

**2017 DRAFTING REQUEST**

**Bill**

For: **Cindi Duchow (608) 266-3007** Drafter: **amckean**  
 By: **Alicia** Secondary Drafters:  
 Date: **10/18/2017** May Contact:

Same as LRB:

Submit via email: **YES**  
 Requester's email: **Rep.Duchow@legis.wisconsin.gov**  
 Carbon copy (CC) to: **tamara.dodge@legis.wisconsin.gov**  
**aaron.mckean@legis.wisconsin.gov**

**Pre Topic:**

No specific pre topic given

**Topic:**

Technical changes requested by OCI

**Instructions:**

See attached

**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	amckean 10/25/2017	aernsttr 10/26/2017			
/P1	tdodge 12/20/2017	aernsttr 12/21/2017	lparisi 10/26/2017		
/P2	tdodge 1/3/2018	aernsttr 1/3/2018	mbarman 12/21/2017		State
/P3	amckean 1/24/2018		mbarman 1/3/2018		State
/1			mbarman	mbarman	State

Vers.   Drafted

Reviewed

Submitted  
1/24/2018

Jacketed  
1/24/2018

Required

FE Sent For:

<END>

→ At  
Intro.

**2017 DRAFTING REQUEST**

**Bill**

For: **Insurance, office of emmsnr of (608)261-6008** after: **amckean**

By: **Richard** Secondary Drafters:

Date: **10/18/2017** May Contact:

Same as LRB:

*Orig. Requestor*

Submit via email: **YES**  
 Requester's email: **Richard.Wicka@wisconsin.gov**  
 Carbon copy (CC) to: **tamara.dodge@legis.wisconsin.gov**  
**aaron.mckean@legis.wisconsin.gov**

**Pre Topic:**

No specific pre topic given

**Topic:**

Technical changes requested by OCI

**Instructions:**

See attached

**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	amckean 10/25/2017	aernstr 10/26/2017			
/P1	tdodge 12/20/2017	aernstr 12/21/2017	lparisi 10/26/2017		
/P2	tdodge 1/3/2018	aernstr 1/3/2018	mbarman 12/21/2017		State
/P3			mbarman 1/3/2018		State

*JACKET FOR ASSEMBLY  
 REQUERER CHANGED TO  
 REP. DUCKLOW >>*

FE Sent For:

<END>

- 1    **Section 1.** Section 601.427 is repealed.
- 2    **Section 2.** Section 610.80 is created to read:
- 3    **610.80 Corporate Governance Annual Disclosure. (1) DEFINITIONS.** In this section:
- 4    **(a)** "Corporate governance annual disclosure" means a confidential report filed by the insurer or  
5 insurance holding company system made in accordance with the requirements of this section.
- 6    **(b)** "Insurance holding company system" has the meaning given in s. 622.03 (2).
- 7    **(c)** "Insurer" has the meaning given in s. 622.03 (3).
- 8    **(d)** "Lead state" has the meaning given in s. 622.03 (4).
- 9    **(e)** "ORSA summary report" means the report filed in accordance with s. 622.09.
- 10   **(2) DISCLOSURE REQUIREMENT. (a)** An insurer or insurance holding company system of which the insurer is a  
11 members shall, no later than June 1 of each calendar year, submit to the commissioner a corporate  
12 governance annual disclosure that contains the information described in sub. (3). When the insurer is a  
13 member of an insurance holding company system, the insurance holding company system shall submit  
14 the required disclosure to the commissioner of the lead state in accordance with the laws of the lead  
15 state. The commissioner may request, and the insurer shall provide, a copy of the corporate governance  
16 annual disclosure when Wisconsin is not the lead state.
- 17   **(b)** The corporate governance annual disclosure must include a signature of the insurer or insurance  
18 holding company system's chief executive officer or corporate secretary attesting to the best of that  
19 individual's belief and knowledge that the insurer has implemented the corporate governance practices  
20 and that a copy of the disclosure has been provided to the insurer's board of directors or the  
21 appropriate committee thereof.

1 (c) The insurer or insurance holding company system may provide information regarding corporate  
2 governance at the ultimate controlling parent level, an intermediate holding company level or the  
3 individual legal entity level, depending upon how the insurer or insurance holding company system has  
4 structured its system of corporate governance. The corporate governance annual disclosure shall  
5 indicate the criteria used to determine the level of reporting and explain any subsequent changes in  
6 level reporting. In determining at which level an insurer or insurance holding company system will make  
7 the corporate governance annual disclosure, the insurer or insurance holding company system should  
8 consider the following factors:

- 9 1. Where the insurer's or insurance holding company system's risk appetite is determined;
- 10 2. Where the earnings, capital, liquidity, operations, and reputation of the insurer are overseen  
11 collectively and where the supervision of those factors is coordinated and exercised;
- 12 3. Where legal liability for failure of general corporate governance duties would be placed.

13 (d) The review of the corporate governance annual disclosure and any requests for additional  
14 information shall be made through the lead state before seeking to obtain the information from the  
15 insurer.

16 (e) Insurers providing information substantially similar to the information required by this section in  
17 other documents provided to the commissioner, including proxy statements or other state or federal  
18 filings provided to the commissioner shall not be required to duplicate that information in the corporate  
19 governance annual disclosure act, but shall only be required to cross reference the document in which  
20 the information is included.

21 (3) CONTENTS OF CORPORATE GOVERNANCE ANNUAL DISCLOSURE. (a) The insurer or insurance holding company  
22 system shall have discretion over the responses to the corporate governance annual disclosure inquiries,  
23 provided the corporate governance annual disclosure shall contain the material information necessary

1 to permit the commissioner to gain an understanding of the insurer's or group's corporate governance  
2 structure, policies, and practices and is consistent with any regulations established by the commissioner  
3 regarding the corporate governance annual disclosure. The commissioner may request additional  
4 information deemed material and necessary to provide the commissioner with a clear understanding of  
5 the corporate governance policies and the reporting or information system or controls implementing  
6 those policies.

7 **(b)** Documentation and supporting information used to create the corporate governance annual  
8 disclosure shall be maintained and made available upon examination or upon request of the  
9 commissioner.

10 **(4)** RULEMAKING AUTHORITY. The commissioner may promulgate any rules necessary to carry out the  
11 purposes of this subchapter. Notwithstanding s. 227.24 (1) (a) and (3), the commissioner may  
12 promulgate rules under this section as emergency rules under s. 227.24 without providing evidence that  
13 promulgating a rule under this section as an emergency rule is necessary for the preservation of the  
14 public peace, health, safety, or welfare and without a finding of emergency.

15 **(5)** CONFIDENTIALITY. Documents, materials and other information filed under this section are proprietary  
16 and contain trade secrets and are subject to the same confidentiality provisions as documents, materials  
17 and other information related to own risk and solvency assessments filings as set forth in s. 622.15,  
18 except that "documents, materials, or other information related to own risk and solvency assessments"  
19 shall be read as "documents, materials, or other information related to the corporate governance  
20 annual disclosure."

21 **(6)** THIRD-PARTY CONSULTANTS. The Commissioner may retain, at the insurer's expense, third-party  
22 consultants as may be reasonably necessary to assist the commissioner in reviewing information  
23 submitted under this Section.

1 (7) Nothing in this act shall be construed to prescribe or impose corporate governance standards and  
2 internal procedures beyond that which is required under applicable state corporate law.

3 **Section 3.** Section 626.31(1)(b) is amended to read.

4 (b) *Representation.* The rating committee shall consist of an even number of members and shall total up  
5 to 12 members but not less than eight ~~10~~ members. Two members of the rating committee shall  
6 represent noninsurer, employer interests and shall be appointed by and serve at the pleasure of the  
7 governor. Of the remaining ~~8~~ members, 4 half shall be chosen by stock insurers and 4 half by mutual  
8 insurers. Both stock and mutual insurers shall be represented equally on all other committees, including  
9 the managing committee. Each member of a committee shall have one vote, with the commissioner  
10 deciding the matter in the event of a tie.

