

## 2013 DRAFTING REQUEST

### Bill

Received: **10/17/2013** Received By: **pkahler**  
Wanted: **As time permits** Same as LRB:  
For: **Fred Risser (608) 266-1627** By/Representing: **Terry Tuschen**  
May Contact: Drafter: **pkahler**  
Subject: **Insurance - miscellaneous** Addl. Drafters:  
Extra Copies:

Submit via email: **YES**  
Requester's email: **Sen.Risser@legis.wisconsin.gov**  
Carbon copy (CC) to: **Tamara.Dodge@legis.wisconsin.gov**

---

### Pre Topic:

No specific pre topic given

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### Topic:

Requiring insurers to provide coverage on basis of agent's statements, regardless of policy terms

---

### Instructions:

See attached

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### Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	pkahler 10/18/2013	jdyer 10/30/2013		_____			
/P1	pkahler 1/15/2014		jfrantze 10/30/2013	_____	srose 10/30/2013		
/P2	pkahler 3/18/2014	jdyer 1/16/2014	jfrantze 1/16/2014	_____	lparisi 1/16/2014		
/1		jdyer	jfrantze	_____	lparisi	lparisi	

Vers. Drafted

Reviewed  
3/18/2014

Typed  
3/18/2014

Proofed  
\_\_\_\_\_

Submitted  
3/18/2014

Jacketed  
3/18/2014

Required

FE Sent For:

*None  
Needed*

<END>

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Requester's email: Sen.Risser@legis.wisconsin.gov  
Carbon copy (CC) to: Tamara.Dodge@legis.wisconsin.gov

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### Pre Topic:

No specific pre topic given

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### Topic:

Requiring insurers to provide coverage on basis of agent's statements, regardless of policy terms

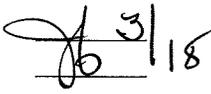
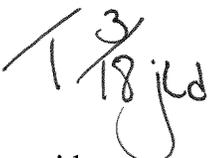
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### Instructions:

See attached

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### Drafting History:

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/?	pkahler 10/18/2013	jdyer 10/30/2013	jd				
/P1	pkahler 1/15/2014	 T 3/18 jld	jfrantze 10/30/2013		rose 10/30/2013		
/P2		jdyer 1/16/2014	jfrantze 1/16/2014		lparisi 1/16/2014		

FE Sent For:

<END>

### 2013 DRAFTING REQUEST

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#### Pre Topic:

No specific pre topic given

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#### Topic:

Requiring insurers to provide coverage on basis of agent's statements, regardless of policy terms

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See attached

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/?	pkahler 10/18/2013	jd 10/30/2013	jd	<del>R3</del> <del>14</del>			
/P1		R2 4/16 jfrantze 10/30/2013			roses 10/30/2013		

FE Sent For:

<END>

2013 DRAFTING REQUEST

Bill

Received: 10/17/2013 Received By: pkahler  
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Submit via email: YES  
 Requester's email: Sen.Risser@legis.wisconsin.gov  
 Carbon copy (CC) to: Tamara.Doge@legis.wisconsin.gov

Pre Topic:

No specific pre topic given

Topic:

Requiring insurers to provide coverage on basis of agent's statements, regardless of policy terms

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	pkahler	PI 10/30 jw					

FE Sent For:

<END>

**Kahler, Pam**

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**From:** Tuschen, Terry  
**Sent:** Thursday, October 17, 2013 3:32 PM  
**To:** Kahler, Pam; Dodge, Tamara  
**Cc:** Tuschen, Terry  
**Subject:** Senator Risser drafting request -

**Importance:** High

Hi Pam, Tamara, Senator Risser would like a simple bill drafted that provides "when a statement and/or assurance is repeatedly made by an insurance agent or supervisor, which causes an action or inaction by a policy holder, that statement must be honored even if it may contradict language in the policy.

This comes from a situation involving constituents who had a dispute with WEA Trust regarding post-retirement health insurance coverage. They inquired a number of times about post-retirement coverage and were reassured (via email) by the person at WEA Trust in charge of this section that yes, their coverage was secure, etc. Then about 30 days before retirement, they were notified that nope...you will not have health insurance after you retire in 30 days and you better find coverage.

WEA Trust's argument is that a provision in the group health insurance document (that they constituents wouldn't have) provides that despite anything told to them by WEA employees, the document says otherwise - I'm paraphrasing but that's the gist of the problem. I'm not asking you to go really deep into this. Just a simple bill that when a statement repeatedly made by an insurance agent or supervisor, which causes an action or inaction by a policy holder, that statement must be honored even if it may contradict language in the policy.

