

State of Wisconsin
2011 - 2012 LEGISLATURE



LRB-2242/P2
PJK&TJD:kjf:pa

v m is run

In: 9/6/11 **Due Thurs**
9/8/11

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

D-note

automobile insurance,

Regenerate ↓

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 (8)
 3 (a) (intro.), 618.41 (8) (c), 618.41 (9) (a), 618.43 (1) (a) (intro.), 618.43 (1) (a) 3.,
 4 618.43 (1) (d), 618.43 (6), 628.03 (1), 628.05 (1), 628.34 (1) (a), 631.85, 646.01 (2)
 5 (b), 646.31 (1) (intro.), 646.35 (1) (b) and 646.35 (6) (b); and *to create* subchapter
 6 III (title) of chapter 618 [precedes 618.40], 618.40, 618.405, 618.416, 618.43 (1)
 7 (bc), 631.20 (7), 646.03 (4m) and 646.31 (4) (ag) of the statutes; **relating to:**
 8 surplus lines insurance, insurance security fund, and granting rule-making
 9 authority.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a subsequent version of this draft.

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:

Analysis insert

1 SECTION 1. Subchapter III (title) of chapter 618 [precedes 618.39] of the
2 statutes is repealed.

3 SECTION 2. Subchapter III (title) of chapter 618 [precedes 618.40] of the
4 statutes is created to read:

5 CHAPTER 618

6 SUBCHAPTER III

7 PERMISSIBLE BUSINESS BY

8 UNAUTHORIZED INSURERS

9 SECTION 3. 618.40 of the statutes is created to read:

10 618.40 Definitions. In this subchapter, unless the context requires otherwise:

11 (1) "Affiliate" means, with respect to an insured, any person that controls, ^{all persons} ~~is~~ ^{are} ~~is~~ ^{are}
12 controlled by, or ^{are} ~~is~~ under common control with, ^{an} ~~the~~ insured.

****NOTE: The term "affiliate" is not used in ch. 618 ~~or~~ in these new provisions.

13 (2) "Affiliated group" means any group of persons that are all affiliated.

****NOTE: I don't think this definition accomplishes anything, since "affiliated" is not defined. It would mean something if, instead, it read "any group of persons that are all affiliates," because then it would contain the defined term, "affiliate."

****NOTE: This term is not used in ch. 618 and is used in these new provisions only in the definition of "home state." Is there some way to include the salient terms from the definition of "affiliate" in this definition and then get rid of the definition for "affiliate"?

14 (3) "Authorized insurer" means an insurer that is licensed, or authorized, to
15 transact the business of insurance under the law of the home state.

****NOTE: "Unauthorized insurer" is used much more than "authorized insurer." Can a definition for "unauthorized insurer" be added, such as "an insurer that is not licensed, etc., to transact the business of insurance under the law of the home state" or "an insurer that is not an authorized insurer"?

16 (4) "Control" means, with respect to a person having control over another
17 person, that the person does any of the following:

1 (a) Directly or indirectly, or acting through one or more other persons, owns,
2 controls, or has the power to vote 25 percent or more of any class of voting securities
3 of a person.

4 (b) Controls in any manner the election of a majority of the directors or trustees
5 of a person.

6 4 (a) Except as provided in par. (b), "home state" means, with respect to an
7 insured, one of the following:

8 1. The state in which the insured maintains its principal place of business or,
9 in the case of an insured who is an individual, the individual's principal residence.

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

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

****NOTE: I did not include the definition for "multistate risk" because the term is not used in any form in ch. 618 or in these new provisions.

17 5 (b) "Premium tax" means, with respect to unauthorized insurance, any tax, fee,
18 assessment, or other charge imposed by this state directly or indirectly based on any
19 payment made as consideration for an insurance contract for such insurance,
20 including premium deposits, assessments, registration fees, and any other
21 compensation given in consideration for a contract of insurance.

22 6 (b) "Principal place of business" means, with respect to determining the home
23 state of an insured, the state where the insured maintains its headquarters and

SECTION 3

1 where the insured's high-level officers direct, control, and coordinate the business
2 activities of the insured.

3 ⁵ 7 ← (8) "Principal residence" means, with respect to determining the home state of
4 an insured who is an individual, the state where the individual resides for the
5 greatest number of days during a calendar year.

6 ⁶ 9 ← (9) "State" includes any state of the United States, the District of Columbia,
7 the Commonwealth of Puerto Rico, Guam, the Northern Mariana Islands, the Virgin
8 Islands, and American Samoa.

9 ⁷ 9 ← (10) "Surplus lines broker" means a person that is licensed in a state to sell,
10 solicit, or negotiate insurance on properties, risks, or exposures located or to be
11 performed in that state with unauthorized insurers.

12 ⁸ 10 ← (11) "Surplus lines insurance" means any insurance to which all of the
13 following apply:

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

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

18 ⁹ 11 ← (12) "Unauthorized insurance" means any insurance permitted in a state to be
19 placed directly or through a surplus lines broker with an unauthorized insurer
20 eligible to accept such insurance.

21 SECTION 4. 618.405 of the statutes is created to read:

22 **618.405 Application of Wisconsin law.** The placement of insurance under
23 ~~ss. 618.41 and 618.42~~ ^{is not} is subject to the requirements of this subchapter only when the
24 insured's home state is this state.

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

1 618.41 (8) (a) *Responsibility*. (intro.) An agent or broker, ~~or any other person~~
2 ~~who offers liability insurance coverage under a group policy~~, may not place insurance
3 under this section with, ~~or~~ and a person who offers liability insurance coverage under
4 a group policy may not solicit the purchase of coverage under a group policy issued
5 by, an unauthorized insurer if all of the following exist:

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

7 618.41 (8) (c) *Financially sound*. To be financially sound for purposes of par.
8 (a) 1., an insurer must be able to satisfy standards comparable to those applied under
9 the laws of this state to authorized insurers or the standards under s. 618.416

****NOTE: I assumed that the insurer had to satisfy the standards under s. 618.416
and not standards *comparable* to those standards, correct?

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

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

22 **SECTION 8.** 618.416 of the statutes is created to read:

Insert 5-21

Insert 5-10

Insert 5-9

618.416 Qualification for placement of surplus lines insurance with an

unauthorized insurer. An intermediary may not place surplus lines insurance under s. 618.41 with an unauthorized insurer if this state is the home state of the insured, unless at the time of placement all of the following apply to the unauthorized insurer:

→ *proposed*

****NOTE: Should this read "proposed insured"? If there is already an insured, I assume the insurance has already been placed.

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

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

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

(c) The unauthorized insurer provides to the commissioner, no more than 6 months after the close of the period reported on, a certified copy of its current annual statement that is filed and approved by the regulatory authority in the unauthorized

1 insurer's domicile and certified by an accounting or auditing firm licensed in the
2 jurisdiction of the unauthorized insurer's domicile.

3 (2) If the unauthorized insurer is an alien insurer, the insurer is listed on the
4 quarterly listing of alien insurers maintained by the international insurers
5 department of the National Association of Insurance Commissioners and meets
6 additional requirements regarding the use of the list established by rule of the
7 commissioner.

8 **SECTION 9.** 618.43 (1) (a) (intro.) of the statutes is amended to read:

9 618.43 (1) (a) (intro.) ~~Except as provided in~~ Subject to par. (b) (bc), insurers,
10 agents, brokers, and policyholders are liable, as provided in sub. (2), for a premium
11 tax of ~~3%~~ 3 percent of gross premiums charged for insurance, excluding annuities,
12 if any of the following ~~are~~ is satisfied:

13 **SECTION 10.** 618.43 (1) (a) 3. of the statutes is amended to read:

14 618.43 (1) (a) 3. The insurance is transacted by an unauthorized insurer for a
15 risk purchasing group ~~for coverage of risks which reside or are otherwise located in~~
16 ~~this state.~~

17 **SECTION 11.** 618.43 (1) (b) of the statutes is repealed.

