



State of Wisconsin
2017 - 2018 LEGISLATURE

LRB-4594/1
AJM&TJD:ahc

2017 ASSEMBLY BILL 877

January 29, 2018 - Introduced by Representative DUCHOW, cosponsored by Senator CRAIG. Referred to Committee on Insurance.

1 **AN ACT** *to repeal* 601.427; *to amend* 626.31 (1) (b); and *to create* 601.465 (1m)
2 (d), 601.465 (2m) (e) to (i), 601.465 (3) (e), 610.80 and 645.31 (16) of the statutes;
3 **relating to:** disclosures to the commissioner of insurance and other changes
4 to the insurance laws, extending the time limit for emergency rule procedures,
5 providing an exemption from emergency rule-making procedures, and
6 granting rule-making authority.

Analysis by the Legislative Reference Bureau

This bill eliminates the medical malpractice insurance report, adds certain biographical information to the information that the commissioner of insurance may refuse to disclose to others, adds provisions that apply to the privilege relating to confidential information provided to the commissioner, changes the membership of the rating committee of the Wisconsin worker's compensation rating bureau, creates a corporate governance annual disclosure requirement, and adds corporate deficiencies to the list of grounds for which an insurer may be rehabilitated.

Corporate governance annual disclosure

The bill requires an insurer or an insurance holding company system of which an insurer is a member to annually submit to the commissioner a corporate governance annual disclosure containing information specified in the bill. If the insurer is a member of an insurance holding company system the system shall

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submit the disclosure to the insurance commissioner of the lead state, and the state shall provide a copy to Wisconsin's commissioner upon the commissioner's request. The bill allows the commissioner to request additional information from the insurer or insurance holding company system to understand the corporate governance policies and implementation of those policies. The bill specifies how, when, and with whom documents, materials, and other information disclosed to the commissioner in conjunction with a corporate governance annual disclosure may be released, shared, or disclosed, including providing that the documents, materials, and other information is considered proprietary and contains trade secrets and is confidential and privileged. The commissioner may petition a court for an order directing rehabilitation of an insurer on one of the grounds specified in current law, and the bill adds to those grounds corporate governance deficiencies in which continued operation of the insurer may be hazardous to policyholders, creditors, or the public.

Nondisclosure of information

Currently the Office of the Commissioner of Insurance may refuse to disclose and may prevent others from disclosing certain information obtained by the commissioner including testimony, reports, records, and information obtained in the court of an inquiry made by the commissioner or an examination conducted by the commissioner. Under the bill, OCI may also refuse to disclose biographical information of directors or principal officers of a corporation reported, as required by current law, by a domestic stock or mutual insurance corporation.

Current law specifies the nature of the privilege surrounding the confidential information obtained by the commissioner such as specifying that the privilege may not be constructively waived and may be waived only by affirmative written and specific consent of the commissioner. Under the bill, privileged information is not subject to inspection or copying under open records law and is not subject to subpoena or discovery or admissible as evidence in a private civil action. The commissioner may not be compelled to testify concerning privileged information in a private civil action, and no person, while acting under the authority of the commissioner, is allowed to testify concerning privileged action in a private civil action. The bill also specifies that the privilege is not waived as a result of the commissioner sharing the information as authorized under current law. Confidentiality of corporate governance annual disclosures and related information is excluded from the general nondisclosure provisions and subject only to the specific confidentiality provisions created for such disclosures and information in the bill.

Medical malpractice report

Current law requires insurers who are authorized to write medical malpractice insurance to file an annual medical malpractice insurance report with the commissioner. This bill eliminates the medical malpractice report filing requirement.

Rating bureau

Currently, the rating committee of the Wisconsin Compensation Rating Bureau that establishes rating plans for worker's compensation insurance consists of ten members: two members representing employer interests, four members chosen by stock insurers, and four chosen by mutual insurers. The bill changes the total of

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members to an even number no fewer than 8 and no more than 12. Two members of the committee will still represent employer interests and be appointed by the governor. Of the remaining members, the bill designates that half are chosen by stock insurers and half are chosen by mutual insurers.

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:

1 **SECTION 1.** 601.427 of the statutes is repealed.

2 **SECTION 2.** 601.465 (1m) (d) of the statutes is created to read:

3 601.465 (**1m**) (d) Biographical data reported under s. 611.54 (1) relating to
4 directors or principal officers of a corporation.

5 **SECTION 3.** 601.465 (2m) (e) to (i) of the statutes are created to read:

6 601.465 (**2m**) (e) Privileged information is not subject to inspection or copying
7 under s. 19.35 (1).

8 (f) Privileged information is not subject to subpoena or discovery and is not
9 admissible as evidence in any private civil action.

10 (g) The commissioner may not be compelled to testify concerning privileged
11 information in any private civil action.

12 (h) No person, while acting under the authority of the commissioner, may
13 testify concerning privileged information in any private civil action.

14 (i) The privilege is not waived as a result of the commissioner sharing
15 information as authorized under sub. (1m).