11 **Section 4.** Section 645.31(16) is created to read.

12 (16) That the insurer has corporate governance deficiencies such that the commissioner determines that  
13 the continued operation of the insurer may be hazardous to the insurer's policyholders, creditors or the  
14 general public.





State of Wisconsin  
2017 - 2018 LEGISLATURE

PI

LRB-4594

AJM:...

ane

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

JW - 10/25  
DOR - 10/26

Sav

gen

1 **AN ACT ...; relating to:** miscellaneous changes to the insurance laws, extending  
2 the time limit for emergency rule procedures, and providing an exemption from  
3 emergency rule-making procedures.

---

*Analysis by the Legislative Reference Bureau*

This is a preliminary draft. An analysis will be provided in a subsequent version of this draft.

---

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

4 ↙ SECTION 1. 601.427 of the statutes is repealed.

5 ↓ SECTION 2. 610.80 of the statutes is created to read:

6 **610.80 Corporate governance annual disclosure.** (1) DEFINITIONS. In this  
7 section:

8 (a) "Insurance holding company system" has the meaning given in s. 622.03 (2).

9 (b) "Insurer" has the meaning given in s. 622.03 (3).

1 (c) "Lead state" has the meaning given in s. 622.03 (4).<sup>✓</sup>

2 (2) DISCLOSURE REQUIREMENT. (a) ~~An insurer or insurer member of an insurance~~  
3 ~~holding company system~~ shall, <sup>of which an insurer is a member</sup> annually no later than June 1, submit to the  
4 commissioner a corporate governance annual disclosure that contains the  
5 information described in sub. (3).<sup>✓</sup> If the insurer is a member of an insurance holding  
6 company system, the insurance holding company system shall submit the disclosure  
7 to the commissioner of the lead state in accordance with the laws of the lead state.  
8 Upon the commissioner's request, the insurer shall provide a copy of the disclosure  
9 when this state is not the lead state.

10 (b) The commissioner may request additional information from an insurer or  
11 insurance holding company system that the commissioner determines is necessary  
12 for the commissioner to understand an insurer's or insurer member of an insurance  
13 holding company system's corporate governance policies and the reporting or  
14 information system or controls implementing the policies.

15 (c) With respect to an insurer member of an insurance holding company system,  
16 if the commissioner wishes to review the disclosure under par. (a) or make a request<sup>✓</sup>  
17 for additional information about the disclosure under par. (a),<sup>✓</sup> the commissioner  
18 shall request the disclosure or additional information through the lead state before  
19 seeking the information from the insurer member of the insurance holding company  
20 system.

21 (d) The insurer or insurance holding company system has discretion over  
22 responses to inquiries regarding the disclosure under this section, provided that the  
23 disclosure is consistent with regulations established by the commissioner regarding  
24 the disclosure and contains the material information necessary to permit the  
25 commissioner to gain an understanding of the insurer's or insurer member of an

1 insurance holding company system's corporate governance structure, policies, and  
2 practices.

3 (3) CONTENTS OF DISCLOSURE. The disclosure under sub. (2) (a) shall include all  
4 of the following:

5 (a) The signature of the chief executive officer or corporate secretary of the  
6 insurer or insurance holding company system attesting that, to the best of that  
7 individual's knowledge, the insurer has implemented the corporate governance  
8 practices described in the disclosure and that a copy of the disclosure was provided  
9 to the insurer's board of directors or a committee of the insurer's board of directors.

10 (b) An explanation of the level of corporate governance at which the disclosure  
11 provides its reporting, the criteria used to determine the level of reporting, and, if  
12 applicable, any change in the level of reporting from the previous disclosure. The  
13 insurer or insurance holding company system may provide information regarding  
14 corporate governance at the ultimate controlling parent, intermediate holding  
15 company, or individual legal entity level, depending upon how the insurer or  
16 insurance holding company system has structured its corporate governance. In  
17 determining at which level of reporting an insurer or insurance holding company  
18 system will make its disclosure, the insurer or insurance holding company system  
19 shall consider at which level the insurer or insurance holding company system does  
20 each of the following:

21 1. Determines risk appetite.

22 2. Collectively oversees earnings, capital, liquidity, operations, and reputation.

23 3. Coordinates and exercises supervision over earnings, capital, liquidity,  
24 operations, and reputation.

25 4. Places liability for failure to perform corporate governance duties.

1 (4) CONFIDENTIALITY. Documents, materials, or other information, including  
2 summary reports, in the possession or control of the commissioner that are obtained  
3 by, created by, or disclosed to the commissioner or any other person under this  
4 section, are confidential and privileged, are not subject to inspection or copying  
5 under s. 19.35 (1), are not subject to subpoena, and are not subject to discovery or  
6 admissible in evidence in any private civil action. The commissioner is authorized  
7 to use the documents, materials, or other information in the commissioner's  
8 regulation of the insurer or insurance holding company system but may not make the  
9 documents, materials, or other information public without the prior written consent  
10 of the insurer or insurance holding company system

11 (5) CONSULTANTS. The commissioner may retain, at the insurer's or insurer  
12 member of an insurance holding company system's expense, consultants that the  
13 commissioner determines are necessary to assist the commissioner in reviewing  
14 documents, materials, or other information submitted under this section.

15 (6) CONSTRUCTION. This section may not be read to prescribe or impose any  
16 standards or procedures with respect to corporate governance.

17 SECTION 3. 626.31 (1) (b) of the statutes is amended to read:

18 626.31 (1) (b) *Representation*. The rating committee shall consist of 10  
19 members an even number of members, up to 12 and no fewer than 8. Two members  
20 of the rating committee shall represent noninsurer, employer interests and shall be  
21 appointed by and serve at the pleasure of the governor. Of the remaining 8 members,  
22 4 half of the members shall be chosen by stock insurers and 4 half of the members  
23 shall be chosen by mutual insurers. Both stock and mutual insurers shall be  
24 represented equally on all other committees, including the managing committee.

1 Each member of a committee shall have one vote, with the commissioner deciding the  
2 matter in the event of a tie.

History: 1975 c. 148, 199: 1983 a. 189 s. 329 (31); 1989 a. 332.

3 ~~SECTION 4.~~ 645.31 (16) of the statutes is created to read:

4 645.31 (16) That the insurer has corporate governance deficiencies such that  
5 the commissioner determines that the continued operation of the insurer may be  
6 hazardous to the insurer's policyholders, creditors, or the general public.

7 **SECTION 5. Nonstatutory provisions.**

8 (1) EMERGENCY RULES CONCERNING CORPORATE GOVERNANCE DISCLOSURE. The  
9 commissioner of insurance may promulgate emergency rules under section 227.24  
10 of the statutes implementing section 610.80 of the statutes. Notwithstanding section  
11 227.24 (1) (c) and (2) of the statutes, emergency rules promulgated under this  
12 subsection remain in effect until January 1, 2019, or the date on which permanent  
13 rules take effect, whichever is sooner. Notwithstanding section 227.24 (1) (a) and (3) <sup>of the</sup> statutes  
14 the commissioner is not required to provide evidence that promulgating a rule under  
15 this subsection as an emergency rule is necessary for the preservation of the public  
16 peace, health, safety, or welfare and is not required to provide a finding of emergency  
17 for a rule promulgated under this subsection.

18

(END)

## Dodge, Tamara

---

**From:** McKean, Aaron  
**Sent:** Friday, December 15, 2017 6:44 PM  
**To:** Dodge, Tamara  
**Subject:** FW: LRB-4594  
**Attachments:** Changes to LRB-4594.docx

These are the instructions for the P2 of 4594.

You may want to look at the file for the instructions for the P1 because I did make a number of changes from that.

I'll let you know when Richard responds to my email.

Thank you!

