

Publication Date: September 9, 2009
Effective Dates: November 1, 2009 through March 30, 2010

**EMERGENCY ORDER OF THE OFFICE OF THE COMMISSIONER OF INSURANCE REPEALING,
AMENDING AND CREATING A RULE**

To repeal Ins 6.77(3)(ag); 6.77(4)(c);

To amend Ins 6.77(1) & (2); 6.77(4)(a); 6.77(4)(b); 6.77(6);

To create Ins 6.77(4)(am); , Wis. Adm. Code,

Relating to exempting commercial umbrella and commercial liability policies covering only hired and non-owned autos from having to offer or include uninsured and underinsured motorist coverage.

FINDING OF EMERGENCY

The Commissioner of Insurance finds that an emergency exists and that the attached rule is necessary for the immediate preservation of the public peace, health, safety, or welfare. Facts constituting the emergency are as follows:

Act 28 (2009) modified the requirements for auto insurance in Wisconsin. Most of these new provisions go into effect on November 1, 2009. These modifications did not specifically address the issue of insurers who write commercial liability insurance and commercial umbrella policies which insure only hired and non-owned automobiles (“HNO”) under the policy but do not insure any automobiles owned by the insured.

If these new Act 28 requirements apply to commercial liability insurance and commercial umbrella policies which insure only hired and non-owned automobiles (“HNO”) under the policy, this creates a significant problem. Some of these insurers do not have authority to write auto insurance which is needed to write uninsured (“UM”) and underinsured coverage (“UIM”). Other insurers offering the commercial umbrella and commercial liability HNO have not ever written UM/UIM coverages because the current rules exempt them. Insurers have also stated that obtaining reinsurance for this is a problem.

This issue was addressed in 1997 when an emergency rule was promulgated and modifications to Ins 6.77 were enacted in response to various court cases. In that process, commercial insurers who wrote liability policies that covered only HNO were exempted from the requirement to offer or include UM/UIM coverage. This emergency rule would continue this exemption so that the market for commercial liability insurance and commercial umbrella policies is not disrupted.

ANALYSIS PREPARED BY THE OFFICE OF THE COMMISSIONER OF INSURANCE (OCI)

1. Statutes interpreted:

ss. 600.01, 628.34 (12) and 632.32, Stats.

2. Statutory authority:

ss. 601.41 (3), 601.42, 628.34 (12) and 631.01 (5), Stats.

3. Explanation of OCI’s authority to promulgate the proposed rule under these statutes:

Section 631.05, Stats, allows the Commissioner to “exempt any class of insurance contract or insurer from any or all of the provisions of this chapter and ch. 632 if the interests of Wisconsin insureds or creditors or of the public of this state do not require such regulation.” These types of policies have never offered UM/UIM or MedPay coverage and thus this would continue the status quo. The exemption is required so that the market for commercial liability insurance and commercial umbrella policies is not disrupted. The commissioner has previously exercised this authority in adopting and amending Ins 6.77, Wis. Admin. Code.

4. Related statutes or rules:

Ins 6.77, Wisc. Admin. Code

5. The plain language analysis and summary of the proposed rule:

This rule would exempt commercial liability insurance and commercial umbrella policies which cover only HNO from the requirement to offer or include UM/UIM coverages. This would continue the current regulatory requirements for these policies.

6. Summary of and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule:

None

7. Comparison of similar rules in adjacent states as found by OCI:

Illinois: 215 ILCS 5/143a In *Hartbarger v. Country Mut. Ins. Co.*, 107 Ill. App. 3d 391, it was found that this section was enacted to insure a minimum amount of uninsured motorist protection, but did not give the authority to rewrite unambiguous provisions of an umbrella policy in order to expand the maximum coverage afforded plaintiff.

Iowa: Iowa Code § 321A.21 Primary insurance is purchased to be the first tier of insurance coverage while an umbrella policy is intended to cover only catastrophic losses that exceed the insured's required primary insurance limit. "Umbrella" policies are not included under Iowa Code § 321A.21, the financial responsibility statute. *Jalas v. State Farm Fire & Cas. Co.*, 505 N.W.2d 811, 1993 Iowa Sup. LEXIS 211 (Iowa 1993).

Michigan: Michigan is a no-fault state and thus is not comparable to Wisconsin.

Minnesota: Minnesota is a no-fault state and thus is not comparable to Wisconsin.

8. A summary of the factual data and analytical methodologies that OCI used in support of the proposed rule and how any related findings support the regulatory approach chosen for the proposed rule:

The rule continues the status quo.