18 **SECTION 12.** 618.43 (1) (bc) of the statutes is created to read:

19 618.43 (1) (bc) Notwithstanding any other provision of this section, with
20 respect to premiums charged ~~on~~ on or after July 21, 2011, for insurance to which par.
21 (a) applies, the tax under par. (a) is required only if the home state of the insured is
22 this state, and it shall be levied on the entire gross premium charged, including
23 premium attributable to those portions of the risk located outside of this state.

****NOTE: Is it correct that the date relates to when premiums are charged? If the date should relate to when a policy is issued, should it also relate to when a policy is renewed?

on policies issued or renewed

1 SECTION 13. 618.43 (1) (d) of the statutes is amended to read:

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

****NOTE: I assumed you would want the penalty tax rate to be the same for ocean marine insurance, too; otherwise the penalty rate would be less than the regular rate.

6 SECTION 14. 618.43 (6) of the statutes is amended to read:

7 618.43 (6) ALLOCATION OF TAX. ~~If~~ With respect to gross premiums charged before
8 July 21, 2011, if a policy covers risks that are only partially located in this state, the
9 premium shall be reasonably allocated among the states on the basis of risk locations
10 in computing the tax, except that all premiums received in this state or charged on
11 policies written or negotiated in this state shall be taxable in full under this section,
12 with a credit for any tax actually paid in another state to the extent of a reasonable
13 allocation on the basis of risk locations.

on policies issued or renewed

****NOTE: Is the application to "gross premiums charged" before the specified date correct? "Transactions occurring" before that date seems too vague.

14 SECTION 15. 628.03 (1) of the statutes is amended to read:

15 628.03 (1) GENERAL. No natural person may perform, offer to perform, or
16 advertise any service as an intermediary in this state, unless the natural person
17 obtains a license under s. 628.04 or 628.09, and no person may utilize the services
18 of another as an intermediary if the person knows or should know that the other does
19 not have a license as required by law. The licensing requirements of this subsection
20 do not apply to a person who solely procures unauthorized insurance, as defined in
21 s. 618.40 (12), that is not surplus lines insurance, as defined in s. 618.40 (11).

22 SECTION 16. 628.05 (1) of the statutes is amended to read:

1 628.05 (1) GENERAL EXEMPTION. Except as otherwise provided in sub. (2), or by
2 rule promulgated by the commissioner, persons engaged in soliciting insurance
3 exclusively for town mutuals are not subject to the licensing requirements of s.
4 628.03 (1).

5 **SECTION 17.** 628.34 (1) (a) of the statutes [✓]is amended to read:

6 628.34 (1) (a) *Conduct forbidden.* No person who is or should be licensed under
7 chs. 600 to 646, no employee or agent of any such person, no person whose primary
8 interest is as a competitor of a person licensed under chs. 600 to 646, and no person
9 on behalf of any of the foregoing persons may make or cause to be made any
10 communication relating to an insurance contract, the insurance business, any
11 insurer, or any intermediary ~~which~~ that contains false or misleading information,
12 including information that is misleading because of incompleteness. Filing a report
13 and, with intent to deceive a person examining it, making a false entry in a record
14 or willfully refraining from making a proper entry, are "communications" within the
15 meaning of this paragraph. No intermediary or insurer may use any business name,
16 slogan, emblem, or related device that is misleading or likely to cause the
17 intermediary or insurer to be mistaken for another insurer or intermediary already
18 in business. No intermediary may provide a misleading certificate of insurance.

19 **SECTION 18.** 631.20 (7) of the statutes [✓]is created to read:

20 631.20 (7) SURPLUS LINES INSURANCE. Except as provided in sub. (1) (c) 9. and
21 s. 618.41 (6m), this section does not apply to a surplus lines insurance form issued
22 under s. 618.41 before, on, or after the effective date of this subsection [LRB
23 inserts date].

Insert 9-23

****NOTE: Is the exception correct? I'm puzzled by the placement of s. 618.41 (6m).
From the language, it's not clear what rustproofing warranty insurance has to do with

surplus lines insurance. Is s. 618.41 (6m) supposed to be limited to rustproofing warranty insurance that is surplus lines insurance?

1 SECTION 19. 631.85 of the statutes is amended to read:

2 631.85 Appraisal or arbitration. An insurance policy may contain provision
3 provisions for independent appraisal and compulsory arbitration, subject to the
4 provisions of s. 631.20. If an approved policy provides for application to a court of
5 record for the appointment of a disinterested appraiser, arbitrator, or umpire, any
6 court of record of this state except the court of appeals or the supreme court may be
7 requested to make an appointment. Upon appropriate request, the court shall make
8 the appointment promptly. This section does not apply to a surplus lines insurance
9 form issued under s. 618.41 before, on, or after the effective date of this section
10 [LRB inserts date].

insert 10-10

11 SECTION 20. 646.01 (2) (b) of the statutes is amended to read:

12 646.01 (2) (b) To provide where appropriate for the continuation of protection
13 under policies and ~~supplemental~~ supplementary contracts of life insurance,
14 disability insurance and annuities.

15 SECTION 21. 646.03 (4m) of the statutes is created to read:

16 646.03 (4m) "Retained asset account" means any mechanism in which the
17 settlement of proceeds payable under a life insurance policy is accomplished by the
18 insurer or an entity acting on behalf of the insurer depositing the proceeds into an
19 account with check or draft writing privileges, where those proceeds are retained by
20 the insurer, under a written supplementary contract not involving annuity benefits.

21 SECTION 22. 646.31 (1) (intro.) of the statutes is amended to read:

22 646.31 (1) CONDITIONS OF ELIGIBILITY. (intro.) A claim is not eligible for payment
23 from the fund unless it is an unpaid claim for a loss insured under the policy or

1 annuity, or an unpaid claim under a supplementary contract providing for a retained
2 asset account, and all of the following conditions are met:

3 **SECTION 23.** 646.31 (4) (a) of the statutes[✓] is renumbered 646.31 (4) (ap) and
4 amended to read:

5 646.31 (4) (ap) Except in regard to worker's compensation insurance and
6 except as provided in par. (b), the obligation of the fund on a single risk, loss, or life,
7 regardless of the number of policies or contracts, may not exceed \$300,000,
8 ~~regardless of the number of policies or contracts except that the aggregate liability~~
9 of the fund for a single risk, loss, or life with respect to benefits for property
10 insurance, liability insurance, and disability insurance, regardless of the number of
11 those policies, may not exceed \$500,000.

12 **SECTION 24.** 646.31 (4) (ag) of the statutes[✓] is created to read:

13 646.31 (4) (ag) For purposes of this subsection, "disability insurance" means
14 comprehensive health insurance policies and major medical health insurance
15 policies. "Disability insurance" does not include hospital indemnity; loss of time;
16 accidental benefits; limited or specified benefit or other ancillary coverages;
17 disability income insurance coverage; long-term care insurance coverage; insurance
18 coverage that is supplemental to another insurance policy or program, including
19 Medicare supplement insurance; or similar types of policies.

20 **SECTION 25.** 646.35 (1) (b) of the statutes[✓] is amended to read:

21 646.35 (1) (b) Life insurance and supplementary contracts providing for
22 retained asset accounts.

