

2007-2008 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0843/P2ins
PJK:jld:jf

INSERT 29-10

1 **SECTION 1.** 628.347 (title) of the statutes is amended to read:
2 **628.347 (title) Suitability of annuity sales to senior consumers.**

3 History: 2003 a. 261. **SECTION 2.** 628.347 (1) (b) of the statutes is amended to read:
4 628.347 (1) (b) "Recommendation" means advice provided by an insurance
5 intermediary, or an insurer if no intermediary is involved, to an individual senior
6 consumer that results in the purchase or exchange of an annuity in accordance with
7 that advice.

8 History: 2003 a. 261. **SECTION 3.** 628.347 (1) (c) of the statutes is repealed.

9 **SECTION 4.** 628.347 (2) (a) of the statutes is amended to read:
10 628.347 (2) (a) Except as provided in par. (c), an insurance intermediary, or
11 insurer if no intermediary is involved, may not recommend to a senior consumer the
12 purchase or exchange of an annuity if the recommendation results in an insurance
13 transaction or series of insurance transactions unless the intermediary or insurer
14 has reasonable grounds to believe that the recommendation is suitable for the senior
15 consumer on the basis of facts disclosed by the senior consumer as to his or her
16 investments, other insurance products, and financial situation and needs.

17 History: 2003 a. 261. **SECTION 5.** 628.347 (2) (b) 1. of the statutes is amended to read:
18 628.347 (2) (b) 1. The senior consumer's financial status.

19 History: 2003 a. 261. **SECTION 6.** 628.347 (2) (b) 2. of the statutes is amended to read:
20 628.347 (2) (b) 2. The senior consumer's tax status.

21 History: 2003 a. 261. **SECTION 7.** 628.347 (2) (b) 3. of the statutes is amended to read:



1 628.347 (2) (b) 3. The ~~senior~~ consumer's investment objectives.

2 History: 2003 a. 261.

2 **SECTION 8.** 628.347 (2) (b) 4. [✓] of the statutes is amended to read:

3 628.347 (2) (b) 4. Any other information that is reasonably appropriate for
4 determining the suitability of a recommendation to the ~~senior~~ [✓] consumer.

5 History: 2003 a. 261.

5 **SECTION 9.** 628.347 (2) (c) (intro.) [✓] of the statutes is amended to read:

6 628.347 (2) (c) (intro.) An insurance intermediary, or insurer if no intermediary
7 is involved, has no obligation under par. (a) to a ~~senior~~ [✓] consumer related to a
8 recommendation if the ~~senior~~ [✓] consumer does any of the following:

9 History: 2003 a. 261.

9 **SECTION 10.** 628.347 (3) (f) 2. [✓] of the statutes is amended to read:

10 628.347 (3) (f) 2. Include in its system of supervision an insurance
11 intermediary's recommendations made to ~~senior~~ [✓] consumers of products other than
12 annuities offered by the insurer, general agent, or independent agency.

13 History: 2003 a. 261.

13 **SECTION 11.** 628.347 (5) (a) [✓] of the statutes is amended to read:

14 628.347 (5) (a) Order an insurer to take reasonably appropriate corrective
15 action for any ~~senior~~ [✓] consumer harmed by a violation of this section by the insurer
16 or the insurer's insurance intermediary.

17 History: 2003 a. 261.

17 **SECTION 12.** 628.347 (5) (b) [✓] of the statutes is amended to read:

18 628.347 (5) (b) Order an insurance intermediary to take reasonably
19 appropriate corrective action for any ~~senior~~ [✓] consumer harmed by a violation of this
20 section by the insurance intermediary.

21 History: 2003 a. 261.

21 **SECTION 13.** 628.347 (5) (c) [✓] of the statutes is amended to read:

22 628.347 (5) (c) Order a general agent or independent agency that employs or
23 contracts with an insurance intermediary to sell, or solicit the sale of, annuities to



1 ~~senior~~ consumers to take reasonably appropriate corrective action for any ~~senior~~
2 consumer harmed by a violation of this section by the insurance intermediary.

3 History: 2003 a. 261.

3 **SECTION 14.** 628.347 (6) (b) ^x of the statutes is amended to read:

4 628.347 (6) (b) A penalty under par. (a) for a violation of sub. (2) (a), (b), or (d),
5 including a forfeiture, may be reduced or eliminated to the extent provided by rule
6 of the commissioner if corrective action is taken for the ~~senior~~[✓] consumer promptly
7 after the violation is discovered.

