



2011 SENATE BILL 378

1 **AN ACT** *to repeal* subchapter III (title) of chapter 618 [precedes 618.39] and
2 618.43 (1) (b); *to renumber and amend* 646.31 (4) (a); *to amend* 618.41 (6m),
3 618.41 (8) (a) (intro.), 618.41 (8) (c), 618.41 (9) (a), 618.43 (1) (a) (intro.), 618.43
4 (1) (a) 3., 618.43 (1) (d), 618.43 (6), 628.03 (1), 628.05 (1), 628.34 (1) (a), 631.01
5 (4m), 631.20 (1) (a), 631.20 (1) (c) 9., 631.20 (1m) (a) (intro.), 631.85, 632.32 (2)
6 (ac), 632.32 (4) (a) (intro.), 632.32 (4) (bc), 632.32 (4) (d), 632.32 (4m) (a), 632.32
7 (4m) (e), 646.01 (2) (b), 646.31 (1) (intro.), 646.35 (1) (b) and 646.35 (6) (b); and
8 **to create** subchapter III (title) of chapter 618 [precedes 618.40], 618.40, 618.41
9 (12), 618.416, 618.43 (1) (bc), 631.20 (7), 632.32 (2) (ab), 646.03 (4m) and 646.31
10 (4) (ag) of the statutes; **relating to:** surplus lines insurance, insurance security
11 fund, automobile insurance, and granting rule-making authority.

Analysis by the Legislative Reference Bureau

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

SENATE BILL 378

1 2. If 100 percent of the insured risk is located outside of the state referred to
2 in subd. 1., the state to which the greatest percentage of the insured's taxable
3 premium for that insurance contract is allocated.

4 (b) If more than one insured from an affiliated group are named insureds on
5 a single surplus lines insurance contract, "home state" means the state, as
6 determined under par. (a), of the member of the affiliated group that has the largest
7 percentage of premium attributed to it under the insurance contract.

8 (5) "Premium tax" means, with respect to unauthorized insurance, any tax, fee,
9 assessment, or other charge imposed by this state directly or indirectly based on any
10 payment made as consideration for an insurance contract for such insurance,
11 including premium deposits, assessments, registration fees, and any other
12 compensation given in consideration for a contract of insurance.

13 (6) "Principal place of business" means, with respect to determining the home
14 state of an insured, the state where the insured maintains its headquarters and
15 where the insured's high-level officers direct, control, and coordinate the business
16 activities of the insured.

17 (7) "Principal residence" means, with respect to determining the home state of
18 an insured who is an individual, the state where the individual resides for the
19 greatest number of days during a calendar year.

20 (8) "State" includes any state of the United States, the District of Columbia,
21 the Commonwealth of Puerto Rico, Guam, the Northern Mariana Islands, the Virgin
22 Islands, and American Samoa.

23 (9) "Surplus lines broker" means a person that is licensed in a state to sell,
24 solicit, or negotiate insurance on properties, risks, or exposures located or to be
25 performed in that state with unauthorized insurers.

SENATE BILL 378**SECTION 3**

1 **(10)** “Surplus lines insurance” means any insurance to which all of the
2 following apply:

3 (a) This state is the home state of the insured.

4 (b) The insurance is permitted under this subchapter to be placed through a
5 surplus lines agent or broker with an unauthorized insurer eligible to accept the
6 insurance.

7 **(11)** “Unauthorized insurance” means any insurance permitted in a state to be
8 placed directly or through a surplus lines broker with an unauthorized insurer
9 eligible to accept such insurance.

10 **SECTION 4.** 618.41 (6m) of the statutes is amended to read:

11 618.41 **(6m)** RUSTPROOFING WARRANTIES INSURANCE. An insurer issuing a policy
12 of insurance under this section to cover a warranty, as defined in s. 100.205 (1) (g),
13 shall comply with s. 632.18 and the policy shall be on a form approved by the
14 commissioner under s. 631.20.

15 **SECTION 5.** 618.41 (8) (a) (intro.) of the statutes is amended to read:

16 618.41 **(8)** (a) *Responsibility.* (intro.) An agent or broker, ~~or any other person~~
17 ~~who offers liability insurance coverage under a group policy,~~ may not place insurance
18 under this section with, ~~or~~ and a person who offers liability insurance coverage under
19 a group policy may not solicit the purchase of coverage under a group policy issued
20 by, an unauthorized insurer if all of the following exist:

21 **SECTION 6.** 618.41 (8) (c) of the statutes is amended to read:

22 618.41 **(8)** (c) *Financially sound.* To be financially sound for purposes of par.
23 (a) 1., an insurer must be able to satisfy standards comparable to those applied under
24 the laws of this state to authorized insurers, unless this state is the insured's home
25 state, in which case s. 618.416 applies.