\*\*\*\*\*

Terry Tuschen  
Office of State Senator Fred Risser  
130 South, State Capitol  
Madison, WI 53707-7882  
608.266.1627  
[Terry.Tuschen@legis.wisconsin.gov](mailto:Terry.Tuschen@legis.wisconsin.gov)

628.34 (1)(b)

628.40

631.48 (agent changing policy?)

ck 893/895?



Fri (cont)

Handwritten notes and initials

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

Check autoref

D-note  
(10-10)

agent

4

1 AN ACT relating to: requiring an insurer to provide coverage on the basis of  
2 an agent's representations.

**Analysis by the Legislative Reference Bureau**

Under current law, an insurer or an insurance agent may not make or cause to be made any communication relating to an insurance contract that contains false or misleading information. If an insurance agent distributes cards or documents, exhibits a sign, or publishes an advertisement relating to an insurance contract that contains false or misleading information, there is a rebuttable presumption that the insurer also committed the violation. Current law also provides that an insurer is bound by any act of its agent while the agent's contract remains in force.

This bill requires an insurer to provide a particular coverage to an insured under a policy issued by the insurer, even if the policy does not provide that coverage, if an agent of the insurer has represented more than once to the insured that the policy provides that particular coverage. However, the insurer is not prohibited from charging a premium for the particular coverage and is not required to provide any type of coverage that the insurer does not otherwise provide. The bill prohibits an insurance policy from including a provision that is contrary to the requirement under the bill.

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

1 SECTION 1. 628.41<sup>x</sup> of the statutes is created to read:

2 628.41 Insurer bound by agent's representations. (1) (a) If an insurer's  
3 agent, acting within the scope of the agent's apparent authority, represents more  
4 than once to an insured under a policy issued by the insurer that the policy provides  
5 a particular coverage and the insured relies on that representation, subject to par.  
6 (b), the insurer is bound to provide to the insured that particular coverage, regardless  
7 of whether the policy provides that coverage.

\*\*\*\*NOTE: Is "more than once" sufficient for "repeatedly"? You could provide a  
different number, but I don't believe "repeatedly" is specific enough for this situation. The  
agent and the insured may disagree on how many times a representation was made, and  
it might be difficult to prove how many times an agent made a representation unless the  
representation was in writing or by email and can be printed. If the representation is in  
writing or by email, only one time may be sufficient.

many

\*\*\*\*NOTE: Do you want to require that the insured relied on the representation to  
his or her detriment? Normally, if an act was not intentional and there was no harm or  
loss, there is no basis for redress.

8 (b) An insurer under par. (a) is not required to provide any type of coverage that  
9 the insurer does not otherwise provide.

~~XXXXXXXXXX~~

10 (2) A policy may not include a provision that is contrary to the requirement  
11 under sub. (1).

12 (3) Nothing in this section prohibits an insurer from charging a premium for  
13 the coverage required to be provided under sub. (1) due to the agent's  
14 representations.

\*\*\*\*NOTE: I assumed that you did not intend that the insured does not have to pay  
for the new coverage.

15 SECTION 2. Initial applicability.

a.r.

16 (1) Except as provided in subsection (2), this act first applies to a representation  
17 first made by an insurance agent on the effective date of this subsection.

\*\*\*\*NOTE: I don't think you can require an insurer to provide coverage that the insurer does not, and might even be authorized to, provide.

1 (2) If an insurance policy that is in effect on the effective date of this subsection  
2 contains a provision that is inconsistent with this act, this act first applies to that  
3 insurance policy on the date on which it is renewed.

4 (END)

✓ a representation first made with respect to

*D. J. [unclear]*

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

LRB-3459/8dn

PJK:.....

PI  
JLD  
r m n n n n n n

date

There are a couple of provisions in current law that may address your constituent's concern. See ss. 628.34 (1) and 628.40. See s. 631.28 with respect to filing a complaint with OCI regarding the agent's actions.

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

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

LRB-3459/P1dn  
PJK:jld:jf

October 30, 2013

There are a couple of provisions in current law that may address your constituent's concern. See ss. 628.34 (1) and 628.40. See s. 631.28 with respect to filing a complaint with OCI regarding the agent's actions.

