

## 2007 DRAFTING REQUEST

### Bill

Received: 08/14/2007

Received By: jkuesel

Wanted: Soon

Identical to LRB:

For: Roger Breske (608) 266-2509

By/Representing: Beth Pilouras

This file may be shown to any legislator: NO

Drafter: pkahler

May Contact:

Adl. Drafters:

Subject: Insurance - miscellaneous

Extra Copies:

Submit via email: YES

Requester's email: Sen.Breske@legis.wisconsin.gov

Carbon copy (CC:) to:

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### Pre Topic:

No specific pre topic given

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### Topic:

Agent package

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### Instructions:

Per LRB-2104/4, with permission of Jim Guidry, OCI (p/c, 8/14/07).

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### Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	jkuesel 08/14/2007	wjackson 08/14/2007		_____			State
/1			pgreensl 08/14/2007	_____	lparisi 08/14/2007	mbarman 09/19/2007	

FE Sent For: "/1" @INTRO 9-25-07 <END>

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12/1	jkuesel pkahler 8/14/07	1 wj 8/14	8/14 ps	8/14 ps			

FE Sent For:

<END>

WANTED Wed 8/15 AM

**2007 BILL**

Regen

1 AN ACT *to repeal* 601.31 (1) (Lm), 601.31 (1) (u), 601.31 (1) (v) and 628.10 (4); *to*  
2 *amend* 628.10 (2) (a), 628.10 (2) (am), 628.10 (2) (c), 628.10 (2) (cm), 628.10 (3)  
3 and 628.11 (title); and *to create* 628.04 (1c), 628.10 (2) (e) and 628.10 (5) of the  
4 statutes; **relating to:** insurance agent license requirements, revocations, and  
5 reinstatement and relicensing requirements, and granting rule-making  
6 authority.

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

Under current law, a person may be licensed to act as an insurance intermediary if he or she: 1) pays the applicable fee; 2) shows to the satisfaction of the commissioner of insurance (commissioner) that he or she has the intent in good faith to do business as an intermediary and is competent and trustworthy; and 3) if a nonresident, agrees to be subject to the jurisdiction of the commissioner and the courts of the state on any matter related to the person's insurance activities in the state. In addition, the person must satisfy certain prelicensing education standards and pass an examination; after being licensed, the person must comply with certain continuing education requirements. This bill authorizes the commissioner to promulgate a rule that would require applicants for licensure as insurance intermediaries who are state residents and natural persons to provide fingerprints as a condition for licensure. The fingerprints, if required, may be used for conducting state and national criminal history background investigations of the applicants.

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Under current law, the license of an insurance intermediary who fails to provide evidence of compliance with continuing education standards, or who fails to pay a fee when due, is suspended, and the suspended license is revoked if the intermediary does not provide evidence of compliance, or pay the fee, within 60 days after the license is suspended. Also under current law, the license of an insurance intermediary is revoked if the Department of Revenue certifies that the intermediary is liable for delinquent taxes. Any intermediary whose license is revoked must satisfy all requirements for initial licensure to be relicensed.

This bill provides that the license of an insurance intermediary who fails to provide evidence of compliance with continuing education requirements, or who fails to pay a fee when due, is automatically revoked rather than suspended for 60 days before revocation. At least 60 days before the automatic revocation occurs, however, the commissioner must notify the intermediary, by first class mail, of the date on which the evidence must be provided or the fee must be paid and that the intermediary's license will be revoked if the evidence is not provided or the fee is not paid by that date. The bill provides that, if an intermediary's license is revoked for failure to provide evidence of compliance with continuing education requirements, for failure to pay a fee when due, or for being delinquent in the payment of taxes, the intermediary, if a natural person, may have his or her license reinstated within 12 months after the revocation without having to satisfy any prelicensing education or examination requirements. The intermediary, however, must satisfy the requirements for which the license was revoked, apply for reinstatement, and pay the application fee for original licensure. If the intermediary's license is not reinstated within 12 months, the intermediary may be relicensed only by satisfying those requirements that apply to initial licensure that the commissioner specifies by rule. The bill also provides that the license of an insurance intermediary who changes residency from one state to another is revoked 60 days after the residency change. The intermediary may be relicensed only by satisfying those requirements that apply to initial licensure that the commissioner specifies by rule.

