



2013 SENATE BILL 581

February 7, 2014 – Introduced by Senator LASEE, cosponsored by Representatives PETERSEN, KAHL, WEININGER, ZEPNICK, DOYLE and YOUNG. Referred to Committee on Insurance and Housing.

1 **AN ACT** *to amend* 13.92 (4) (c), 13.92 (4) (d), 13.92 (4) (e), 13.92 (4) (f), 35.93 (2)
2 (b) 4., 35.93 (2) (c) 1., 35.93 (3), 35.93 (3) (e) (intro.), 35.93 (3) (e) 1., 227.01 (13)
3 (intro.), 227.11 (2) (intro.) and 227.27 (2); and *to create* 13.92 (4) (bm) and
4 227.265 of the statutes; **relating to:** rule-making procedures and modifying
5 and creating administrative rules related to long-term care insurance.

Analysis by the Legislative Reference Bureau

Rule-making procedures

Current law sets forth a procedure for the promulgation of administrative rules (rules). Generally, that procedure consists of the following steps:

1. The agency planning to promulgate the rule prepares a statement of the scope of the proposed rule, which the governor and the agency head must approve before any state employee or official may perform any activity in connection with the drafting of the proposed rule.

2. The agency drafts the proposed rule, together with an economic impact analysis, plain language analysis, and fiscal estimate for the proposed rule, and submits those materials to the Legislative Council Staff for review.

3. Subject to certain exceptions, a public hearing is held on the proposed rule.

4. The final draft of the proposed rule is submitted to the governor for approval.

5. The final draft of the proposed rule, together with an economic impact analysis, plain language analysis, and fiscal estimate for the proposed rule, are

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submitted to the legislature for review by one standing committee in each house and by the Joint Committee for Review of Administrative Rules.

6. The proposed rule is filed with the Legislative Reference Bureau (LRB) for publication in the Wisconsin Administrative Code (code) and the Wisconsin Administrative Register (register), and, subject to certain exceptions, the rule becomes effective on the first day of the first month beginning after publication.

Under this bill, if a bill that repeals or modifies a rule is enacted, the ordinary rule-making procedures under current law do not apply. Instead, the LRB must publish the repeal or modification, in the code and the register, and the repeal or modification, subject to certain exceptions, takes effect on the first day of the first month beginning after publication.

Compensating intermediaries for sale of long-term care insurance

Under current rules promulgated by the Office of the Commissioner of Insurance, an insurer may provide compensation to an insurance intermediary or other representative, and the intermediary or other representative may accept compensation, for the sale of a long-term care policy or certificate only if 1) the first-year compensation for the sale does not exceed 400 percent of the compensation paid in the second year or period for the sale or for servicing the policy or certificate and 2) the compensation provided in subsequent years is the same as provided in the second year or period and is provided for at least five renewal years. The current rules prohibit any person from providing compensation to an intermediary, representative, or producer, and prohibit any intermediary, representative, or producer from accepting compensation, relating to the replacement of a long-term care policy or certificate for which the compensation is greater than the renewal compensation provided by the replacing insurer for the replacing policy or certificate.

The bill removes from the rules references to other representatives or procedures while retaining references to intermediaries. Under the bill, instead of the current compensation restrictions, an insurer may compensate an intermediary, and an intermediary may accept compensation, for the sale of a long-term care policy or certificate only if the compensation provided in the second year or period and subsequent years is the same and is provided for at least five renewal years. The bill adds an exemption to the prohibition on certain compensation for replacement of a long-term care policy. Under that exemption, a person may provide to an intermediary, and an intermediary may accept, compensation relating to the replacement of a long-term care policy or certificate for which the compensation is not greater than the first-year compensation provided by the replacing insurer for the replacing policy or certificate, if certain criteria that are created in the bill and certain requirements that are in the current rules are satisfied.

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

1 **SECTION 1.** 13.92 (4) (bm) of the statutes is created to read:

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1 13.92 (4) (bm) If 2 or more rules filed under s. 227.20 or modified under s.
2 227.265 affect the same unit of the Wisconsin administrative code without taking
3 cognizance of the effect thereon of the other rules and if the legislative reference
4 bureau finds that there is no mutual inconsistency in the changes made by each such
5 rule, the legislative reference bureau shall incorporate the changes made by each
6 rule into the text of the unit and document the incorporation in a note to the unit.
7 For each such incorporation, the legislative reference bureau shall include in a
8 correction bill a provision formally validating the incorporation. Section 227.27 (2)
9 is not affected by printing decisions made by the legislative reference bureau under
10 this paragraph.

