



of Wisconsin / OFFICE OF THE COMMISSIONER OF INSURANCE

Scott Walker, Governor
Theodore K. Nickel, Commissioner

Wisconsin.gov

Legal Unit
125 South Webster Street • P.O. Box 7873
Madison, Wisconsin 53707-7873
Phone: (608) 267-9586 • Fax: (608) 264-6228
Web Address: oci.wi.gov

TO: Bruce Hoesly
Legislative Reference Bureau
1 East Main Street, Suite 200
Madison, WI 53701-2037

FROM: Richard B. Wicka, Deputy Chief Legal Counsel
Office of the Commissioner of Insurance

DATE: October 23, 2015

SUBJECT: Section Ins 6.77, Wis. Adm. Code, relating to exemption from required
uninsured motorist, underinsured motorist and medical payments
coverage

Clearinghouse Rule No. 15-032



Enclosed are two originals of the above-referenced order of the Commissioner of Insurance promulgating a rule. The first is to be filed with the Leg. Ref. Bureau and the other to be stamped by the Leg. Ref. Bureau and be retained by OCI.

I have e-mailed you an electronic copy of the rule. For additional information or if you did not get the e-mail, please contact Richard B. Wicka at (608) 261-6018 or e-mail at richard.wicka@wisconsin.gov. Pursuant to s. 227.114 (6), Wis. Stat., I am providing you with the following:

Summary of Final Regulatory Flexibility Analysis

The Office of the Commissioner of Insurance has determined that this rule will not have a significant economic impact on a substantial number of small businesses and therefore a final regulatory flexibility analysis is not required.

Summary of Comments of Legislative Standing Committees

The legislative standing committees had no comments on this rule.

FN:RBW

Attachments: 2 Original copies of the rule



State of Wisconsin / OFFICE OF THE COMMISSIONER OF INSURANCE

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125 South Webster Street • P.O. Box 7873
Madison, Wisconsin 53707-7873
Phone: (608) 266-3585 • Fax: (608) 266-9935
E-Mail: ociinformation@wisconsin.gov
Web Address: oci.wi.gov

STATE OF WISCONSIN

OFFICE OF THE COMMISSIONER OF INSURANCE

SS



I, Daniel J. Schwartz, Deputy Commissioner and custodian of the official records, certify that the annexed rule affecting section Ins 6.77, Wis. Adm. Code, relating to exemption from required uninsured motorist, underinsured motorist and medical payments coverage, is duly approved and adopted by this Office on October 23, 2015.

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 October 23, 2015.

Daniel J. Schwartz
Deputy Commissioner
Office of the Commissioner of Insurance

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

Rule No. Agency 145 – Ins 6.77 (Title), (1), (2), (3) (am) and (bm), (4) (am) and (b), and (6).

The Commissioner of Insurance proposes an order to repeal Ins 6.77(3)(am), (bm), (4)(am) and (b) and (6); and to amend Ins 6.77 (Title), (1) and (2), relating to exemption from required uninsured motorist, underinsured motorist and medical payments coverage.

The statement of scope for this rule SS: 101-14, was approved by the Governor on September 23, 2014, published in Register No. 706, on October 10, 2014, and approved by the Commissioner on November 5, 2014. The proposed rule was approved by the Governor on August 3, 2015 to submit to the Legislature, and submitted to the Legislature on August 5, 2015.

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

1. Statutes interpreted:

s. 632.32, Stats.

2. Statutory authority:

ss. 227.11(2)(a), 600.01, 601.41 (3), 631.01(5) 631.36(1)(c), Stats.

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

Under s. 631.01(5), Wis. Stats., the commissioner is given authority to exempt certain classes of insurance from the requirements of ss. 631.36 or 632.32, Stats. The commissioner has previously exercised this authority at various times in adopting and amending Ins. 6.77, Wis. Adm. Code and in this proposed rule to remove exemptions.

4. Related statutes or rules:

INS 6.77 Wis. Adm. Code and s. 632.32(4) and (4m) Wis. Stats.

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

The proposed rule will repeal exemptions contained in ss. INS 6.77 (4)(am) and (b), Wis. Adm. Code, and provisions relating to those exemptions contained in ss. INS 6.77(3)(am) and (6), Wis. Adm. Code, that are identical to exemptions recently added to s. 632.32(4) and (4m), Wis. Stats. In particular, 2011 Wisconsin Acts 14 and 224 created exemptions for excess and umbrella policies and commercial liability policies covering only non-owned autos from having to offer or include uninsured motorist coverage, underinsured motorist coverage and medical payment coverage. The proposed rule will remove redundant provisions and reduce the risk of confusion.

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 sec. 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 sec. 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: Sec. 257.520(a) Michigan is a no-fault state and thus is not comparable to Wisconsin. Michigan defines a "motor vehicle liability policy" as an owner's or an operator's policy of liability insurance which would appear to not include an umbrella policy.

Minnesota: 65B.49 Minnesota is a no-fault state and thus is not comparable to Wisconsin. Uninsured and underinsured coverage is required in auto policies.

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:

OCI review of s. 632.32 (4) and (4m), insurers existing business practices and other information.

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 proposed law does not substantively change the law. Instead, it will lessen confusion and administrative burdens on insurers issuing policies affected by these provisions by removing duplicative and unnecessary code provisions. As such, it will have no impact on small businesses.

10. Private Sector Fiscal Analysis.

See the attached Fiscal Analysis.

11. A description of the Effect on Small Business:

This rule will have little or no effect on small businesses.

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 May 22, 2015.

Mailing address:

Richard B. Wicka
Legal Unit - OCI Rule Comment for Rule Ins 6.77
Office of the Commissioner of Insurance
PO Box 7873
Madison WI 53707-7873

Street address:

Richard B. Wicka
Legal Unit - OCI Rule Comment for Rule Ins 6.77
Office of the Commissioner of Insurance
125 South Webster St - 2nd Floor
Madison WI 53703-3474

Email address:

Richard B. Wicka
richard.wicka@wisconsin.gov

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

The proposed rule changes are:

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

Ins 6.77 Exemption from mid-term cancellation requirements, and from required uninsured motorist, underinsured motorist and medical payment coverages.

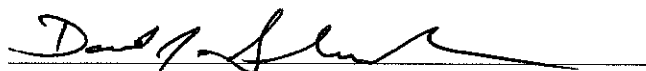
(1) PURPOSE. This section is intended to exempt certain classes of insurance contracts from ss. 631.36 (2) (a), (b) and (c) and ~~632.32(4)~~, Stats. This section implements the provisions of ss. 631.01 (5) and 631.36 (1) (c), Stats.

(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 policies in Wisconsin~~ and to all insurers authorized to write aircraft insurance policies in Wisconsin.

SECTION 2. Ins 6.77(3)(am), (bm), (4)(am), (b), and (6) are repealed.

SECTION 3. EFFECTIVE DATE. This rule shall 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 23rd day of October, 2015.



Daniel J. Schwartzer
Deputy Commissioner
Office of the Commissioner of Insurance

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

for Section Ins 6.77 relating to exemption from required uninsured
motorist, underinsured motorist and medical payments coverage

This rule change will have no significant effect on the private sector regulated by OCI.