

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

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Under current law, the statute of limitation that applies to recovering a claim overpayment is most likely s. 893.43, which allows six years. Section 631.83 (1) provides a few other limitations for actions under certain types of policies, but is drafted so broadly that I'm not sure whether it covers overpayments of claims under those policies. (Is an action to recover an overpayment of a claim made under a fire insurance policy an action *on* a fire insurance policy? I think there are arguments both ways.)

Under this draft, does the one-year limitation on recovery apply if an *entire* claim was paid in error? Is that an *overpayment*?

What if a person whose life is insured "disappears" for a time and then returns after one year after a death benefit has been paid and neither the insured nor the beneficiary of the proceeds were fraudulent. Would the one-year limitation for recovery of the proceeds apply? There is actually a uniform act on paying life insurance proceeds on the basis of the absence of the insured. See ss. 813.22 to 813.34.

Another aspect to consider is whether the limitation in this draft might have an unintended effect of causing delays in claim payments. Insurers might be even more cautious than usual about paying claims if an erroneous payment must be discovered so much sooner (or at least might use that as an excuse for delaying payment).

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