---

**From:** Wicka, Richard B - OCI  
**Sent:** Friday, December 08, 2017 1:43 PM  
**To:** McKean, Aaron <Aaron.McKean@legis.wisconsin.gov>  
**Subject:** LRB-4594

Hi Aaron,

Attached are my comments and requested edits to LRB-4594 which you sent me about a month ago. The first two changes are new additions that were not in my original version.

I also added a substitute of the confidentiality provisions that is taken from the model law that this requirement is based. It is very similar to s. 622.15. Finally, I added back in rulemaking authority. I appreciate the non-statutory provision but want to make it clear that OCI has rulemaking authority after the initial rule is drafted. I also added an effective date for the new filing requirements.

Please let me know if you have any questions.

Thanks

Richard

## Changes to LRB-4594

- **New Section 2.**

**Section 2.** Section 601.465(1m)(d) is created to read:

(d) Biographical data relating to directors or principal officers of a corporation reported under s. 611.54.

- **New Section 3.**

**Section 3.** Section 601.465(2m)(e)-(i) are created to read:

(e) Privileged information is not subject to inspection or copying under s. 19.35 (1).

(f) Privileged information is not subject to subpoena, discovery or admissible in evidence in any private civil action.

(g) The commissioner may not be compelled to testify in any private civil action concerning privileged information.

(h) No person, while acting under the authority of the commissioner, may testify in any private civil action concerning privileged information.

(i) No waiver of the privilege shall occur as a result of the commissioner sharing such information as authorized in subsection (1m).

- 601.465(3)(e) is created to read:

(e) All information protected under 610.80(4), including the corporate governance annual disclosures and related information, which are subject only to the confidentiality provisions in 610.80(4).

- **Edit to p.3, line 10.**

to the insurer's board of directors or an appropriate committee of the insurer's board of directors.

- **Reinsert original (2)(e) after p.3, line 3:**

(e) Insurers providing information substantially similar to the information required by this section in other documents provided to the commissioner, including proxy statements or other state or federal filings provided to the commissioner shall not be required to duplicate that information in the corporate governance annual disclosure act, but shall only be required to cross reference the document in which the information is included.

- **Replace (4) Confidentiality (starting p.4, line 2.) with the following:**

**(4) CONFIDENTIALITY.** (a) Documents, materials and other information in the possession or control of the commissioner that are obtained by, created by or disclosed to the Commissioner or any other person under this section are proprietary and contain trade secrets. All such documents, material or other information shall be confidential by law and privileged, shall not be open to inspection or copying under s. 19.35(1) and shall not be subject to subpoena, to discovery or admissible in evidence in any private civil action. The commissioner is authorized to use documents, materials and other information in the furtherance of any regulatory or legal action brought as a part of the commissioner's official duties. The commissioner shall not otherwise make the documents, materials or other information public without the prior written consent of the insurer.

(b) Neither the Commissioner nor any person who received documents, materials or other information related to the corporate governance annual disclosure required under this section shall be permitted or required to testify in any private civil action regarding documents, materials or other information related to the corporate governance annual disclosure required under this section.

(c) The commissioner may, upon request, share documents, materials or other information related to the corporate governance annual disclosure required under this section with other state, federal and international financial regulatory agencies provided that the recipient agrees



in writing to maintain the confidentiality and privileged status and has verified that it has the legal authority to maintain confidentiality. The commissioner may receive documents, materials or other information related to similar corporate governance disclosures from other state, federal and international financial regulatory agencies and shall maintain as confidential or privileged any documents, materials or other information that is treated as confidential or privileged under the laws of the jurisdiction that is the source. The sharing of documents under this paragraph shall not constitute a delegation of regulatory authority and does not act as a waiver of the privilege.

(d) The commissioner may share documents, materials or other information related to the corporate governance annual disclosure required under this section with third-party contractors and the National Association of Insurance Commissioners provided that the commissioner enters into a written agreement with the third-party contractor or the National Association of Insurance Commissioners that provides for the following:

1. Procedures and protocols for maintaining the confidentiality and security of documents, materials or other information shared under this section.
2. Procedures for sharing by the National Association of Insurance Commissioners only with other state regulators in which the insurance group has domiciled insurers and who receive the information confidentially. The agreement shall provide that the recipient agrees in writing to maintain the confidentiality and privileged status of the documents, materials or other information related to the corporate governance annual disclosure required filed under this section and has verified in writing the legal authority to maintain confidentiality.
3. A provision specifying that the ownership of documents, materials or other information shared under this section remains with the commissioner and the use of the information is at the direction of the commissioner.

4. A provision that prohibits the National Association of Insurance Commissioners or third-party contractor from storing information shared pursuant to this section in a permanent database after the underlying analysis is complete.

5. A provision requiring the National Association of Insurance Commissioners or third-party contractor to provide prompt notice to the commissioner and to the insurer regarding any subpoena, request for disclosure, or request for production of information shared pursuant to this section.

6. A requirement that the National Association of Insurance Commissioners or a third-party contractor consent to intervention by an insurer in any judicial or administrative action in which the National Association of Insurance Commissioners or third-party contractor may be required to disclose confidential information about the insurer shared pursuant to this section.

- **Insert rulemaking authority and effective date after p.4, line 17 as follows:**

**(7) RULEMAKING AUTHORITY.** The commissioner may promulgate any rules necessary to carry out the purposes of this Section.

**(8) EFFECTIVE DATE.** An insurer, or the insurance holding company system of which the insurer is a member, required to file a corporate governance annual disclosure under this section shall file the first corporate governance annual disclosure 60 days after final adoption of rules implementing this section and no later than June 1 each year thereafter.

Sa ✓

1 INSERT ANALYSIS

This bill eliminates the medical malpractice insurance report, adds certain biographical information to the information that the commissioner of insurance may refuse to disclose to others, adds provisions that apply to the privilege relating to confidential information provided to the commissioner, changes the membership of the rating committee of the Wisconsin worker's compensation rating bureau, creates a corporate governance annual disclosure requirement, and adds corporate deficiencies to the list of grounds for which an insurer may be rehabilitated.

***Corporate governance annual disclosure***

The bill requires an insurer or an insurance holding company system of which an insurer is a member to annually submit to the commissioner a corporate governance annual disclosure containing information specified in the bill. If the insurer is a member of an insurance holding company system the system shall submit the disclosure to the insurance commissioner of the lead state, and the state shall provide a copy to Wisconsin's commissioner upon the commissioner's request. The bill allows the commissioner to request additional information from the insurer or insurance holding company to understand the corporate governance policies and implementation of those policies. The bill specifies how, when, and with whom documents, materials, and other information disclosed to the commissioner in conjunction with a corporate governance annual disclosure may be released, shared, or disclosed, including providing that the documents, materials, and other information is considered proprietary and contains trade secrets and is confidential and privileged. The commissioner may petition a court for an order directing rehabilitation of an insurer on one of the grounds specified in current law, and the bill adds to those grounds corporate governance deficiencies in which continued operation of the insurer may be hazardous to policyholders, creditors, or the public.

***Nondisclosure of information***

Currently the Office of the Commissioner of Insurance may refuse to disclose and may prevent others from disclosing certain information obtained by the commissioner including testimony, reports, records, and information obtained in the court of an inquiry made by the commissioner or an examination conducted by the commissioner. Under the bill, OCI may also refuse to disclose biographical information of directors or principal officers of a corporation reported, as required by current law, by a domestic stock or mutual insurance corporation.

Current law specifies the nature of the privilege surrounding the confidential information obtained by the commissioner such as specifying that the privilege may not be constructively waived and may be waived only by affirmative written and specific consent of the commissioner. Under the bill, privileged information is not subject to inspection or copying under open records law and is not subject to subpoena or discovery or admissible as evidence in a private civil action. The commissioner may not be compelled to testify concerning privileged information in a private civil action, and no person, while acting under the authority of the commissioner, is

allowed to testify concerning privileged action in a private civil action. The bill also specifies that the privilege is not waived as a result of the commissioner sharing the information as authorized under current law. Confidentiality of corporate governance annual disclosures and related information is excluded from the general nondisclosure provisions and subject only to the specific confidentiality provisions created for such disclosures and information in the bill.

