed by HIPAA, so those provisions would apply to all such policies in every state.

2. Renewability.

****NOTE: The problem here is similar to the problem for preexisting conditions.

3. Portability.

****NOTE: Exactly the same problem as for preexisting conditions, i.e., HIPAA governs employer group policies and no provision in Wisconsin law for individual policies.

4. Contract termination.

****NOTE: The problem here is similar to the problem for preexisting conditions.

5. Coverage and benefits.

****NOTE: "Coverage" is too broad a term. It pretty much applies to everything, and so it would be very difficult, if not impossible, to address every policy that is issued in compliance with the insurance chapters.

6. Rate regulation.

****NOTE: I don't believe there is really any rate regulation under Wisconsin law, except for policies issued to small employers. Otherwise, rates simply must not be "excessive, inadequate, or unfairly discriminatory," and even *this* standard does not apply to group health insurance.

(b) What state's laws govern the issuance of and requirements under the health care plan offered under this section.

4 ← (5) RULES. The commissioner may promulgate rules for the administration of this section. The commissioner may not promulgate a rule that does any of the following:

(a) Requires a foreign insurer under this section to modify coverage or benefit requirements or to restrict rate increases in any way that exceeds the insurer's domiciliary state's laws or regulations.

(b) Expands the commissioner's authority over foreign insurers in a way that conflicts with this section.

(c) Conflicts with the purpose of exempting foreign insurers under this section from requirements under chs. 600 to 646.

****NOTE: The above provisions relating to rules are paraphrased. Please modify if I was unable to capture your intent.

1 (6) EXEMPTIONS FOR DOMESTIC INSURERS. The commissioner may make an order
2 exempting from the requirements from which a foreign insurer offering health care
3 plans under this section is exempt any domestic insurer authorized to do business
4 in this state in one or more lines of insurance that includes health insurance that
5 applies for such an exemption on the basis that the insurer believes that the
6 exemption will enable it to be more competitive with foreign insurers offering health
7 care plans under this section.

****NOTE: I assumed you wanted to limit this to health insurers and with respect to competition with foreign insurers under this section. Is that correct?

****NOTE: Usually the commissioner takes action on the basis of standards that the commissioner applies, not on the basis of what the applicant wants or believes. Conceivably, all domestic insurers could apply for this exemption. The commissioner is not required to make an order exempting an insurer, but the provision gives the commissioner no guidelines upon which to base a decision other than a belief stated by the insurer.

****NOTE: An additional problem with this provision is that a domestic insurer would be subject to almost no insurance regulation at all because it would only be subject to the Wisconsin stats. that specifically apply to a foreign insurer. A foreign insurer is subject to the laws of its domiciliary state, in addition to those specifically mentioned in proposed s. 618.29 (2) (a) 1. A domestic insurer would be exempt from all Wisconsin stats. except for those specifically mentioned; there would be no other laws of its domiciliary state (WI) that would apply. Thus, it would have no financial requirements, no requirements relating to its organization, no requirements relating to policies and forms, etc., because these are all Wisconsin requirements that a foreign insurer is exempt from but subject to under the laws of its domiciliary state.

8 SECTION 9. 618.36 (1) of the statutes is amended to read:

9 618.36 (1) CONTINUANCE OF REGULATION. ~~A~~ Subject to s. 618.29 (2) (a), a
10 nondomestic insurer authorized under this chapter is subject to regulation under the
11 applicable provisions of chs. 600 to 646 until released from regulation under this
12 section.

13 SECTION 10. 625.03 (1m) (d) of the statutes is amended to read:

14 625.03 (1m) (d) Variable and fixed annuities; and

15 SECTION 11. 625.03 (1m) (e) of the statutes is amended to read:

Insert 7-8

1 625.03 (1m) (e) Group and blanket accident and sickness insurance other than
2 credit accident and sickness insurance; and

3 **SECTION 12.** 625.03 (1m) (f) of the statutes is created to read:

4 625.03 (1m) (f) Individual health care plans, as defined in s. 628.36 (2) (a) 1.,
5 offered by a foreign insurer under s. 618.29 or by a domestic insurer exempted under

6 s. 618.29 (6).