Under current law, the license of an intermediary who is a natural person is suspended if he or she is delinquent in court-ordered child support payments, or if he or she fails to comply with a subpoena or warrant related to paternity or child support proceedings. The bill provides that the intermediary's license will be reinstated if the intermediary satisfies the requirements for which the license was suspended, applies for reinstatement, and pays the application fee for original licensure.

The bill eliminates fees for issuing a duplicate agent's license and for preparing and furnishing an agent's letter of certification or clearance. The bill also eliminates a penalty under which an intermediary whose license had been suspended or revoked was required, when a new license was issued, to pay all fees that would have been payable if the license had not been suspended or revoked. Generally, under the bill, an intermediary whose license is suspended or revoked must pay the application fee for original licensure to have the license reinstated.

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For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

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

1           **SECTION 1.** 601.31 (1) (Lm) of the statutes is repealed.

2           **SECTION 2.** 601.31 (1) (u) of the statutes is repealed.

3           **SECTION 3.** 601.31 (1) (v) of the statutes is repealed.

4           **SECTION 4.** 628.04 (1c) of the statutes is created to read:

5           **628.04 (1c) FINGERPRINTS.** The commissioner may by rule require an applicant  
6 under sub. (1) who is a resident and a natural person to provide fingerprints as an  
7 additional condition for the granting of a license to act as an agent. The  
8 commissioner may use the fingerprints, if required, to conduct a state criminal  
9 history background investigation of the applicant and a national criminal history  
10 background investigation of the applicant with the federal bureau of investigation.

11           **SECTION 5.** 628.10 (2) (a) of the statutes is amended to read:

12           **628.10 (2) (a)** *For failure to comply with continuing education requirements.*

13 The license of any intermediary who fails to produce evidence of compliance with  
14 continuing education standards set by the commissioner is ~~suspended~~ revoked,  
15 effective on the day date on which the evidence of compliance is due. ~~If an~~  
16 ~~intermediary whose license has been suspended under this paragraph produces~~  
17 ~~evidence of compliance within 60 days after the date on which the license is~~  
18 ~~suspended, the commissioner shall reinstate the license effective on the date of~~  
19 ~~suspension. If such an intermediary does not produce evidence of compliance within~~  
20 ~~60 days, the license is revoked and the intermediary may be relicensed only after~~  
21 ~~satisfying all requirements under s. 628.04. At least 60 days before that date, the~~

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1 commissioner shall send by 1st class mail to the intermediary's address that is on file  
2 with the commissioner notice of the date by which the evidence of compliance is due  
3 and that the intermediary's license will be revoked if the evidence is not received by  
4 that date. An intermediary whose license is revoked under this paragraph may have  
5 his or her license reinstated, or may be relicensed, as provided in sub. (5).

6 **SECTION 6.** 628.10 (2) (am) of the statutes is amended to read:

7 628.10 (2) (am) *Nonpayment of fees.* The license of an intermediary who fails  
8 to pay a fee when due is ~~suspended on and after~~ revoked, effective on the date when  
9 on which the fee is due, ~~if.~~ At least 60 days before that date, the commissioner gave  
10 the intermediary reasonable shall send by 1st class mail to the intermediary's  
11 address that is on file with the commissioner notice that of the date by which the fee  
12 was is due and that the intermediary's license would will be suspended ~~revoked~~ if  
13 timely payment was ~~is~~ not made. If the intermediary pays the fee within 60 days  
14 after the date it is due, the license is reinstated effective on the date of suspension.  
15 If payment is not made within 60 days, the license is revoked and the intermediary  
16 may be relicensed only after satisfying all requirements under s. 628.04. An  
17 intermediary who is a natural person whose license is revoked under this paragraph  
18 may have his or her license reinstated, or may be relicensed, as provided in sub. (5).