✓ **Medical malpractice report**

✓ Current law requires insurers who are authorized to write medical malpractice insurance to file an annual medical malpractice insurance report with the commissioner. This bill eliminates the medical malpractice report filing requirement.

✓ **Rating bureau** <sup>es</sup>

Currently, the rating committee of the Wisconsin compensation rating bureau that establish rating plans for worker's compensation insurance consists of 10 members, two members representing employer interests, four members chosen by stock insurers, and four chosen by mutual insurers. The bill changes the total of members to an even number no fewer than 8 and no more than 12. Two members of the committee will still represent employer interests and be appointed by the governor. Of the remaining members, the bill designates that half are chosen by stock insurers and half are chosen by mutual insurers.

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

1           END INSERT ANALYSIS

2           INSERT 1-6

3           ↓ **SECTION 1.** 601.465 (1m) (d) of the statutes is created to read:

4           601.465 (1m) (d) Biographical data reported under s. 611.54 (1) relating to  
5 directors or principal officers of a corporation.

6           ↓ **SECTION 2.** 601.465 (2m) (e) to (i) of the statutes are created to read:

7           601.465 (2m) (e) Privileged information is not subject to inspection or copying  
8 under s. 19.35 (1).

9           (f) Privileged information is not subject to subpoena or discovery and is not  
10 admissible as evidence in any private civil action.

11           (g) The commissioner may not be compelled to testify concerning privileged  
12 information in any private civil action.

anal:stat:space

✓  
★  
✓  
↓

ten

1 (h) No person, while acting under the authority of the commissioner, may  
2 testify concerning privileged information in any private civil action.

3 (i) The privilege is not waived as a result of the commissioner sharing  
4 information as authorized under sub. (1m).

5 **SECTION 3.** 601.465 (3) (e) of the statutes is created to read:

6 601.465 (3) (e) All information protected under s. 610.80 (4), including the  
7 corporated governance annual disclosures and related information, which are  
8 subject only to the confidentiality provisions in s. 610.80 (4).

9 END INSERT 1-6

10 INSERT 3-5

11 (e) Insurers providing information substantially similar to the information  
12 required by this section in other documents provided to the commissioner, including  
13 proxy statements or other state or federal filings provided to the commissioner, are  
14 not required to also provide that information in the corporate governance annual  
15 disclosure but are required to reference in the corporate governance annual  
16 disclosure the document in which the information is included.

17 END INSERT 3-5

18 (e) INSERT 4-2

19 (a) All of the following apply to documents, materials, and other information  
20 in the possession or control of the commissioner that are obtained by, created by, or  
21 disclosed to the commissioner or any other person under this section:

22 1. The documents, materials, and other information are considered proprietary  
23 and contain trade secrets.

24 2. The documents, materials, and other information are confidential and  
25 privileged.

1           3. The documents, materials, and other information are not open to inspection  
2 or copying under s. 19.35 (1).

3           4. The documents, materials, and other information are not subject to subpoena  
4 or discovery and are not admissible as evidence in a civil action.

5           5. The commissioner may use the documents, materials, and other information  
6 in the furtherance of any regulatory or legal action brought as a part of the  
7 commissioner's official duties.

8           6. The commissioner may not make the documents, materials, or other  
9 information public without first obtaining written consent of the insurer.

10          (b) Neither the commissioner nor any person who received documents,  
11 materials, or other information related to the corporate governance annual  
12 disclosure required under this section may testify or be required to testify in any  
13 private civil action regarding documents, materials, or other information related to  
14 the corporate governance annual disclosure required under this section.

15          (c) Notwithstanding par. (a), the commissioner may share, upon request,  
16 documents, materials, or other information related to the corporate governance  
17 annual disclosure required under this section with other state, federal, and  
18 international financial regulatory agencies if the recipient agrees in writing to  
19 maintain the confidentiality and privileged status of the documents, materials, or  
20 other information and has verified that it has the legal authority to maintain  
21 confidentiality. The commissioner may receive documents, materials, or other  
22 information related to similar corporate governance disclosures from other state,  
23 federal, and international financial regulatory agencies and shall maintain as  
24 confidential or privileged any documents, materials, or other information that is

1 treated as confidential or privileged under the laws of the jurisdiction that is the  
2 source of the documents, materials, or other information.

3 (d) Notwithstanding par. (a), the commissioner may share documents,  
4 materials, or other information related to the corporate governance annual  
5 disclosure required under this section with 3rd-party contractors and the National  
6 Association of Insurance Commissioners if the contractor or the National  
7 Association of Insurance Commissioners enters into an agreement with the  
8 commissioner that provides for all of the following:

9 1. Procedures and protocols for maintaining the confidentiality and security of  
10 documents, materials, and other information shared under this section.

11 2. Procedures for sharing by the National Association of Insurance  
12 Commissioners only with other state regulators in which the insurance group has  
13 domiciled insurers and who receive the information confidentially. The agreement  
14 shall provide that the recipient agrees in writing to maintain the confidentiality and  
15 privileged status of the documents, materials, or other information related to the  
16 corporate governance annual disclosure required to be filed under this section and  
17 has verified in writing the legal authority to maintain confidentiality.

18 3. A provision specifying that the ownership of documents, materials, or other  
19 information shared under this section remains with the commissioner and the use  
20 of the information is at the direction of the commissioner.

21 4. A provision that prohibits the National Association of Insurance  
22 Commissioners or 3rd-party contractor from storing information shared under this  
23 paragraph in a permanent database after the underlying analysis is complete.

24 5. A provision requiring the National Association of Insurance Commissioners  
25 or 3rd-party contractor to provide prompt notice to the commissioner and to the

1 insurer regarding any subpoena, request for disclosure, or request for production of  
2 information shared under this paragraph.

3 6. A requirement that the National Association of Insurance Commissioners  
4 or the 3rd-party contractor consent to intervention by an insurer in any judicial or  
5 administrative action in which the National Association of Insurance  
6 Commissioners or the 3rd-party contractor may be required to disclose confidential  
7 information about the insurer shared under this paragraph.

8 END INSERT 4-2

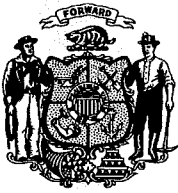
9 INSERT 4-18

10 (7) RULEMAKING. The commissioner may promulgate any rules necessary to  
11 carry out the purposes of this section.

12 (8) INITIAL FILING DEADLINE. Notwithstanding the June 1 deadline under sub.  
13 (2) (a), an insurer, or the insurance holding company system of which the insurer is  
14 a member, that is required to file a corporate governance annual disclosure under  
15 this section shall file its first corporate governance annual disclosure no later than  
16 60 days after the date the final rules implementing this section are promulgated.

17 END INSERT 4-18





State of Wisconsin  
2017 - 2018 LEGISLATURE

LRB-4594/P1  
AJM:ahc  
P2  
&TJD

In: 12/20

Due Thurs 12/21 (H)

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

sa ✓

Regen

disclosures to the commissioner of insurance and other

1 AN ACT to repeal 601.427; to amend 626.31 (1) (b); and to create 610.80 and  
2 645.31 (16) of the statutes; relating to: ~~miscellaneous~~ changes to the insurance  
3 laws, extending the time limit for emergency rule procedures, and providing an  
4 exemption from emergency rule-making procedures.

and granting rule-making authority ✓

**Analysis by the Legislative Reference Bureau**

Insert analysis

This is a preliminary draft. An analysis will be provided in a subsequent version of this draft. ✓

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

Insert 1-6

- 5 SECTION 1. 601.427 of the statutes is repealed.
- 6 SECTION 2. 610.80 of the statutes is created to read:
- 7 **610.80 Corporate governance annual disclosure.** (1) DEFINITIONS. In this
- 8 section:
- 9 (a) "Insurance holding company system" has the meaning given in s. 622.03 (2).