23 **SECTION 26.** 646.35 (6) (b) of the statutes[✓] is amended to read:

24 646.35 (6) (b) In the case of a disability insurance policy that is neither
25 guaranteed renewable nor noncancelable, the fund is not obligated to continue the

30 days after

1 policy in force beyond ~~the time required under s. 645.43~~ 30 days after the date the
2 order of liquidation is entered or the date established in the liquidation order of
3 another state, but may continue the coverage under any disability insurance policy
4 for up to 180 days after the date of the liquidation order.

****NOTE: As drafted now, this provision could be read in two different ways. The first way is that the fund is not obligated to continue the policy beyond either 30 days after the entry date of the order of liquidation or 30 days after the date established in the liquidation order of another state. The second way is that the fund is not obligated to continue the policy beyond either 30 days after the entry date of the order or the date of the other state's liquidation order. Which version correctly portrays your intent?

5 **SECTION 27. Initial applicability.**

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

****NOTE: Is this initial applicability for the ocean marine insurance tax rate change ok?

10

(END)

Insert 12-10

D-note

ANALYSIS INSERT

Surplus lines insurance

This bill makes a few changes related to surplus lines insurance, which is defined in the bill as insurance that is permitted to be placed through an agent or broker with an insurer that is not authorized to do an insurance business in this state and that covers an insured for which this state is the home state, which is defined in the bill as: 1) the state in which the insured maintains its principal place of business; 2) the insured's principal residence if the insured is an individual; or 3) if 100 percent of the insured risk is outside this state, the state to which the greatest percentage of the insured's taxable premium for the insurance is allocated.

Current law contains some limitations on and requirements for the placement of insurance with, and the direct procurement of insurance from, an insurer that is not authorized to do an insurance business in this state. The bill specifies that certain of these requirements do not apply if this state is not the insured's home state and the placement complies with the laws of the insured's home state. The bill also specifies that an intermediary may not place surplus lines insurance with an insurer that is not authorized to do an insurance business in this state unless certain criteria are satisfied. If the insurer is domiciled in another United States jurisdiction, the insurer must be authorized to write the type of insurance in its domiciliary jurisdiction that the intermediary is placing, the insurer must have a specified level of capital and surplus or the commissioner of insurance (commissioner) must find the insurer's capital and surplus acceptable, and the insurer must provide to the commissioner a certified copy of its current annual statement that is filed and approved by the regulatory authority in the insurer's domicile. If the insurer is domiciled outside the United States, the insurer must be on the list maintained by the international insurers department of the National Association of Insurance Commissioners and must meet any additional requirements regarding the use of the list established by the commissioner by rule.

Under current law, the policyholder of surplus lines insurance must pay a three percent tax on gross premium, except for ocean marine insurance, for which the tax is one-half of one percent of gross premium. The bill makes the tax on ocean marine insurance three percent of gross premium, also. In addition, under current law, if a policy covers risks in more than one state including this state, the tax payable to this state is computed on the premium allocated to this state for the portion of the risk located in this state. Under the bill, that computation applies only for policies issued or renewed before July 21, 2011. For policies issued or renewed on or after that date, the tax is payable to this state only if this state is the home state of the insured, and it is computed on the entire premium, including premium attributable to risks outside of this state.

The bill specifies that the licensing requirements for intermediaries in this state do not apply to a person who solely procures insurance that may be placed directly or through a broker with an insurer that is not authorized to do an insurance business in this state and that is not surplus lines insurance; that the requirements related to filing insurance forms with the commissioner for approval do not apply to

①
X
③

③

a surplus lines insurance form; and that the provision relating to insurance policies containing provisions for independent appraisal and compulsory arbitration, subject to the requirements for form filing and approval, does not apply to surplus lines insurance.

Auto insurance

The bill makes a few modifications to the auto insurance provisions that, under Act 14, go into effect on November 1, 2011. Act 14 provided a definition for a "commercial liability policy" as a policy that provides coverage for the insured's general liability arising out of business or commercial activities and that includes as one component coverage for the insured's liability arising out of the ownership, maintenance, or use of a motor vehicle. Under Act 14, commercial liability policies are not subject to the requirement for motor vehicle insurance policies that they must include uninsured motorist coverage and medical payments coverage, unless the insured rejects medical payments coverage, or the requirement that an insurer must notify the insured of the availability of underinsured motorist coverage. The bill does all of the following:

X 1. Specifies that a commercial liability policy is not subject to these requirements if the coverage provided under the policy for the insured's liability arising out of the maintenance or use of a motor vehicle is limited to non-owned motor vehicles.

2. Provides that if a policy that is exempt from the requirements does, however, provide uninsured or underinsured motorist coverage or medical payments coverage, that coverage must have at least the limits that are required under the statutes for those coverages. (For uninsured motorist coverage, the minimum limits are \$25,000 per person and \$50,000 per accident; for underinsured motorist coverage, the minimum limits are \$50,000 per person and \$100,000 per accident; and for medical payments coverage, the minimum limit is \$1,000 per person.)

3. Excludes commercial automobile liability policies from the definition of commercial liability policies so that commercial automobile liability policies are subject to the same requirements as motor vehicle insurance policies and defines a "commercial automobile liability policy" as a policy that is intended principally to provide primary coverage for the insured's liability arising out of the ownership, maintenance, or use of a motor vehicle in the insured's business or other commercial activities.

4. Clarifies that only one named insured is required to reject medical payments coverage for the rejection to be effective.

Insurance security fund

Under current law, the state maintains an insurance security fund to protect insured parties from excessive delay and loss in the event an insurer is liquidated and to provide for the continuation of protection under certain policies and contracts in the event of a liquidation of an insurer. Insurers, with some exceptions, are required to contribute moneys to the insurance security fund. Current law also specifies that, with some exceptions, the maximum obligation of the insurance security fund on any single risk, loss, or life is \$300,000.

In addition to making other changes to the insurance security fund, this bill specifies that retained asset accounts are covered by the insurance security fund. A retained asset account is any mechanism in which the settlement of proceeds payable under a life insurance policy is accomplished by the insurer or an entity acting on behalf of the insurer depositing the proceeds into an account with check or draft writing privileges, where those proceeds are retained by the insurer under a written supplementary contract not involving annuity benefits. The bill specifies that a retained asset account is a type of supplementary contract for which an insured may make a claim for payment against the fund. The bill also specifies that retained asset accounts are eligible for continuation protections as are certain other policies and contracts. The bill defines, for the purposes of the maximum fund obligation, "disability insurance" as comprehensive health insurance and major medical health insurance. The bill clarifies that the maximum obligation applies regardless of the number of policies or contracts. The bill also sets the maximum aggregate liability of the fund for a single risk, loss, or life with respect to benefits for property insurance, liability insurance, and disability insurance at \$500,000, while the maximum for other insurance policy or contract types remains at \$300,000.

(END OF ANALYSIS INSERT)

2011-2012 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2242/P2ins
PJK:.....

INSERT 5-9

1 *not* unless this state is the insured's home state, in which case s. 618.416 applies ✓

(END OF INSERT 5-9)

INSERT 5-10

***NOTE: Is my addition to your suggested language okay?

(END OF INSERT 5-10)

INSERT 5-21

2 SECTION 1. 618.41 (12) of the statutes is created to read: ✓

3 618.41 (12) APPLICATION WHEN THIS STATE IS NOT THE INSURED'S HOME STATE. The
4 placement of insurance under this section is not subject to subs. (4), (7m), (8), (9), or
5 (10) if this state is not the insured's home state and the placement complies with the
6 laws of the insured's home state.