7 **SECTION 13.** 631.01 (1) (a) of the statutes is amended to read:

8 631.01 (1) (a) As provided in ss. 600.01, 618.29, and 618.42;

9 **SECTION 14.** 635.01 of the statutes is renumbered 635.01 (1) and amended to
10 read:

11 635.01 (1) This Except as provided in sub. (2), this chapter applies to all group
12 health insurance plans, policies, or certificates, written on risks or operations in this
13 state, providing coverage for employees of a small employer, or employees of a small
14 employer and the employer, and to individual health insurance policies, written on
15 risks or operations in this state, providing coverage for employees of a small
16 employer, or employees of a small employer and the employer when 3 or more are sold
17 to or through a small employer.

18 **SECTION 15.** 635.01 (2) of the statutes is created to read:

19 635.01 (2) This chapter does not apply to a group or individual health care plan,
20 as defined in s. 628.36 (2) (a) 1., that is offered by a foreign insurer under s. 618.29

21 or by a domestic insurer exempted under s. 618.29 (6).

22 **SECTION 16.** 645.02 (3) of the statutes is amended to read:

23 645.02 (3) All Except as provided in s. 618.29 (2) (a) 1. and (6), all insurers who
24 have insureds resident in this state.

25 **SECTION 17.** 646.01 (1) (a) 2. m. of the statutes is created to read:

**2007-2008 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-3560/lins
PJK:.....

INSERT A

Current law specifies how an insurer that is domiciled in another state (a foreign insurer) may transact an insurance business in this state. If the insurer satisfies certain specified requirements, the insurer will be issued a certificate of authority and may offer insurance policies in this state. Generally, unless a specific exemption applies, a foreign insurer that provides insurance coverage to a person or entity in this state is subject to the insurance laws and other requirements of this state.

This bill provides that a foreign insurer may offer health care plans to groups and individuals in this state. Both the insurer and the health care plans offered are exempt from all insurance laws and requirements of this state except for certain specified ones. To be able to offer these health care plans, a foreign insurer must be in compliance with all the laws and regulations of the insurer's domiciliary state that apply to the insurer, must have been issued a certificate of authority by this state to transact an insurance business in this state, must be in compliance with the laws and requirements of this state that do apply to the insurer, and must offer coverage in its domiciliary state under any health care plan that it intends to offer in this state. If there is a conflict between a law of the insurer's domiciliary state and a law of this state that applies to the insurer, the law of this state takes precedence unless the Commissioner of Insurance (commissioner) exempts the insurer from this state's law.

A foreign insurer offering health care plans under the bill would be subject to the taxation requirements in this state that apply to insurers in general and would be required to pay the assessments that health insurers pay to help fund the Health Insurance Risk-Sharing Plan (HIRSP). Wisconsin statutes and any administrative rules promulgated under those statutes that specifically apply to the foreign insurer and health care plans offered by the insurer include: requirements relating to the disclosure of personal medical information; prohibitions on various unfair marketing practices; requiring insurers to provide notice of an insured's right to file a complaint with the Office of the Commissioner of Insurance; prohibitions on certain actions relating to whether an applicant or insured has obtained a test, and what the results were, for the presence of human immunodeficiency virus (HIV); preexisting condition, portability, and contract renewability requirements and discrimination prohibitions that apply to employer group health care plans under the federal Health Insurance Portability and Accountability Act of 1996; contract renewability requirements for individual health insurance policies; and prohibitions on a health care plan from refusing to cover the services of certain health care professionals if the health care plan covers the same services when provided by a different type of health care professional. Every application for, and policy of, a health care plan offered by a foreign insurer must include plain language disclosing: 1) the differences between that health care plan and one that is issued in compliance with all of the Wisconsin insurance statutes and rules, and 2) which state's laws govern the issuance and requirements under the health care plan.

Ins A contd

The bill also provides that a domestic health insurer may request an exemption from the Wisconsin insurance laws, as determined by the commissioner, that would allow the insurer to provide health care plans with plan designs that are comparable to those that a foreign insurer may offer under the bill. The commissioner may order an exemption if the commissioner determines that the exemption would enable the domestic insurer to be more competitive with foreign insurers offering the health care plans authorized under the bill.

(END OF INSERT A)

INSERT 4-5

1 *WCH*, unless the commissioner orders an exemption from the law or requirement
2 under s. 618.28

(END OF INSERT 4-5)

INSERT 5-2

3 3. The insurer may not refuse to provide or pay for benefits under the health
4 care plan for health care services provided by a licensed health care professional on
5 the ground that the services were not rendered by a physician as defined in s. 990.01
6 (28), unless the health care plan clearly excludes services by such practitioners, but
7 no health care plan under this section may exclude services in violation of s. 632.87
8 (2), (2m), (3), (4), or (5).