19 **SECTION 7.** 628.10 (2) (c) of the statutes is amended to read:

20 628.10 (2) (c) *For failure to pay support or to comply with subpoena or warrant.*  
21 The commissioner shall suspend or limit the license of an intermediary who is a  
22 natural person, or a temporary license of a natural person under s. 628.09, if the  
23 natural person is delinquent in court-ordered payments of child or family support,  
24 maintenance, birth expenses, medical expenses or other expenses related to the  
25 support of a child or former spouse, or if the natural person fails to comply, after

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1 appropriate notice, with a subpoena or warrant issued by the department of  
2 workforce development or a county child support agency under s. 59.53 (5) and  
3 related to paternity or child support proceedings, as provided in a memorandum of  
4 understanding entered into under s. 49.857. A natural person whose license or  
5 temporary license is suspended under this paragraph who satisfies the requirements  
6 under this paragraph for which the license was suspended may have his or her  
7 license or temporary license reinstated by satisfactorily completing a reinstatement  
8 application and paying the application fee for original licensure as specified by rule.

9 **SECTION 8.** 628.10 (2) (cm) of the statutes is amended to read:

10 628.10 (2) (cm) *For liability for delinquent taxes.* The commissioner shall  
11 revoke the license of an intermediary, including a temporary license under s. 628.09,  
12 if the department of revenue certifies under s. 73.0301 that the intermediary is liable  
13 for delinquent taxes. An intermediary who is a natural person whose license is  
14 revoked under this paragraph may have his or her license reinstated, or may be  
15 relicensed, as provided in sub. (5).

16 **SECTION 9.** 628.10 (2) (e) of the statutes is created to read:

17 628.10 (2) (e) *For changing state of residence.* The license of an intermediary  
18 who changes residence from one state to another is revoked 60 days after the change  
19 of residence. The intermediary may be relicensed only after satisfying any  
20 requirements under s. 628.04 that are specified by the commissioner by rule.

21 **SECTION 10.** 628.10 (3) of the statutes is amended to read:

22 628.10 (3) **DELAY FOR NEW APPLICATION.** An order revoking an intermediary's  
23 license under sub. (2) (b) or (c) may specify a time not to exceed 5 years within which  
24 the former intermediary may not apply for a new license. If no time is specified, the



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1 intermediary may not apply for 5 years. An intermediary whose license is revoked  
2 under sub. (2) (am) may immediately reapply.

3 **SECTION 11.** 628.10 (4) of the statutes is repealed.

4 **SECTION 12.** 628.10 (5) of the statutes is created to read:

5 **628.10 (5) REINSTATEMENT OR RELICENSING AFTER CERTAIN REVOCATIONS.** (a)

6 *Reinstatement within 12 months.* An intermediary who is a natural person and  
7 whose license is revoked under sub. (2) (a), (am), or (cm) may have his or her license  
8 reinstated within 12 months after the date on which the license was revoked without  
9 having to satisfy any preclicensing education or examination requirements under s.  
10 628.04. To have his or her license reinstated, the intermediary must satisfy the  
11 requirement under sub. (2) (a), (am), or (cm) for which the license was revoked,  
12 satisfactorily complete a reinstatement application, and pay the application fee for  
13 original licensure as specified by rule. The reinstatement is effective on the date on  
14 which the commissioner actually reinstates the license. If the intermediary is also  
15 a resident who is required to complete continuing education, the intermediary must  
16 have satisfied all previous continuing education requirements to have his or her  
17 license reinstated under this paragraph.

18 (b) *Relicensing required after 12 months.* An intermediary specified in par. (a)  
19 whose license has been revoked for more than 12 months is not eligible to have his  
20 or her license reinstated under par. (a) but may apply for relicensing at any time after  
21 12 months have elapsed from the date of revocation. To be relicensed, the  
22 intermediary must satisfy any requirements under s. 628.04 that are specified by the  
23 commissioner by rule.