(END OF INSERT 5-21)

INSERT 9-23

***NOTE: I did not make any changes to the form of s. 631.20 (7) that was included
in the last version of this draft. I wasn't sure from the response whether any change was
wanted. ✓

***NOTE: Rather than saying that s. 631.20 does not apply to a surplus lines form,
would it be better to exempt surplus lines forms from subs. (1) (a) and (1m) (a) in a new
subsection, similar to the language of sub. (1g), and then add a cross-reference to the new
subsection in sub. (1) (a)? Subsections (1) (a) and (1m) (a) both mention exemptions under
s. 631.01 (2) to (5). Should these read "s. 631.01 (2) to (4) and (5)"? Section 631.01 (4m)
does not appear to be an exemption from the requirement. It seems to be just the opposite.

(END OF INSERT 9-23)

INSERT 10-10 *1004*

7 SECTION 2. 632.32 (2) (ab) of the statutes is created to read:
↓

Ins. 10-10 cont'd 2007

1 632.32 (2) (ab) "Commercial automobile liability policy" means a liability
2 insurance policy that is intended principally to provide primary coverage for the
3 insured's liability arising out of the ownership, maintenance, or use of a motor
4 vehicle in the insured's business or other commercial activities.

 ****NOTE: I dropped the "for" of your suggested language before "other commercial
activities." Is this okay, or does it change your intended meaning?

5 **SECTION 3.** 632.32 (2) (ac) of the statutes, as created by 2011 Wisconsin Act 14,
6 is amended to read:

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

~~NOTE: NOTE: Par. (ac) is created eff. 11-1-11 by 2011 Wis. Act 14. NOTE:~~

~~History: 1975 c. 375, 421; 1979 c. 102, 104; 1979 c. 177 ss. 67, 68; 1979 c. 221; 1981 c. 284; 1983 a. 243, 459; 1985 a. 146 s. 8; 1995 a. 21, 448; 1997 a. 48; 1999 a. 31, 162; 2007 a. 168; 2009 a. 28, 342; 2011 a. 14.~~

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

17 632.32 (4) (a) (intro.) Except as provided in par. (d), every policy of insurance
18 subject to this section that insures with respect to any ~~owned~~ motor vehicle
19 registered or principally garaged in this state against loss resulting from liability
20 imposed by law for bodily injury or death suffered by any person arising out of the
21 ownership, maintenance, or use of a motor vehicle shall contain therein or
22 supplemental thereto provisions for all of the following coverages:

~~NOTE: NOTE: Sub. (4) (intro.) is shown as amended eff. 11-1-11 by 2011 Wis. Act 14. Prior to 11-1-11 it reads: NOTE:~~



Ins 10-10 cont'd 3084

~~REQUIRED UNINSURED MOTORIST, UNDERINSURED MOTORIST, AND MEDICAL PAYMENTS COVERAGES.~~

History: 1975 c. 375, 421; 1979 c. 102, 104; 1979 c. 177 ss. 67, 68; 1979 c. 221; 1981 c. 284; 1983 a. 243, 459; 1985 a. 146 s. 8; 1995 a. 21, 448; 1997 a. 48; 1999 a. 31, 162; 2007 a. 168; 2009 a. 28, 342; 2011 a. 14.

SECTION 5. 632.32 (4) (bc) of the statutes, as affected by 2011 Wisconsin Act 14,

is amended to read:

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

NOTE: NOTE: Par. (bc) is shown as amended eff. 11-1-11 by 2011 Wis. Act 14. Prior to 11-1-11 it reads:NOTE:

(bc) Notwithstanding par. (a) 3m., the named insured may reject medical payments coverage. If the named insured rejects the coverage, the coverage need not be provided in a subsequent renewal policy issued by the same insurer unless the insured requests it in writing.

History: 1975 c. 375, 421; 1979 c. 102, 104; 1979 c. 177 ss. 67, 68; 1979 c. 221; 1981 c. 284; 1983 a. 243, 459; 1985 a. 146 s. 8; 1995 a. 21, 448; 1997 a. 48; 1999 a. 31, 162; 2007 a. 168; 2009 a. 28, 342; 2011 a. 14.

SECTION 6. 632.32 (4) (d) of the statutes, as affected by 2011 Wisconsin Act 14,

is amended to read:

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

NOTE: NOTE: Par. (d) is shown as amended eff. 11-1-11 by 2011 Wis. Act 14. Prior to 11-1-11 it reads:NOTE:

(d) This subsection does not apply to umbrella or excess liability policies, which are subject to sub. (4r).

Cross-reference: Cross-reference: Cross-reference: See also s. Ins 6.77, Wis. adm. code. Cross-reference:
History: 1975 c. 375, 421; 1979 c. 102, 104; 1979 c. 177 ss. 67, 68; 1979 c. 221; 1981 c. 284; 1983 a. 243, 459; 1985 a. 146 s. 8; 1995 a. 21, 448; 1997 a. 48; 1999 a. 31, 162; 2007 a. 168; 2009 a. 28, 342; 2011 a. 14.

SECTION 7. 632.32 (4m) (a) of the statutes, as created by 2011 Wisconsin Act 14,

is amended to read:

632.32 (4m) (a) Except as provided in par. (e), an insurer writing policies that insure with respect to a motor vehicle registered or principally garaged in this state against loss resulting from liability imposed by law for bodily injury or death suffered

Ins 10-10 covered 4804

1 by a person arising out of the ownership, maintenance, or use of a motor vehicle shall
2 provide to one named insured under each such insurance policy that goes into effect
3 after November 1, 2011, that is written by the insurer and that does not include
4 underinsured motorist coverage written notice of the availability of underinsured
5 motorist coverage, including a brief description of the coverage. An insurer is
6 required to provide the notice required under this paragraph only one time and in
7 conjunction with the delivery of the policy.

History: 1975 c. 375, 421; 1979 c. 102, 104; 1979 c. 177 ss. 67, 68; 1979 c. 221; 1981 c. 284; 1983 a. 243, 459; 1985 a. 146 s. 8; 1995 a. 21, 448; 1997 a. 48; 1999 a. 31, 162; 2007 a. 168; 2009 a. 28, 342; 2011 a. 14.

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

10 632.32 (4m) (e) This subsection does not apply to a commercial liability policies
11 policy if the coverage it provides for the insured's liability arising out of the
12 maintenance or use of a motor vehicle is limited to coverage for motor vehicles that
13 are not owned motor vehicles, or to an umbrella or excess liability policies policy. If
14 a commercial liability policy or an umbrella or excess liability policy provides
15 underinsured motorist coverage, however, the coverage must have limits of at least
16 those specified in par. (d).

~~NOTE: NOTE: Sub. (4m) is created eff. 11-1-11 by 2011 Wis. Act 14. NOTE:~~

History: 1975 c. 375, 421; 1979 c. 102, 104; 1979 c. 177 ss. 67, 68; 1979 c. 221; 1981 c. 284; 1983 a. 243, 459; 1985 a. 146 s. 8; 1995 a. 21, 448; 1997 a. 48; 1999 a. 31, 162; 2007 a. 168; 2009 a. 28, 342; 2011 a. 14.

(END OF INSERT 10-10)

INSERT 12-10

17 **SECTION 9. Effective dates.** This act takes effect on the day after publication,
18 except as follows:



Ins 12-10 contd

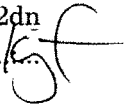
✓

1 ✓ (1) AUTO INSURANCE PROVISIONS. The treatment of section 632.32 (2) (ab) and
2 (ac), (4) (a) (intro.), (bc), and (d), and (4m) (a) and (e) of the statutes takes effect on
3 November 1, 2011, or on the day after publication, whichever is later.

(END OF INSERT 12-10)

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

LRB-2242/P2dn
PJK:...