1 (b) "Insurer" has the meaning given in s. 622.03 (3).

2 (c) "Lead state" has the meaning given in s. 622.03 (4).

3 (2) DISCLOSURE REQUIREMENT. (a) An insurer or insurance holding company  
4 system of which an insurer is a member shall, annually no later than June 1, submit  
5 to the commissioner a corporate governance annual disclosure that contains the  
6 information described in sub. (3). If the insurer is a member of an insurance holding  
7 company system, the insurance holding company system shall submit the disclosure  
8 to the commissioner of the lead state in accordance with the laws of the lead state.  
9 Upon the commissioner's request, the insurer shall provide a copy of the disclosure  
10 when this state is not the lead state.

11 (b) The commissioner may request additional information from an insurer or  
12 insurance holding company system that the commissioner determines is necessary  
13 for the commissioner to understand an insurer's or insurer member of an insurance  
14 holding company system's corporate governance policies and the reporting or  
15 information system or controls implementing the policies.

16 (c) With respect to an insurer member of an insurance holding company system,  
17 if the commissioner wishes to review the disclosure under par. (a) or make a request  
18 for additional information about the disclosure under par. (a), the commissioner  
19 shall request the disclosure or additional information through the lead state before  
20 seeking the information from the insurer member of the insurance holding company  
21 system.

22 (d) The insurer or insurance holding company system has discretion over  
23 responses to inquiries regarding the disclosure under this section, provided that the  
24 disclosure is consistent with regulations<sup>e rules</sup> established by the commissioner regarding  
25 the disclosure and contains the material information necessary to permit the

**SECTION 2**

*Note: I changed regulations to rules. If you meant something other than rules promulgated by the commissioner, please let me know and I can alter this. TJD*

1 commissioner to gain an understanding of the insurer's or insurer member of an  
 2 insurance holding company system's corporate governance structure, policies, and  
 3 practices.

*Insert 5 3-5*

4 **(3) CONTENTS OF DISCLOSURE.** The disclosure under sub. (2) (a) shall include all  
 5 of the following:

6 (a) The signature of the chief executive officer or corporate secretary of the  
 7 insurer or insurance holding company system attesting that, to the best of that  
 8 individual's knowledge, the insurer has implemented the corporate governance  
 9 practices described in the disclosure and that a copy of the disclosure was provided  
 10 to the insurer's board of directors or *an appropriate* committee of the insurer's board of directors.

11 (b) An explanation of the level of corporate governance at which the disclosure  
 12 provides its reporting, the criteria used to determine the level of reporting, and, if  
 13 applicable, any change in the level of reporting from the previous disclosure. The  
 14 insurer or insurance holding company system may provide information regarding  
 15 corporate governance at the ultimate controlling parent, intermediate holding  
 16 company, or individual legal entity level, depending upon how the insurer or  
 17 insurance holding company system has structured its corporate governance. In  
 18 determining at which level of reporting an insurer or insurance holding company  
 19 system will make its disclosure, the insurer or insurance holding company system  
 20 shall consider at which level the insurer or insurance holding company system does  
 21 each of the following:

- 22 1. Determines risk appetite.
- 23 2. Collectively oversees earnings, capital, liquidity, operations, and reputation.
- 24 3. Coordinates and exercises supervision over earnings, capital, liquidity,
- 25 operations, and reputation.

Insert 4-2

1 4. Places liability for failure to perform corporate governance duties.

2 (4) CONFIDENTIALITY. Documents, materials, or other information, including  
3 summary reports, in the possession or control of the commissioner that are obtained  
4 by, created by, or disclosed to the commissioner or any other person under this  
5 section, are confidential and privileged, are not subject to inspection or copying  
6 under s. 19.35 (1), are not subject to subpoena, and are not subject to discovery or  
7 admissible in evidence in any private civil action. The commissioner is authorized  
8 to use the documents, materials, or other information in the commissioner's  
9 regulation of the insurer or insurance holding company system but may not make the  
10 documents, materials, or other information public without the prior written consent  
11 of the insurer or insurance holding company system.

12 (5) CONSULTANTS. The commissioner may retain, at the insurer's or insurer  
13 member of an insurance holding company system's expense, consultants that the  
14 commissioner determines are necessary to assist the commissioner in reviewing  
15 documents, materials, or other information submitted under this section.

16 (6) CONSTRUCTION. This section may not be read to prescribe or impose any  
17 standards or procedures with respect to corporate governance.

18 **SECTION 3.** 626.31 (1) (b) of the statutes is amended to read:

19 626.31 (1) (b) *Representation.* The rating committee shall consist of 10  
20 members an even number of members, up to 12 and no fewer than 8. Two members  
21 of the rating committee shall represent noninsurer, employer interests and shall be  
22 appointed by and serve at the pleasure of the governor. Of the remaining 8 members,  
23 4 half of the members shall be chosen by stock insurers and 4 half of the members  
24 shall be chosen by mutual insurers. Both stock and mutual insurers shall be  
25 represented equally on all other committees, including the managing committee.

Insert  
4-18

1 Each member of a committee shall have one vote, with the commissioner deciding the  
2 matter in the event of a tie.

3 **SECTION 4.** 645.31 (16) of the statutes is created to read:

4 645.31 (16) That the insurer has corporate governance deficiencies such that  
5 the commissioner determines that the continued operation of the insurer may be  
6 hazardous to the insurer's policyholders, creditors, or the general public.

7 **SECTION 5. Nonstatutory provisions.**

8 (1) EMERGENCY RULES CONCERNING CORPORATE GOVERNANCE DISCLOSURE. The  
9 commissioner of insurance may promulgate emergency rules under section 227.24  
10 of the statutes implementing section 610.80 of the statutes. Notwithstanding section  
11 227.24 (1) (c) and (2) of the statutes, emergency rules promulgated under this  
12 subsection remain in effect until January 1, 2019, or the date on which permanent  
13 rules take effect, whichever is sooner. Notwithstanding section 227.24 (1) (a) and (3)  
14 of the statutes, the commissioner is not required to provide evidence that  
15 promulgating a rule under this subsection as an emergency rule is necessary for the  
16 preservation of the public peace, health, safety, or welfare and is not required to  
17 provide a finding of emergency for a rule promulgated under this subsection.

18

(END)

## Dodge, Tamara

---

**From:** McKean, Aaron  
**Sent:** Wednesday, January 03, 2018 7:23 AM  
**To:** Dodge, Tamara  
**Subject:** FW: LRB-4594

Hey Tami--

Looks like he just has one change to make, below. Do you mind taking this? Otherwise, I'll be back in the office on Friday.

Cheers--Aaron

---

**From:** Wicka, Richard B - OCI  
**Sent:** Tuesday, January 02, 2018 2:54 PM  
**To:** McKean, Aaron  
**Subject:** RE: LRB-4594

Hi Aaron,

Hope you enjoyed your vacation. I received the updated tech bill from Tami and it looks good. I had just one small final change. At the end of page 7, line 24 – 610.80(4)(c), this final sentence should be included “The sharing of documents under this paragraph shall not constitute a delegation of regulatory authority and does not act as a waiver of privilege.”

Let me know if I should send this to Tami instead.

Thanks,

Richard

---

**From:** McKean, Aaron - LEGIS [mailto:aaron.mckean@legis.wisconsin.gov]  
**Sent:** Monday, December 18, 2017 9:58 AM  
**To:** Wicka, Richard B - OCI  
**Subject:** RE: LRB-4594

Hi Richard--

No worries - thanks for letting me know. We'll make sure we get it over to you either this week or early next, and it's no trouble. Enjoy your holidays!

Cheers--Aaron

---

**From:** Wicka, Richard B - OCI  
**Sent:** Monday, December 18, 2017 9:25 AM  
**To:** McKean, Aaron  
**Subject:** RE: LRB-4594

Hi Aaron,

I had heard that the assembly insurance committee wanted to take this up in the first week of January so it would be helpful if we could get the draft back before the end of the year. Hopefully it won't be too much trouble, I know you all are busy at the end of the year.