24 (c) *Applicability.* This subsection applies to all of the following:

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1           1. Intermediaries whose licenses were revoked under sub. (2) (a), (am), or (cm)  
2 before the effective date of this subdivision .... [revisor inserts date], regardless of  
3 whether an order under sub. (3) applies to the intermediary.

4           2. Intermediaries whose licenses are revoked under sub. (2) (a), (am), or (cm)  
5 on or after the effective date of this subdivision .... [revisor inserts date].

6           **SECTION 13.** 628.11 (title) of the statutes is amended to read:

7           **628.11 (title) Listing of insurance Appointment of agents.**

8           **SECTION 14. Initial applicability.**

9           (1) ELIMINATION OF FEES.

10           (a) The treatment of section 601.31 (1) (Lm) of the statutes first applies to  
11 requests for duplicate licenses that are received on the effective date of this  
12 paragraph.

13           (b) The treatment of section 601.31 (1) (u) of the statutes first applies to  
14 requests for letters of certification that are received on the effective date of this  
15 paragraph.

16           (c) The treatment of section 601.31 (1) (v) of the statutes first applies to requests  
17 for letters of clearance that are received on the effective date of this paragraph.

18           (2) AGENT LICENSE REVOCATION FOR CHANGING RESIDENCE. The treatment of  
19 section 628.10 (2) (e) of the statutes first applies to intermediaries who change  
20 residence from one state to another state on the effective date of this subsection.

21           (3) DELAY IN APPLICATION AFTER REVOCATION. The treatment of section 628.10 (3)  
22 of the statutes first applies to revocations that occur on the effective date of this  
23 subsection.

24

(END)



## 325F.69, Minnesota Statutes 2006

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### 325F.69 UNLAWFUL PRACTICES.

Subdivision 1. **Fraud, misrepresentation, deceptive practices.** The act, use, or employment by any person of any fraud, false pretense, false promise, misrepresentation, misleading statement or deceptive practice, with the intent that others rely thereon in connection with the sale of any merchandise, whether or not any person has in fact been misled, deceived, or damaged thereby, is enjoined as provided in section [325F.70](#).

Subd. 2. **Referral and chain referral selling prohibited.** (1) With respect to any sale or lease the seller or lessor may not give or offer a rebate or discount or otherwise pay or offer to pay value to the buyer or lessee as an inducement for a sale or lease in consideration of the buyer's or lessee's giving to the seller or lessor the names of prospective purchasers or lessees, or otherwise aiding the seller or lessor in making a sale or lease to another person, if the earning of the rebate, discount or other value is contingent upon the occurrence of an event subsequent to the time the buyer or lessee agrees to buy or lease.

(2) (a) With respect to any sale or lease, it shall be illegal for any seller or lessor to operate or attempt to operate any plans or operations for the disposal or distribution of property or franchise or both whereby a participant gives or agrees to give a valuable consideration for the chance to receive something of value for inducing one or more additional persons to give a valuable consideration in order to participate in the plan or operation, or for the chance to receive something of value when a person induced by the participant induces a new participant to give such valuable consideration including such plans known as chain referrals, pyramid sales, or multilevel sales distributorships.

(b) The phrase "something of value" as used in paragraph (a) above, does not mean or include payment based upon sales made to persons who are not purchasing in order to participate in the prohibited plan or operation.

(3) If a buyer or lessee is induced by a violation of this subdivision to enter into a sale or lease, the agreement is unenforceable and the buyer or lessee has the option to rescind the agreement with the seller or lessor and, upon tendering the property received, or what remains of it, obtain full or in the case of remains, a proportional restitution of all sums paid, or retain the goods delivered and the benefit of any services performed without any further obligation to pay for them.