(END OF INSERT 5-2)

INSERT 7-8

9 **(5) EXEMPTIONS FOR DOMESTIC INSURERS.** A domestic insurer authorized to do
10 business in this state in one or more lines of insurance that includes health insurance
11 may apply for an exemption from the provisions under chs. 600 to 646, and any rules
12 promulgated under those provisions, as determined by the commissioner, that would
13 allow the insurer to offer health care plans that are comparable in plan design to

Ins 7-8 contd

1 health care plans offered by foreign insurers under this section. The commissioner
2 may make an order exempting the insurer from the relevant provisions and rules if
3 the commissioner determines that the exemption will enable the insurer to be more
4 competitive with foreign insurers offering health care plans under this section. Any
5 health care plan offered by a domestic insurer under an exemption under this
6 subsection shall be subject to the requirements that apply to health care plans
7 offered by foreign insurers under this section, including the disclosure requirements
8 under sub. (3).

(END OF INSERT 7-8)

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

LRB-3560/1dn

PJK: *kgf*

Date

✓
Proposed s. 618.29 (5) is a rewording of the provision that allows domestic insurers to request exemptions from state laws that would enable them to offer health care plans that are comparable in plan design to those offered by foreign insurers under the bill. I have provided that the commissioner determines what state laws the exemptions apply to. For that reason, I have not specified any exemptions for domestic insurers under current laws that I have specifically exempted foreign insurers from (see ss. 625.03 (1m) (f) and 635.01 (2), for example). Is this okay?

✓
In proposed s. 618.29 (5), I have also provided that the exemption would be ordered if the commissioner determines (rather than if the insurer believes) that the exemption would make the domestic insurer more competitive. Is this change okay? If not, I can easily change it back to the insurer's belief.

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

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

LRB-3560/1dn
PJK:kjf:pg

January 31, 2008

Proposed s. 618.29 (5) is a rewording of the provision that allows domestic insurers to request exemptions from state laws that would enable them to offer health care plans that are comparable in plan design to those offered by foreign insurers under the bill. I have provided that the commissioner determines what state laws the exemptions apply to. For that reason, I have not specified any exemptions for domestic insurers under current laws that I have specifically exempted foreign insurers from (see ss. 625.03 (1m) (f) and 635.01 (2), for example). Is this okay?

In proposed s. 618.29 (5), I have also provided that the exemption would be ordered if the commissioner determines (rather than if the insurer believes) that the exemption would make the domestic insurer more competitive. Is this change okay? If not, I can easily change it back to the insurer's belief.

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

Duerst, Christina

From: Cady, Dean
Sent: Monday, February 04, 2008 2:08 PM
To: LRB.Legal
Subject: Draft Review: LRB 07-3560/1 Topic: Requirements for out-of-state health insurers

Please Jacket LRB 07-3560/1 for the ASSEMBLY.

Kahler, Pam

From: Vukmir, Leah
Sent: Tuesday, February 19, 2008 4:54 PM
To: Kahler, Pam
Subject: Amendment to LRB 3560/1

Pam,

I need an amendment to LRB 3560/1. The amendment needs to push the initial applicability to July 1, 2009.

I need to change the language starting on page 6, line 22 as follows:

EXEMPTIONS FOR DOMESTIC INSURERS. A domestic insurer authorized to do business in this state in one or more lines of insurance that includes health insurance may apply for an exemption from the provisions under chs. 600 to 646, and any rules promulgated under those provisions, as determined by the commissioner, that would allow the insurer to offer health care plans that are comparable in plan design to health care plans offered by foreign insurers under this section. The commissioner ~~may~~ shall make an order exempting the insurer from the relevant provisions and rules ~~if the commissioner determines that the exemption will enable the insurer to be more competitive with~~ that would allow the insurer to offer a plan or plans that are comparable to the plan or plans offered by foreign insurers offering health care plans under this section. Any health care plan offered by a domestic insurer under an exemption under this subsection shall be subject to the requirements that apply to health care plans offered by foreign insurers under this section, including the disclosure requirements under sub. (3).