Enjoy you time off.

Richard

---

**From:** McKean, Aaron - LEGIS [<mailto:aaron.mckean@legis.wisconsin.gov>]  
**Sent:** Friday, December 15, 2017 6:42 PM  
**To:** Wicka, Richard B - OCI  
**Subject:** RE: LRB-4594

Hi Richard—

I just wanted to let you know that I'm taking a planned vacation that keeps me out of the office for the next couple weeks. I have been working on the draft, but have not had a chance to finish it with your changes.

Do you want this draft back to you before the end of the year? If so, I'll make sure Tami finishes it up. If you're otherwise okay with after the first of the year, I won't ask her to do that. We're happy either way, so just let me know what your preference is.

Thanks!

Cheers—Aaron

---

**From:** Wicka, Richard B - OCI  
**Sent:** Friday, December 08, 2017 1:43 PM  
**To:** McKean, Aaron <[Aaron.McKean@legis.wisconsin.gov](mailto:Aaron.McKean@legis.wisconsin.gov)>  
**Subject:** LRB-4594

Hi Aaron,

Attached are my comments and requested edits to LRB-4594 which you sent me about a month ago. The first two changes are new additions that were not in my original version.

I also added a substitute of the confidentiality provisions that is taken from the model law that this requirement is based. It is very similar to s. 622.15. Finally, I added back in rulemaking authority. I appreciate the non-statutory provision but want to make it clear that OCI has rulemaking authority after the initial rule is drafted. I also added an effective date for the new filing requirements.

Please let me know if you have any questions.

Thanks

Richard

## Dodge, Tamara

---

**From:** Dodge, Tamara  
**Sent:** Wednesday, January 03, 2018 7:39 AM  
**To:** Wicka, Richard B - OCI  
**Subject:** FW: LRB-4594

Richard,

Aaron passed along your request so I'll just get this change to you quick.

Tami

**Tamara J. Dodge**  
Senior Legislative Attorney  
Wisconsin Legislative Reference Bureau  
P.O. Box 2037  
Madison, WI 53701-2037  
(608) 267 - 7380  
tamara.dodge@legis.wisconsin.gov

---

**From:** McKean, Aaron  
**Sent:** Wednesday, January 03, 2018 7:23 AM  
**To:** Dodge, Tamara <Tamara.Dodge@legis.wisconsin.gov>  
**Subject:** FW: LRB-4594

Hey Tami--  
Looks like he just has one change to make, below. Do you mind taking this? Otherwise, I'll be back in the office on Friday.

Cheers--Aaron

---

**From:** Wicka, Richard B - OCI  
**Sent:** Tuesday, January 02, 2018 2:54 PM  
**To:** McKean, Aaron  
**Subject:** RE: LRB-4594

Hi Aaron,

Hope you enjoyed your vacation. I received the updated tech bill from Tami and it looks good. I had just one small final change. At the end of page 7, line 24 – 610.80(4)(c), this final sentence should be included “The sharing of documents under this paragraph shall not constitute a delegation of regulatory authority and does not act as a waiver of privilege.”

Let me know if I should send this to Tami instead.

Thanks,

Richard

---

**From:** McKean, Aaron - LEGIS [<mailto:aaron.mckean@legis.wisconsin.gov>]  
**Sent:** Monday, December 18, 2017 9:58 AM  
**To:** Wicka, Richard B - OCI  
**Subject:** RE: LRB-4594



Hi Richard--

No worries - thanks for letting me know. We'll make sure we get it over to you either this week or early next, and it's no trouble. Enjoy your holidays!

Cheers--Aaron

---

**From:** Wicka, Richard B - OCI  
**Sent:** Monday, December 18, 2017 9:25 AM  
**To:** McKean, Aaron  
**Subject:** RE: LRB-4594

Hi Aaron,

I had heard that the assembly insurance committee wanted to take this up in the first week of January so it would be helpful if we could get the draft back before the end of the year. Hopefully it won't be too much trouble, I know you all are busy at the end of the year.

Enjoy you time off.

Richard

---

**From:** McKean, Aaron - LEGIS [<mailto:aaron.mckean@legis.wisconsin.gov>]  
**Sent:** Friday, December 15, 2017 6:42 PM  
**To:** Wicka, Richard B - OCI  
**Subject:** RE: LRB-4594

Hi Richard—

I just wanted to let you know that I'm taking a planned vacation that keeps me out of the office for the next couple weeks. I have been working on the draft, but have not had a chance to finish it with your changes.

Do you want this draft back to you before the end of the year? If so, I'll make sure Tami finishes it up. If you're otherwise okay with after the first of the year, I won't ask her to do that. We're happy either way, so just let me know what your preference is.

Thanks!

Cheers—Aaron

---

**From:** Wicka, Richard B - OCI  
**Sent:** Friday, December 08, 2017 1:43 PM  
**To:** McKean, Aaron <[Aaron.McKean@legis.wisconsin.gov](mailto:Aaron.McKean@legis.wisconsin.gov)>  
**Subject:** LRB-4594

Hi Aaron,

Attached are my comments and requested edits to LRB-4594 which you sent me about a month ago. The first two changes are new additions that were not in my original version.

I also added a substitute of the confidentiality provisions that is taken from the model law that this requirement is based. It is very similar to s. 622.15. Finally, I added back in rulemaking authority. I appreciate the non-statutory provision but want to make it clear that OCI has rulemaking authority after the initial rule is drafted. I also added an effective date for the new filing requirements.

Please let me know if you have any questions.

Thanks

Richard



State of Wisconsin  
2017 - 2018 LEGISLATURE

LRB-4594/P2  
AJM&TJD:ahe P3

In: 113

Due Today

(H)

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

sa ✓

1 **AN ACT to repeal** 601.427; **to amend** 626.31 (1) (b); and **to create** 601.465 (1m)  
2 (d), 601.465 (2m) (e) to (i), 601.465 (3) (e), 610.80 and 645.31 (16) of the statutes;  
3 **relating to:** disclosures to the commissioner of insurance and other changes  
4 to the insurance laws, extending the time limit for emergency rule procedures,  
5 providing an exemption from emergency rule-making procedures, and  
6 granting rule-making authority.

---

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

This bill eliminates the medical malpractice insurance report, adds certain biographical information to the information that the commissioner of insurance may refuse to disclose to others, adds provisions that apply to the privilege relating to confidential information provided to the commissioner, changes the membership of the rating committee of the Wisconsin worker's compensation rating bureau, creates a corporate governance annual disclosure requirement, and adds corporate deficiencies to the list of grounds for which an insurer may be rehabilitated.

***Corporate governance annual disclosure***

The bill requires an insurer or an insurance holding company system of which an insurer is a member to annually submit to the commissioner a corporate governance annual disclosure containing information specified in the bill. If the insurer is a member of an insurance holding company system the system shall submit the disclosure to the insurance commissioner of the lead state, and the state

shall provide a copy to Wisconsin's commissioner upon the commissioner's request. The bill allows the commissioner to request additional information from the insurer or insurance holding company system to understand the corporate governance policies and implementation of those policies. The bill specifies how, when, and with whom documents, materials, and other information disclosed to the commissioner in conjunction with a corporate governance annual disclosure may be released, shared, or disclosed, including providing that the documents, materials, and other information is considered proprietary and contains trade secrets and is confidential and privileged. The commissioner may petition a court for an order directing rehabilitation of an insurer on one of the grounds specified in current law, and the bill adds to those grounds corporate governance deficiencies in which continued operation of the insurer may be hazardous to policyholders, creditors, or the public.

### ***Nondisclosure of information***

Currently the Office of the Commissioner of Insurance may refuse to disclose and may prevent others from disclosing certain information obtained by the commissioner including testimony, reports, records, and information obtained in the court of an inquiry made by the commissioner or an examination conducted by the commissioner. Under the bill, OCI may also refuse to disclose biographical information of directors or principal officers of a corporation reported, as required by current law, by a domestic stock or mutual insurance corporation.

