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(FORM UPDATED: 08/11/2010)

WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

1995-96

(session year)

Assembly

(Assembly, Senate or Joint)

Committee on Insurance, Securities and Corporate Policy...

COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)
(**ab** = Assembly Bill) (**ar** = Assembly Resolution) (**ajr** = Assembly Joint Resolution)
(**sb** = Senate Bill) (**sr** = Senate Resolution) (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

Assembly

Senate Bill 362

November 14, 1995

November 30, 1995

Record of Committee Proceedings

AN ACT relating to grounds and notice requirements, for rescission of insurance contracts. Introduced by Senators Schultz, Rosenzweig, Huelsman, Darling, Fitzgerald, Welch, Zien and Breske; cosponsored by Representatives Albers, Seratti, Powers, Otte, Ainsworth, Schneiders, Ott, Lorge, Ladwig, Hahn, Dobyms, Kreibich, Johnsrud, Lehman, Grothman, Ryba, Hanson and Cullen.

Referred to committee on Insurance, Securities & Corporate Policy.

PUBLIC HEARING HELD

Present: (11) Representatives Albers, Lorge, Lasee, Kreibich, Lazich, Hoven, Green, Baldus, Robson, Cullen, and Ziegelbauer

Absent: (2) Underheim and Notestein

Appearances For the Bill

- ▶ Senator Dale Schultz
- ▶ Don Schultz-American Family
- ▶ Bob Weiss-Wisconsin Association of Mutual Insurance Companies and Merrimac Mutual Insurance Company, Prairie du Sac
- ▶ Chet Gerlach-State Farm Insurance
- ▶ Bob Manklusky-Alliance of American Insurers, Schaumburg, IL 60173

Appearances Against the Bill

None.

Appearances for Information Only

None.

Registrations For the Bill

- ▶ Randy Alt-Blue Cross & Blue Shield United of Wisconsin
- ▶ Senator Robert Welch
- ▶ Todd Nejedlo-Blue Cross & Blue Shield United of Wisconsin
- ▶ Taisha Weber-Blue Cross & Blue Shield United of Wisconsin
- ▶ Jerry Mueller-Wisconsin Association of Mutual Insurance Companies
- ▶ Robert W. Feinen, Jr.-Sentry Insurance
- ▶ Lee Fanshaw-Sentry Insurance
- ▶ Michael Vaughan-American Insurance Association

- ▶ Owen Schwerdtfeger-American Family Insurance
- ▶ Amy Steinmetz-Civil Trial Counsel of Wisconsin
- ▶ James E. Hough-Civil Trial Counsel of Wisconsin
- ▶ Ruth Ann Nelson-Wisconsin Federation of Cooperatives
- ▶ James Tenuta-Wisconsin Association of Life & Health Underwriters

December 14, 1995

EXECUTIVE SESSION HELD

Present: (12) Representatives Albers, Lasee, Underheim, Kreibich, Lazich, Hoven, Green Baldus, Notestein, Robson, Cullen, and Ziegelbauer.

Absent: (1) Lorge.

Moved by Representative Green, seconded by Representative Underheim that Senate Bill 362 be recommended for concurrence.

Ayes: (12) Representatives Albers, Lasee, Underheim, Kreibich, Lazich, Hoven, Green, Baldus, Notestein, Robson, Cullen, and Ziegelbauer.

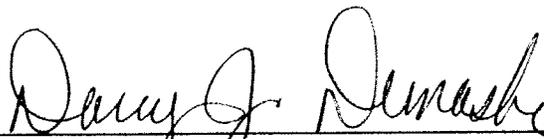
Noes: (0) None.

Absent: (1) Lorge.