9. Any analysis and supporting documentation that OCI used in support of OCI's determination of the rule's effect on small businesses under s. 227.114:

The change will continue the existing practice used by insurers issuing commercial umbrella and commercial liability policies covering only HNO. As such, it will have no impact. Small businesses may not be able to obtain general liability insurance or be required on short notice to have to find another carrier for their business insurance.

10. See the attached Private Sector Fiscal Analysis.

These changes will not have a significant fiscal effect on the private sector.

11. A description of the Effect on Small Business:

This rule will have little or no effect on small businesses. The lack of this change would likely disrupt small business insurance and thus their operation.

12. Agency contact person:

A copy of the full text of the proposed rule changes, analysis and fiscal estimate may be obtained from the Web site at: <http://oci.wi.gov/ocirules.htm>

or by contacting Inger Williams, OCI Services Section, at:

Phone: (608) 264-8110

Email: inger.williams@wisconsin.gov

Address: 125 South Webster St – 2nd Floor, Madison WI 53703-3474

Mail: PO Box 7873, Madison, WI 53707-7873

13. Place where comments are to be submitted and deadline for submission:

The deadline for submitting comments is 4:00 p.m. on the 14th day after the date for the hearing stated in the Notice of Hearing.

Mailing address:

Robert Luck

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The proposed rule changes are:

SECTION 1. Ins 6.77(1) & (2) are amended to read:

Ins 6.77(1) PURPOSE. This section is intended to exempt certain classes of insurance contracts from ss. 631.36 (2) (a), (b) and (c) and 632.32 (4) and ~~(4m)~~ (4r), Stats. This section implements the provisions of ss. 631.01 (5) and 631.36 (1) (c), Stats.

(2) SCOPE. This section applies to all insurers authorized to write umbrella or excess liability insurance policies in Wisconsin, to all insurers authorized to write commercial liability ~~and commercial automobile liability~~ policies in Wisconsin and to all insurers authorized to write aircraft insurance policies in Wisconsin.

SECTION 2. Ins 6.77(3)(ag) is repealed.

SECTION 3. Ins 6.77(4)(a) is amended to read:

(4) EXEMPTION. (a) Any umbrella liability or excess liability insurance policy is exempt from the requirements of ~~ss. s.~~ 631.36(2)(a) ~~and 632.32(4)~~, Stats.

SECTION 4. Ins 6.77(4)(am) is created to read:

Ins 6.77(4)(am) Any umbrella liability or excess liability insurance policy issued or renewed on or after November 1, 2009 is exempt from the requirements of s. 632.32(4)(a) and (4r), Stats., if the coverage it provides for the insured's liability arising out of the maintenance or use of a motor vehicle is limited to coverage for non-owned motor vehicles.

SECTION 5. Ins 6.77(4)(b) is amended to read:

Ins 6.77(4)(b) Any commercial liability policy issued or renewed on or after July 1, 2007, is exempt from the requirements of s. 632.32 (4), Stats., (as amended by 2009 Wisconsin Act 28) if its coverage of the insured's liability arising out of the maintenance or use of a motor vehicle is limited to coverage for non-owned motor vehicles.

SECTION 6. Ins 6.77(4)(c) is repealed.

SECTION 7. Ins 6.77(6) is amended to read:

Ins 6.77(6) DISCLOSURE. (a) An insurer shall disclose on the application form for each commercial liability, ~~commercial automobile liability~~, umbrella liability ~~or and~~ excess liability insurance policy ~~application form~~ subject to subs. (4)(am) and (b) whether or not uninsured motorist coverage, underinsured motorist coverage and medical payments coverage may be purchased from the insurer under the policy. If the insurer writes commercial liability, commercial automobile liability, umbrella liability or excess liability insurance policy such policies without using an application form, the insurer shall send with delivery of the policy a written disclosure of whether or not uninsured motorist coverage, underinsured motorist coverage and medical payments coverage may be purchased from the insurer under the policy. The insured's signature on the application form or on the disclosure sent with the policy is not required, and the disclosure on

the application form or with the delivery of the initial policy creates an irrebuttable presumption that the disclosure was made in accordance with this paragraph. An insurer is only required to provide the disclosure under this paragraph on any application form or with the delivery of the initial policy, if no application form is used, and need not provide the disclosure in connection with any subsequent renewal of or change to the policy. This paragraph first applies to policies issued ~~150 days on and after July 1, 2007~~ November 1, 2009.

(b) Each insurer that has a ~~commercial liability, commercial automobile liability, umbrella liability or excess liability insurance~~ policy subject to subs. (4)(am) and (b) in effect on ~~July 1, 2007~~ November 1, 2009, shall disclose in writing to one insured under each policy whether or not uninsured motorist coverage, underinsured motorist coverage and medical payments coverage may be purchased from the insurer under the policy. An insurer is required to provide the disclosure only one time and in conjunction with either the notice of, or the delivery of, the first renewal of each policy occurring ~~120 days on and after July 1, 2007~~ November 1, 2009.