Date

Would it be possible in this draft to clear up the confusion (that I have at least) with the treatment of rustproofing warranty insurance? The following provisions create the confusion:

Section 618.41 (6m) says that the policy for this type of insurance must be on a form approved by the commissioner *under s. 631.20*. I assume that this provision relates to surplus lines insurance, because of the placement in s. 618.41, but the language gives no indication of that. *Could that be clarified?*

Section 631.01 (4m) says that the policy for this type of insurance must be on a form approved by the commissioner ("*under s. 631.20*" was removed in 2007 Act 168). Does this difference mean that surplus lines must be approved by the commissioner under s. 631.20 but other types must be approved but not under s. 631.20?

As I mention in a note in the draft, ss. 631.20 (1) (a) and (1m) (a) both indicate that there are exemptions to the requirements for filing and approval of forms under s. 631.01 (2) to (5), which includes sub. (4m), but sub. (4m) seems more like an affirmation of the requirement than an exemption from it.

Then, s. 631.20 (1) (c) provides that certain forms are exempt from the filing and approval requirements under par. (a) except for a number of forms, including a form subject to s. 618.41 (6m). Does this mean that rustproofing warranty insurance that is surplus lines insurance is subject to sub. (1) (a) but rustproofing warranty insurance that is not surplus lines insurance is subject to sub. (1m) or some other type of approval?

This may not be a very important issue, but can it be clarified?

Pamela J. Kahler
Senior Legislative Attorney
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E-mail: pam.kahler@legis.wisconsin.gov

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

LRB-2242/P2dn
PJK:kjf:rs

September 8, 2011

Would it be possible in this draft to clear up the confusion (that I have at least) with the treatment of rustproofing warranty insurance? The following provisions create the confusion:

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Then, s. 631.20 (1) (c) provides that certain forms are exempt from the filing and approval requirements under par. (a) except for a number of forms, including a form subject to s. 618.41 (6m). Does this mean that rustproofing warranty insurance that is surplus lines insurance is subject to sub. (1) (a) but rustproofing warranty insurance that is not surplus lines insurance is subject to sub. (1m) or some other type of approval?

This may not be a very important issue, but can it be clarified?

Pamela J. Kahler
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Kahler, Pam

From: Luck, Robert R - OCI [Robert.Luck@wisconsin.gov]
Sent: Friday, September 09, 2011 11:30 AM
To: Kahler, Pam
Cc: Nepple, Fred - OCI
Subject: P&C Technical Bill
Attachments: Pams Rustproofing Comments.pdf

Pam,

The following are responses to issues raised on the P&C Technical bill draft

Rustproofing Warranties Drafter's Notes (attached):

✓ Par 1. Revise 618.41(6m) to clarify that it only applies to s/l policies. OK to clarify - possibly as follows:

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

✓ Par 2 No - all should be approved in the same manner. Add back in "under 631.20" at the end.

✓ Par 3 You are correct.

Perhaps instead of "631.01(2) to (5)", it should read "631.01(2), (3), (4) and (5)"

✓ Par 4 No - Both should be subject to the same requirements of 631.01(1)(a)-prior approval. I'm not sure how the best way to do this is.

a. **Preferred Way??** - Change the reference in (1)(c)9. to be a more general rustproofing warranty exception which would include both surplus lines and authorized insurers

b. Perhaps add a Rustproofing warranty exception in 631.01(1)(c) for authorized insurers

c. Change the 631.01(4m) to add "under 631.20(1)(a)" and possibly 618.41 (6m) the same.

Your 3 comments in the draft relating to s/l and auto provisions:

✓ Section 5 - Your change OK

✓ Section 18 - Leave it as it is

✓ Section 20 - Dropping the "for" is ok

The auto analysis could be supplemented to further explain the "owned" issue at the end of the Auto analysis by adding the following:

Under Act 14, the requirements for uninsured motorist coverage and medical payments coverage applied to insurance policies that insure any owned motor vehicles. This bill clarifies that every insurance policy that insures any motor vehicle whether owned or not owned is subject to these coverages unless otherwise exempted.

✓ In addition, the last phrase of section 23 (page 13) should be changed to "named" insured and not just "an" insured which could include children of the named insured as follows:

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

If you have other questions, please contact me.

Robert Luck, Attorney

Robert.Luck@Wisconsin.Gov

Phone: (608) 266-0082 FAX: (608) 264-6228

WI Office of the Commissioner of Ins oci.wi.gov

PO Box 7873 Madison WI 53707-7873

125 S Webster St (2nd Fl) Madison WI 53703-3474

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2242/P2dn
PJK:kjfrs

September 8, 2011

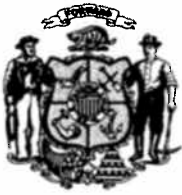
all surplus lines

Would it be possible in this draft to clear up the confusion (that I have at least) with the treatment of rustproofing warranty insurance? The following provisions create the confusion:

- ① Section 618.41 (6m) says that the policy for this type of insurance must be on a form approved by the commissioner *under s. 631.20*. I assume that this provision relates to surplus lines insurance, because of the placement in s. 618.41, but the language gives no indication of that. Could that be clarified? *yes - add*
- ② Section 631.01 (4m) says that the policy for this type of insurance must be on a form approved by the commissioner ("*under s. 631.20* was removed in 2007 Act 168). Does this difference mean that surplus lines must be approved by the commissioner under s. 631.20 but other types must be approved but not under s. 631.20?
- ③ As I mention in a note in the draft, ss. 631.20 (1) (a) and (1m) (a) both indicate that there are exemptions to the requirements for filing and approval of forms under s. 631.01 (2) to (5), which includes sub. (4m), but sub. (4m) seems more like an affirmation of the requirement than an exemption from it.
- ④ Then, s. 631.20 (1) (c) provides that certain forms are exempt from the filing and approval requirements under par. (a) except for a number of forms, including a form subject to s. 618.41 (6m). Does this mean that rustproofing warranty insurance that is surplus lines insurance is subject to sub. (1) (a) but rustproofing warranty insurance that is not surplus lines insurance is subject to sub. (1m) or some other type of approval?

This may not be a very important issue, but can it be clarified?

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E-mail: pam.kahler@legis.wisconsin.gov



State of Wisconsin
2011 - 2012 LEGISLATURE



LRB-2242/PP

PJK&TJD:kjf:re

stays r m is run

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

SOON
(w 7-12)

requeste ↓

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

Analysis by the Legislative Reference Bureau

Surplus lines insurance

This bill makes a few changes related to surplus lines insurance, which is defined in the bill as insurance that is permitted to be placed through an agent or broker with an insurer that is not authorized to do an insurance business in this state and that covers an insured for which this state is the home state, which is defined

in the bill as: 1) the state in which the insured maintains its principal place of business; 2) the insured's principal residence if the insured is an individual; or 3) if 100 percent of the insured risk is outside this state, the state to which the greatest percentage of the insured's taxable premium for the insurance is allocated.

Current law contains some limitations on and requirements for the placement of insurance with, and the direct procurement of insurance from, an insurer that is not authorized to do an insurance business in this state. The bill specifies that certain of these requirements do not apply if this state is not the insured's home state and the placement complies with the laws of the insured's home state. The bill also specifies that an intermediary may not place surplus lines insurance with an insurer that is not authorized to do an insurance business in this state unless certain criteria are satisfied. If the insurer is domiciled in another United States jurisdiction, the insurer must be authorized to write the type of insurance in its domiciliary jurisdiction that the intermediary is placing, the insurer must have a specified level of capital and surplus or the commissioner of insurance (commissioner) must find the insurer's capital and surplus acceptable, and the insurer must provide to the commissioner a certified copy of its current annual statement that is filed and approved by the regulatory authority in the insurer's domicile. If the insurer is domiciled outside the United States, the insurer must be on the list maintained by the international insurers department of the National Association of Insurance Commissioners and must meet any additional requirements regarding the use of the list established by the commissioner by rule.

