



State of Wisconsin / OFFICE OF THE COMMISSIONER OF INSURANCE

Jim Doyle, Governor
Sean Dilweg, Commissioner

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STATE OF WISCONSIN

OFFICE OF THE COMMISSIONER OF INSURANCE

SS

I, Sean Dilweg, Commissioner of Insurance and custodian of the official records, certify that the annexed rule affecting Section Ins 6.77, Wis. Adm. Code, relating to exempting 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 and affecting small business, is duly approved and adopted by this Office on March 19, 2010.

I further certify that I have compared this copy with the original on file in this Office and that it is a true copy of the original, and the whole of the original.

IN TESTIMONY WHEREOF, I have hereunto set my hand at 125 South Webster Street, Madison, Wisconsin, on March 19, 2010.

Sean Dilweg
Commissioner of Insurance

**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.

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**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." Commercial umbrella and commercial liability not covering autos except for only hired or non-owned ("HNO") autos have never offered uninsured/underinsured ("UM/UIM") or medical payments coverage ("MedPay") 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. Without these changes 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](mailto:inger.williams@wisconsin.gov)

Address: 125 South Webster St – 2<sup>nd</sup> 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 14<sup>th</sup> day after the date for the hearing stated in the Notice of Hearing.

Mailing address:

Robert Luck  
Legal Unit - OCI Rule Comment for Rule Ins 677  
Office of the Commissioner of Insurance  
PO Box 7873  
Madison WI 53707-7873

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Madison WI 53703-3474

Email address:

Robert Luck  
robert.luck@wisconsin.gov

Web site: <http://oci.wi.gov/ocirules.htm>

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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., 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. Note: Section 632.32 (4), Stats., refers to the requirements as amended by 2009 Wisconsin Act 28

**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 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 changes may be enforced under ss. 601.41, 601.64, 601.65, 628.10, Stats., or ch. 645, Stats., or any other enforcement provision of chs. 600 to 646, Stats.

**SECTION 10.** These changes will take effect on the first day of the month after publication, as provided in s. 227.22(2)(intro.), Stats.

Dated at Madison, Wisconsin, this 19th day of March, 2010.

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Sean Dilweg  
Commissioner of Insurance