Motion carried: be recommended for concurrence

Concurrence:

Ayes 13, Noes 0, Absent 1



Darcy J. Demaske, Committee Clerk

Assembly Committee on Insurance, Securities, and Corporate Policy

DATE 12-14-95 Concurrence
 Moved by Green Seconded by Underheim
 AB _____ SB 362 Clearinghouse Rule _____
 AJR _____ SJR _____ Appointment _____
 A _____ SR _____ Other _____
 A/S Amdt _____
 A/S Amdt _____ to A/S Amdt _____
 A/S Sub Amdt _____
 A/S Amdt _____ to A/S Sub Amdt _____
 A/S Amdt _____ to A/S Amdt _____ to A/S Sub Amdt _____

- Be recommended for:
- Passage
 - Introduction
 - Adoption
 - Rejection
 - Indefinite Postponement
 - Tabling
 - Concurrence
 - Nonconcurrence
 - Confirmation

	Committee Member	Aye	No	Absent	Not Voting
1.	Rep. Sheryl Albers, Chair	X			
2.	Rep. William Lorge, Vice-Chair			X	
3.	Rep. Gregg Underheim	X			
4.	Rep. Robin Kreibich	X			
5.	Rep. Mary Lazich	X			
6.	Rep. Tim Hoven	X			
7.	Rep. Frank Lasee	X			
8.	Rep. Mark Green	X			
9.	Rep. Al Baldus	X			
10.	Rep. Barbara Notestein	X			
11.	Rep. Judy Robson	X			
12.	Rep. David Cullen	X			
13.	Rep. Robert Ziegelbauer	X			
14.					
15.					
16.					
17.					
18.					
Totals		12	0	1	0

MOTION CARRIED MOTION FAILED



Chet Gerlach

GOVERNMENT CONSULTING SERVICES

TO: Assembly Insurance Committee
FROM: State Farm Insurance
RE: SB 361 and SB 362
DATE: November 30, 1995

One of the ways insurers can help keep premiums low is by reducing fraud. Arson or theft for profit is fraudulent by definition. However, insurance fraud takes on many other forms.

Insurance fraud exists in every state and in all lines of insurance. No one knows the real cost of insurance fraud, but all experts agree that a significant portion of claim dollars go to persons who have not sustained a loss. In part, the problem may be that a disturbing high percentage of the public condones insurance fraud.

Insurers estimate insurance fraud costs the insurance buying public upwards of \$100 billion a year.

The Insurance research Council in 1993 reports that 22% of the people surveyed said it is alright to increase a claim payment to make up for the application of a deductible. 19% say it is acceptable to "pad" a claim to make up for previous premiums. 9% say it is acceptable to continue medical treatment after an injury is healed. 6% say allowing a doctor or lawyer to submit medical bills for treatment not received also is acceptable. Finally, 13% of the public said an insurer should pay the valid part of a claim even when the claimant is involved with an organized ring which files false claims.

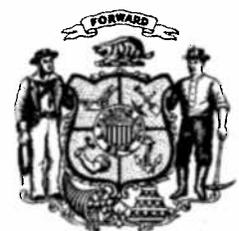
State Farm was one of the first insurers to establish its own anti-fraud program which included the formation of special investigative units. State Farm, over the years, has worked closely with law enforcement officials and encourages them in their efforts to fight insurance fraud.

State Farm supports the passage of Senate Bill 361 in its present form. The bill would enable insurers to provide information to law enforcement as they work together to combat insurance fraud.

Senate Bill 362 also is supported by State Farm. Passage of this bill would enable us to rescind policies which were obtained via misrepresentation or fraud. Why should an insurer be required to pay a claim when in fact there was no car to insure?



WISCONSIN STATE LEGISLATURE



November 30, 1995

MEMBERS OF ASSEMBLY INSURANCE COMMITTEE

RE: 1995 SENATE BILLS 361 AND 362

My name is Donald Schultz. I am Managing Claim Attorney for American Family Insurance at its Great Lakes Regional Office here in Madison. I write in support of both bills currently before you. Prior to my taking my current position, I held the position of Senior Claim Attorney in American Family's Wausau Branch Office. During that time, approximately seven (7) years, I had the opportunity to be involved in the investigation of a number of arson and/or fraudulent claim files. Additionally, prior to coming to American Family, I was involved in various aspects of file handling involving clients making first party claims against their insurance companies. It is this due persona that I believe gives me a particular insight into the proposed bills before you.