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

## Kahler, Pam

---

**From:** Tuschen, Terry  
**Sent:** Wednesday, January 15, 2014 8:45 AM  
**To:** Kahler, Pam  
**Subject:** FW: FW: RE: Draft review: LRB -3459/P1 Topic: Requiring insurers to provide coverage on basis of agent's statements, regardless of policy terms

Hi Pam, I'm sorry...it looks like I may have not forward this response to you. Is it helpful in answering your questions?  
Thanks, Terry

**From:** michael moore [<mailto:xcalakboy@gmail.com>]  
**Sent:** Tuesday, December 17, 2013 4:54 PM  
**To:** Tuschen, Terry  
**Subject:** Re: FW: RE: Draft review: LRB -3459/P1 Topic: Requiring insurers to provide coverage on basis of agent's statements, regardless of policy terms

The WEA Trust was the insurer for the plan covering WEAC and most affiliate employees. That is still the case as far as I know. The WEA Trust terminated our coverage effective Aug 31 of 2012 indicating we would no longer be eligible to be part of the WEAC group even though we had repeatedly been given assurances that we would both verbally and in writing from employees in the eligibility department of the WEA Trust. They offered to continue our coverage after the termination date but we would have not been be part of the group and would have been rated as individuals. Of course, the price difference was enormous and the coverages were not equivalent.

In the examiner's August 12th letter she references 631.09, 600.03, 628.02, 631.11 and 632.79. I think representative should work.

*→ defers → defers ?*  
*don't help*

On Tue, Dec 17, 2013 at 4:14 PM, Tuschen, Terry <[Terry.Tuschen@legis.wisconsin.gov](mailto:Terry.Tuschen@legis.wisconsin.gov)> wrote:  
>Mike, here are the drafters responses (in blue, your original text is in black) with f/u questions.  
>Thanks, Terry

Below are my responses. However, I'm not sure I can answer these questions satisfactorily, because I don't know about WEA Trust or exactly what the "continued coverage" circumstances are. Did OCI make a reference to s. 632.897?

---

Hi,

Thanks for forwarding the draft. Here are my preliminary comments and questions.

1. Our particular situation had to do with eligibility for continued coverage not a "particular coverage". The WEA Trust said we were no longer eligible to be insured by them under the group policy even though we were repeatedly assured our coverage could continue. Does this draft cover that circumstance or only if a certain procedure or coverage is denied?
2. I'm not sure what is meant by "continued coverage." By "continue" do you mean that your policy would be renewed or not terminated? Was your coverage terminated before the end of the policy term? By "continued coverage," do you mean continuation coverage under s. 632.897, which may require you to switch to an individual policy 18 months after you elect to continue group coverage (see s. 632.897 (6)). Perhaps the draft needs to include, or be changed to apply to, representations about continuation coverage.
3. We were given assurances by those working in the eligibility department of the WEA Trust. Are they "agents" as defined in the statute?

4. I really don't know how WEA Trust is set up or what it is exactly. Is it a third party administrator? How is it related to the insurance company that provides the insurance? The definition for an agent in s. 628.02 (1) is a person that solicits, negotiates, or places insurance on behalf of an insurer or a person seeking insurance or a person who advises other persons about insurance needs and coverages. We could add "or a representative of an insurer." Would that work?
5. We were given assurances both in writing (by email) and verbally. Would an addition like "more than once or in writing" clarify?
6. I could add "or in writing."

4. We have, long ago, filed a complaint with OCI. I sent you their latest denial.

Take care,  
Mike

\*\*\*\*\*

Terry Tuschen  
Office of State Senator Fred Risser  
130 South, State Capitol  
Madison, WI 53707-7882  
608.266.1627  
[Terry.Tuschen@legis.wisconsin.gov](mailto:Terry.Tuschen@legis.wisconsin.gov)



y mis run

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

J-note  
(w/ 1-15)

Continue group  
Regen  
or representative's

X  
1  
2

AN ACT to create 628.41 of the statutes; relating to: requiring an insurer to provide coverage on the basis of an agent's representations.

***Analysis by the Legislative Reference Bureau***

Under current law, an insurer or an insurance agent may not make or cause to be made any communication relating to an insurance contract that contains false or misleading information. If an insurance agent distributes cards or documents, exhibits a sign, or publishes an advertisement relating to an insurance contract that contains false or misleading information, there is a rebuttable presumption that the insurer also committed the violation. Current law also provides that an insurer is bound by any act of its agent while the agent's contract remains in force.

This bill requires an insurer to provide a particular coverage to an insured under a policy issued by the insurer, even if the policy does not provide that coverage, if an agent of the insurer has represented more than once to the insured that the policy provides that particular coverage. However, the insurer is not prohibited from charging a premium for the particular coverage and is not required to provide any type of coverage that the insurer does not otherwise provide. The bill prohibits an insurance policy from including a provision that is contrary to the requirement under the bill.

