

## 2001 SENATE BILL 375

January 11, 2002 – Introduced by Senator BRESKE, cosponsored by Representative MONTGOMERY. Referred to Committee on Insurance, Tourism, and Transportation.

1     **AN ACT** *to repeal* 628.097 (1) (title) and 628.097 (2); *to renumber* 601.41 (3),  
2     628.097 (1) (a) and 628.097 (1) (b); *to renumber and amend* 628.46 (2m); *to*  
3     *amend* 227.21 (2) (a), 227.21 (2) (b), 600.03 (19) (b) 1., 612.33 (2) (a), 612.33 (2)  
4     (b), 618.43 (7), 628.09 (1), 628.09 (4), 628.09 (5), 628.097 (title), 632.05 (2),  
5     632.68 (2) (e), 632.68 (4) (c), 655.27 (5) (a) 1. and 655.27 (5) (a) 2.; and *to create*  
6     601.41 (3) (b), 604.04 (8), 618.39 (3) and 628.46 (2m) (b) of the statutes; **relating**  
7     **to:** miscellaneous changes to the insurance laws related to the confidentiality  
8     of personal information obtained in the course of administering a state  
9     insurance fund, the statute of limitations for bringing an action against the  
10    patients compensation fund, the applicability of a timeliness requirement for  
11    the payment of insurance claims for chiropractic services, an exception from a  
12    requirement to obtain consent to incorporate certain publications by reference  
13    in administrative rules, the type of property for which the loss amount is the  
14    insurance limits, the renewal date for viatical settlement brokers' licenses,

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1           eliminating the requirement to keep a separate account for surplus lines taxes,  
2           issuance of temporary licenses for intermediaries, specifying by rule the  
3           amount of stop-loss reinsurance that a town mutual must obtain, standards  
4           related to assisting unauthorized insurers, and defining extraordinary  
5           dividends for life insurers; and granting rule-making authority.

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***Analysis by the Legislative Reference Bureau***

This bill makes a variety of minor and technical changes in the insurance statutes, including the following:

1. Under current law, a person with a claim against a health care provider may recover from the patient's compensation fund only if the health care provider has coverage under the fund and the fund is named as a party in the action. The bill provides that, in addition, the fund must be named as a party in the action within the time limit that applies to naming the health care provider in the action.

2. Current law provides that, if real property that is owned and occupied as a dwelling is wholly destroyed, the amount of the loss, for insurance purposes, is the limits of any policy covering the property. A Wisconsin administrative rule provides that, if property owned and occupied as a dwelling is also used for commercial purposes, except on an incidental basis, the statute regarding the amount of loss in case of destruction does not apply to the property. The Wisconsin supreme court, in *Seider v. O'Connell*, 236 Wis. 2d 211, 612 N.W. 2d 659 (2000), determined that the administrative rule is invalid because it exceeds the statutory authority of the office of the commissioner of insurance (OCI), which promulgated the rule. The bill limits the applicability of the statute to real property that is owned and occupied *primarily* as a dwelling.

3. Under current law, the commissioner of insurance (commissioner) may issue a temporary license to a person to act as an insurance agent, other than a life insurance agent, in various specified situations, such as when an agent dies or enters active duty in the armed services. A temporary license may be issued for up to three months, with extensions of up to three months each, not exceeding 12 months in all. The bill authorizes a temporary license to be issued for life insurance agents also, and changes the period for which any temporary agent's license may be issued to no more than 12 months, with no extensions.

4. Under current law, the annual license renewal for viatical settlement providers and viatical settlement brokers occurs on the anniversary date of the original issuance of each individual license. To simplify administration, the bill changes the annual renewal date of both types of licenses to July 1.

5. The bill authorizes the commissioner, as manager of the state life insurance fund and the local government property insurance fund, to keep confidential

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personally identifiable information obtained by the commissioner in the course of operating such a fund.

