
Wisconsin Legislative Council

ACT MEMO



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2021 Wisconsin Act 114
[2021 Senate Bill 588]

Insurance Regulations

2021 Wisconsin Act 114 makes various changes relating to regulation of the insurance industry.

ACCREDITATION

The act requires the Office of the Commissioner of Insurance (OCI) to maintain accreditation with the National Association of Insurance Commissioners (NAIC).

The act also allows OCI to adopt minimum education and certification requirements for staff that monitor the financial solvency of insurers, as necessary to meet accreditation and best practice standards established by NAIC.

ADULT AT RISK

The act creates a specific penalty for a person who violates an insurance statute or rule that involves a consumer who is an “adult at risk” or is at least 60 years of age. Rather than a forfeiture of \$1,000 for a general violation of an insurance statute or rule, the forfeiture for a violation involving an adult at risk or person who is at least 60 years of age is \$5,000 for each violation. An “adult at risk” is a person with a substantial physical or mental impairment.

DATA BREACH NOTICE REQUIREMENTS

Under current law, subject to certain exceptions, a person or entity that is licensed, registered, or authorized with OCI is required to provide notice to certain persons in the event of a data breach.

The act removes an exemption from the required notice to consumers, producers, and consumer reporting agencies for any entity covered by the Gramm-Leach-Bliley Act. The act also extends the exemption for entities that are governed by the Health Insurance Portability and Accountability Act (commonly referred to as HIPAA) to also exempt a covered entity’s business associates that comply with HIPAA.

FUNDING AGREEMENT FOR ANNUITY CONTRACT WITHOUT LIFE CONTINGENCY

Prior law authorized OCI to promulgate administrative rules regulating annuity contracts that do not have life contingencies. The act maintains that authorization, and specifies certain parameters by statute for that type of annuity, referred to in the act as a “funding agreement.”

The act defines a “funding agreement” as an annuity without life contingencies that is an agreement for an insurer to accept and accumulate funds and to make one or more payments at future dates in fixed or variable amounts, or both, that are not based on mortality or morbidity contingencies.

The act largely codifies the existing administrative rules, but adds a requirement that a domestic insurer's board of directors or an authorized committee of the board must approve a domestic insurer's plan relating to funding agreements for such annuities, and specifies that issuance of funding agreements must not be adverse to the interests of the insurer's policyholders. The act further specifies that amounts paid to a domestic insurer under a funding agreement, and proceeds under optional modes of settlement, may be allocated to one or more separate accounts.

Also, although an insurer was already authorized by rule to offer this type of annuity directly, the act further specifies that a domestic insurer is not required to use licensed intermediaries when marketing funding agreements for such annuities.

Lastly, the act specifies that OCI has sole authority to regulate the issuance and sale of funding agreements, and that a claim under a funding agreement is eligible for distribution from an insurer's estate in a liquidation proceeding. The act specifies that materials submitted to OCI for a determination of the policyholders' interests related to a funding agreement are confidential.

GROUP CAPITAL CALCULATIONS AND LIQUIDITY STRESS TESTS

The act requires OCI to promulgate administrative rules for insurers' reporting of group capital calculations and liquidity stress tests. The act specifies that those reports, when filed with OCI, are not subject to the open records law or to subpoena or discovery in a private civil action and are confidential.

INJURED PATIENTS AND FAMILIES COMPENSATION FUND

The act specifies that the annual report from the injured patients and families compensation fund to the Joint Committee on Finance must include details on the payment classifications set for the next year, in addition to details on the proposed fees, as already required. The act also specifies that payment classifications are to be determined by reference to the applicable Insurance Services Office, Inc., codes for specialties and types of practice that are similar in the degree of exposure to loss.

The act allows the peer review council for the fund to consist of five or seven members, rather than only five members, as under prior law.

INSURANCE SECURITY FUND

The act updates a number of items related to the insurance security fund. For example, the act specifically excludes policies under the federal employee health benefit plan, and funding agreements for annuity contracts without life contingencies, from the insurance security fund provisions. The act specifies that the fund may recover costs and expenses in administering a claim, in addition to costs and expenses in defending a claim, as already allowed. The fund may also recover from a person who is otherwise excluded from the fund's provisions due to a deductible, self-funded, or self-insured portion of a claim under a liability or worker's compensation insurance policy. The act removes a reference to assessments on health insurance policies authorized before November 13, 2015, and specifies that if assessment data is not available for a preceding year when an assessment is called, the fund may use the most recent data available. Lastly, the act specifies that the fund may contract with an insured for the administration and payment of claims for which the insured is responsible.

REMOTE PARTICIPATION IN SHAREHOLDER MEETINGS

The act authorizes remote participation in a stock corporation's shareholder meeting and a mutual insurance company's policyholder meeting, if also authorized by the board of directors.

The stock corporation or mutual insurance company must implement reasonable measures to verify that each person deemed present and permitted to vote is a shareholder, policyholder, or proxy. The stock corporation or mutual insurance company must also implement reasonable measures to ensure the opportunity to participate and vote, and must maintain a record of voting or action at the meeting.

As under prior law, a notice for a mutual insurance company's policyholder meeting is considered fair and reasonable if notice is given between 10 and 60 days before the meeting date, or, if notice is mailed by any type other than first class or registered mail, between 30 and 60 days before the meeting date. If remote participation is authorized, the notice must describe the means of remote communication.

SMALL EMPLOYERS

The act repeals the requirement for OCI to promulgate administrative rules specifying the manner in which a small employer must publish premium rates. The act also repeals the requirement for small employers to annually publish new business premium rates.

Effective date: December 5, 2021

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