I. 1995 Senate Bill 361

As I understand this legislation, it would provide civil immunity to persons or entities for the reporting of insurance fraud to the agencies or organizations designated in the bill, absent malice.

Presently, sec. 165.55(14) Wis. Stats., grants such immunity in the case of suspected arson, only if information is formally requested by the state fire marshall, any deputy fire marshall or fire chief. There is no conceptual or practical reason to limit such reporting to arson or to a formal request from a fire official, before insurers should be able to notify law enforcement regarding their suspicions of arson and/or fraud.

At the present time there is reluctance on the part of insurers to report suspected fraud out of fear of civil liability for defamation which might result if the authorities investigate but do not prosecute or, if they prosecute, do not obtain a conviction. This bill would eliminate that concern for good faith reporting of suspected fraud. Such a law would benefit the people of Wisconsin by enhancing the abilities of law enforcement

agencies to do their job and by deterring fraud which drives up costs and premiums for everyone. Finally, the bill would intrude on no one other than those that deserve no protection, the perpetrators of fraud.

II. 1995 Senate Bill 362

This bill corrects a glaring deficiency in Wisconsin insurance law. It allows a carrier to rescind an insurance policy if that policy was obtained by fraud or misrepresentation. People who commit fraud or mislead insurers in order to procure insurance are not the "average individual." See, WHEDA v. VEREX ASSURANCE, 48 N.W.2d 490, at p. 493, citing, "Preliminary Comment" to sec. 631.36 Stats. (1992). To the contrary, they are the exception that is costing the "average individual" by way of losses that should not be covered.

In the WHEDA decision, the Supreme Court issued an open invitation to persons bent on insurance fraud. It said that if a person lies about an important fact on an application - a fact that would have caused the insurer to reject the application - the carrier must still pay losses which occur between the date coverage is bound and 10 days after the carrier finds out about the lie.

Thus, a person is encouraged to lie when buying coverage, hoping not to get caught before having a loss or, worse yet, to lie with the intent of creating a loss (e.g. a false theft claim) which the insurer would have to pay.

Such a state of affairs is just plain wrong! The law should not encourage or allow people to lie to obtain an economic benefit, or any other benefit. This bill would change that and, for these reasons, I urge all of you to support this legislation.

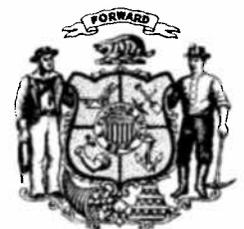
Respectfully submitted,



Donald E. Schultz - Managing Claim Attorney



WISCONSIN STATE LEGISLATURE



11/30/95

MEMORANDUM

TO: ASSEMBLY COMMITTEE ON INSURANCE, SECURITIES AND CORPORATE
POLICY

FROM: ROBERT C. BURRELL,
BORGELT, POWELL, PETERSON & FRAUEN, S.C.
735 North Water Street
Milwaukee, Wisconsin 53202

RE: SB 362

On behalf of Civil Trial Counsel of Wisconsin and as an attorney representing many insurers doing business in the State of Wisconsin, we request your vote in support of S. B. 362.

Wisconsin citizens, as insurance premium payers, have been effectively forced to absorb the costs of fraudulent insurance claims by the recent Wisconsin Supreme Court decision in WHEDA v. Verex Assurance, Inc., 166 Wis.2d 636, 480 N.W.2d 490 (1992). Verex held that Wis. Stats. Sec. 631.36, governing cancellation of insurance policies, applied to application misrepresentations. Wis. Stats. Sec. 631.36(2) permits the cancellation of an insurance contract only upon ten days' notice. Thus, Verex prevents insurers from rescinding insurance policies until after an insurance applicant who has lied makes an insurance claim.

