

MAY 15 2017

**Notice of Submittal of Proposed Rule to  
Legislative Council Rules Clearinghouse**

On May 15, 2017, the Office of the Commissioner of Insurance submitted a proposed rule to the Wisconsin Legislative Council Clearinghouse pursuant to s. 227.15 (1), Wis. Stats.

**Analysis**

The proposed rule affects Chapter Ins 25, relating to an exception to the annual privacy notice requirements and affecting small business.

A related emergency rule, EmR1708, affecting the same Administrative Code provisions contained in this proposed rule and relating to the same purpose has been published and is in effect.

**Statement of Scope**

The scope statement for this rule, SS 105-16 was approved by the Governor on October 27, 2016, published in Register No. 731A1, on November 11, 2016, and approved by Deputy Commissioner on November 28, 2016.

**Agency Procedure for Promulgation**

A public hearing is required and will be held on June 15, 2017 at 10:30 am for both the permanent and the emergency rule that was published May 2, 2017.

**Agency Organizational Unit Primarily Responsible for Promulgating Rule**

Office of the Commissioner of Insurance

**Agency Contact Person**

Julie E. Walsh  
[Julie.walsh@wisconsin.gov](mailto:Julie.walsh@wisconsin.gov)  
608-264-8101

## **Notice of Hearing**

The Office of the Commissioner of Insurance announces that it will hold a public hearing on a permanent and emergency rule that will to renumber and amend Ins 25.13 (4) and (title) to Ins 25.13 (4) (title) and (a), and to create Ins 25.13 (4) (b), relating to an exception to the annual privacy notice requirements and affecting small business, at the time and place shown below.

### **Hearing Information:**

Date: June 15, 2017

Time: 10:30 am

Location: 125 S. Webster Street, 2<sup>nd</sup> Flr, Room 227

### **Accessibility:**

Pursuant to the American with Disabilities Act, reasonable accommodations, including the provisions of information materials in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Karyn Culver at (608) 267-9586 with specific information on your request at least 10 days before the date of the hearing. There is also handicap access to the hearing location.

### **Appearances at the Hearing and Submittal of Written Comments:**

The rules may be reviewed and comments made at <http://docs.legis.wisconsin.gov/code> and at <https://oci.wi.gov/Pages/Regulation/RulesCurrentlyPending.aspx>. Deadline for submitting comments is 4:00 pm on June 26, 2017.

### **Initial Regulatory Flexibility Analysis:**

This rule reduces requirements for all licensees including small businesses and does not impose any additional requirements on small businesses.

### **Agency Small Business Regulatory Coordinator:**

The OCI small business coordinator is Kate Ludlum and she may be reached at [Kate.ludlum@wisconsin.gov](mailto:Kate.ludlum@wisconsin.gov) or (608) 264-6232

**PROPOSED ORDER OF THE COMMISSIONER OF INSURANCE  
TO RENUMBER AND AMEND, AND TO CREATE A RULE.**

The commissioner of insurance proposes the following rule to renumber and amend Ins 25.13 (4) and (title) to Ins 25.13 (4) (title) and (a), and to create Ins 25.13 (4) (b), relating to an exception to the annual privacy notice requirements and affecting small business.

The statement of scope for this rule SS 105-16, was approved by the Governor on October 27, 2016, published in Register No. 731A1, on November 11, 2016, and approved by the Deputy Commissioner on November 28, 2016.

**Analysis prepared by the Office of the Commissioner of Insurance (OCI).**

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**Statutes interpreted:**

Sections 601.41 (3), 628.34 (12), Stats.

**Statutory authority:**

Sections 601.41 (3), 628.34 (12), and 633.17, Stats.

**Explanation of OCI's authority to promulgate the proposed rule:**

The Commissioner has the general authority to promulgate rules necessary to administer and enforce chs. 600 to 655, Stats., and as provided under ss. 227.11 (2) (a) and 601.41, Stats. Further, Ch. Ins. 25, Wis. Adm. Code, is specifically promulgated pursuant to the authority granted by ss. 601.41 (3) (a) ("The commissioner shall have rule-making authority under s. 227.11 (2)."), 610.70, 628.34 (12), and 633.17 ("The commissioner shall promulgate rules necessary for the implementation of this chapter, in addition to the rules permitted under s. 633.13 (2) and required under ss. 633.14 (3) and 633.15 (1) (b)."), Stats. These provisions both permit and require the commissioner to promulgate rules governing consumer privacy of financial and health information through the use of notices. Section 601.41 (3), Stats., grants the Commissioner general rule making authority which allows for the prudent oversight of Wisconsin's insurance industry.