Thanks,

Leah



State of Wisconsin
2007 - 2008 LEGISLATURE

LRB-3560/1
PJK:kjf:pg

2
v m is run

2007 BILL

SOON
(in 2-20)

Regen

1 AN ACT *to renumber and amend* 635.01; *to amend* 149.10 (5), 618.36 (1),
2 625.03 (1m) (d), 625.03 (1m) (e), 631.01 (1) (a) and 645.02 (3); and *to create*
3 600.01 (1) (b) 12., 618.02 (4), 618.11 (12m), 618.12 (5), 618.21 (6), 618.26 (5),
4 618.29, 625.03 (1m) (f), 635.01 (2), 646.01 (1) (a) 2. m. and 646.01 (1) (b) 19. of
5 the statutes; **relating to:** allowing out-of-state insurers to offer health care
6 plans that are exempt from certain laws to employers and individuals in this
7 state.

Analysis by the Legislative Reference Bureau

Current law specifies how an insurer that is domiciled in another state (a foreign insurer) may transact an insurance business in this state. If the insurer satisfies certain specified requirements, the insurer will be issued a certificate of authority and may offer insurance policies in this state. Generally, unless a specific exemption applies, a foreign insurer that provides insurance coverage to a person or entity in this state is subject to the insurance laws and other requirements of this state.

This bill provides that a foreign insurer may offer health care plans to groups and individuals in this state. Both the insurer and the health care plans offered are exempt from all insurance laws and requirements of this state except for certain specified ones. To be able to offer these health care plans, a foreign insurer must be

BILL

in compliance with all the laws and regulations of the insurer's domiciliary state that apply to the insurer, must have been issued a certificate of authority by this state to transact an insurance business in this state, must be in compliance with the laws and requirements of this state that do apply to the insurer, and must offer coverage in its domiciliary state under any health care plan that it intends to offer in this state. If there is a conflict between a law of the insurer's domiciliary state and a law of this state that applies to the insurer, the law of this state takes precedence unless the Commissioner of Insurance (commissioner) exempts the insurer from this state's law.

A foreign insurer offering health care plans under the bill would be subject to the taxation requirements in this state that apply to insurers in general and would be required to pay the assessments that health insurers pay to help fund the Health Insurance Risk-Sharing Plan (HIRSP). Wisconsin statutes and any administrative rules promulgated under those statutes that specifically apply to the foreign insurer and health care plans offered by the insurer include: requirements relating to the disclosure of personal medical information; prohibitions on various unfair marketing practices; requiring insurers to provide notice of an insured's right to file a complaint with the Office of the Commissioner of Insurance; prohibitions on certain actions relating to whether an applicant or insured has obtained a test, and what the results were, for the presence of human immunodeficiency virus (HIV); preexisting condition, portability, and contract renewability requirements and discrimination prohibitions that apply to employer group health care plans under the federal Health Insurance Portability and Accountability Act of 1996; contract renewability requirements for individual health insurance policies; and prohibitions on a health care plan from refusing to cover the services of certain health care professionals if the health care plan covers the same services when provided by a different type of health care professional. Every application for, and policy of, a health care plan offered by a foreign insurer must include plain language disclosing: 1) the differences between that health care plan and one that is issued in compliance with all of the Wisconsin insurance statutes and rules; and 2) which state's laws govern the issuance and requirements under the health care plan.

The bill also provides that a domestic health insurer may request an exemption from the Wisconsin insurance laws, as determined by the commissioner, that would allow the insurer to provide health care plans with plan designs that are comparable to those that a foreign insurer may offer under the bill. The commissioner may order an exemption if the commissioner determines that the exemption would enable the domestic insurer to be more competitive with foreign insurers offering the health care plans authorized under the bill.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

and the commissioner must order,

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

BILL

1 **SECTION 1.** 149.10 (5) of the statutes is amended to read:

2 149.10 (5) "Insurer" means any person or association of persons, including a
3 health maintenance organization, limited service health organization, or preferred
4 provider plan offering or insuring health services on a prepaid basis, including, but
5 not limited to, policies of health insurance issued by a currently licensed insurer, as
6 defined in s. 600.03 (27), nonprofit hospital or medical service plans under ch. 613,
7 cooperative medical service plans under s. 185.981, or other entity whose primary
8 function is to provide diagnostic, therapeutic or preventive services to a defined
9 population in return for a premium paid on a periodic basis. "Insurer" includes any
10 person providing health services coverage for individuals on a self-insurance basis
11 without the intervention of other entities, as well as any person providing health
12 insurance coverage under a medical reimbursement plan to persons. "Insurer"
13 includes a foreign insurer that issues health care plans in this state under s. 618.29.