8 History: 2003 a. 261.

8 **SECTION 15.** 628.347 (6) (c) ^x of the statutes is amended to read:

9 628.347 (6) (c) The commissioner may promulgate rules related to the
10 reduction or elimination of penalties for violations of this section on the basis of
11 prompt action taken to correct any harm caused to ~~senior~~[✓] consumers by the
12 violations.

13 History: 2003 a. 261.

13 **SECTION 16.** 628.347 (7) ^x of the statutes is amended to read:

14 628.347 (7) RECORD KEEPING. An insurer and an insurance intermediary,
15 including a general agent and an independent agency, shall maintain, or be able to
16 make available to the commissioner, records of the information collected from a
17 ~~senior~~[✓] consumer and other information used in making a recommendation that was
18 the basis for an insurance transaction for 6 years after the insurance transaction is
19 completed by the insurer, except as otherwise permitted by the commissioner by rule.
20 An insurer may, but is not required to, maintain records on behalf of an insurance
21 intermediary, including a general agent and an independent agency.

22 History: 2003 a. 261.

22 **SECTION 17.** 628.347 (8) (a) ^x of the statutes is amended to read:



1 628.347 (8) (a) Direct response solicitations in which no recommendation is
2 made based on information collected from the senior consumer.

3 History: 2003 a. 261.

3 **SECTION 18.** 631.01 (3) of the statutes is amended to read:

4 631.01 (3) OCEAN MARINE INSURANCE. Sections 631.03 to 631.09, 631.15 (1) and
5 (4), 631.20 (1) (1c), 631.27, 631.41 to 631.51, 631.64 to 631.81 and 631.85 apply to
6 ocean marine insurance; the commissioner may specify by rule that ocean marine
7 contracts are subject to other provisions of this chapter upon a finding that the
8 interests of Wisconsin insureds or creditors or of the public in this state so require.

9 History: 1975 c. 375, 421; 1985 a. 29; 1987 a. 247; 1991 a. 230; 1995 a. 242; 1997 a. 27.

9 **SECTION 19.** 631.20 (1) of the statutes is renumbered 631.20 (1c), and 631.20

10 (1c) (a), as renumbered, is amended to read:

11 631.20 (1c) (a) ~~No~~ Except as provided in par. (c) and sub. (1g), no form subject
12 to s. 631.01 (1), except as exempted under s. 631.01 (2) to (5) or by rule under par. (b),
13 may be used unless it has been filed with and approved by the commissioner and
14 unless the insurer certifies that the form complies with chs. 600 to 655 and rules
15 promulgated under chs. 600 to 655. It is deemed approved if it is not disapproved
16 within 30 days after filing, or within a 30-day extension of that period ordered by the
17 commissioner prior to the expiration of the first 30 days.

18 History: 1975 c. 375, 421; 1979 c. 218; 1987 a. 247; 1999 a. 9; 2005 a. 74.

18 **SECTION 20.** 631.20 (1b) of the statutes is created to read:

19 631.20 (1b) DEFINITION. In this section, "product" has the meaning given in s.
20 601.58 (2) (k).

21 **SECTION 21.** 631.20 (1c) (c) of the statutes is created to read:

22 631.20 (1c) (c) A form first used on or after the effective date of this paragraph
23 [revisor inserts date], is exempt from par. (a) except for any of the following:

- 24 1. A form subject to s. 655.24 (1).

- 1 2. A form for a worker's compensation policy. ✓
- 2 3. A form for a Medicare replacement policy or a Medicare supplement policy. ✓
- 3 4. A form for a long-term ✓ care insurance policy, including a form for a nursing
- 4 home policy or home health care policy.
- 5 5. A form filed under ch. 149. ✓
- 6 6. A form issued by an insurer ordered by the commissioner under s. 601.41 (4)
- 7 to file forms under par. (a). ✓ The commissioner may require an insurer to file forms
- 8 under par. (a) ✓ to secure compliance with the law, including if the commissioner
- 9 determines that the insurer violated sub. (1m). ✓
- 10 7. A form that includes an appraisal or arbitration provision not specifically
- 11 authorized by rule. The entire form, including the appraisal or arbitration provision,
- 12 is subject to par. (a). ✓
- 13 8. A form that contains a clause subject to s. 631.21, but only as to the clause. ✓
- 14 9. A form required to be filed under par. (a) ✓ by a rule promulgated by the
- 15 commissioner.