SENATE BILL 378

1 **SECTION 7.** 618.41 (9) (a) of the statutes is amended to read:

2 618.41 **(9)** *Required information.* Every new or renewal insurance policy
3 procured and delivered under this section shall bear the name and address of the
4 insurance agent or broker who procured it and, ~~except for ocean marine insurance,~~
5 shall have stamped or affixed upon it the following: “This insurance contract is with
6 an insurer which has not obtained a certificate of authority to transact a regular
7 insurance business in the state of Wisconsin, and is issued and delivered as a surplus
8 line coverage pursuant to s. 618.41 of the Wisconsin Statutes. Section 618.43 (1),
9 Wisconsin Statutes, requires payment by the policyholder of 3 percent tax on gross
10 premium.” ~~Every ocean marine insurance policy shall have stamped or affixed upon~~
11 ~~it the above statement except that the tax shall be one-half of one percent on gross~~
12 ~~premium.~~

13 **SECTION 8.** 618.41 (12) of the statutes is created to read:

14 618.41 **(12)** APPLICATION WHEN THIS STATE IS NOT THE INSURED'S HOME STATE. The
15 placement of insurance under this section is not subject to subs. (4), (7m), (8), (9), or
16 (10) if this state is not the insured's home state and the placement complies with the
17 laws of the insured's home state.

18 **SECTION 9.** 618.416 of the statutes is created to read:

19 **618.416 Qualification for placement of surplus lines insurance with an**
20 **unauthorized insurer.** An intermediary may not place surplus lines insurance
21 under s. 618.41 with an unauthorized insurer if this state is the home state of the
22 proposed insured, unless at the time of placement all of the following apply to the
23 unauthorized insurer:

24 **(1)** If the unauthorized insurer is domiciled in a United States jurisdiction, the
25 insurer satisfies all of the following:

SENATE BILL 378**SECTION 9**

1 (a) In its domiciliary jurisdiction, the unauthorized insurer is authorized to
2 write the type of insurance to be placed with the insurer.

3 (b) Either the unauthorized insurer has capital and surplus or its equivalent
4 under the laws of its domiciliary jurisdiction that equals the greater of either the
5 minimum capital and surplus requirements under the laws of this state or
6 \$15,000,000 or the commissioner affirmatively finds that the unauthorized insurer's
7 capital and surplus are acceptable. The commissioner's finding shall be based on
8 factors that include quality of management, capital and surplus of any parent
9 company, company underwriting profit and investment income trends, market
10 availability, and company record and reputation within the industry. In no event
11 may the commissioner find that the unauthorized insurer's capital and surplus are
12 acceptable if the unauthorized insurer's capital and surplus are less than
13 \$4,500,000.

14 (c) The unauthorized insurer provides to the commissioner, no more than 6
15 months after the close of the period reported on, a certified copy of its current annual
16 statement that is filed and approved by the regulatory authority in the unauthorized
17 insurer's domicile and certified by an accounting or auditing firm licensed in the
18 jurisdiction of the unauthorized insurer's domicile.

19 (2) If the unauthorized insurer is an alien insurer, the insurer is listed on the
20 quarterly listing of alien insurers maintained by the international insurers
21 department of the National Association of Insurance Commissioners and meets
22 additional requirements regarding the use of the list established by rule of the
23 commissioner.

24 **SECTION 10.** 618.43 (1) (a) (intro.) of the statutes is amended to read:

SENATE BILL 378

1 618.43 (1) (a) (intro.) ~~Except as provided in Subject to~~ par. (b) (bc), insurers,
2 agents, brokers, and policyholders are liable, as provided in sub. (2), for a premium
3 tax of ~~3%~~ 3 percent of gross premiums charged for insurance, excluding annuities,
4 if any of the following are is satisfied:

5 **SECTION 11.** 618.43 (1) (a) 3. of the statutes is amended to read:

6 618.43 (1) (a) 3. The insurance is transacted by an unauthorized insurer for a
7 risk purchasing group ~~for coverage of risks which reside or are otherwise located in~~
8 ~~this state.~~

9 **SECTION 12.** 618.43 (1) (b) of the statutes is repealed.