14 "Insurer" does not include a plan under ch. 613 which offers only dental care.

15 **SECTION 2.** 600.01 (1) (b) 12. of the statutes is created to read:

16 600.01 (1) (b) 12. Health care plans offered by a foreign insurer under s. 618.29.

17 **SECTION 3.** 618.02 (4) of the statutes is created to read:

18 618.02 (4) "Health care plan" has the meaning given in s. 628.36 (2) (a) 1.

19 **SECTION 4.** 618.11 (12m) of the statutes is created to read:

20 618.11 (12m) If the insurer is a foreign insurer that intends to offer health care
21 plans to employers or individuals in this state, the proposed disclosures required
22 under s. 618.29 (3);

23 **SECTION 5.** 618.12 (5) of the statutes is created to read:

24 618.12 (5) SPECIAL CONSIDERATION FOR FOREIGN HEALTH INSURERS. When
25 determining whether to issue a certificate of authority or a new certificate of

BILL

1 authority to an applicant under sub. (4) or s. 618.11 who intends to offer health care
2 plans under s. 618.29, the commissioner may consider the applicant's financial
3 condition, marketing practices, and compliance with the applicable laws and
4 regulations of the applicant's domiciliary state. However, the commissioner may not
5 apply these factors in a manner that would place a greater burden on these foreign
6 insurers than on domestic insurers.

7 **SECTION 6.** 618.21 (6) of the statutes is created to read:

8 618.21 (6) FOREIGN HEALTH INSURERS. This section does not apply to foreign
9 insurers offering health care plans under s. 618.29.

10 **SECTION 7.** 618.26 (5) of the statutes is created to read:

11 618.26 (5) FOREIGN HEALTH INSURERS. This section does not apply to foreign
12 insurers offering health care plans under s. 618.29.

13 **SECTION 8.** 618.29 of the statutes is created to read:

14 **618.29 Sale by foreign insurer of health insurance. (1) REQUIREMENTS**
15 **FOR OFFERING COVERAGE.** (a) A foreign insurer may offer and provide coverage to
16 employers in this state under group health care plans, and may offer and provide
17 coverage to individuals in this state under individual health care plans, that are
18 exempt from the requirements specified in this section, if all of the following are
19 satisfied:

20 1. The insurer is in compliance with the laws, regulations, and other
21 requirements of its domiciliary state that apply to the insurer.

22 2. The insurer has been issued a certificate of authority or a new certificate of
23 authority to do business in this state under s. 618.12 and is in compliance with the
24 laws and other requirements of this state that apply to the insurer.

BILL

1 3. The insurer offers coverage in its domiciliary state under any group or
2 individual health care plan under which it offers coverage in this state.

3 (b) Notwithstanding par. (a) 1. and 2., if there is a conflict between an applicable
4 law or requirement of the insurer's domiciliary state and an applicable law or
5 requirement of this state, the law or requirement of this state applies, unless the
6 commissioner orders an exemption from the law or requirement under s. 618.28.

7 **(2) EXEMPTIONS, REQUIREMENTS, AND LAWS THAT APPLY.** (a) A foreign insurer that
8 satisfies the requirements under sub. (1), and any health care plan that the insurer
9 offers or intends to offer in this state, shall be exempt from chs. 600 to 646, and any
10 rules promulgated under those chapters, except as otherwise provided in this
11 chapter and except as follows:

12 1. The insurer and health care plan, as applicable, are subject to ss. 600.03,
13 610.70, 631.27 with respect to rules of law that are applicable to the insurer or health
14 care plan, 631.28, 631.90, 631.93, 632.715, 632.745 to 632.7495, and 632.785, subchs.
15 III and IV of ch. 628, subch. I of ch. 631, and chs. 601 and 618, and any rules
16 promulgated under any of them.

17 2. If the insurer's domiciliary state does not require the insurer to establish and
18 follow grievance and independent claims review procedures, the insurer and health
19 care plan are subject to ss. 632.83 and 632.835 and any rules promulgated under
20 them.

21 3. The insurer may not refuse to provide or pay for benefits under the health
22 care plan for health care services provided by a licensed health care professional on
23 the ground that the services were not rendered by a physician as defined in s. 990.01
24 (28), unless the health care plan clearly excludes services by such practitioners, but

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1 no health care plan under this section may exclude services in violation of s. 632.87
2 (2), (2m), (3), (4), or (5).