11 **SECTION 2.** 13.92 (4) (c) of the statutes is amended to read:

12 13.92 (4) (c) The legislative reference bureau may insert in the Wisconsin
13 administrative code a note explaining any change made under par. (b) or (bm).

14 **SECTION 3.** 13.92 (4) (d) of the statutes is amended to read:

15 13.92 (4) (d) Sections 227.114, 227.116, 227.135, and 227.14 to 227.24 do not
16 apply to any change made by the legislative reference bureau under par. (b) or (bm).

17 **SECTION 4.** 13.92 (4) (e) of the statutes is amended to read:

18 13.92 (4) (e) The legislative reference bureau shall prepare and keep on file a
19 record of each change made under par. (b) or (bm).

20 **SECTION 5.** 13.92 (4) (f) of the statutes is amended to read:

21 13.92 (4) (f) The legislative reference bureau shall notify the agency involved
22 of each change made under par. (b) or (bm).

23 **SECTION 6.** 35.93 (2) (b) 4. of the statutes, as affected by 2013 Wisconsin Act 20,
24 is amended to read:

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1 35.93 (2) (b) 4. Copies of all rules filed with the legislative reference bureau
2 under s. 227.20 (1) or modified under s. 227.265 since the compilation of the
3 preceding register, including emergency rules filed under s. 227.24 (3).

4 **SECTION 7.** 35.93 (2) (c) 1. of the statutes, as affected by 2013 Wisconsin Act 20,
5 is amended to read:

6 35.93 (2) (c) 1. Each chapter of the Wisconsin administrative code that has been
7 affected by rules filed with legislative reference bureau under s. 227.20 (1) or
8 modified under s. 227.265, in accordance with sub. (3) (e) 1.

9 **SECTION 8.** 35.93 (3) of the statutes is amended to read:

10 35.93 (3) The legislative reference bureau shall compile and deliver to the
11 department for printing copy for a register which shall contain all the rules filed
12 under s. 227.20 or modified under s. 227.265 since the compilation of rules for the
13 preceding issue of the register was made and those executive orders which are to be
14 in effect for more than 90 days or an informative summary thereof. The complete
15 register shall be compiled and published before the first day of each month and a
16 notice section of the register shall be compiled and published before the 15th day of
17 each month. Each issue of the register shall contain a title page with the name
18 “Wisconsin administrative register”, the number and date of the register, and a table
19 of contents. Each page of the register shall also contain the date and number of the
20 register of which it is a part in addition to the other necessary code titles and page
21 numbers. The legislative reference bureau may include in the register such
22 instructions or information as in the bureau’s judgment will help the user to correctly
23 make insertions and deletions in the code and to keep the code current.

24 **SECTION 9.** 35.93 (3) (e) (intro.) of the statutes, as affected by 2013 Wisconsin
25 Act 20, is amended to read:

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1 35.93 (3) (e) (intro.) The legislative reference bureau shall incorporate into the
2 appropriate chapters of the Wisconsin administrative code each permanent rule filed
3 with the legislative reference bureau under s. 227.20 (1) or modified under s. 227.265
4 and, for each chapter of the administrative code affected by a rule, do all of the
5 following:

6 **SECTION 10.** 35.93 (3) (e) 1. of the statutes, as affected by 2013 Wisconsin Act
7 20, is amended to read:

8 35.93 (3) (e) 1. Publish the chapter in the appropriate end-of-month register
9 in accordance with the filing deadline for publication established in the rules
10 procedures manual published under s. 227.15 (7) ~~or~~, in an end-of-month register
11 agreed to by the submitting agency and the legislative reference bureau, or, in the
12 case of a rule modified under s. 227.265, in the end-of-month register for the month
13 in which the bill modifying the rule is enacted.