Under current law, the policyholder of surplus lines insurance must pay a 3 percent tax on gross premium, except for ocean marine insurance, for which the tax is one-half of 1 percent of gross premium. The bill makes the tax on ocean marine insurance 3 percent of gross premium, also. In addition, under current law, if a policy covers risks in more than one state including this state, the tax payable to this state is computed on the premium allocated to this state for the portion of the risk located in this state. Under the bill, that computation applies only for policies issued or renewed before July 21, 2011. For policies issued or renewed on or after that date, the tax is payable to this state only if this state is the home state of the insured, and it is computed on the entire premium, including premium attributable to risks outside of this state.

The bill specifies that the licensing requirements for intermediaries in this state do not apply to a person who solely procures insurance that may be placed directly or through a broker with an insurer that is not authorized to do an insurance business in this state and that is not surplus lines insurance; that the requirements related to filing insurance forms with the commissioner for approval do not apply to a surplus lines insurance form; and that the provision relating to insurance policies containing provisions for independent appraisal and compulsory arbitration, subject to the requirements for form filing and approval, does not apply to surplus lines insurance.

Auto insurance

The bill makes a few modifications to the auto insurance provisions that, under Act 14, go into effect on November 1, 2011. Act 14 provided a definition for a

Insert A

warranty insurance

, except for a form for rust proofing

“commercial liability policy” as a policy that provides coverage for the insured’s general liability arising out of business or commercial activities and that includes as one component coverage for the insured’s liability arising out of the ownership, maintenance, or use of a motor vehicle. Under Act 14, commercial liability policies are not subject to the requirement for motor vehicle insurance policies that they must include uninsured motorist coverage and medical payments coverage, unless the insured rejects medical payments coverage, or the requirement that an insurer must notify the insured of the availability of underinsured motorist coverage. The bill does all of the following:

1. Specifies that a commercial liability policy is not subject to these requirements if the coverage provided under the policy for the insured’s liability arising out of the maintenance or use of a motor vehicle is limited to nonowned motor vehicles.

2. Provides that if a policy that is exempt from the requirements does, however, provide uninsured or underinsured motorist coverage or medical payments coverage, that coverage must have at least the limits that are required under the statutes for those coverages. (For uninsured motorist coverage, the minimum limits are \$25,000 per person and \$50,000 per accident; for underinsured motorist coverage, the minimum limits are \$50,000 per person and \$100,000 per accident; and for medical payments coverage, the minimum limit is \$1,000 per person.)

3. Excludes commercial automobile liability policies from the definition of commercial liability policies so that commercial automobile liability policies are subject to the same requirements as motor vehicle insurance policies and defines a “commercial automobile liability policy” as a policy that is intended principally to provide primary coverage for the insured’s liability arising out of the ownership, maintenance, or use of a motor vehicle in the insured’s business or other commercial activities.

4. Clarifies that only one named insured is required to reject medical payments coverage for the rejection to be effective.

Insurance security fund

Under current law, the state maintains an insurance security fund to protect insured parties from excessive delay and loss in the event an insurer is liquidated and to provide for the continuation of protection under certain policies and contracts in the event of a liquidation of an insurer. Insurers, with some exceptions, are required to contribute moneys to the insurance security fund. Current law also specifies that, with some exceptions, the maximum obligation of the insurance security fund on any single risk, loss, or life is \$300,000.

In addition to making other changes to the insurance security fund, this bill specifies that retained asset accounts are covered by the insurance security fund. A retained asset account is any mechanism in which the settlement of proceeds payable under a life insurance policy is accomplished by the insurer or an entity acting on behalf of the insurer depositing the proceeds into an account with check or draft writing privileges, where those proceeds are retained by the insurer under a written supplementary contract not involving annuity benefits. The bill specifies that a retained asset account is a type of supplementary contract for which an insured may

1 (a) Directly or indirectly, or acting through one or more other persons, owns,
2 controls, or has the power to vote 25 percent or more of any class of voting securities
3 of a person.

4 (b) Controls in any manner the election of a majority of the directors or trustees
5 of a person.

6 **(4)** (a) Except as provided in par. (b), “home state” means, with respect to an
7 insured, one of the following:

8 1. The state in which the insured maintains its principal place of business or,
9 in the case of an insured who is an individual, the individual’s principal residence.

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

13 (b) If more than one insured from an affiliated group are named insureds on
14 a single surplus lines insurance contract, “home state” means the state, as
15 determined under par. (a), of the member of the affiliated group that has the largest
16 percentage of premium attributed to it under the insurance contract.

17 **(5)** “Premium tax” means, with respect to unauthorized insurance, any tax, fee,
18 assessment, or other charge imposed by this state directly or indirectly based on any
19 payment made as consideration for an insurance contract for such insurance,
20 including premium deposits, assessments, registration fees, and any other
21 compensation given in consideration for a contract of insurance.

22 **(6)** “Principal place of business” means, with respect to determining the home
23 state of an insured, the state where the insured maintains its headquarters and
24 where the insured’s high-level officers direct, control, and coordinate the business
25 activities of the insured.

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

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

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

10 (10) "Surplus lines insurance" means any insurance to which all of the
11 following apply:

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

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

16 (11) "Unauthorized insurance" means any insurance permitted in a state to be
17 placed directly or through a surplus lines broker with an unauthorized insurer
18 eligible to accept such insurance.

Insert 6-18

19 SECTION 4. 618.41 (8) (a) (intro.) of the statutes is amended to read:

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

25 SECTION 5. 618.41 (8) (c) of the statutes is amended to read:

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

***NOTE: Is my addition to your suggested language okay?

5 **SECTION 6.** 618.41 (9) (a) of the statutes is amended to read:

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

17 **SECTION 7.** 618.41 (12) of the statutes[✓] is created to read:

18 618.41 (12) APPLICATION WHEN THIS STATE IS NOT THE INSURED'S HOME STATE. The
19 placement of insurance under this section is not subject to subs. (4), (7m), (8), (9), or
20 (10) if this state is not the insured's home state and the placement complies with the
21 laws of the insured's home state.

22 **SECTION 8.** 618.416 of the statutes[✓] is created to read:

23 **618.416 Qualification for placement of surplus lines insurance with an**
24 **unauthorized insurer.** An intermediary may not place surplus lines insurance

1 under s. 618.41 with an unauthorized insurer if this state is the home state of the
2 proposed insured, unless at the time of placement all of the following apply to the
3 unauthorized insurer:

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

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

8 (b) Either the unauthorized insurer has capital and surplus or its equivalent
9 under the laws of its domiciliary jurisdiction that equals the greater of either the
10 minimum capital and surplus requirements under the laws of this state or
11 \$15,000,000 or the commissioner affirmatively finds that the unauthorized insurer's
12 capital and surplus are acceptable. The commissioner's finding shall be based on
13 factors that include quality of management, capital and surplus of any parent
14 company, company underwriting profit and investment income trends, market
15 availability, and company record and reputation within the industry. In no event
16 may the commissioner find that the unauthorized insurer's capital and surplus are
17 acceptable if the unauthorized insurer's capital and surplus are less than
18 \$4,500,000.

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

24 (2) If the unauthorized insurer is an alien insurer, the insurer is listed on the
25 quarterly listing of alien insurers maintained by the international insurers

1 department of the National Association of Insurance Commissioners and meets
2 additional requirements regarding the use of the list established by rule of the
3 commissioner.

