

Clearinghouse Rule 06-117

**PROPOSED ORDER OF THE OFFICE OF THE COMMISSIONER OF INSURANCE
RENUMBERING, AMENDING AND CREATING A RULE**

To renumber Ins 6.77(3)(c) and (d); **To amend** Ins 6.77 Title, (1) and (2), 6.77(4)(a);
and **To create** Ins 6.77(3)(c), Wis. Adm. Code, **Relating to** underinsured and
uninsured motorist coverage in umbrella and commercial policies.

ANALYSIS PREPARED BY THE OFFICE OF THE COMMISSIONER OF INSURANCE (OCI)

1. Statutes interpreted:

ss. 600.01, 631.36, 632.32, Stats.

2. Statutory authority:

ss. 600.01(2), 601.41(3), 628.34(12), 631.01(5), 631.36(1)(c), Stats.

3. Explanation of the OCI's authority to promulgate the proposed rule under these statutes:

Under s. 631.01(5), the commissioner is given authority to exempt certain classes of insurance from the requirements of 631.36 or 632.32, Stats. The commissioner has previously exercised this authority in adopting and amending Ins 6.77, Wis. Admin. Code.

4. Related Statutes or rules:

Ins 6.77, Wisc. Admin. Code

5. The plain language analysis and summary of the proposed rule:

This rule would remove the requirement that umbrella and commercial policies give notice of the availability of underinsured motorists coverage. The obligation to give this notice would rest solely with the insurer writing the auto coverage.

In addition, the current exemption from the requirement to offer uninsured motorists for umbrella policies would be expanded to include commercial liability policies.

6. Summary of and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule:

None.

7. Comparison of similar rules in adjacent states as found by OCI:

Illinois: 215 ILCS 5/143a In *Hartbarger v. Country Mut. Ins. Co.*, 107 Ill. App. 3d 391, it was found that this section was enacted to insure a minimum amount of uninsured motorist protection, but did not give the authority to rewrite unambiguous provisions of an umbrella policy in order to expand the maximum coverage afforded plaintiff.

Iowa: Iowa Code § 321A.21 Primary insurance is purchased to be the first tier of insurance coverage while an umbrella policy is intended to cover only

catastrophic losses that exceed the insured's required primary insurance limit. "Umbrella" policies are not included under Iowa Code § 321A.21, the financial responsibility statute. *Jalas v. State Farm Fire & Cas. Co.*, 505 N.W.2d 811, 1993 Iowa Sup. LEXIS 211 (Iowa 1993).

Michigan: Sec. 257.520(a) Michigan is a no-fault state and thus is not comparable to Wisconsin. Michigan defines a "motor vehicle liability policy" as an owner's or an operator's policy of liability insurance which would appear to not include an umbrella policy.

Minnesota: 65B.49 Minnesota is a no-fault state and thus is not comparable to Wisconsin. Uninsured and underinsured coverage is required in auto policies.

8. A summary of the factual data and analytical methodologies that OCI used in support of the proposed rule and how any related findings support the regulatory approach chosen for the proposed rule:

OCI review of complaints, NAIC models, insurer's financial information

9. Any analysis and supporting documentation that OCI used in support of OCI's determination of the rule's effect on small businesses under s. 227.114:

The change will continue the existing practice used by insurers issuing umbrella and commercial policies. As such, it will have no impact.

10. If these changes may have a significant fiscal effect on the private sector, the anticipated costs that will be incurred by private sector in complying with the rule:

These changes will not have a significant fiscal effect on the private sector.

11. A description of the Effect on Small Business:

This rule will have little or no effect on small businesses.

12. Agency contact person:

A copy of the full text of the proposed rule changes, analysis and fiscal estimate may be obtained from the OCI WEB sites at: <http://oci.wi.gov/ocirules.htm> or by contacting Inger Williams, OCI Services Section, at:

Phone: (608) 264-8110
Email: Inger.Williams@OCI.State.WI.US
Address: 125 South Webster St – 2nd Floor Madison WI 53702
Mail: PO Box 7873, Madison WI 53707-7873

13. Place where comments are to be submitted:

Mailing address:

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WEB Site: <http://oci.wi.gov/ocirules.htm>

The proposed rule changes are:

SECTION 1. Section Ins 6.77 Title, (1) and (2) are amended to read:

Ins 6.77 Exemption from mid-term cancellation requirements and requirements, required uninsured motorist motorist, underinsured motorist and medical payment coverages.