16 **SECTION 4.** 601.465 (3) (e) of the statutes is created to read:

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1 601.465 (3) (e) All information protected under s. 610.80 (4), including the
2 corporated governance annual disclosures and related information, which are
3 subject only to the confidentiality provisions in s. 610.80 (4).

4 **SECTION 5.** 610.80 of the statutes is created to read:

5 **610.80 Corporate governance annual disclosure. (1) DEFINITIONS.** In this
6 section:

7 (a) “Insurance holding company system” has the meaning given in s. 622.03 (2).

8 (b) “Insurer” has the meaning given in s. 622.03 (3).

9 (c) “Lead state” has the meaning given in s. 622.03 (4).

10 **(2) DISCLOSURE REQUIREMENT.** (a) An insurer or insurance holding company
11 system of which an insurer is a member shall, annually no later than June 1, submit
12 to the commissioner a corporate governance annual disclosure that contains the
13 information described in sub. (3). If the insurer is a member of an insurance holding
14 company system, the insurance holding company system shall submit the disclosure
15 to the commissioner of the lead state in accordance with the laws of the lead state.
16 Upon the commissioner’s request, the insurer shall provide a copy of the disclosure
17 when this state is not the lead state.

18 (b) The commissioner may request additional information from an insurer or
19 insurance holding company system that the commissioner determines is necessary
20 for the commissioner to understand an insurer’s or insurer member of an insurance
21 holding company system’s corporate governance policies and the reporting or
22 information system or controls implementing the policies.

23 (c) With respect to an insurer member of an insurance holding company system,
24 if the commissioner wishes to review the disclosure under par. (a) or make a request
25 for additional information about the disclosure under par. (a), the commissioner

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1 shall request the disclosure or additional information through the lead state before
2 seeking the information from the insurer member of the insurance holding company
3 system.

4 (d) The insurer or insurance holding company system has discretion over
5 responses to inquiries regarding the disclosure under this section, provided that the
6 disclosure is consistent with rules established by the commissioner regarding the
7 disclosure and contains the material information necessary to permit the
8 commissioner to gain an understanding of the insurer's or insurer member of an
9 insurance holding company system's corporate governance structure, policies, and
10 practices.

11 (e) Insurers providing information substantially similar to the information
12 required by this section in other documents provided to the commissioner, including
13 proxy statements or other state or federal filings provided to the commissioner, are
14 not required to also provide that information in the corporate governance annual
15 disclosure but are required to reference in the corporate governance annual
16 disclosure the document in which the information is included.

17 **(3) CONTENTS OF DISCLOSURE.** The disclosure under sub. (2) (a) shall include all
18 of the following:

19 (a) The signature of the chief executive officer or corporate secretary of the
20 insurer or insurance holding company system attesting that, to the best of that
21 individual's knowledge, the insurer has implemented the corporate governance
22 practices described in the disclosure and that a copy of the disclosure was provided
23 to the insurer's board of directors or an appropriate committee of the insurer's board
24 of directors.

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1 (b) An explanation of the level of corporate governance at which the disclosure
2 provides its reporting, the criteria used to determine the level of reporting, and, if
3 applicable, any change in the level of reporting from the previous disclosure. The
4 insurer or insurance holding company system may provide information regarding
5 corporate governance at the ultimate controlling parent, intermediate holding
6 company, or individual legal entity level, depending upon how the insurer or
7 insurance holding company system has structured its corporate governance. In
8 determining at which level of reporting an insurer or insurance holding company
9 system will make its disclosure, the insurer or insurance holding company system
10 shall consider at which level the insurer or insurance holding company system does
11 each of the following:

12 1. Determines risk appetite.

13 2. Collectively oversees earnings, capital, liquidity, operations, and reputation.

14 3. Coordinates and exercises supervision over earnings, capital, liquidity,
15 operations, and reputation.

16 4. Places liability for failure to perform corporate governance duties.

17 **(4) CONFIDENTIALITY.** (a) All of the following apply to documents, materials, and
18 other information in the possession or control of the commissioner that are obtained
19 by, created by, or disclosed to the commissioner or any other person under this
20 section:

21 1. The documents, materials, and other information are considered proprietary
22 and contain trade secrets.

23 2. The documents, materials, and other information are confidential and
24 privileged.

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1 3. The documents, materials, and other information are not open to inspection
2 or copying under s. 19.35 (1).

3 4. The documents, materials, and other information are not subject to subpoena
4 or discovery and are not admissible as evidence in a civil action.

5 5. The commissioner may use the documents, materials, and other information
6 in the furtherance of any regulatory or legal action brought as a part of the
7 commissioner's official duties.

8 6. The commissioner may not make the documents, materials, or other
9 information public without first obtaining written consent of the insurer.

10 (b) Neither the commissioner nor any person who received documents,
11 materials, or other information related to the corporate governance annual
12 disclosure required under this section may testify or be required to testify in any
13 private civil action regarding documents, materials, or other information related to
14 the corporate governance annual disclosure required under this section.