Current law specifies the nature of the privilege surrounding the confidential information obtained by the commissioner such as specifying that the privilege may not be constructively waived and may be waived only by affirmative written and specific consent of the commissioner. Under the bill, privileged information is not subject to inspection or copying under open records law and is not subject to subpoena or discovery or admissible as evidence in a private civil action. The commissioner may not be compelled to testify concerning privileged information in a private civil action, and no person, while acting under the authority of the commissioner, is allowed to testify concerning privileged action in a private civil action. The bill also specifies that the privilege is not waived as a result of the commissioner sharing the information as authorized under current law. Confidentiality of corporate governance annual disclosures and related information is excluded from the general nondisclosure provisions and subject only to the specific confidentiality provisions created for such disclosures and information in the bill.

### ***Medical malpractice report***

Current law requires insurers who are authorized to write medical malpractice insurance to file an annual medical malpractice insurance report with the commissioner. This bill eliminates the medical malpractice report filing requirement.

### ***Rating bureau***

Currently, the rating committee of the Wisconsin Compensation Rating Bureau that establishes rating plans for worker's compensation insurance consists of ten members: two members representing employer interests, four members chosen by stock insurers, and four chosen by mutual insurers. The bill changes the total of members to an even number no fewer than 8 and no more than 12. Two members

of the committee will still represent employer interests and be appointed by the governor. Of the remaining members, the bill designates that half are chosen by stock insurers and half are chosen by mutual insurers.

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

---

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

1           **SECTION 1.** 601.427 of the statutes is repealed.

2           **SECTION 2.** 601.465 (1m) (d) of the statutes is created to read:

3           601.465 (1m) (d) Biographical data reported under s. 611.54 (1) relating to  
4 directors or principal officers of a corporation.

5           **SECTION 3.** 601.465 (2m) (e) to (i) of the statutes are created to read:

6           601.465 (2m) (e) Privileged information is not subject to inspection or copying  
7 under s. 19.35 (1).

8           (f) Privileged information is not subject to subpoena or discovery and is not  
9 admissible as evidence in any private civil action.

10          (g) The commissioner may not be compelled to testify concerning privileged  
11 information in any private civil action.

12          (h) No person, while acting under the authority of the commissioner, may  
13 testify concerning privileged information in any private civil action.

14          (i) The privilege is not waived as a result of the commissioner sharing  
15 information as authorized under sub. (1m).

16          **SECTION 4.** 601.465 (3) (e) of the statutes is created to read:

17          601.465 (3) (e) All information protected under s. 610.80 (4), including the  
18 incorporated governance annual disclosures and related information, which are  
19 subject only to the confidentiality provisions in s. 610.80 (4).

1           **SECTION 5.** 610.80 of the statutes is created to read:

2           **610.80 Corporate governance annual disclosure. (1) DEFINITIONS.** In this  
3 section:

4           (a) “Insurance holding company system” has the meaning given in s. 622.03 (2).

5           (b) “Insurer” has the meaning given in s. 622.03 (3).

6           (c) “Lead state” has the meaning given in s. 622.03 (4).

7           **(2) DISCLOSURE REQUIREMENT.** (a) An insurer or insurance holding company  
8 system of which an insurer is a member shall, annually no later than June 1, submit  
9 to the commissioner a corporate governance annual disclosure that contains the  
10 information described in sub. (3). If the insurer is a member of an insurance holding  
11 company system, the insurance holding company system shall submit the disclosure  
12 to the commissioner of the lead state in accordance with the laws of the lead state.  
13 Upon the commissioner’s request, the insurer shall provide a copy of the disclosure  
14 when this state is not the lead state.

15           (b) The commissioner may request additional information from an insurer or  
16 insurance holding company system that the commissioner determines is necessary  
17 for the commissioner to understand an insurer’s or insurer member of an insurance  
18 holding company system’s corporate governance policies and the reporting or  
19 information system or controls implementing the policies.

20           (c) With respect to an insurer member of an insurance holding company system,  
21 if the commissioner wishes to review the disclosure under par. (a) or make a request  
22 for additional information about the disclosure under par. (a), the commissioner  
23 shall request the disclosure or additional information through the lead state before  
24 seeking the information from the insurer member of the insurance holding company  
25 system.

1 (d) The insurer or insurance holding company system has discretion over  
2 responses to inquiries regarding the disclosure under this section, provided that the  
3 disclosure is consistent with rules established by the commissioner regarding the  
4 disclosure and contains the material information necessary to permit the  
5 commissioner to gain an understanding of the insurer's or insurer member of an  
6 insurance holding company system's corporate governance structure, policies, and  
7 practices.

\*\*\*NOTE: I changed regulations to rules. If you meant something other than rules promulgated by the commissioner, please let me know and I can alter this. TJD

8 (e) Insurers providing information substantially similar to the information  
9 required by this section in other documents provided to the commissioner, including  
10 proxy statements or other state or federal filings provided to the commissioner, are  
11 not required to also provide that information in the corporate governance annual  
12 disclosure but are required to reference in the corporate governance annual  
13 disclosure the document in which the information is included.

14 **(3) CONTENTS OF DISCLOSURE.** The disclosure under sub. (2) (a) shall include all  
15 of the following:

16 (a) The signature of the chief executive officer or corporate secretary of the  
17 insurer or insurance holding company system attesting that, to the best of that  
18 individual's knowledge, the insurer has implemented the corporate governance  
19 practices described in the disclosure and that a copy of the disclosure was provided  
20 to the insurer's board of directors or an appropriate committee of the insurer's board  
21 of directors.

22 (b) An explanation of the level of corporate governance at which the disclosure  
23 provides its reporting, the criteria used to determine the level of reporting, and, if

**SECTION 5**

1 applicable, any change in the level of reporting from the previous disclosure. The  
2 insurer or insurance holding company system may provide information regarding  
3 corporate governance at the ultimate controlling parent, intermediate holding  
4 company, or individual legal entity level, depending upon how the insurer or  
5 insurance holding company system has structured its corporate governance. In  
6 determining at which level of reporting an insurer or insurance holding company  
7 system will make its disclosure, the insurer or insurance holding company system  
8 shall consider at which level the insurer or insurance holding company system does  
9 each of the following:

10 1. Determines risk appetite.

11 2. Collectively oversees earnings, capital, liquidity, operations, and reputation.

12 3. Coordinates and exercises supervision over earnings, capital, liquidity,  
13 operations, and reputation.

14 4. Places liability for failure to perform corporate governance duties.

15 **(4) CONFIDENTIALITY.** (a) All of the following apply to documents, materials, and  
16 other information in the possession or control of the commissioner that are obtained  
17 by, created by, or disclosed to the commissioner or any other person under this  
18 section:

19 1. The documents, materials, and other information are considered proprietary  
20 and contain trade secrets.

21 2. The documents, materials, and other information are confidential and  
22 privileged.

23 3. The documents, materials, and other information are not open to inspection  
24 or copying under s. 19.35 (1).



1           4. The documents, materials, and other information are not subject to subpoena  
2 or discovery and are not admissible as evidence in a civil action.

3           5. The commissioner may use the documents, materials, and other information  
4 in the furtherance of any regulatory or legal action brought as a part of the  
5 commissioner's official duties.

6           6. The commissioner may not make the documents, materials, or other  
7 information public without first obtaining written consent of the insurer.

8           (b) Neither the commissioner nor any person who received documents,  
9 materials, or other information related to the corporate governance annual  
10 disclosure required under this section may testify or be required to testify in any  
11 private civil action regarding documents, materials, or other information related to  
12 the corporate governance annual disclosure required under this section.