16 **SECTION 22.** 631.20 (1g) ✓ of the statutes is created to read:

17 631.20 (1g) EXEMPT IF APPROVED BY COMMISSION. Notwithstanding sub. (1c) (c)

18 1. to 9. ✓, a form for a product is exempt from subs. (1c) (a) ✓ and (1m) ✓ if it is approved

19 by or self-certified ✓ to, and not disapproved by, the Interstate Insurance Product

20 Regulation Commission under s. 601.58, ✓ unless otherwise provided by a rule

21 promulgated by the commissioner under s. 601.58 (7) (d). ✓

****NOTE: Is proposed s. 601.58 (7) (d) the citation you had in mind for a rule promulgated by the commissioner under s. 601.58?

****NOTE: I assumed the forms that are *not* exempt under sub. (1c) (c) are exempt if approved by the commission. Is this correct? ✓

22 **SECTION 23.** 631.20 (1m) ✓ of the statutes is created to read:



1 631.20 (1m) USE OF CERTAIN FORMS. On or after the effective date of this
2 subsection [revisor inserts date], an insurer may not use a form that is exempt
3 from sub. (1c) (a) solely because of sub. (1c) (c) unless the insurer does all of the
4 following:

5 (a) Files the form with the commissioner, in the manner and format prescribed
6 by the commissioner, at least 30 days before its use.

7 (b) Certifies, in the form prescribed by the commissioner, that the form
8 complies with chs. 600 to 655 and rules promulgated under chs. 600 to 655. The
9 commissioner may require an insurer to include specific compliance certifications.
10 The certification shall be executed by the insurer's senior officer responsible for
11 policy form development. No insurer may file, and no officer may execute, a false
12 certification.

13 **SECTION 24.** 631.20 (2) (intro.) of the statutes is amended to read:

14 631.20 (2) GROUNDS FOR DISAPPROVAL. (intro.) The commissioner may
15 disapprove a form under sub. (1c) (a) or (3) upon a finding:

16 History: 1975 c. 375, 421; 1979 c. 218; 1987 a. 247; 1999 a. 9; 2005 a. 74.

17 **SECTION 25.** 631.20 (3) of the statutes is amended to read:

18 631.20 (3) SUBSEQUENT DISAPPROVAL. Whenever the commissioner finds, after
19 a hearing, that a form approved or deemed to be approved under sub. (1) (1c) (a)
20 would, a form filed under sub. (1m), or a form subject to subsequent disapproval
21 under s. 601.58 (14) should be disapproved under sub. (2) if ~~newly~~ filed, the
22 commissioner may order that on or before a date not less than 30 nor more than 90
23 days after the order the use of the form shall be discontinued or appropriate changes
shall be made.

History: 1975 c. 375, 421; 1979 c. 218; 1987 a. 247; 1999 a. 9; 2005 a. 74.

****NOTE: Should the cross-reference for disapprovals by the commission be s. 601.58 (11) (b) in addition to or instead of s. 601.58 (14)? Should s. 601.58 (14) be limited to s. 601.58 (14) (e)?

****NOTE: I'm not sure what "a form subject to subsequent disapproval under s. 601.58 (14)" is. Is it a form that has been disapproved by the commission? Aren't all forms approved by the commission under s. 601.58 subject to subsequent disapproval? Does the commissioner have the authority to disapprove a form that was approved by the commission?

1 **SECTION 26.** 631.20 (6) (title) of the statutes is amended to read:

2 631.20 (6) (title) ~~APPROVED FORM WHICH~~ FORM THAT VIOLATES STATUTE OR RULE.

History: 1975 c. 375, 421; 1979 c. 218; 1987 a. 247; 1999 a. 9; 2005 ~~74~~.

3 **SECTION 27.** 631.20 (6) (a) of the statutes is amended to read:

4 631.20 (6) (a) The penalties under s. 601.64 (3) to (5) may not be imposed
5 against an insurer for using a form that does not comply with a statute or rule if the
6 statute or rule was in effect on the date the form was approved or deemed to be
7 approved under sub. ~~(1)~~ (1c) (a).

History: 1975 c. 375, 421; 1979 c. 218; 1987 a. 247; 1999 a. 9; 2005 ~~74~~.