10 **SECTION 13.** 618.43 (1) (bc) of the statutes is created to read:

11 618.43 (1) (bc) Notwithstanding any other provision of this section, with
12 respect to premiums charged on policies issued or renewed on or after July 21, 2011,
13 for insurance to which par. (a) applies, the tax under par. (a) is required only if the
14 home state of the insured is this state, and it shall be levied on the entire gross
15 premium charged, including premium attributable to those portions of the risk
16 located outside of this state.

17 **SECTION 14.** 618.43 (1) (d) of the statutes is amended to read:

18 618.43 (1) (d) Any insurance business transacted in violation of the law is
19 subject to a premium tax of ~~5%~~ 5 percent of gross premiums charged for the
20 insurance, ~~except that for ocean marine insurance the tax is 2% of gross premiums~~
21 ~~charged for the insurance.~~

22 **SECTION 15.** 618.43 (6) of the statutes is amended to read:

23 618.43 (6) ALLOCATION OF TAX. If With respect to gross premiums charged on
24 policies issued or renewed before July 21, 2011, if a policy covers risks that are only
25 partially located in this state, the premium shall be reasonably allocated among the

SENATE BILL 378**SECTION 15**

1 states on the basis of risk locations in computing the tax, except that all premiums
2 received in this state or charged on policies written or negotiated in this state shall
3 be taxable in full under this section, with a credit for any tax actually paid in another
4 state to the extent of a reasonable allocation on the basis of risk locations.

5 **SECTION 16.** 628.03 (1) of the statutes is amended to read:

6 628.03 (1) GENERAL. No natural person may perform, offer to perform, or
7 advertise any service as an intermediary in this state, unless the natural person
8 obtains a license under s. 628.04 or 628.09, and no person may utilize the services
9 of another as an intermediary if the person knows or should know that the other does
10 not have a license as required by law. The licensing requirements of this subsection
11 do not apply to a person who solely procures unauthorized insurance, as defined in
12 s. 618.40 (11), that is not surplus lines insurance, as defined in s. 618.40 (10).

13 **SECTION 17.** 628.05 (1) of the statutes is amended to read:

14 628.05 (1) GENERAL EXEMPTION. Except as otherwise provided in sub. (2), or by
15 rule promulgated by the commissioner, persons engaged in soliciting insurance
16 exclusively for town mutuals are not subject to the licensing requirements of s.
17 628.03 (1).

18 **SECTION 18.** 628.34 (1) (a) of the statutes is amended to read:

19 628.34 (1) (a) *Conduct forbidden.* No person who is or should be licensed under
20 chs. 600 to 646, no employee or agent of any such person, no person whose primary
21 interest is as a competitor of a person licensed under chs. 600 to 646, and no person
22 on behalf of any of the foregoing persons may make or cause to be made any
23 communication relating to an insurance contract, the insurance business, any
24 insurer, or any intermediary ~~which~~ that contains false or misleading information,
25 including information that is misleading because of incompleteness. Filing a report

SENATE BILL 378

1 and, with intent to deceive a person examining it, making a false entry in a record
2 or willfully refraining from making a proper entry, are “communications” within the
3 meaning of this paragraph. No intermediary or insurer may use any business name,
4 slogan, emblem, or related device that is misleading or likely to cause the
5 intermediary or insurer to be mistaken for another insurer or intermediary already
6 in business. No intermediary may provide a misleading certificate of insurance.

7 **SECTION 19.** 631.01 (4m) of the statutes is amended to read:

8 631.01 (4m) RUSTPROOFING WARRANTIES INSURANCE. An insurer issuing a policy
9 of insurance to cover a warranty, as defined in s. 100.205 (1) (g), shall comply with
10 s. 632.18 and the policy shall be on a form approved by the commissioner under s.
11 631.20.

12 **SECTION 20.** 631.20 (1) (a) of the statutes is amended to read:

13 631.20 (1) (a) No form subject to s. 631.01 (1), except as exempted under par.
14 (c), sub. (1g), or s. 631.01 (2) ~~to~~, (3), (4), or (5) or by rule under par. (b), may be used
15 unless it has been filed with and approved by the commissioner and unless the
16 insurer certifies that the form complies with chs. 600 to 655 and rules promulgated
17 under chs. 600 to 655. It is deemed approved if it is not disapproved within 30 days
18 after filing, or within a 30-day extension of that period ordered by the commissioner
19 prior to the expiration of the first 30 days.

20 **SECTION 21.** 631.20 (1) (c) 9. of the statutes is amended to read:

21 631.20 (1) (c) 9. A form-subject to s. ~~618.41 (6m)~~ for a policy of insurance to cover
22 a warranty, as defined in s. 100.205 (1) (g).