6. Under current law, if a town mutual provides coverage against windstorm or hail or other perils with a similar potential for catastrophic losses, the town mutual is required to obtain stop-loss reinsurance to an extent reasonably adequate to cover the risk of loss. If a town mutual provides nonproperty insurance, the town mutual must obtain reinsurance of at least a 90% proportional share of each risk. An administrative rule, however, requires unlimited aggregate excess of loss reinsurance for all risks covered by either property or nonproperty insurance. The bill brings the rule and statute into conformity by requiring a town mutual that covers potentially catastrophic losses to obtain stop-loss reinsurance to an extent or in an amount specified by the commissioner by rule, and by authorizing the commissioner to require, by rule, other reinsurance than that specified for risks covered by nonproperty insurance provided by a town mutual.

7. Under current law, an agency may, with the consent of the revisor of statutes and the attorney general, adopt standards established by technical societies and organizations of recognized national standing through incorporation of the standards by reference in an administrative rule of the agency. The bill authorizes OCI to adopt standards of the National Association of Insurance Commissioners through incorporation of the standards by reference in an administrative rule of OCI without having to obtain the consent of the revisor or the attorney general.

8. Current law provides that a person may not do an insurance business in this state if the person knows or should know that the result is or might be the illegal placement of insurance with an unauthorized insurer or the subsequent servicing of an insurance policy illegally placed with an unauthorized insurer. The bill provides that OCI may by rule promulgate standards for establishing that a person should have known that the result of the insurance business is or might be the illegal placement of insurance with an unauthorized insurer or the subsequent servicing of an insurance policy illegally placed with an unauthorized insurer and standards for imposing sanctions or remedial measures for a violation of the provision.

9. Current law requires that insurance claims be promptly paid and imposes interest at the rate of 12% per year on overdue payments. Under current law, a claim for payment for chiropractic services is overdue if not paid within 30 days after the insurer receives clinical documentation that the services were provided. The bill provides that this provision regarding when payment of a claim for chiropractic services is overdue does not apply to worker's compensation insurance or any line of property and casualty insurance except disability insurance, which specifically does not include uninsured or underinsured motorist coverage or medical payment coverage.

10. The bill eliminates a requirement that premium taxes collected by an agent or broker or by an insurer in trust for the state must be kept in a separate account.

11. Under current law, the definition of "extraordinary dividend," with respect to a distribution of cash or other property by an insurer, contains an error in the formula in that it requires calculation of a life insurer's net gain from operations, which applies to certain kinds of insurance other than life insurance. The bill

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corrects the formula by substituting “net income” for “net gain from operations,” with respect to a life insurer.

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***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***

1           **SECTION 1.** 227.21 (2) (a) of the statutes is amended to read:

2           227.21 **(2)** (a) ~~To~~ Except as provided in s. 601.41 (3) (b), to avoid unnecessary  
3 expense, an agency may, with the consent of the revisor and the attorney general,  
4 adopt standards established by technical societies and organizations of recognized  
5 national standing by incorporating the standards in its rules by reference to the  
6 specific issue or issues of the publication in which they appear, without reproducing  
7 the standards in full.

8           **SECTION 2.** 227.21 (2) (b) of the statutes is amended to read:

9           227.21 **(2)** (b) The revisor and the attorney general shall consent to  
10 incorporation by reference only in a rule of limited public interest and in a case where  
11 the incorporated standards are readily available in published form. Each rule  
12 containing an incorporation by reference shall state how the material incorporated  
13 may be obtained and, except as provided in s. 601.41 (3) (b), that the standards are  
14 on file at the offices of the agency, the secretary of state, and the revisor.

15           **SECTION 3.** 600.03 (19) (b) 1. of the statutes is amended to read:

16           600.03 **(19)** (b) 1. With respect to a life insurer, the total net ~~gain from~~  
17 ~~operations~~ income of the insurer for the calendar year preceding the date of the  
18 dividend or distribution, minus realized capital gains for that calendar year.

19           **SECTION 4.** 601.41 (3) of the statutes is renumbered 601.41 (3) (a).