The typical fraudulent claim scenario goes something like this: A person experiences fires or other losses for which he or she makes insurance claims. Those losses may themselves be fraudulent. The applicant then applies to another insurer to obtain insurance. He does so by signing an application. Insurance applications contain representations about prior claims, prior arrests, prior accidents, and the like. The applicant who intends to defraud an insurer simply answers "no" to these questions. Moreover, in order to prevent detection, insureds have even been known to misrepresent their names and social security numbers. Having misrepresented to the insurer that no prior claims exist, the applicant is virtually assured of acquiring insurance from the unsuspecting insurer. Detailed investigation into each insurance applicant's background is, practically speaking, impossible.

Shortly after he signs the false application, the claimant who has lied experiences yet another insurance claim. During the course of its claim investigation, often at the stage of the insured's Examination Under Oath, the insurer may unearth the application misrepresentation. The remedy which should exist is to allow the insurer to rescind the insurance contract which was based upon the false application. However Verex prevents insurers from doing so. Under Verex, the insurer may not rescind the fraudulently obtained insurance policy. Instead, the most that an insurer can do is to cancel the policy effective ten days after the

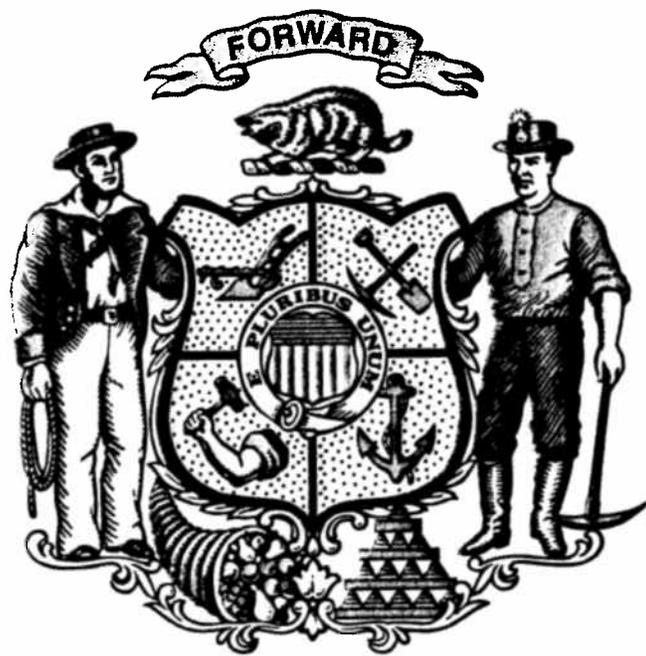
falsification was discovered. By this time the misrepresenting insureds have often experienced multiple losses.

The impact of Verex is therefore to reward the liar. An applicant who can fraudulently misrepresent his past insurance claim history will be assured of insurance coverage. Only a few days of insurance coverage is required for further false claims to be made. Insurers investigating such claims encounter large expenses. It is a difficult burden to prove that a particular insurance claim was falsified. At a minimum it is an expensive proposition for an insurer to do so. Those expenses are necessarily passed on to the honest premium paying citizens of this State.

From a litigating standpoint, the impact of Verex is severe. In the typical scenario an insured who falsifies an insurance application also intends to make a later false insurance claim. Under Verex the application misrepresentation may not even be admissible into evidence at the trial of the post-application fraudulent claim. Such inadmissibility undermines the insurer's ability to prove the course of conduct of the fraudulent party.

Finally, it is noteworthy that Wisconsin appears to be the only state in the nation with a procedure like that enunciated in Verex. No other jurisdiction that I have discovered prevents an insurer from rescinding an insurance contract where it discovers that the contract was issued based upon an application misrepresentation.

Insurance protection should be available for the honest Wisconsin insurance consumer. It should be available at a reasonable price. The impact of Verex is to reward the dishonest act of falsifying an insurance application. The reward to the dishonest necessarily makes insurance more expensive for the honest citizens of our state. SB 362 corrects this situation.



November 30, 1995

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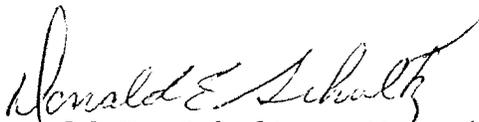
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Respectfully submitted,



Donald E. Schultz - Managing Claim Attorney