(c) Nothing in this subsection shall be interpreted to require insurers to provide uninsured motorist coverage, underinsured motorist coverage or medical payments coverage in ~~policies a~~ commercial liability, umbrella or excess policy if its coverage of the insured's liability arising out of the maintenance or use of a motor vehicle is limited to coverage for non-owned motor vehicles.

SECTION 8. These changes first apply to policies issued or renewed on or after November 1, 2009.

SECTION 9. These emergency rule changes will take effect on November 1, 2009, as provided in s. 227.24(1)(c), Stats.

**Office of the Commissioner of Insurance
Private Sector Fiscal Analysis**

for Section Ins 6.77 relating to exempting commercial general liability policies from offering
uninsured and underinsured motorist coverage

This rule change will have no significant effect on the private sector regulated by OCI and will continue the status quo regarding insurers and small businesses.

FISCAL ESTIMATE WORKSHEET
Detailed Estimate of Annual Fiscal Effect

ORIGINAL UPDATED

 CORRECTED SUPPLEMENTAL

LRB Number	Amendment No. if Applicable
Bill Number	Administrative Rule Number INS 6.77

Subject
exempt commercial liability and umbrella policies from offering uninsured and underinsured motorist coverage

One-time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):

Annualized Costs:	Annualized Fiscal impact on State funds from:	
	Increased Costs	Decreased Costs
A. State Costs by Category		
State Operations - Salaries and Fringes	\$ 0	\$ -0
(FTE Position Changes)	(0 FTE)	(-0 FTE)
State Operations - Other Costs	0	-0
Local Assistance	0	-0
Aids to Individuals or Organizations	0	-0
TOTAL State Costs by Category	\$ 0	\$ -0
B. State Costs by Source of Funds	Increased Costs	Decreased Costs
GPR	\$ 0	\$ -0
FED	0	-0
PRO/PRS	0	-0
SEG/SEG-S	0	-0
C. State Revenues	Increased Rev.	Decreased Rev.
Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)		
GPR Taxes	\$ 0	\$ -0

GPR Earned	0	-0
FED	0	-0
PRO/PRS	0	-0
SEG/SEG-S	0	-0
TOTAL State Revenues	\$ 0 None	\$ -0 None

NET ANNUALIZED FISCAL IMPACT

	<u>STATE</u>	<u>LOCAL</u>
NET CHANGE IN COSTS	\$ <u>None 0</u>	\$ <u>None 0</u>
NET CHANGE IN REVENUES	\$ <u>None 0</u>	\$ <u>None 0</u>

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Authorized Signature:	Telephone No. 608-267-3782	Date (mm/dd/ccyy)

FISCAL ESTIMATE

- ORIGINAL UPDATED

 CORRECTED SUPPLEMENTAL

LRB Number	Amendment No. if Applicable
Bill Number	Administrative Rule Number INS 6.77

Subject
exempt commercial liability and umbrella policies from offering uninsured and underinsured motorist coverage

Fiscal Effect

- State: No State Fiscal Effect
Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.
- | | | |
|---|---|--|
| <input type="checkbox"/> Increase Existing Appropriation Revenues | <input type="checkbox"/> Increase Existing Revenues | <input type="checkbox"/> Increase Costs - May be possible to Absorb
Within Agency's Budget <input type="checkbox"/> Yes
<input type="checkbox"/> No

<input type="checkbox"/> Decrease Costs |
| <input type="checkbox"/> Decrease Existing Appropriation Revenues | <input type="checkbox"/> Decrease Existing Revenues | |
| <input type="checkbox"/> Create New Appropriation | | |

Local: No local government costs

- | | | |
|--|--|--|
| 1. <input type="checkbox"/> Increase Costs

<input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory
2. <input type="checkbox"/> Decrease Costs
<input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory | 3. <input type="checkbox"/> Increase Revenues

<input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory
4. <input type="checkbox"/> Decrease Revenues
<input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory | 5. Types of Local Governmental Units Affected:
<input type="checkbox"/> Towns <input type="checkbox"/> Villages <input type="checkbox"/> Cities

<input type="checkbox"/> Counties <input type="checkbox"/> Others _____
<input type="checkbox"/> School Districts |
|--|--|--|

- Fund Sources Affected
 GPR FED PRO PRS SEG
 SEG-S

Affected Chapter 20 Appropriations

Assumptions Used in Arriving at Fiscal Estimate

This rule will continue the status quo and thus would not affect any revenues or expenses of OCI.

Long-Range Fiscal Implications

None

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