23 **SECTION 22.** 631.20 (1m) (a) (intro.) of the statutes is amended to read:

24 631.20 (1m) (a) (intro.) Except as exempted under sub. (1g) or s. 631.01 (2) ~~to~~,
25 (3), (4), or (5) or by a rule promulgated by the commissioner, an insurer may not, on

SENATE BILL 378**SECTION 22**

1 or after August 1, 2008, use a form that is exempt from sub. (1) (a) under sub. (1) (c)
2 unless the insurer does all of the following:

3 **SECTION 23.** 631.20 (7) of the statutes is created to read:

4 **631.20 (7) SURPLUS LINES INSURANCE.** Except as provided in sub. (1) (c) 9. and
5 s. 618.41 (6m), this section does not apply to a surplus lines insurance form issued
6 under s. 618.41 before, on, or after the effective date of this subsection [LRB
7 inserts date].

8 **SECTION 24.** 631.85 of the statutes is amended to read:

9 **631.85 Appraisal or arbitration.** An insurance policy may contain ~~provision~~
10 provisions for independent appraisal and compulsory arbitration, subject to the
11 provisions of s. 631.20. If an approved policy provides for application to a court of
12 record for the appointment of a disinterested appraiser, arbitrator, or umpire, any
13 court of record of this state except the court of appeals or the supreme court may be
14 requested to make an appointment. Upon appropriate request, the court shall make
15 the appointment promptly. This section does not apply to a surplus lines insurance
16 form issued under s. 618.41 before, on, or after the effective date of this section
17 [LRB inserts date].

18 **SECTION 25.** 632.32 (2) (ab) of the statutes is created to read:

19 **632.32 (2) (ab)** “Commercial automobile liability policy” means a liability
20 insurance policy that is intended principally to provide primary coverage for the
21 insured’s liability arising out of the ownership, maintenance, or use of a motor
22 vehicle in the insured’s business or other commercial activities.

23 **SECTION 26.** 632.32 (2) (ac) of the statutes, as created by 2011 Wisconsin Act
24 14, is amended to read:

SENATE BILL 378

1 632.32 (2) (ac) “Commercial liability policy” means any form of liability
2 insurance policy, including a commercial or business package policy or a policy
3 written on farm and agricultural operations, that is intended principally to provide
4 primary coverage for the insured’s general liability arising out of its business or other
5 commercial activities, and that includes coverage for the insured’s liability arising
6 out of the ownership, maintenance, or use of a motor vehicle as only one component
7 of the policy or as coverage that is only incidental to the principal purpose of the
8 policy. “Commercial liability policy” does not include a worker’s compensation policy
9 or a commercial automobile liability policy.

10 **SECTION 27.** 632.32 (4) (a) (intro.) of the statutes is amended to read:

11 632.32 (4) (a) (intro.) Except as provided in par. (d), every policy of insurance
12 subject to this section that insures with respect to any ~~owned~~ motor vehicle
13 registered or principally garaged in this state against loss resulting from liability
14 imposed by law for bodily injury or death suffered by any person arising out of the
15 ownership, maintenance, or use of a motor vehicle shall contain therein or
16 supplemental thereto provisions for all of the following coverages:

17 **SECTION 28.** 632.32 (4) (bc) of the statutes, as affected by 2011 Wisconsin Act
18 14, is amended to read:

19 632.32 (4) (bc) Notwithstanding par. (a) 2., the named insured may reject
20 medical payments coverage. If ~~the~~ one named insured rejects the coverage, the
21 coverage need not be provided in a subsequent renewal policy issued by the same
22 insurer unless ~~the~~ a named insured under the policy requests it in writing.

23 **SECTION 29.** 632.32 (4) (d) of the statutes, as affected by 2011 Wisconsin Act 14,
24 is amended to read:

SENATE BILL 378**SECTION 29**

1 632.32 (4) (d) This subsection does not apply to a commercial liability policies
2 policy if the coverage it provides for the insured's liability arising out of the
3 maintenance or use of a motor vehicle is limited to coverage for motor vehicles that
4 are not owned motor vehicles, or to an umbrella or excess liability policies policy. If
5 a commercial liability policy or an umbrella or excess liability policy provides medical
6 payments coverage or uninsured motorist coverage, however, the coverage must
7 have limits of at least those specified in par. (a).