3 (b) An insurer under par. (a) is subject to assessment under ch. 149 and taxation
4 under subch. III of ch. 76.

5 **(3) DISCLOSURES REGARDING PLAN DIFFERENCES.** Each application form for, and
6 each policy of, a health care plan under this section shall disclose, in plain language,
7 all of the following:

8 (a) The differences between the health care plan under this section and a health
9 care plan issued in compliance with chs. 600 to 646.

10 (b) What state's laws govern the issuance of and requirements under the health
11 care plan offered under this section.

12 **(4) RULES.** The commissioner may promulgate rules for the administration of
13 this section. The commissioner may not promulgate a rule that does any of the
14 following:

15 (a) Requires a foreign insurer under this section to modify coverage or benefit
16 requirements or to restrict rate increases in any way that exceeds the insurer's
17 domiciliary state's laws or regulations.

18 (b) Expands the commissioner's authority over foreign insurers in a way that
19 conflicts with this section.

20 (c) Conflicts with the purpose of exempting foreign insurers under this section
21 from requirements under chs. 600 to 646.

22 **(5) EXEMPTIONS FOR DOMESTIC INSURERS.** A domestic insurer authorized to do
23 business in this state in one or more lines of insurance that includes health insurance
24 may apply for an exemption from the provisions under chs. 600 to 646, and any rules
25 promulgated under those provisions, as determined by the commissioner, that would

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Upon an insurer's application, the

1 allow the insurer to offer health care plans that are comparable in plan design to
 2 health care plans offered by foreign insurers under this section. ~~The~~ commissioner
 3 *shall* ~~may~~ make an order exempting the insurer from ~~the relevant~~ *those* provisions and rules if
 4 ~~the commissioner determines that the exemption will enable the insurer to be more~~
 5 ~~competitive with~~ *insert 7-5* foreign insurers offering health care plans under this section. Any
 6 health care plan offered by a domestic insurer under an exemption under this
 7 subsection shall be subject to the requirements that apply to health care plans
 8 offered by foreign insurers under this section, including the disclosure requirements
 9 under sub. (3).

10 **SECTION 9.** 618.36 (1) of the statutes is amended to read:

11 618.36 (1) CONTINUANCE OF REGULATION. ~~A~~ Subject to s. 618.29 (2) (a), a
 12 nondomestic insurer authorized under this chapter is subject to regulation under the
 13 applicable provisions of chs. 600 to 646 until released from regulation under this
 14 section.

15 **SECTION 10.** 625.03 (1m) (d) of the statutes is amended to read:

16 625.03 (1m) (d) Variable and fixed annuities; ~~and~~

17 **SECTION 11.** 625.03 (1m) (e) of the statutes is amended to read:

18 625.03 (1m) (e) Group and blanket accident and sickness insurance other than
 19 credit accident and sickness insurance; and

20 **SECTION 12.** 625.03 (1m) (f) of the statutes is created to read:

21 625.03 (1m) (f) Individual health care plans, as defined in s. 628.36 (2) (a) 1.,
 22 offered by a foreign insurer under s. 618.29.

23 **SECTION 13.** 631.01 (1) (a) of the statutes is amended to read:

24 631.01 (1) (a) As provided in ss. 600.01, 618.29, and 618.42;

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1 **SECTION 14.** 635.01 of the statutes is renumbered 635.01 (1) and amended to
2 read:

3 635.01 (1) ~~This~~ Except as provided in sub. (2), this chapter applies to all group
4 health insurance plans, policies, or certificates, written on risks or operations in this
5 state, providing coverage for employees of a small employer, or employees of a small
6 employer and the employer, and to individual health insurance policies, written on
7 risks or operations in this state, providing coverage for employees of a small
8 employer, or employees of a small employer and the employer when 3 or more are sold
9 to or through a small employer.

10 **SECTION 15.** 635.01 (2) of the statutes is created to read:

11 635.01 (2) This chapter does not apply to a group or individual health care plan,
12 as defined in s. 628.36 (2) (a) 1., that is offered by a foreign insurer under s. 618.29.

13 **SECTION 16.** 645.02 (3) of the statutes is amended to read:

14 645.02 (3) All Except as provided in s. 618.29 (2) (a) 1., all insurers who have
15 insureds resident in this state.