(1) PURPOSE. This section is intended to exempt certain classes of insurance contracts from ss. 631.36 (2) (b) and ~~(c) and 632.32 (4)~~, (c), 632.32(4) and 632.32 (4m), Stats. This section implements the provisions of ss. 631.01 (5) and 631.36 (1) (c), Stats.

(2) SCOPE. This section applies to all insurers authorized to write umbrella or excess liability insurance policies in Wisconsin, to all insurers authorized to write commercial liability policies in Wisconsin, and to all insurers authorized to write aircraft insurance policies in Wisconsin.

SECTION 2. Section Ins 6.77(3)(c) and (d) are renumbered to Ins 6.77(3)(d) and (e).

SECTION 3. Section Ins 6.77(3)(c) is created to read:

Ins 6.77(3)(c) *Commercial liability policy* means any form of commercial insurance contract providing coverage for the insured's liability arising out of the ownership, maintenance or use of an automobile or other motor vehicle. For purposes of this section, commercial liability policy includes policies written on farms and agricultural operations but excludes worker's compensation policies.

SECTION 4. Section Ins 6.77(4)(a) is amended to read:

6.77(4) EXEMPTION. (a) Any umbrella or excess liability insurance policy as defined in sub. (3) is exempt from the requirements of ~~ss. s. 631.36 (2) (a) and 632.32 (4)~~, any commercial liability or umbrella or excess liability insurance policy as defined in sub. (3) is exempt from the requirements of ss. 632.32(4) and 632.32 (4m), Stats.

SECTION 5. These changes will take effect on the first day of the month after publication, as provided in s. 227.22(2)(intro.), Stats.

Dated at Madison, Wisconsin, this 3rd day of November, 2006.

Jorge Gomez
Commissioner of Insurance

**Office of the Commissioner of Insurance
Private Sector Fiscal Analysis**

for Rule Ins 6 relating to underinsured and uninsured motorist coverage
in umbrella and commercial policies

This rule change will have no significant effect on the private sector regulated by OCI.

FISCAL ESTIMATE WORKSHEET

Detailed Estimate of Annual Fiscal Effect

ORIGINAL UPDATED
 CORRECTED SUPPLEMENTAL

LRB Number	Amendment No. if Applicable
Bill Number	Administrative Rule Number INS 6.77

Subject
underinsured motorist coverage in umbrella and commercial policies

One-time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):
None

Annualized Costs:	Annualized Fiscal impact on State funds from:	
A. State Costs by Category	Increased Costs	Decreased Costs
State Operations - Salaries and Fringes	\$ 0	\$ -0
(FTE Position Changes)	(0 FTE)	(-0 FTE)
State Operations - Other Costs	0	-0
Local Assistance	0	-0
Aids to Individuals or Organizations	0	-0
TOTAL State Costs by Category	\$ 0	\$ -0
B. State Costs by Source of Funds	Increased Costs	Decreased Costs
GPR	\$ 0	\$ -0
FED	0	-0
PRO/PRS	0	-0
SEG/SEG-S	0	-0
C. State Revenues	Increased Rev.	Decreased Rev.
GPR Taxes <small>Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)</small>	\$ 0	\$ -0
GPR Earned	0	-0
FED	0	-0
PRO/PRS	0	-0
SEG/SEG-S	0	-0
TOTAL State Revenues	\$ 0 None	\$ -0 None

NET ANNUALIZED FISCAL IMPACT

	<u>STATE</u>	<u>LOCAL</u>
NET CHANGE IN COSTS	\$ <u>None 0</u>	\$ <u>None 0</u>
NET CHANGE IN REVENUES	\$ <u>None 0</u>	\$ <u>None 0</u>

Prepared by: Robert Luck	Telephone No. (608) 266-0082	Agency Insurance
Authorized Signature:	Telephone No. (608) 267-3782	Date (mm/dd/ccyy) 11/3/2006