4 **SECTION 9.** 618.43 (1) (a) (intro.) of the statutes is amended to read:

5 618.43 (1) (a) (intro.) ~~Except as provided in~~ Subject to par. (b) (bc), insurers,
6 agents, brokers, and policyholders are liable, as provided in sub. (2), for a premium
7 tax of ~~3%~~ 3 percent of gross premiums charged for insurance, excluding annuities,
8 if any of the following ~~are~~ is satisfied:

9 **SECTION 10.** 618.43 (1) (a) 3. of the statutes is amended to read:

10 618.43 (1) (a) 3. The insurance is transacted by an unauthorized insurer for a
11 risk purchasing group ~~for coverage of risks which reside or are otherwise located in~~
12 ~~this state.~~

13 **SECTION 11.** 618.43 (1) (b) of the statutes is repealed.

14 **SECTION 12.** 618.43 (1) (bc) of the statutes is created to read:

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

21 **SECTION 13.** 618.43 (1) (d) of the statutes is amended to read:

22 618.43 (1) (d) Any insurance business transacted in violation of the law is
23 subject to a premium tax of ~~5%~~ 5 percent of gross premiums charged for the
24 insurance, ~~except that for ocean marine insurance the tax is 2% of gross premiums~~
25 ~~charged for the insurance.~~

1 **SECTION 14.** 618.43 (6) of the statutes is amended to read:

2 618.43 (6) ALLOCATION OF TAX. If With respect to gross premiums charged on
3 policies issued or renewed before July 21, 2011, if a policy covers risks that are only
4 partially located in this state, the premium shall be reasonably allocated among the
5 states on the basis of risk locations in computing the tax, except that all premiums
6 received in this state or charged on policies written or negotiated in this state shall
7 be taxable in full under this section, with a credit for any tax actually paid in another
8 state to the extent of a reasonable allocation on the basis of risk locations.

9 **SECTION 15.** 628.03 (1) of the statutes is amended to read:

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

17 **SECTION 16.** 628.05 (1) of the statutes is amended to read:

18 628.05 (1) GENERAL EXEMPTION. Except as otherwise provided in sub. (2), or by
19 rule promulgated by the commissioner, persons engaged in soliciting insurance
20 exclusively for town mutuals are not subject to the licensing requirements of s.
21 628.03 (1).

22 **SECTION 17.** 628.34 (1) (a) of the statutes is amended to read:

23 628.34 (1) (a) *Conduct forbidden.* No person who is or should be licensed under
24 chs. 600 to 646, no employee or agent of any such person, no person whose primary
25 interest is as a competitor of a person licensed under chs. 600 to 646, and no person

1 on behalf of any of the foregoing persons may make or cause to be made any
 2 communication relating to an insurance contract, the insurance business, any
 3 insurer, or any intermediary ~~which~~ that contains false or misleading information,
 4 including information that is misleading because of incompleteness. Filing a report
 5 and, with intent to deceive a person examining it, making a false entry in a record
 6 or willfully refraining from making a proper entry, are "communications" within the
 7 meaning of this paragraph. No intermediary or insurer may use any business name,
 8 slogan, emblem, or related device that is misleading or likely to cause the
 9 intermediary or insurer to be mistaken for another insurer or intermediary already
 10 in business. No intermediary may provide a misleading certificate of insurance.

Insert 11-10

11 **SECTION 18.** 631.20 (7) of the statutes is created to read:

12 **631.20 (7) SURPLUS LINES INSURANCE.** Except as provided in sub. (1) (c) 9. and
 13 s. 618.41 (6m), this section does not apply to a surplus lines insurance form issued
 14 under s. 618.41 before, on, or after the effective date of this subsection [LRB
 15 inserts date].

****NOTE: I did not make any changes to the form of s. 631.20 (7) that was included
 in the last version of this draft. I wasn't sure from the response whether any change was
 wanted.

****NOTE: Rather than saying that s. 631.20 does not apply to a surplus lines form,
 would it be better to exempt surplus lines forms from subs. (1) (a) and (1m) (a) in a new
 subsection, similar to the language of sub. (1g), and then add a cross-reference to the new
 subsection in sub. (1) (a)? Subsections (1) (a) and (1m) (a) both mention exemptions under
 s. 631.01 (2) to (5). Should these read "s. 631.01 (2) to (4) and (5)"? Section 631.01 (4m)
 does not appear to be an exemption from the requirement. It seems to be just the opposite.

16 **SECTION 19.** 631.85 of the statutes is amended to read:

17 **631.85 Appraisal or arbitration.** An insurance policy may contain provision
 18 provisions for independent appraisal and compulsory arbitration, subject to the
 19 provisions of s. 631.20. If an approved policy provides for application to a court of
 20 record for the appointment of a disinterested appraiser, arbitrator, or umpire, any

1 court of record of this state except the court of appeals or the supreme court may be
2 requested to make an appointment. Upon appropriate request, the court shall make
3 the appointment promptly. This section does not apply to a surplus lines insurance
4 form issued under s. 618.41 before, on, or after the effective date of this section
5 [LRB inserts date].

6 SECTION 20. 632.32 (2) (ab) of the statutes is created to read:

7 632.32 (2) (ab) "Commercial automobile liability policy" means a liability
8 insurance policy that is intended principally to provide primary coverage for the
9 insured's liability arising out of the ownership, maintenance, or use of a motor
10 vehicle in the insured's business or other commercial activities.

→ ****NOTE: I dropped the "for" of your suggested language before "other commercial
activities." Is this okay, or does it change your intended meaning?

11 SECTION 21. 632.32 (2) (ac) of the statutes, as created by 2011 Wisconsin Act
12 14, is amended to read:

13 632.32 (2) (ac) "Commercial liability policy" means any form of liability
14 insurance policy, including a commercial or business package policy or a policy
15 written on farm and agricultural operations, that is intended principally to provide
16 primary coverage for the insured's general liability arising out of its business or other
17 commercial activities, and that includes coverage for the insured's liability arising
18 out of the ownership, maintenance, or use of a motor vehicle as only one component
19 of the policy or as coverage that is only incidental to the principal purpose of the
20 policy. "Commercial liability policy" does not include a worker's compensation policy
21 or a commercial automobile liability policy.

22 SECTION 22. 632.32 (4) (a) (intro.) of the statutes is amended to read:

1 632.32 (4) (a) (intro.) Except as provided in par. (d), every policy of insurance
2 subject to this section that insures with respect to any ~~owned~~ motor vehicle
3 registered or principally garaged in this state against loss resulting from liability
4 imposed by law for bodily injury or death suffered by any person arising out of the
5 ownership, maintenance, or use of a motor vehicle shall contain therein or
6 supplemental thereto provisions for all of the following coverages:

7 **SECTION 23.** 632.32 (4) (bc) of the statutes, as affected by 2011 Wisconsin Act
8 14, is amended to read:

9 632.32 (4) (bc) Notwithstanding par. (a) 2., the named insured may reject
10 medical payments coverage. If ~~the one~~ named insured rejects the coverage, the
11 coverage need not be provided in a subsequent renewal policy issued by the same
12 insurer unless ~~the~~ ^{a named} insured under the policy requests it in writing.

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

15 632.32 (4) (d) This subsection does not apply to a commercial liability policies
16 policy if the coverage it provides for the insured's liability arising out of the
17 maintenance or use of a motor vehicle is limited to coverage for motor vehicles that
18 are not owned motor vehicles, or to an umbrella or excess liability policies policy. If
19 a commercial liability policy or an umbrella or excess liability policy provides medical
20 payments coverage or uninsured motorist coverage, however, the coverage must
21 have limits of at least those specified in par. (a).