15 (c) Notwithstanding par. (a), the commissioner may share, upon request,
16 documents, materials, or other information related to the corporate governance
17 annual disclosure required under this section with other state, federal, and
18 international financial regulatory agencies if the recipient agrees in writing to
19 maintain the confidentiality and privileged status of the documents, materials, or
20 other information and has verified that it has the legal authority to maintain
21 confidentiality. The commissioner may receive documents, materials, or other
22 information related to similar corporate governance disclosures from other state,
23 federal, and international financial regulatory agencies and shall maintain as
24 confidential or privileged any documents, materials, or other information that is
25 treated as confidential or privileged under the laws of the jurisdiction that is the

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1 source of the documents, materials, or other information. The sharing of documents
2 under this paragraph does not constitute a delegation of regulatory authority and
3 does not act as a waiver of privilege.

4 (d) Notwithstanding par. (a), the commissioner may share documents,
5 materials, or other information related to the corporate governance annual
6 disclosure required under this section with 3rd-party contractors and the National
7 Association of Insurance Commissioners if the contractor or the National
8 Association of Insurance Commissioners enters into an agreement with the
9 commissioner that provides for all of the following:

10 1. Procedures and protocols for maintaining the confidentiality and security of
11 documents, materials, and other information shared under this section.

12 2. Procedures for sharing by the National Association of Insurance
13 Commissioners only with other state regulators in which the insurance group has
14 domiciled insurers and who receive the information confidentially. The agreement
15 shall provide that the recipient agrees in writing to maintain the confidentiality and
16 privileged status of the documents, materials, or other information related to the
17 corporate governance annual disclosure required to be filed under this section and
18 has verified in writing the legal authority to maintain confidentiality.

19 3. A provision specifying that the ownership of documents, materials, or other
20 information shared under this section remains with the commissioner and the use
21 of the information is at the direction of the commissioner.

22 4. A provision that prohibits the National Association of Insurance
23 Commissioners or 3rd-party contractor from storing information shared under this
24 paragraph in a permanent database after the underlying analysis is complete.

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1 5. A provision requiring the National Association of Insurance Commissioners
2 or 3rd-party contractor to provide prompt notice to the commissioner and to the
3 insurer regarding any subpoena, request for disclosure, or request for production of
4 information shared under this paragraph.

5 6. A requirement that the National Association of Insurance Commissioners
6 or the 3rd-party contractor consent to intervention by an insurer in any judicial or
7 administrative action in which the National Association of Insurance
8 Commissioners or the 3rd-party contractor may be required to disclose confidential
9 information about the insurer shared under this paragraph.

10 **(5) CONSULTANTS.** The commissioner may retain, at the insurer's or insurer
11 member of an insurance holding company system's expense, consultants that the
12 commissioner determines are necessary to assist the commissioner in reviewing
13 documents, materials, or other information submitted under this section.

14 **(6) CONSTRUCTION.** This section may not be read to prescribe or impose any
15 standards or procedures with respect to corporate governance.

16 **(7) RULE MAKING.** The commissioner may promulgate any rules necessary to
17 carry out the purposes of this section.

18 **(8) INITIAL FILING DEADLINE.** Notwithstanding the June 1 deadline under sub.
19 (2) (a), an insurer, or the insurance holding company system of which the insurer is
20 a member, that is required to file a corporate governance annual disclosure under
21 this section shall file its first corporate governance annual disclosure no later than
22 60 days after the date the final rules implementing this section are promulgated.

23 **SECTION 6.** 626.31 (1) (b) of the statutes is amended to read:

24 626.31 (1) (b) *Representation.* The rating committee shall consist of 10
25 ~~members~~ an even number of members, up to 12 and no fewer than 8. Two members

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1 of the rating committee shall represent noninsurer, employer interests and shall be
2 appointed by and serve at the pleasure of the governor. Of the remaining ~~8~~ members,
3 ~~4~~ half of the members shall be chosen by stock insurers and ~~4~~ half of the members
4 shall be chosen by mutual insurers. Both stock and mutual insurers shall be
5 represented equally on all other committees, including the managing committee.
6 Each member of a committee shall have one vote, with the commissioner deciding the
7 matter in the event of a tie.

8 **SECTION 7.** 645.31 (16) of the statutes is created to read:

9 645.31 (16) That the insurer has corporate governance deficiencies such that
10 the commissioner determines that the continued operation of the insurer may be
11 hazardous to the insurer's policyholders, creditors, or the general public.

12 **SECTION 8. Nonstatutory provisions.**

13 (1) EMERGENCY RULES CONCERNING CORPORATE GOVERNANCE DISCLOSURE. The
14 commissioner of insurance may promulgate emergency rules under section 227.24
15 of the statutes implementing section 610.80 of the statutes. Notwithstanding section
16 227.24 (1) (c) and (2) of the statutes, emergency rules promulgated under this
17 subsection remain in effect until January 1, 2019, or the date on which permanent
18 rules take effect, whichever is sooner. Notwithstanding section 227.24 (1) (a) and (3)
19 of the statutes, the commissioner is not required to provide evidence that
20 promulgating a rule under this subsection as an emergency rule is necessary for the
21 preservation of the public peace, health, safety, or welfare and is not required to
22 provide a finding of emergency for a rule promulgated under this subsection.

23 (END)