16 **SECTION 17.** 646.01 (1) (a) 2. m. of the statutes is created to read:

17 646.01 (1) (a) 2. m. Foreign insurers offering health care plans under s. 618.29.

18 **SECTION 18.** 646.01 (1) (b) 19. of the statutes is created to read:

19 646.01 (1) (b) 19. Health care plans offered by foreign insurers under s. 618.29.

20 **SECTION 19. Initial applicability.**

21 (1) This act first applies to all of the following:

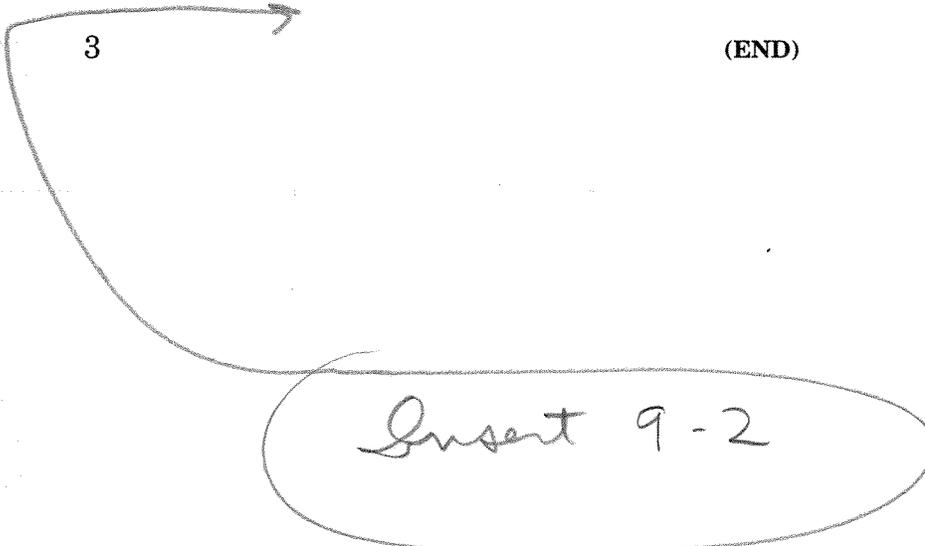
22 (a) Foreign insurers that apply for a certificate of authority under section
23 618.11 of the statutes, as affected by this act, or that apply for a new certificate of
24 authority under section 618.12 (4) of the statutes, on the effective date of this
25 paragraph.

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1 (b) Domestic insurers that apply for an exemption under section 618.29 (5) of
2 the statutes, as created by this act, on the effective date of this paragraph.

3

(END)



Insert 9-2

**2007-2008 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-3560/2ins
PJK:.....

INSERT 7-5

- 1 *not* that would allow the domestic insurer to offer a health care plan or plans that
2 are comparable in design to health care plans offered by

(END OF INSERT 7-5)

2005

Nonstat File Sequence: **FFF**

LRB 3560 / 2

PJK : _____ : _____

EFFECTIVE DATE

Insert 9-2

1. In the component bar: For the action phrase, execute: ... **create** → **action:** → *NS: → **effdate**
For the text, execute: **create** → **text:** → *NS: → **effdateA**
2. Nonstatutory subunits are numbered automatically. Fill in the SECTION # or subsection # only if a "frozen" number is needed.

SECTION # ____ . **Effective date.**

(#1) () This act takes effect on July 1, 2009.

1. In the component bar: For the action phrase, execute: .. **create** → **action:** → *NS: → **effdateE**
For the text, execute: **create** → **text:** → *NS: → **effdate**
2. Nonstatutory subunits are numbered automatically. Fill in the SECTION # or subsection # only if a "frozen" number is needed.

SECTION # ____ . **Effective dates;**

..... This act takes effect on the day after publication, except as follows:

(#1) () The treatment of sections of the statutes takes effect on

1. In the component bar: For the budget action phrase, execute:.. **create** → **action:** → *NS: → **94XX**
For the text, execute: **create** → **text:** → *NS: → **effdate**
2. Nonstatutory subunits are numbered automatically. Fill in the SECTION # or subsection # only if a "frozen" number is needed. Below, for the budget, fill in the **9400** department code.

SECTION 94 ____ . **Effective dates;**

(#1) () The treatment of sections of the statutes takes effect on

(end of insert 9-2)