

**PROPOSED ORDER OF THE OFFICE OF THE COMMISSIONER OF INSURANCE
REPEALING AND AMENDING A RULE**

To repeal s. Ins 6.77(3)(am), (bm), (4)(am) and (b) and (6); **To amend** s. Ins 6.77 Title and 6.77 (2); **Relating to** exemption from required uninsured motorist, underinsured motorist and medical payments coverage.

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

1. Statutes interpreted:

ss. 600.01, 628.34 (12), 632.32, Stats.

2. Statutory authority:

ss. 227.11(2)(a), 600.01, 601.41 (3), 628.34 (12), 631.01 (5) 631.36 (1) (c), Stats.

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

Under s. 631.01(5), Wis. Stats., the commissioner is given authority to exempt certain classes of insurance from the requirements of ss. 631.36 or 632.32, Stats. The commissioner has previously exercised this authority at various times in adopting and amending Ins. 6.77, Wis. Adm. Code and in this proposed rule to remove exemptions.

4. Related statutes or rules:

INS 6.77 Wis. Adm. Code and s. 632.32(4) and (4m) Wis. Stats.

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

The proposed rule will repeal exemptions contained in INS ss. 6.77(3)(am), 4(am) and (b), and (6), Wis. Adm. Code that are identical to exemptions recently added to s. 632.32(4) and (4m) Wis. Stats. In particular, 2011 Wisconsin Acts 14 and 224 created exemptions for excess and umbrella policies and commercial liability policies covering only non-owned autos from having to offer or include uninsured motorist coverage, underinsured motorist coverage and medical payment coverage. The proposed rule will remove redundant provisions and reduce the risk of confusion.

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 sec. 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 sec. 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 s. 632.32 (4) and (4m), insurers existing business practices and other 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 proposed law does not substantively change the law. Instead, it will lessen confusion and administrative burdens on insurers issuing policies affected by these provisions by removing duplicative and unnecessary code provisions. As such, it will have no impact on small businesses.

10. See the attached Private Sector Fiscal Analysis.

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 Web site at:

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

or by contacting Inger Williams, OCI Services Section, at:

Phone: (608) 264-8110

Email: inger.williams@wisconsin.gov

Address: 125 South Webster St – 2nd Floor, Madison WI 53703-3474

Mail: PO Box 7873, Madison, WI 53707-7873

13. Place where comments are to be submitted and deadline for submission:

The deadline for submitting comments is 4:00 p.m. on the 14th day after the date for the hearing stated in the Notice of Hearing.

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The proposed rule changes are:

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

Ins 6.77 Exemption from mid-term cancellation requirements, and from required uninsured 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) (a), (b) and (c) and ~~632.32(4)~~, 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. Ins 6.77(3)(am), (bm), (4)(am), (b), and (6) are repealed.

SECTION 3. These changes will take effect on the first day of the month after publication, as provided in s. 227.22(2)(intro.), Stats.

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

for Section Ins 6.77 relating to exemption from required uninsured motorist, underinsured motorist and medical payments coverage

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