8 **SECTION 28.** 631.20 (6) (b) of the statutes is amended to read:

9 631.20 (6) (b) Use of a form that does not comply with a statute or rule which
10 takes effect after the date the form was approved or deemed to be approved under
11 sub. ~~(1)~~ (1c) (a) is a violation of the statute or rule, and the penalties under s. 601.64
12 may be imposed against the insurer using the form.

History: 1975 c. 375, 421; 1979 c. 218; 1987 a. 247; 1999 a. 9; 2005 ~~74~~.

13 **SECTION 29.** 631.20 (6) (c) of the statutes is created to read:

14 631.20 (6) (c) Except as otherwise provided by the Interstate Insurance Product
15 Regulation Commission, an insurer's use of a form or advertisement in violation of
16 s. 601.58 or the rules, uniform standards, or other requirements of the Interstate
17 Insurance Product Regulation Commission applicable to the content, approval, or
18 certification of a product is a violation of an insurance statute subject to the penalties
19 and remedial orders provided under chs. 600 to 655, including ss. 601.41 (4) and
20 601.64.



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19

SECTION 30. 631.20 (6) (d) of the statutes is created to read:

631.20 (6) (d) Except as provided in par. (a) or by the Interstate Insurance Product Regulation Commission, an insurer's use of a form, including a form filed under sub. (1m) and not subsequently disapproved under sub. (3) or s. 601.58, that violates chs. 600 to 655 or rules promulgated under chs. 600 to 655 is a violation of an insurance statute or rule subject to the penalties and remedial orders provided under chs. 600 to 655, including ss. 601.41 (4) and 601.64.

SECTION 31. 631.36 (1) (a) of the statutes is amended to read:

631.36 (1) (a) *General.* Except as otherwise provided in this section or in other statutes or by rule under par. (c), this section applies to all contracts of insurance based on forms which are subject to filing and approval under s. 631.20 (1) (1c) (a).

History: 1975 c. 375, 421; 1977 c. 444 s. 11; 1979 c. 102; 1979 s. 110 s. 60 (11); 1981 c. 83; 1985 a. 335; 1989 a. 187, 332, 359; 1991 a. 315; 1995 a. 259; 1997 a. 27; 1999 a. 9.

SECTION 32. 655.24 (1) of the statutes is amended to read:

655.24 (1) No insurer may enter into or issue any policy of health care liability insurance until its policy form has been submitted to and approved by the commissioner under s. 631.20 (1) (1c) (a). The filing of a policy form by any insurer with the commissioner for approval shall constitute, on the part of the insurer, a conclusive and unqualified acceptance of all provisions of this chapter, and an agreement by it to be bound hereby as to any policy issued by it to any health care provider.

History: 1975 c. 37; 1977 c. 131; 1985 a. 340; 1989 a. 187; 1991 a. 214; 1999 a. 9.

(END OF INSERT 29-10)

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0843/P2dn

PJK:jdjif

date

stays

This draft is Group 1 - Policy and Form Package, including the Interstate Insurance Product Regulation Compact, the new form review provisions in s. 631.20, and the suitability of annuity sales. The new language for s. 631.20 is in rough form; you will need to review it carefully. I have not included a delayed effective date for any of the provisions. Do you want a specific delayed effective date? If so, what date and for what parts of this draft?

Do any of the following statutes need to be amended to account for the changes in the form review under s. 631.20? If so, how should they be amended? (One or more of these are already treated in the draft but for a different reason.)

40.55 (1)

100.205 (6) (intro.)

185.983 (1) (a)

424.209

605.03 (1)

607.02 (1)

612.33 (2) (e)

612.51 (1)

616.76

618.41 (6m)

631.01 (4m)

631.13 (2)

631.21 (1) (intro.)

631.23 (1) (intro.) and (2)

- 631.36 (1) (a) ✓
- 631.85 ✓
- 632.32 (4) (intro.) ✓
- 632.45 (2) ✓
- 632.68 (6) ✓
- 632.77 (3) ✓
- 646.35 (6) (bm) ✓

Pamela J. Kahler
Senior Legislative Attorney
Phone: (608) 266-2682
E-mail: pam.kahler@legis.wisconsin.gov

843

Kahler, Pam

From: Nepple, Fred - OCI
Sent: Friday, January 12, 2007 2:13 PM
To: Kahler, Pam
Subject: RE: 631.20 draft 11207-3.doc
Attachments: 631.20 11207-3doc.doc

Pam

Sorry to create confusion, but please replace the draft I forwarded earlier today with the attached. It has a minor revision.