Insert A

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

*of other representative*

*or representatives*

*or representative's*

1 SECTION 1. 628.41 of the statutes is created to read:

2 **628.41 Insurer bound by agent's representations.** (1) (a) If an insurer's

3 agent, acting within the scope of the agent's apparent authority, represents ~~more~~

4 ~~than once~~ *in writing* to an insured under a policy issued by the insurer that the policy provides

5 a particular coverage and the insured relies on that representation, subject to par.

6 (b), the insurer is bound to provide to the insured that particular coverage, regardless

7 of ~~whether~~ *any contrary provision in* the policy ~~provides that coverage~~

\*\*\*\*NOTE: Is "more than once" sufficient for "repeatedly"? You could provide a different number, but I don't believe "repeatedly" is specific enough for this situation. The agent and the insured may disagree on how many times a representation was made, and it might be difficult to prove how many times an agent made a representation unless the representation was in writing or by e-mail and can be printed. If the representation is in writing or by e-mail, only one time may be sufficient.

*Insert 2-7*

\*\*\*\*NOTE: Do you want to require that the insured relied on the representation to his or her detriment? Normally, if an act was not intentional and there was no harm or loss, there is no basis for redress.

8 (b) An insurer under par. (a) is not required to provide any type of coverage that  
9 the insurer does not otherwise provide.

\*\*\*\*NOTE: I don't think you can require an insurer to provide coverage that the insurer does not, and may not even be authorized to, provide.

10 (2) A policy may not include a provision that is contrary to the requirement<sup>2</sup>  
11 under sub. (1).

12 (3) Nothing in this section prohibits an insurer from charging a premium for  
13 the coverage required to be provided under sub. (1) due to the agent's  
14 representations.

\*\*\*\*NOTE: I assumed that you did not intend that the insured does not have to pay for the new coverage.

15 SECTION 2. Initial applicability. *a.s.*

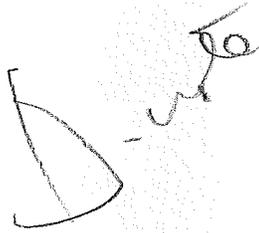
16 (1) Except as provided in subsection (2), this act first applies to a representation  
17 first made by an insurance agent on the effective date of this subsection.

*or other insurer representative*

1           (2) If an insurance policy that is in effect on the effective date of this subsection  
2 contains a provision that is inconsistent with this act, this act first applies to a  
3 representation first made with respect to that insurance policy on the date on which  
4 it is renewed.✓

5

(END)



INSERT A

This bill requires an insurer that provides coverage under a group health care policy or plan to allow an insured to continue coverage under the group health care policy or plan as part of the group for the next term if an agent or other representative of the insurer has represented in writing to the insured that he or she is eligible to continue coverage under the group health care policy or plan as part of the group for the next policy or plan term. The bill prohibits the insurer from charging the insured a higher premium for the coverage than the premium that is charged other insureds under the group health care policy or plan. The bill also prohibits an insurance policy from including a provision that is contrary to the requirements under the bill.

(END OF INSERT A)

INSERT 2-7

1           SECTION 1. 628.41 of the statutes is created to read:

2           **628.41 Insurer bound by agent's representations.** (1) (a) If an insurer's  
3 agent or other representative, acting within the scope of the agent's or  
4 representative's apparent authority, represents in writing to an insured under a  
5 group health care policy or plan issued by the insurer that the insured is eligible to  
6 continue coverage for the next policy or plan term as part of the group under the  
7 group health care policy or plan and the insured relies on that representation, the  
8 insurer is bound to allow the insured to continue coverage under that group health  
9 care policy or plan as part of the group for the next policy or plan term, regardless  
10 of whether the insured is eligible to continue coverage under the policy or plan as part  
11 of the group and regardless of any provision in the policy or plan to the contrary.

12           (b) The insurer may not charge an insured whose group coverage is continued  
13 under par. (a) a premium that is higher than the premium charged to other insureds  
14 who are part of the group covered under the group health care policy or plan.

(END OF INSERT 2-7)

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

LRB-3459/P2dn

PJK:.....

*date*

*JL*

I redrafted the bill <sup>✓</sup> to be specific to your constituent's situation. This situation may occur very infrequently, however.