20           **SECTION 5.** 601.41 (3) (b) of the statutes is created to read:

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1           601.41 (3) (b) The commissioner may, without the consent of the revisor or the  
2 attorney general as required under s. 227.21 (2), adopt standards of the National  
3 Association of Insurance Commissioners by incorporating by reference in rules  
4 promulgated by the commissioner any materials published, adopted, or approved by  
5 the National Association of Insurance Commissioners, without reproducing the  
6 standards in full. Any materials of the National Association of Insurance  
7 Commissioners that are incorporated by reference in rules promulgated by the  
8 commissioner shall be obtainable from, and are only required to be kept on file at,  
9 the office, which shall be stated in any rule containing such an incorporation by  
10 reference.

11           **SECTION 6.** 604.04 (8) of the statutes is created to read:

12           604.04 (8) NONDISCLOSURE OF PERSONAL INFORMATION. The manager may refuse  
13 to disclose, and may prevent any other person from disclosing, any personally  
14 identifiable information, as defined in s. 19.62 (5), that is obtained by the manager  
15 in the course of administering a fund under chs. 605 to 607.

16           **SECTION 7.** 612.33 (2) (a) of the statutes is amended to read:

17           612.33 (2) (a) *Windstorm and hail insurance.* If a town mutual provides  
18 coverage against windstorm or hail, or other perils involving a similar potential for  
19 catastrophic losses, which are designated by the commissioner by rule, it shall obtain  
20 reinsurance for each such risk or else stop-loss reinsurance with an insurer  
21 authorized to do such business in this state, to an extent ~~reasonably adequate to~~  
22 ~~cover the risk of catastrophic losses or in an amount specified by the commissioner~~  
23 by rule. The commissioner may prescribe detailed requirements for such  
24 reinsurance by rule or by order.

25           **SECTION 8.** 612.33 (2) (b) of the statutes is amended to read:

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1           612.33 (2) (b) *Nonproperty insurance.* To the extent that a town mutual  
2 provides insurance under s. 612.31 (3), it shall obtain reinsurance of at least a 90%  
3 proportional share of each risk with an insurer authorized to do such business in this  
4 state. The commissioner may permit a town mutual to retain a larger percentage if  
5 he or she finds that the interests of the members will not be endangered thereby, or  
6 may require it to reinsure a larger percentage if he or she finds that the interests of  
7 the members make it advisable. The commissioner may by rule require other  
8 reinsurance.

9           **SECTION 9.** 618.39 (3) of the statutes is created to read:

10           618.39 (3) STANDARDS BY RULE. (a) The office may by rule promulgate standards  
11 for any of the following:

12           1. Establishing that a person should know that the result of insurance business  
13 is or might be the illegal placement of insurance with an unauthorized insurer or the  
14 subsequent servicing of an insurance policy illegally placed with an unauthorized  
15 insurer.

16           2. Imposing requirements under s. 601.42 or 628.04 or sanctions or remedial  
17 measures under sub. (2) or s. 601.64, or any other applicable penalty or remedial  
18 provision of chs. 600 to 646, for a violation of this section.

19           (b) Notwithstanding par. (a) 1., it is not necessary for the office to promulgate  
20 a rule under par. (a) 1. to establish that a person violated sub. (1).

21           **SECTION 10.** 618.43 (7) of the statutes is amended to read:

22           618.43 (7) TAXES AS TRUST FUNDS. All premium taxes collected under this section  
23 by an agent or broker or by an insurer are the property of this state. ~~They shall be~~  
24 ~~kept in a separate account and may not be commingled with funds belonging to~~  
25 ~~anyone else, to be held in trust for the state.~~

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1           **SECTION 11.** 628.09 (1) of the statutes is amended to read:

2           **628.09 (1) ISSUANCE OF LICENSE.** Except as provided in s. 628.095 or 628.097,  
3 the commissioner may issue a temporary license as an intermediary for a period of  
4 not more than ~~3~~ 12 months to the personal representative of a deceased or mentally  
5 disabled intermediary, or to a person designated by an intermediary who is otherwise  
6 disabled or has entered active duty in the U.S. armed forces, in order to give time for  
7 more favorable sale of the goodwill of a business owned by the intermediary, for the  
8 recovery or return of the intermediary, or for the orderly training and licensing of new  
9 personnel for the intermediary's business. ~~This subsection does not apply to life~~  
10 ~~insurance agents.~~

11           **SECTION 12.** 628.09 (4) of the statutes is amended to read:

12           **628.09 (4) DURATION OF LICENSE.** The commissioner may by order revoke a  
13 temporary license if the interests of insureds or the public are endangered. ~~Except~~  
14 ~~as provided in s. 628.097, a~~ A temporary license may not be extended beyond the  
15 initial period specified under sub. (1), ~~for additional periods of not more than 3~~  
16 ~~months each, with the total period not to exceed 12 months in the aggregate.~~ A  
17 temporary license may not continue after the owner or the personal representative  
18 disposes of the business.

19           **SECTION 13.** 628.09 (5) of the statutes is amended to read:

20           **628.09 (5) FEES.** The fees for a temporary license are the same as for a  
21 permanent license. ~~No additional fee may be charged for extensions under sub. (4),~~  
22 ~~nor for the issuance of a subsequent license under s. 628.04 if that license is issued~~  
23 ~~while the temporary license remains in effect.~~

24           **SECTION 14.** 628.097 (title) of the statutes is amended to read:

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1           **628.097** (title) **Refusal to issue license; failure to pay support or to**  
2 **comply with subpoena or warrant; tax delinquency.**

3           **SECTION 15.** 628.097 (1) (title) of the statutes is repealed.

4           **SECTION 16.** 628.097 (1) (a) of the statutes is renumbered 628.097 (1m).

5           **SECTION 17.** 628.097 (1) (b) of the statutes is renumbered 628.097 (2m).

6           **SECTION 18.** 628.097 (2) of the statutes is repealed.

7           **SECTION 19.** 628.46 (2m) of the statutes, as created by 2001 Wisconsin Act 16,  
8 is renumbered 628.46 (2m) (a) and amended to read:

9           628.46 **(2m)** (a) Notwithstanding subs. (1) and (2) and except as provided in  
10 par. (b), a claim for payment for chiropractic services is overdue if not paid within 30  
11 days after the insurer receives clinical documentation from the chiropractor that the  
12 services were provided unless, within those 30 days, the insurer provides to the  
13 insured and to the chiropractor the written statement under s. 632.875 (2).

14           **SECTION 20.** 628.46 (2m) (b) of the statutes is created to read:

15           628.46 **(2m)** (b) Paragraph (a) does not apply to any of the following:

16           1. Worker's compensation insurance.

17           2. Any line of property and casualty insurance except disability insurance. In  
18 this subdivision, "disability insurance" does not include uninsured motorist  
19 coverage, underinsured motorist coverage, or medical payment coverage.

20           **SECTION 21.** 632.05 (2) of the statutes is amended to read:

21           632.05 **(2)** Whenever any policy insures real property which that is owned and  
22 occupied by the insured primarily as a dwelling and the property is wholly destroyed,  
23 without criminal fault on the part of the insured or the insured's assigns, the amount  
24 of the loss shall be taken conclusively to be the policy limits of the policy insuring the  
25 property.



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1           **SECTION 22.** 632.68 (2) (e) of the statutes is amended to read:

2           632.68 **(2)** (e) Except as provided in sub. (3), a license issued under this  
3 subsection shall be renewed annually on ~~the anniversary date~~ July 1 upon payment  
4 of the fee specified in s. 601.31 (1) (mp) and upon providing the licensee's social  
5 security number, unless the licensee does not have a social security number, or  
6 federal employer identification number, as applicable, if not previously provided on  
7 the application for the license or at a previous renewal of the license. If the licensee  
8 is a natural person who does not have a social security number, the license shall be  
9 renewed annually on ~~the anniversary date~~ July 1 upon payment of the fee specified  
10 in s. 601.31 (1) (mp) and upon providing to the commissioner a statement made or  
11 subscribed under oath or affirmation, on a form prescribed by the department of  
12 workforce development, that the licensee does not have a social security number.