Fred Nepple, General Counsel**Fred.Nepple@oci.state.wi.us**

Ph: (608)266-7726 FAX: (608)264-6228

Wisconsin Office of the Commissioner of Ins <http://oci.wi.gov>

PO Box 7873 Madison WI 53707-7873

125 S Webster St Madison WI 53702

*****CONFIDENTIAL*****

This is a communication intended to be transmitted to or from the OCI legal unit and may contain information which is privileged, confidential and protected by the attorney-client, attorney work product or s. 601.465, Wis. Stat., privileges. If you are not the intended recipient note that any disclosure, copying, distribution, or use of this message is prohibited. If you have received this message in error, please destroy it and notify us immediately at 608-266-7726.

-----Original Message-----

From: Nepple, Fred
Sent: Friday, January 12, 2007 11:24 AM
To: Kahler, Pam
Subject: 631.20 draft 11207.doc

Pam

As a result of internal discussions I have modified the form filing draft to add Medicare replacement, Medicare supplement and long term care (which the draft makes clear includes home health care policies) as exceptions from the "new" form filing process.

Kahler, Pam

From: Nepple, Fred - OCI
Sent: Monday, January 08, 2007 8:18 AM
To: Kahler, Pam
Subject: RE: OCI omnibus draft

Hi Pam

Yes. I gave our Bureau of Market Regulation a draft in November and they indicated they may have some changes. Why don't I obtain those from them, add the compact reconciliation, and forward it to you, probably tomorrow, unless you would rather have the draft now? I doubt the bureaus changes will be significant.

Fred Nepple, General Counsel

Fred.Nepple@oci.state.wi.us

Ph: (608)266-7726 FAX: (608)264-6228

Wisconsin Office of the Commissioner of Ins <http://oci.wi.gov>

PO Box 7873 Madison WI 53707-7873

125 S Webster St Madison WI 53702

*****CONFIDENTIAL*****

This is a communication intended to be transmitted to or from the OCI legal unit and may contain information which is privileged, confidential and protected by the attorney-client, attorney work product or s. 601.465, Wis. Stat., privileges. If you are not the intended recipient note that any disclosure, copying, distribution, or use of this message is prohibited. If you have received this message in error, please destroy it and notify us immediately at 608-266-7726.

-----Original Message-----

From: Kahler, Pam [mailto:Pam.Kahler@legis.wisconsin.gov]

Sent: Friday, January 05, 2007 5:00 PM

To: Nepple, Fred - OCI

Subject: OCI omnibus draft

Hi, Fred:

I looked at your e-mail on the interstate compact draft and noticed that you say you would appreciate it if I reconciled the compact with s. 631.20. That relates to the original request that Jim sent over in November (it seems like it was about 5 months ago!). Request no. 5 was to amend s. 631.20 to allow OCI to implement a "file and use" process for policy forms. Jim indicated that you were putting together some language for that one, which is what I was referring to when I asked if the changes to s. 631.20 (that you were sending over) would take the compact into account. Will you still be sending something on s. 631.20?

Pam

Pamela J. Kahler

Legislative Attorney

Legislative Reference Bureau

608-266-2682

Kahler, Pam

From: Guidry, Jim R - OCI
Sent: Tuesday, January 02, 2007 3:08 PM
To: Kahler, Pam
Subject: FW: interstate compact

Pam,

Fred's email was rejected. Here is a copy.

Jim Guidry
Legislative Liaison
Office of the Commissioner of Insurance
125 South Webster Street
PO Box 7873
Madison, WI 53707-7873

Work: (608) 264-6239
Cell: (608) 209-6309

-----Original Message-----

From: Nepple, Fred
Sent: Tuesday, January 02, 2007 3:04 PM
To: Guidry, Jim
Subject: FW: interstate compact

Fred Nepple, General Counsel

Fred.Nepple@oci.state.wi.us

Ph: (608)266-7726 FAX: (608)264-6228

Wisconsin Office of the Commissioner of Ins <http://oci.wi.gov>

PO Box 7873 Madison WI 53707-7873

125 S Webster St Madison WI 53702

*****CONFIDENTIAL*****

This is a communication intended to be transmitted to or from the OCI legal unit and may contain information which is privileged, confidential and protected by the attorney-client, attorney work product or s. 601.465, Wis. Stat., privileges. If you are not the intended recipient note that any disclosure, copying, distribution, or use of this message is prohibited. If you have received this message in error, please destroy it and notify us immediately at 608-266-7726.