14 **SECTION 11.** 227.01 (13) (intro.) of the statutes is amended to read:

15 227.01 (13) (intro.) “Rule” means a regulation, standard, statement of policy,
16 or general order of general application which has the effect of law and which is issued
17 by an agency to implement, interpret, ~~or~~ make specific legislation enforced or
18 administered by the agency or to govern the organization or procedure of the agency.
19 “Rule” includes a modification of a rule under s. 227.265. “Rule” does not include, and
20 s. 227.10 does not apply to, any action or inaction of an agency, whether it would
21 otherwise meet the definition under this subsection, which:

22 **SECTION 12.** 227.11 (2) (intro.) of the statutes is amended to read:

23 227.11 (2) (intro.) Rule-making authority is expressly conferred on an agency
24 as follows:

25 **SECTION 13.** 227.265 of the statutes is created to read:

SENATE BILL 581**SECTION 13**

1 **227.265 Repeal or modification of rules.** If a bill to repeal or modify a rule
2 is enacted, the procedures under ss. 227.114 to 227.21 and 227.26 do not apply.
3 Instead, the legislative reference bureau shall publish the repeal or modification in
4 the Wisconsin administrative code and register as required under s. 35.93, and the
5 repeal or modification shall take effect as provided in s. 227.22.

6 **SECTION 14.** 227.27 (2) of the statutes is amended to read:

7 227.27 (2) The code shall be prima facie evidence in all courts and proceedings
8 as provided by s. 889.01, but this does not preclude reference to or, in case of a
9 discrepancy, control over a rule filed with the legislative reference bureau ~~or the~~
10 ~~secretary of state~~ under s. 227.20 or modified under s. 227.265, and the certified copy
11 of a rule shall also and in the same degree be prima facie evidence in all courts and
12 proceedings.

13 **SECTION 15.** Ins 3.46 (13) (a) (intro.) and 2. of the administrative code are
14 consolidated, renumbered Ins 3.46 (13) (a) and amended to read:

15 Ins 3.46 (13) (a) An insurer may provide compensation to an intermediary ~~or~~
16 ~~other representative~~, and an intermediary ~~or representative~~ may accept
17 compensation for the sale of a long-term care policy or certificate only if: ~~2. The~~ the
18 compensation provided in the 2nd year or period and subsequent years is the same
19 ~~as provided in the 2nd year or period~~ and is provided for at least 5 renewal years.

20 **SECTION 16.** Ins 3.46 (13) (a) 1. of the administrative code is repealed.

21 **SECTION 17.** Ins 3.46 (13) (b) of the administrative code is amended to read:

22 Ins 3.46 (13) (b) ~~No~~ Except as provided in par. (c), no person may provide
23 compensation to an intermediary, ~~representative or producer~~, and no intermediary,
24 ~~representative or producer~~ may accept compensation, relating to the replacement of
25 a long-term care policy or certificate which is greater than the renewal compensation

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1 provided by the replacing insurer for the replacing policy or certificate. Long-term
2 care policies this paragraph applies and par. (c) apply to include, but are not limited
3 to, long-term care policies, nursing home policies and home health care policies
4 issued prior to June 1, 1991.

5 **SECTION 18.** Ins 3.46 (13) (c) of the administrative code is created to read:

6 Ins 3.46 (13) (c) A person may provide to an intermediary, and an intermediary
7 may accept, compensation relating to the replacement of a long-term care policy or
8 certificate; which compensation is no greater than the first-year compensation
9 provided by the replacing insurer for the replacing policy or certificate if, in addition
10 to requirements contained in sub. (14), all of the following criteria are satisfied:

11 1. The replacing insurer has established reasonable standards for which
12 first-year compensation is appropriate for the replacement.

13 2. The standards referenced in subd. 1. include all of the following standards:

14 a. The replacing policy is suitable for the applicant.

15 b. The replacing policy materially improves the position of the applicant,
16 including, but not limited to, the coverage, price, premium stability, or financial
17 strength ratings of the insurer.

18 c. The intermediary has done an assessment of the replacement transaction
19 justifying the replacement according to the insurer's replacement standards and this
20 subd. 2. c. and submits that assessment to the insurer as part of the application for
21 replacement.

22 d. The insurer evaluates each replacement and affirmatively approves or
23 denies the replacement's qualification for first-year compensation of the replacing
24 policy.

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1 e. The standards and methodology are subject to review by the office of the
2 commissioner of insurance.

3 3. The replacing insurer has established an auditable methodology for
4 evaluating replacements that qualify for first-year compensation.

5 **SECTION 19. Effective dates.** This act takes effect on the day after publication,
6 except as follows:

7 (1) The treatment of section 35.93 (2) (b) 4. and (c) 1. and (3) (e) (intro.) and 1.
8 of the statutes takes effect on January 1, 2015.

9 (END)