13           **SECTION 23.** 632.68 (4) (c) of the statutes is amended to read:

14           632.68 **(4)** (c) Except as provided in sub. (5), a license issued under this  
15 subsection shall be renewed annually on ~~the anniversary date~~ July 1 upon payment  
16 of the fee specified in s. 601.31 (1) (ms) and upon providing the licensee's social  
17 security number, unless the licensee does not have a social security number, or  
18 federal employer identification number, as applicable, if not previously provided on  
19 the application for the license or at a previous renewal of the license. If the licensee  
20 is a natural person who does not have a social security number, the license shall be  
21 renewed annually, except as provided in sub. (5), on ~~the anniversary date~~ July 1 upon  
22 payment of the fee specified in s. 601.31 (1) (ms) and upon providing to the  
23 commissioner a statement made or subscribed under oath or affirmation, on a form  
24 prescribed by the department of workforce development, that the licensee does not  
25 have a social security number.

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1           **SECTION 24.** 655.27 (5) (a) 1. of the statutes is amended to read:

2           655.27 (5) (a) 1. Any person may file a claim for damages arising out of the  
3 rendering of medical care or services or participation in peer review activities under  
4 s. 146.37 within this state against a health care provider or an employee of a health  
5 care provider. A person filing a claim may recover from the fund only if the health  
6 care provider or the employee of the health care provider has coverage under the fund  
7 and, the fund is named as a party in the action, and the action against the fund is  
8 commenced within the time limitation under s. 893.55 within which the action  
9 against the health care provider or employee of the health care provider must be  
10 commenced.

11           **SECTION 25.** 655.27 (5) (a) 2. of the statutes is amended to read:

12           655.27 (5) (a) 2. Any person may file an action for damages arising out of the  
13 rendering of medical care or services or participation in peer review activities under  
14 s. 146.37 outside this state against a health care provider or an employee of a health  
15 care provider. A person filing an action may recover from the fund only if the health  
16 care provider or the employee of the health care provider has coverage under the fund  
17 and, the fund is named as a party in the action, and the action against the fund is  
18 commenced within the time limitation under s. 893.55 within which the action  
19 against the health care provider or employee of the health care provider must be  
20 commenced. If the rules of procedure of the jurisdiction in which the action is brought  
21 do not permit naming the fund as a party, the person filing the action may recover  
22 from the fund only if the health care provider or the employee of the health care  
23 provider has coverage under the fund and the fund is notified of the action within 60  
24 days of service of process on the health care provider or the employee of the health  
25 care provider. The board of governors may extend this time limit if it finds that

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1 enforcement of the time limit would be prejudicial to the purposes of the fund and  
2 would benefit neither insureds nor claimants.

3 **SECTION 26. Initial applicability.**

4 (1) RENEWAL OF VIATICAL SETTLEMENT PROVIDER AND BROKER LICENSES. The  
5 treatment of section 632.68 (2) (e) and (4) (c) of the statutes first applies to licenses  
6 renewed in 2002.

7 (2) ISSUANCE OF TEMPORARY INTERMEDIARY LICENSES. The treatment of sections  
8 628.09 (1), (4), and (5) and 628.097 (title), (1) (title), (a), and (b), and (2) of the statutes  
9 first applies to temporary licenses issued on the effective date of this subsection.

10 (3) PATIENTS COMPENSATION FUND STATUTE OF LIMITATIONS. The treatment of  
11 section 655.27 (5) (a) 1. and 2. of the statutes first applies to claims arising out of  
12 injuries occurring on the effective date of this subsection.

13

(END)