-----Original Message-----

From: Nepple, Fred
Sent: Tuesday, January 02, 2007 3:03 PM
To: Pam Kahler (Kahler, Pam)
Subject: interstate compact

Pam

I reviewed your notes. No, we did not reconcile s. 631.20 with the interstate compact and would appreciate it if

01/02/2007

you would do so. AS to your other notes I believe they all follow from the previous issue, or are language issues. While your points on language are all well taken, as usual, I am inclined to suggest that we leave the compact language as is. Presumably every other state has adopted the language as is. (There are 28 states now, so the issue of which option to make the compact is effective is invoked and when is now moot.)

On another matter, I think the drafters assume that it is clear enough that the compact is not a state agency for the purpose of the various procedural and other requirements of a state agency. Are you comfortable that is clear enough? For example the compact has the commission adopting its own rules and its own dispute provisions. Obviously the intent is that ch. 227 does not apply.

Give me a call when you have a chance.

Fred Nepple, General Counsel

Fred.Nepple@oci.state.wi.us

Ph: (608)266-7726 FAX: (608)264-6228

Wisconsin Office of the Commissioner of Ins <http://oci.wi.gov>

PO Box 7873 Madison WI 53707-7873

125 S Webster St Madison WI 53702

*****CONFIDENTIAL*****

This is a communication intended to be transmitted to or from the OCI legal unit and may contain information which is privileged, confidential and protected by the attorney-client, attorney work product or s. 601.465, Wis. Stat., privileges. If you are not the intended recipient note that any disclosure, copying, distribution, or use of this message is prohibited. If you have received this message in error, please destroy it and notify us immediately at 608-266-7726.

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0843/P2dn
PJK:jld:rs

March 7, 2007

This draft is Group 1 - Policy and Form Package, including the Interstate Insurance Product Regulation Compact, the new form review provisions in s. 631.20, and the suitability of annuity sales. The new language for s. 631.20 is in rough form; you will need to review it carefully. I have not included a delayed effective date for any of the provisions. Do you want a specific delayed effective date? If so, what date and for what parts of this draft?

Do any of the following statutes need to be amended to account for the changes in the form review under s. 631.20? If so, how should they be amended? (One or more of these are already treated in the draft but for a different reason.)

40.55 (1)

100.205 (6) (intro.)

185.983 (1) (a)

424.209

605.03 (1)

607.02 (1)

612.33 (2) (e)

612.51 (1)

616.76

618.41 (6m)

631.01 (4m)

631.13 (2)

631.21 (1) (intro.)

631.23 (1) (intro.) and (2)

631.36 (1) (a)

631.85

632.32 (4) (intro.)

632.45 (2)

632.68 (6)

632.77 (3)

646.35 (6) (bm)

Pamela J. Kahler
Senior Legislative Attorney
Phone: (608) 266-2682
E-mail: pam.kahler@legis.wisconsin.gov

Kahler, Pam

From: Nepple, Fred - OCI
Sent: Wednesday, April 25, 2007 2:55 PM
To: Kahler, Pam
Subject: LRB-0843/P2dn OCI file and use/compact draft
Attachments: File and use and compact drafting note response 4 25 07.doc; OCI File and use s 631.20 4-25-07.DOC

Pam

Please find attached a response to your drafting note. Also attached is a revised amendment to s. 631.20. This is the product of extended back and forth with interested parties. Please let me know if a "walk through" would be helpful.

Fred Nepple, General Counsel

Fred.Nepple@oci.state.wi.us

Ph: (608)266-7726 FAX: (608)264-6228

Wisconsin Office of the Commissioner of Ins <http://oci.wi.gov>

PO Box 7873 Madison WI 53707-7873

125 S Webster St Madison WI 53702

*****CONFIDENTIAL*****

This is a communication intended to be transmitted to or from the OCI legal unit and may contain information which is privileged, confidential and protected by the attorney-client, attorney work product or s. 601.465, Wis. Stat., privileges. If you are not the intended recipient note that any disclosure, copying, distribution, or use of this message is prohibited. If you have received this message in error, please destroy it and notify us immediately at 608-266-7726.