**Related statutes or rules:**

None.

**Plain language analysis:**

The proposed rule changes s. Ins 25.13 (4), Wis. Adm. Code, to track the language contained in the Fixing America's Surface Transportation Act (FAST Act), Public Law 114-94 §75001, that amended Section 503, 12 U.S.C. § 6803, of the GLBA (PL 102-106) privacy notice requirements. The additional exception from providing consumers an annual privacy notice is narrowly available to insurers doing the business of insurance in this state only if the insurer can meet two requirements: (i) that the licensee does not share nonpublic personal information except as permitted in certain statutory exceptions and, (ii) that licensee's business practices with regards to their disclosure of nonpublic personal financial information have not changed since their most recent disclosure of their privacy policy sent to their customers. The exception is permitted only until the insurer no longer meets either of the requirements. This proposed

narrow exception balances the need to keep Wisconsin's insurance market competitive, by ensuring regulatory consistency with federal privacy laws while also creating a clear set of conditions that protect consumers by requiring updated disclosure of privacy policies when business practices change.

**Summary of and comparison with any existing or proposed federal statutes and regulations:**

This proposed amendment to Ins 25.13 (4), Wis. Adm. Code, would make Wisconsin law consistent with the GLBA Section 503, 12 U.S.C. § 6803 and relieve compliant insurers from providing annual notices while maintaining consumer protections by requiring privacy notices be mailed when business practices change. Specifically the exemption under GLBA that will be mirrored in Ins 25.13, reads:

S.503 (f) Exception to annual notice requirement. A financial institution that –

(1) provides nonpublic personal information only in accordance with the provisions of subsection (b) (2) or (e) of section 6802 of this title or regulations prescribed under section 6804 (b) of this title, and

(2) has not changed its policies and practices with regard to disclosing nonpublic personal information from the policies and practices that were disclosed in the most recent disclosure sent to consumers in accordance with this section, shall not be required to provide an annual disclosure under this section until such time as the financial institution fails to comply with any criteria described in paragraph (1) or (2).

Additionally, the National Association of Insurance Commissioners Market Regulation and Consumer Affairs (D) Committee adopted a Model Bulletin that implemented the key provisions of the FAST Act's GLBA amendments. Thus amending Ins 25.13 will achieve regulatory uniformity. If Ins 25.13 is not amended there could be market participant confusion and conflict between Wisconsin Insurance regulations and federal privacy laws.

**Comparison with rules in adjacent states:**

**Illinois:** Recently submitted notice of proposed amendment to 41 Ill. Reg. 4002.50, published in the Illinois Register Vol 40, Issue 53 pg.16513, that proposes changes consistent with changes to the privacy notice proposed by Wisconsin.

**Iowa:** Iowa promulgated Iowa Code section 505.8 amended Chapter 90 by creating 191—90.4(4) (505) that is consistent with the proposed change to Wisconsin law. The regulation was filed November 30, 2016, and was effective January 25, 2017.

**Michigan:** Mich. Admin. Code r 500.551 etc. contains the similar requirement for providing annual notices but does not contain the most recent modification as contained in this proposed rule.

**Minnesota:** Adopted the NAIC model act implementing the GLBA that contains the similar requirement for providing annual notices but does not contain the most recent modification as contained in this proposed rule.

**A summary of the factual data and analytical methodologies that OCI used in support of the proposed rule:**

The OCI has reviewed NAIC models and insurer's financial information to support the analysis that this rule change is beneficial to the state of Wisconsin and its insurance industry. Further, this amendment relieves insurers from the burden of costly annual mailings to consumers when able to comply with two conditions. The proposed rule change still protects Wisconsin's insureds by promoting transparency with regard to the treatment and use of their sensitive personal information and licensed insurance companies are required to send notices if their policies and treatment of sensitive personal information changes from what was previously disclosed. One company estimates that it could save \$70,000 annually in printing, postage, and mailing supplies.