8 **SECTION 30.** 632.32 (4m) (a) of the statutes, as created by 2011 Wisconsin Act
9 14, is amended to read:

10 632.32 (4m) (a) Except as provided in par. (e), an insurer writing policies that
11 insure with respect to a motor vehicle registered or principally garaged in this state
12 against loss resulting from liability imposed by law for bodily injury or death suffered
13 by a person arising out of the ownership, maintenance, or use of a motor vehicle shall
14 provide to one named insured under each such insurance policy that goes into effect
15 after November 1, 2011, that is written by the insurer and that does not include
16 underinsured motorist coverage written notice of the availability of underinsured
17 motorist coverage, including a brief description of the coverage. An insurer is
18 required to provide the notice required under this paragraph only one time and in
19 conjunction with the delivery of the policy.

20 **SECTION 31.** 632.32 (4m) (e) of the statutes, as created by 2011 Wisconsin Act
21 14, is amended to read:

22 632.32 (4m) (e) This subsection does not apply to a commercial liability policies
23 policy if the coverage it provides for the insured's liability arising out of the
24 maintenance or use of a motor vehicle is limited to coverage for motor vehicles that
25 are not owned motor vehicles, or to an umbrella or excess liability policies policy. If

SENATE BILL 378

1 a commercial liability policy or an umbrella or excess liability policy provides
2 underinsured motorist coverage, however, the coverage must have limits of at least
3 those specified in par. (d).

4 **SECTION 32.** 646.01 (2) (b) of the statutes is amended to read:

5 646.01 (2) (b) To provide where appropriate for the continuation of protection
6 under policies and supplemental supplementary contracts of life insurance,
7 disability insurance and annuities.

8 **SECTION 33.** 646.03 (4m) of the statutes is created to read:

9 646.03 (4m) “Retained asset account” means any mechanism in which the
10 settlement of proceeds payable under a life insurance policy is accomplished by the
11 insurer or an entity acting on behalf of the insurer depositing the proceeds into an
12 account with check or draft writing privileges, where those proceeds are retained by
13 the insurer, under a written supplementary contract not involving annuity benefits.

14 **SECTION 34.** 646.31 (1) (intro.) of the statutes is amended to read:

15 646.31 (1) CONDITIONS OF ELIGIBILITY. (intro.) A claim is not eligible for payment
16 from the fund unless it is an unpaid claim for a loss insured under the policy or
17 annuity, or an unpaid claim under a supplementary contract providing for a retained
18 asset account, and all of the following conditions are met:

19 **SECTION 35.** 646.31 (4) (a) of the statutes is renumbered 646.31 (4) (ap) and
20 amended to read:

21 646.31 (4) (ap) Except in regard to worker’s compensation insurance and
22 except as provided in par. (b), the obligation of the fund on a single risk, loss, or life,
23 regardless of the number of policies or contracts, may not exceed \$300,000,
24 regardless of the number of policies or contracts except that the aggregate liability
25 of the fund for a single risk, loss, or life with respect to benefits for property

SENATE BILL 378**SECTION 35**

1 insurance, liability insurance, and disability insurance, regardless of the number of
2 those policies, may not exceed \$500,000.

3 **SECTION 36.** 646.31 (4) (ag) of the statutes is created to read:

4 646.31 (4) (ag) For purposes of this subsection, “disability insurance” means
5 comprehensive health insurance policies and major medical health insurance
6 policies. “Disability insurance” does not include hospital indemnity; loss of time;
7 accidental benefits; limited or specified benefit or other ancillary coverages;
8 disability income insurance coverage; long-term care insurance coverage; insurance
9 coverage that is supplemental to another insurance policy or program, including
10 Medicare supplement insurance; or similar types of policies.

11 **SECTION 37.** 646.35 (1) (b) of the statutes is amended to read:

12 646.35 (1) (b) Life insurance and supplementary contracts providing for
13 retained asset accounts.

14 **SECTION 38.** 646.35 (6) (b) of the statutes is amended to read:

15 646.35 (6) (b) In the case of a disability insurance policy that is neither
16 guaranteed renewable nor noncancelable, the fund is not obligated to continue the
17 policy in force beyond ~~the time required under s. 645.43~~ 30 days after the date the
18 order of liquidation is entered, or 30 days after the date established in the liquidation
19 order of another state, but may continue the coverage under any disability insurance
20 policy for up to 180 days after the date of the liquidation order.

21 **SECTION 39. Initial applicability.**

22 (1) OCEAN MARINE INSURANCE TAX RATE. The treatment of sections 618.41 (9) (a)
23 and 618.43 (1) (a) (intro.) (with respect to the tax rate exception for ocean marine
24 insurance), (b), and (d) of the statutes first applies to surplus lines ocean marine
25 insurance issued or renewed on the effective date of this subsection.