State of Wisconsin / OFFICE OF THE COMMISSIONER OF INSURANCE

Jim Doyle, Governor
Sean Dilweg, Commissioner

Wisconsin.gov

Legal Unit
125 South Webster Street • P.O. Box 7873
Madison, Wisconsin 53707-7873
Phone: (608) 267-9586 • Fax: (608) 264-6228
Web Address: oci.wi.gov

Date: April 25, 2007
To: Ms. Pam Kehler
From: Fred Nepple, General Counsel
Subject: Policy and Form Package

In response to your drafting note regarding LRB-0843/P2dn:

- 1) The amendments to s. 631.20 should have a delayed effective date of the first day of the 4th month commencing after publication.
- 2) The amendments to s. 628.437 should have a delayed effective date of the first day of the 7th month commencing after publication.
- 3) The Interstate Insurance Product Commission provisions should be effective immediately.
- 4) The statutes referenced in the note should be treated as follows:

- ✓ 40.55 (1) substitute "filed with"
- ✓ 100.205 (6) (intro) strike "under s. 631.20"
- ✓ 185.983 (1) (a) leave unchanged
- ✓ 424.209 (1) leave unchanged
- (a) ✓ 605.03 (1) substitute "filed with the commissioner"
- ✓ 607.02 (2) substitute "filed with the commissioner"
- ✓ 612.33 (2) (e) leave unchanged
- ✓ 612.51 (1) repeal (We note that the revised s. 631.20 will apply to a town mutual.)
- ✓ 616.76 leave unchanged
- ✓ 618.41 (6m) leave unchanged, add 631.20 (1g) (c) "9. A form subject to s. 618.41 (6m)"
- ✓ 631.01 (4m) strike "under s. 631.20."
- ✓ 631.13 (2) leave unchanged
- ✓ 631.21 (1) (intro) substitute "Despite filing, or general approval, " and substitute "may not be used" for "are not approved"
- ✓ 631.23 (1) (intro) strike "for approval"
- ✓ 631.23 (2) leave unchanged.
- ✓ 631.36 (1) (a) substitute "filing under s. 631.20 or s. 601.58"
- ✓ 631.85 leave unchanged. The draft requires these forms to be filed and approved.

- ✓ 632.32 (4) (intro) strike "approved by the commissioner"
- ✓ 632.45 (2) strike "and approval"
- ✓ 632.68 (6) leave unchanged
- ✓ 632.77 (3) leave unchanged
- ✓ 646.35 (6) (bm) strike "approved by the commissioner"

✓ 5) Please see the attached revised version of the "file and use" revision to s. 631.20. This amendment has been revised based on discussions with a number of parties. Please let me know if you would like a briefing on the changes made in this draft.

631.20 Filing and approval of forms.

(1) Filing.

(a) No form subject to s. 631.01 (1) , except as exempted under sub. (1g), s. 631.01 (2) to (5), par. (c) or by rule under par. (b), may be used unless it has been filed with and approved by the commissioner and unless the insurer certifies that the form complies with chs. 600 to 655 and rules promulgated under chs. 600 to 655. It is deemed approved if it is not disapproved within 30 days after filing, or within a 30-day extension of that period ordered by the commissioner prior to the expiration of the first 30 days.

(b) Subject to s. 655.24 (1) , the commissioner may by rule exempt certain classes of policy forms from prior filing and approval.

(c) A form first filed with the commissioner on or after the effective date of this act (2008) is exempt from par. (a) except any of the following forms:

1. A form subject to s. 655.24 (1).
2. A form for a workers compensation policy.
3. A form for a Medicare replacement policy or a Medicare supplement policy.
4. A form for a long term care policy, including a form for a nursing home or home health care policy.
5. A form filed under ch. 149.
6. A form issued by an insurer ordered by the commissioner under s. 601.41 (4) to file forms under sub. (1) (a). The commissioner may require an insurer to file forms under this subsection to secure compliance with the law, including if the commissioner determines the insurer violated sub. (1m).
7. A form that includes an appraisal or arbitration provision not specifically authorized by rule. The entire form, including the appraisal or arbitration provision, is subject to sub. (1) (a).
8. A form that contains a clause subject to s. 631.21 but only as to the clause.
9. A form subject to s.618.41 (6m).
10. A warranty contract form.

Formatted: Font: 12 pt, Underline

Formatted: Font: 12 pt

Formatted: Underline

11. A form required to be filed under sub. (1) (a) by a rule promulgated by the commissioner.

(1g) A form for a product that is approved by or self-certified to, and not disapproved by, the interstate insurance product regulation commission is exempt from subs. (1) (a) and (1m) (a), unless otherwise provided by rule promulgated by the commissioner under s. 601.58.