(4) With respect to a sale or lease in violation of this section an assignee of the rights of the seller or lessor is subject to all claims and defenses of the buyer or lessee against the seller or lessor arising out of the sale or lease notwithstanding an agreement to the contrary, but the assignee's liability under this section may not exceed the amount owing to the assignee at the time the claim or defense is asserted against the assignee. Rights of the buyer or lessee under this section can only be asserted as a matter of defense to or setoff against a claim by the assignee.

(5) In a sale or lease in violation of this section, the seller or lessor may not take a negotiable instrument other than a check as evidence of the obligation of the buyer or lessee. A holder is not in good faith if the holder takes a negotiable instrument with notice that it is issued in violation of this section.

(6) Any person who violates any provision of this subdivision shall be guilty of a gross misdemeanor.

Subd. 3. **Advertising media excluded.** Sections 325F.68 to 325F.70 shall apply to actions of the owner, publisher, agent or employee of newspapers, magazines, other printed matter or radio or television stations or other advertising media used for the publication or dissemination of an advertisement, only if the owner, publisher, agent, or employee has either knowledge of the false, misleading or deceptive character of the advertisement or a financial interest in the sale or distribution of the advertised merchandise.

Subd. 4. **Solicitation of money for merchandise not ordered or services not performed.** The act, use, or employment by any person of any solicitation for payment of money by another by any statement or invoice, or any writing that could reasonably be interpreted as a statement or invoice, for merchandise not yet ordered or for services not yet performed and not yet ordered, whether or not any person has in fact been misled, deceived, or damaged thereby, is enjoined as provided in section 325F.70.

Subd. 5. **Prohibited going out of business sales.** It is illegal for any person to represent falsely that a sale is a "going out of business sale." Any representation that a sale is a "going out of business sale" is presumed to be false and illegal under this subdivision, if at that location or within a relevant market area:

- (1) the sale has been represented to be a "going out of business sale" for a period of more than 120 days;
- (2) the business has increased its inventory for the sale by ordering or purchasing an unusual amount of merchandise during the sale or during the 90 days before the sale began;
- (3) the business, or any of its officers or directors, has advertised any other sale as a "going out of business sale" during the 120 days before this sale began; or
- (4) the sale has continued after a date on which the business has represented, expressly or by reasonable implication, that the business would terminate.

Any presumption arising under clauses (1) to (4) may be rebutted if the business shows, by clear and convincing evidence, that the sale was in fact conducted in anticipation of the imminent termination of the business. This subdivision does not apply to a sale in any statutory or home rule charter city that by ordinance requires the licensing of persons conducting a "going out of business sale," nor to public officers acting in the course of their official duties.

Subd. 6. **Deceptive use of financial institution name.** No person shall include the name, trade name, logo, or tagline of a financial institution as defined in section 49.01, subdivision 2, in a written solicitation for financial services directed to a customer who has obtained a loan from the financial institution without written permission from the financial institution, unless the solicitation clearly and conspicuously states that the person is not sponsored by or affiliated with the financial institution, which shall be identified by name. This statement shall be made in close proximity to, and in the same or larger font size as, the first and most prominent use or uses of the name, trade name, logo, or tagline in the solicitation, including on an envelope or through an envelope window containing the solicitation. For purposes of this section, the term "financial institution" includes a financial institution's affiliates and subsidiaries. This subdivision shall not prohibit the use of a financial institution name, trade name, logo, or tagline of a financial institution if the use of that name is part of a fair and accurate comparison of like products or services.

**History:** 1963 c 842 s 2; 1969 c 739 s 1; 1969 c 1100 s 1; 1971 c 391 s 1; 1973 c 454 s 1; 1975 c 364 s 3; 1985 c 148 s 3; 1986 c 444; 2004 c 228 art 1 s 56,57; 2005 c 118 s 17

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**Parisi, Lori**

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**From:** Piliouras, Elizabeth  
**Sent:** Tuesday, September 18, 2007 5:02 PM  
**To:** LRB.Legal  
**Subject:** Draft Review: LRB 07-3062/1 Topic: Agent package

*Please Jacket LRB 07-3062/1 for the SENATE.*

09/18/2007