22 **SECTION 25.** 632.32 (4m) (a) of the statutes, as created by 2011 Wisconsin Act
23 14, is amended to read:

24 632.32 (4m) (a) Except as provided in par. (e), an insurer writing policies that
25 insure with respect to a motor vehicle registered or principally garaged in this state

1 against loss resulting from liability imposed by law for bodily injury or death suffered
2 by a person arising out of the ownership, maintenance, or use of a motor vehicle shall
3 provide to one named insured under each such insurance policy that goes into effect
4 after November 1, 2011, that is written by the insurer and that does not include
5 underinsured motorist coverage written notice of the availability of underinsured
6 motorist coverage, including a brief description of the coverage. An insurer is
7 required to provide the notice required under this paragraph only one time and in
8 conjunction with the delivery of the policy.

9 **SECTION 26.** 632.32 (4m) (e) of the statutes, as created by 2011 Wisconsin Act
10 14, is amended to read:

11 632.32 (4m) (e) This subsection does not apply to a commercial liability policies
12 policy if the coverage it provides for the insured's liability arising out of the
13 maintenance or use of a motor vehicle is limited to coverage for motor vehicles that
14 are not owned motor vehicles, or to an umbrella or excess liability policies policy. If
15 a commercial liability policy or an umbrella or excess liability policy provides
16 underinsured motorist coverage, however, the coverage must have limits of at least
17 those specified in par. (d).

18 **SECTION 27.** 646.01 (2) (b) of the statutes is amended to read:

19 646.01 (2) (b) To provide where appropriate for the continuation of protection
20 under policies and ~~supplemental~~ supplementary contracts of life insurance,
21 disability insurance and annuities.

22 **SECTION 28.** 646.03 (4m) of the statutes is created to read:

23 646.03 (4m) "Retained asset account" means any mechanism in which the
24 settlement of proceeds payable under a life insurance policy is accomplished by the
25 insurer or an entity acting on behalf of the insurer depositing the proceeds into an

1 account with check or draft writing privileges, where those proceeds are retained by
2 the insurer, under a written supplementary contract not involving annuity benefits.

3 **SECTION 29.** 646.31 (1) (intro.) of the statutes is amended to read:

4 646.31 (1) CONDITIONS OF ELIGIBILITY. (intro.) A claim is not eligible for payment
5 from the fund unless it is an unpaid claim for a loss insured under the policy or
6 annuity, or an unpaid claim under a supplementary contract providing for a retained
7 asset account, and all of the following conditions are met:

8 **SECTION 30.** 646.31 (4) (a) of the statutes is renumbered 646.31 (4) (ap) and
9 amended to read:

10 646.31 (4) (ap) Except in regard to worker's compensation insurance and
11 except as provided in par. (b), the obligation of the fund on a single risk, loss, or life,
12 regardless of the number of policies or contracts, may not exceed \$300,000,
13 regardless of the number of policies or contracts except that the aggregate liability
14 of the fund for a single risk, loss, or life with respect to benefits for property
15 insurance, liability insurance, and disability insurance, regardless of the number of
16 those policies, may not exceed \$500,000.

17 **SECTION 31.** 646.31 (4) (ag) of the statutes is created to read:

18 646.31 (4) (ag) For purposes of this subsection, "disability insurance" means
19 comprehensive health insurance policies and major medical health insurance
20 policies. "Disability insurance" does not include hospital indemnity; loss of time;
21 accidental benefits; limited or specified benefit or other ancillary coverages;
22 disability income insurance coverage; long-term care insurance coverage; insurance
23 coverage that is supplemental to another insurance policy or program, including
24 Medicare supplement insurance; or similar types of policies.

25 **SECTION 32.** 646.35 (1) (b) of the statutes is amended to read:

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FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2242/lins
PJK:.....

INSERT A

4
Under current law, the auto insurance provisions relating to required coverage and minimum limits apply to all liability insurance policies that insure with respect to any owned motor vehicle registered or principally garaged in this state. The bill eliminates the condition that the requirements apply only if an owned motor vehicle is insured so that, unless a specific exemption applies, the coverage and minimum limit requirements apply to any policy that insures with respect to any motor vehicle.

(END OF INSERT A)

INSERT 6-18

1 SECTION 1. 618.41 (6m) of the statutes is amended to read:
2 618.41 (6m) RUSTPROOFING WARRANTIES INSURANCE. An insurer issuing a policy
3 of insurance under this section to cover a warranty, as defined in s. 100.205 (1) (g),
4 shall comply with s. 632.18 and the policy shall be on a form approved by the
5 commissioner under s. 631.20.

History: 1971 c. 260; 1975 c. 371 ss. 45, 50; 1979 c. 89; 1979 c. 102 ss. 147, 236 (6), (13), (21), 237; 1981 c. 20 s. 2202 (26) (a); 1985 a. 29, 332; 1987 a. 247; 1989 a. 187 s. 29; 2009 a. 177.

(END OF INSERT 6-18)

INSERT 11-10

6 SECTION 2. 631.01 (4m) of the statutes is amended to read:
7 631.01 (4m) RUSTPROOFING WARRANTIES INSURANCE. An insurer issuing a policy
8 of insurance to cover a warranty, as defined in s. 100.205 (1) (g), shall comply with
9 s. 632.18 and the policy shall be on a form approved by the commissioner under s.
10 631.20.

History: 1975 c. 375, 421; 1985 a. 29; 1987 a. 247; 1991 a. 250; 1995 a. 242; 1997 a. 27; 2007 a. 168.

11 SECTION 3. 631.20 (1) (a) of the statutes is amended to read:
12 631.20 (1) (a) No form subject to s. 631.01 (1), except as exempted under par.
13 (c), sub. (1g), or s. 631.01 (2) ~~to, (3), (4)~~² or (5) or by rule under par. (b), may be used
14 unless it has been filed with and approved by the commissioner and unless the



Ins. 11-10 covered

1 insurer certifies that the form complies with chs. 600 to 655 and rules promulgated
2 under chs. 600 to 655. It is deemed approved if it is not disapproved within 30 days
3 after filing, or within a 30-day extension of that period ordered by the commissioner
4 prior to the expiration of the first 30 days.

History: 1975 c. 375, 421; 1979 c. 218; 1987 a. 247; 1999 a. 9; 2005 a. 74; 2007 a. 168. ✓

5 **SECTION 4.** 631.20 (1) (c) 9. of the statutes is amended to read:

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

History: 1975 c. 375, 421; 1979 c. 218; 1987 a. 247; 1999 a. 9; 2005 a. 74; 2007 a. 168.

~~(END OF INSERT 11/10)~~

8 **SECTION 5.** 631.20 (1m) (a) (intro.) of the statutes is amended to read: ✓

9 631.20 (1m) (a) (intro.) Except as exempted under sub. (1g) or s. 631.01 (2) ~~to,~~
10 (3), (4) [✓] ~~or~~ [✓] (5) ² or by a rule promulgated by the commissioner, an insurer may not, on
11 or after August 1, 2008, use a form that is exempt from sub. (1) (a) under sub. (1) (c)
12 unless the insurer does all of the following:

History: 1975 c. 375, 421; 1979 c. 218; 1987 a. 247; 1999 a. 9; 2005 a. 74; 2007 a. 168.

(end of ins 11-10)

10-11

Fred Hoyle called and asked that the reference to the increase in the premium tax for ocean marine insurance be taken out of the analysis (as it is a very minor part) but not out of the substance of the bill.