(1m) (a) Except as exempted under sub. (1g), s. 631.01 (2) to (5), or by rule promulgated by the commissioner, an insurer may not use a form exempt under sub. (1) (c) from sub. (1) (a) on or after the effective date of this Act (2008) unless the insurer does all of the following:

1. The insurer files the form with the commissioner 30 days prior to its use.
 2. The insurer files the form in the manner and format, and with the attachments, prescribed by the commissioner.
 3. The insurer certifies as required under par. (b) that the form complies with chs. 600 to 655 and rules promulgated under chs. 600 to 655. The commissioner may require an insurer to include specific compliance certifications.
- (b) An insurer shall provide the certification required under par. (a) in the form prescribed by the commissioner. The certification shall be executed by the insurer's officer responsible for policy form development. No insurer may file, and no officer of an insurer may execute, a false certification.

(2) Grounds for disapproval. The commissioner may disapprove a form under sub. (1) (a) or sub. (3) upon a finding:

(a) That it is inequitable, unfairly discriminatory, misleading, deceptive, obscure or encourages misrepresentation, including cases where the form:

1. Is misleading because its benefits are too restricted to achieve the purposes for which the policy is sold;
2. Contains provisions whose natural consequence is to obscure or lessen competition;
3. Is unnecessarily verbose or complex in language; or
4. Is misleading, deceptive or obscure because of such physical aspects as format, typography, style, color, material or organization;

(b) That it provides benefits or contains other provisions that endanger the solidity of the insurer;

(c) That in the case of the policy, though not of riders and endorsements, it fails to provide the exact name of the insurer and the full address of its home office; or

(d) That it violates a statute or a rule promulgated by the commissioner, or is otherwise contrary to law.

(e) That its use would violate s. 631.22 .

(f) In the case of a policy form under ch. 149 , that any of the following applies:

1. The benefit design is not comparable to a typical comprehensive individual health insurance policy offered in the private sector market in this state.

2. The benefit levels are not generally reflective of and commensurate with comprehensive health insurance coverage offered in the private individual market in the state.

3. The copayments, deductibles, and coinsurance are not actuarially equivalent to comprehensive individual plans and would create undue financial hardship.

4. It is inconsistent with the purpose of providing health care coverage to those unable to obtain coverage in the private market.

(3) Subsequent disapproval. Whenever the commissioner finds, after a hearing, that a form approved or deemed to be approved under sub. (1) (a), a form filed under sub. (1m), or a form subject to subsequent disapproval under s. 601.58 (14), would be should be disapproved under sub. (2) if newly filed, the commissioner may order that on a date that is not less than 30 nor more than 90 days after the order the use of the form shall be discontinued or appropriate changes shall be made.

(4) Contents of order of disapproval. The commissioner's disapproval must be in writing and constitutes an order. It must state the reasons for disapproval sufficiently explicitly that the insurer is provided reasonable guidance in reformulating its proposals.

(5) Explicit approval of certain clauses. General approval of a form under this section, or failure to disapprove, does not constitute approval of clauses specified in s. 631.21 .

(6) Approved form Form which violates statute or rule.

(a) The penalties under s. 601.64 (3) to (5) may not be imposed against an insurer:

1. For using a form that does not comply with a statute or rule, including a rule or uniform standard adopted by the interstate insurance product regulation commission, if the statute or rule was in effect on the date the

form was either approved or deemed to be approved under sub. (1) (a) or s. 601.58.

2. For the use of a form solely based on a finding of the commissioner that the content of the form is misleading under s. 628.34(1)

(b) An insurer's use of a form that does not comply with a statute or rule, including a rule or uniform standard adopted by the interstate insurance product regulation commission, which takes effect after the date the form was approved or deemed to be approved under sub. (1) (a) or s. 601.58 is a violation of the statute or rule and the penalties under s. 601.64 may be imposed against the insurer using the form.

(c) Except as provided in par. (a) 2, an insurer's use of a form filed under sub. (1m) that violates chs. 600 to 655 or rules promulgated under chs. 600 to 655 is a violation of the statute or rule, regardless of whether the form has been subsequently disapproved under sub. (3). The insurer is subject to the penalties and remedial orders provided under chs. 600 to 655, including ss. 601.41(4) and 601.64.