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

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

LRB-3459/P2dn  
PJK:jld:jf

January 16, 2014

I redrafted the bill to be specific to your constituent's situation. This situation may occur very infrequently, however.

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

**Kahler, Pam**

---

**From:** LRB.Legal  
**Sent:** Tuesday, March 18, 2014 9:09 AM  
**To:** Kahler, Pam  
**Subject:** FW: Draft review: LRB -3459/P2 Topic: Requiring insurers to provide coverage on basis of agent's statements, regardless of policy terms

Hello Pam, Looks like they would like this to a /1 and jacketed.

Thanks ☺

---

**From:** Risser, Fred A.  
**Sent:** Tuesday, March 18, 2014 9:06 AM  
**To:** LRB.Legal  
**Subject:** RE: Draft review: LRB -3459/P2 Topic: Requiring insurers to provide coverage on basis of agent's statements, regardless of policy terms

Please have this jacketed for introduction. This is good.  
Thank you,  
Terry

\*\*\*\*\*

Terry Tuschen, Chief of Staff  
Office of State Senator Fred Risser  
130 South, State Capitol  
Madison, WI 53707-7882  
608.266.1627  
[Terry.Tuschen@legis.wisconsin.gov](mailto:Terry.Tuschen@legis.wisconsin.gov)

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**From:** LRB.Legal  
**Sent:** Thursday, January 16, 2014 11:36 AM  
**To:** Risser, Fred A.  
**Subject:** Draft review: LRB -3459/P2 Topic: Requiring insurers to provide coverage on basis of agent's statements, regardless of policy terms

**Following is the PDF version of draft LRB -3459/P2 and drafter's note.**



State of Wisconsin  
2013 - 2014 LEGISLATURE



LRB-3459/PK  
PJK:jld

v m to run

~~PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION~~

2013 Bill

(w 3-18)

✓ Regen

1 AN ACT *to create* 628.41 of the statutes; **relating to:** requiring an insurer to  
2 continue group coverage on the basis of an agent's or representative's  
3 representations.

---

***Analysis by the Legislative Reference Bureau***

Under current law, an insurer or an insurance agent may not make or cause to be made any communication relating to an insurance contract that contains false or misleading information. If an insurance agent distributes cards or documents, exhibits a sign, or publishes an advertisement relating to an insurance contract that contains false or misleading information, there is a rebuttable presumption that the insurer also committed the violation. Current law also provides that an insurer is bound by any act of its agent while the agent's contract remains in force.

This bill requires an insurer that provides coverage under a group health care policy or plan to allow an insured to continue coverage under the group health care policy or plan as part of the group for the next term if an agent or other representative of the insurer has represented in writing to the insured that he or she is eligible to continue coverage under the group health care policy or plan as part of the group for the next policy or plan term. The bill prohibits the insurer from charging the insured a higher premium for the coverage than the premium that is charged other insureds

under the group health care policy or plan. The bill also prohibits an insurance policy from including a provision that is contrary to the requirements under the bill.

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

1           **SECTION 1.** 628.41 of the statutes is created to read:

2           **628.41 Insurer bound by agent's representations.** (1) (a) If an insurer's  
3 agent or other representative, acting within the scope of the agent's or  
4 representative's apparent authority, represents in writing to an insured under a  
5 group health care policy or plan issued by the insurer that the insured is eligible to  
6 continue coverage for the next policy or plan term as part of the group under the  
7 group health care policy or plan and the insured relies on that representation, the  
8 insurer is bound to allow the insured to continue coverage under that group health  
9 care policy or plan as part of the group for the next policy or plan term, regardless  
10 of whether the insured is eligible to continue coverage under the policy or plan as part  
11 of the group and regardless of any provision in the policy or plan to the contrary.

12           (b) The insurer may not charge an insured whose group coverage is continued  
13 under par. (a) a premium that is higher than the premium charged to other insureds  
14 who are part of the group covered under the group health care policy or plan.

\*\*\*NOTE: Do you want to require that the insured relied on the representation to  
his or her detriment? Normally, if an act was not intentional and there was no harm or  
loss, there is no basis for redress.

15           (2) A policy may not include a provision that is contrary to the requirements  
16 under sub. (1).

17           **SECTION 2. Initial applicability.**

1

2

3

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8

(1) Except as provided in subsection (2), this act first applies to a representation first made by an insurance agent or other insurer representative on the effective date of this subsection.

(2) If an insurance policy that is in effect on the effective date of this subsection contains a provision that is inconsistent with this act, this act first applies to a representation first made with respect to that insurance policy on the date on which it is renewed.

(END)