13           (c) Notwithstanding par. (a), the commissioner may share, upon request,  
14 documents, materials, or other information related to the corporate governance  
15 annual disclosure required under this section with other state, federal, and  
16 international financial regulatory agencies if the recipient agrees in writing to  
17 maintain the confidentiality and privileged status of the documents, materials, or  
18 other information and has verified that it has the legal authority to maintain  
19 confidentiality. The commissioner may receive documents, materials, or other  
20 information related to similar corporate governance disclosures from other state,  
21 federal, and international financial regulatory agencies and shall maintain as  
22 confidential or privileged any documents, materials, or other information that is  
23 treated as confidential or privileged under the laws of the jurisdiction that is the  
24 source of the documents, materials, or other information.

*The sharing of documents under this paragraph does not constitute a delegation of regulatory authority and does not act as a waiver of privilege.*

1 (d) Notwithstanding par. (a), the commissioner may share documents,  
2 materials, or other information related to the corporate governance annual  
3 disclosure required under this section with 3rd-party contractors and the National  
4 Association of Insurance Commissioners if the contractor or the National  
5 Association of Insurance Commissioners enters into an agreement with the  
6 commissioner that provides for all of the following:

7 1. Procedures and protocols for maintaining the confidentiality and security of  
8 documents, materials, and other information shared under this section.

9 2. Procedures for sharing by the National Association of Insurance  
10 Commissioners only with other state regulators in which the insurance group has  
11 domiciled insurers and who receive the information confidentially. The agreement  
12 shall provide that the recipient agrees in writing to maintain the confidentiality and  
13 privileged status of the documents, materials, or other information related to the  
14 corporate governance annual disclosure required to be filed under this section and  
15 has verified in writing the legal authority to maintain confidentiality.

16 3. A provision specifying that the ownership of documents, materials, or other  
17 information shared under this section remains with the commissioner and the use  
18 of the information is at the direction of the commissioner.

19 4. A provision that prohibits the National Association of Insurance  
20 Commissioners or 3rd-party contractor from storing information shared under this  
21 paragraph in a permanent database after the underlying analysis is complete.

22 5. A provision requiring the National Association of Insurance Commissioners  
23 or 3rd-party contractor to provide prompt notice to the commissioner and to the  
24 insurer regarding any subpoena, request for disclosure, or request for production of  
25 information shared under this paragraph.

1           6. A requirement that the National Association of Insurance Commissioners  
2 or the 3rd-party contractor consent to intervention by an insurer in any judicial or  
3 administrative action in which the National Association of Insurance  
4 Commissioners or the 3rd-party contractor may be required to disclose confidential  
5 information about the insurer shared under this paragraph.

6           **(5) CONSULTANTS.** The commissioner may retain, at the insurer's or insurer  
7 member of an insurance holding company system's expense, consultants that the  
8 commissioner determines are necessary to assist the commissioner in reviewing  
9 documents, materials, or other information submitted under this section.

10          **(6) CONSTRUCTION.** This section may not be read to prescribe or impose any  
11 standards or procedures with respect to corporate governance.

12          **(7) RULE MAKING.** The commissioner may promulgate any rules necessary to  
13 carry out the purposes of this section.

14          **(8) INITIAL FILING DEADLINE.** Notwithstanding the June 1 deadline under sub.  
15 (2) (a), an insurer, or the insurance holding company system of which the insurer is  
16 a member, that is required to file a corporate governance annual disclosure under  
17 this section shall file its first corporate governance annual disclosure no later than  
18 60 days after the date the final rules implementing this section are promulgated.

19          **SECTION 6.** 626.31 (1) (b) of the statutes is amended to read:

20          626.31 (1) (b) *Representation.* The rating committee shall consist of 10  
21 members an even number of members, up to 12 and no fewer than 8. Two members  
22 of the rating committee shall represent noninsurer, employer interests and shall be  
23 appointed by and serve at the pleasure of the governor. Of the remaining 8 members,  
24 4 half of the members shall be chosen by stock insurers and 4 half of the members  
25 shall be chosen by mutual insurers. Both stock and mutual insurers shall be

1 represented equally on all other committees, including the managing committee.  
2 Each member of a committee shall have one vote, with the commissioner deciding the  
3 matter in the event of a tie.

4 **SECTION 7.** 645.31 (16) of the statutes is created to read:

5 **645.31 (16)** That the insurer has corporate governance deficiencies such that  
6 the commissioner determines that the continued operation of the insurer may be  
7 hazardous to the insurer's policyholders, creditors, or the general public.

8 **SECTION 8. Nonstatutory provisions.**

9 (1) **EMERGENCY RULES CONCERNING CORPORATE GOVERNANCE DISCLOSURE.** The  
10 commissioner of insurance may promulgate emergency rules under section 227.24  
11 of the statutes implementing section 610.80 of the statutes. Notwithstanding section  
12 227.24 (1) (c) and (2) of the statutes, emergency rules promulgated under this  
13 subsection remain in effect until January 1, 2019, or the date on which permanent  
14 rules take effect, whichever is sooner. Notwithstanding section 227.24 (1) (a) and (3)  
15 of the statutes, the commissioner is not required to provide evidence that  
16 promulgating a rule under this subsection as an emergency rule is necessary for the  
17 preservation of the public peace, health, safety, or welfare and is not required to  
18 provide a finding of emergency for a rule promulgated under this subsection.

19 (END)



State of Wisconsin  
2017 - 2018 LEGISLATURE

LRB-4594/P3  
AJM&TJD:ahc

1

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

JACKET  
FOR  
ASSEMBLY  
(DUPLICATIONS)

1 **AN ACT to repeal** 601.427; **to amend** 626.31 (1) (b); and **to create** 601.465 (1m)  
2 (d), 601.465 (2m) (e) to (i), 601.465 (3) (e), 610.80 and 645.31 (16) of the statutes;  
3 **relating to:** disclosures to the commissioner of insurance and other changes  
4 to the insurance laws, extending the time limit for emergency rule procedures,  
5 providing an exemption from emergency rule-making procedures, and  
6 granting rule-making authority.

---

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

This bill eliminates the medical malpractice insurance report, adds certain biographical information to the information that the commissioner of insurance may refuse to disclose to others, adds provisions that apply to the privilege relating to confidential information provided to the commissioner, changes the membership of the rating committee of the Wisconsin worker's compensation rating bureau, creates a corporate governance annual disclosure requirement, and adds corporate deficiencies to the list of grounds for which an insurer may be rehabilitated.

***Corporate governance annual disclosure***

The bill requires an insurer or an insurance holding company system of which an insurer is a member to annually submit to the commissioner a corporate governance annual disclosure containing information specified in the bill. If the insurer is a member of an insurance holding company system the system shall submit the disclosure to the insurance commissioner of the lead state, and the state

1 represented equally on all other committees, including the managing committee.  
2 Each member of a committee shall have one vote, with the commissioner deciding the  
3 matter in the event of a tie.

4 **SECTION 7.** 645.31 (16) of the statutes is created to read:

5 645.31 (16) That the insurer has corporate governance deficiencies such that  
6 the commissioner determines that the continued operation of the insurer may be  
7 hazardous to the insurer's policyholders, creditors, or the general public.

8 **SECTION 8. Nonstatutory provisions.**

9 (1) EMERGENCY RULES CONCERNING CORPORATE GOVERNANCE DISCLOSURE. The  
10 commissioner of insurance may promulgate emergency rules under section 227.24  
11 of the statutes implementing section 610.80 of the statutes. Notwithstanding section  
12 227.24 (1) (c) and (2) of the statutes, emergency rules promulgated under this  
13 subsection remain in effect until January 1, 2019, or the date on which permanent  
14 rules take effect, whichever is sooner. Notwithstanding section 227.24 (1) (a) and (3)  
15 of the statutes, the commissioner is not required to provide evidence that  
16 promulgating a rule under this subsection as an emergency rule is necessary for the  
17 preservation of the public peace, health, safety, or welfare and is not required to  
18 provide a finding of emergency for a rule promulgated under this subsection.

19

(END)