**Analysis and supporting documentation that OCI used in support of the OCI's determination of the rule's effect on small business or in preparation of an economic impact analysis:**

This proposed rule will have a moderately positive economic impact as it will eliminate the need for financial institutions to send their customers redundant privacy notices. This ability to reduce the frequency of mailing privacy notices will decrease costs and will have a positive effect on small businesses in Wisconsin. The annual notice to consumers requires printing, postage and supplies all at increasing costs to insurers. Those insurers who are able to comply will directly and immediately benefit from the exception.

**Effect on small business:**

This rule will not negatively affect regulated small businesses as the proposed rule change would no longer require them to send out annual privacy notices provided they are able to comply with the terms of the exceptions. The proposed rule change would also have a beneficial financial effect on small business that can be measured by the savings realized by not sending out annual privacy notices.

**A copy of any comments and opinion prepared by the Board of Veterans Affairs under s. 45.03 (2m), Stats., for rule proposed by the Department of Veterans Affairs.**

None.

**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/Pages/Regulation/RulesCurrentlyPending.aspx>**

or by contacting Karyn Culver, Paralegal, at:

Phone: (608) 267-9586  
Email: [karyn.culver@wisconsin.gov](mailto:karyn.culver@wisconsin.gov)  
Address: 125 South Webster St – 2<sup>nd</sup> Floor, Madison WI 53703-3474  
Mail: PO Box 7873, Madison, WI 53707-7873

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

A public hearing will be held in compliance with s. 227.14 (4m) and 227.24 (4), Stats., on June 15, 2017 at 10:30 am in room 227 at the Office of the Commissioner of Insurance.

Deadline for submitting comments is 4:00 pm on June 26, 2017

**Mailing address:**

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**Email address:**

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Web site: <http://oci.wi.gov/Pages/Regulation/RulesCurrentlyPending.aspx>

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**The proposed rule changes are:**

**SECTION 1. Ins 25.13 (4) (title) is renumbered Ins 25.13 (4) (title) and (a), and are amended to read:**

Ins 25.13 (4) ~~Exception~~ Exceptions. The annual privacy notice requirement in this section does not apply when a licensee complies with either of the following:

(a) When a licensee provides nonpublic personal financial information to any person described by s. Ins 25.50 (1) (a) 2.

**SECTION 2. Ins 25.13 (4) (b) is created to read:**

Ins 25.13 (4) (b) When both of the following conditions are met:

1. The licensee provides nonpublic personal information only in accordance with the provisions of this chapter.

2. The licensee has not changed its policies and practices with regard to disclosing nonpublic personal information from the policies and practices that were disclosed in the licensee's most recent disclosure to consumers in accordance with this section.

**SECTION 3.** These proposed rule changes will take effect on the date of publication as provided in s. 227.14 (4m), Stats.

Dated at Madison, Wisconsin, this \_\_\_\_ day of \_\_\_\_\_, 2017.

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J.P. Wieske  
Deputy Commissioner of Insurance

## ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

1. Type of Estimate and Analysis

Original    Updated    Corrected

2. Administrative Rule Chapter, Title and Number

INS CH 25, Privacy of Consumer Financial and Health Information, 25.13 (4), Wis. Adm. Code.

3. Subject

Relating to an exception to the annual privacy notice requirements and affecting small business.

4. Fund Sources Affected

GPR    FED    PRO    PRS    SEG    SEG-S

5. Chapter 20, Stats. Appropriations Affected

None

6. Fiscal Effect of Implementing the Rule

No Fiscal Effect    Increase Existing Revenues    Increase Costs  
 Indeterminate    Decrease Existing Revenues    Could Absorb Within Agency's Budget  
 Decrease Cost

7. The Rule Will Impact the Following (Check All That Apply)

State's Economy    Specific Businesses/Sectors  
 Local Government Units    Public Utility Rate Payers  
 Small Businesses (if checked, complete Attachment A)

8. Would Implementation and Compliance Costs Be Greater Than \$20 million?

Yes    No

9. Policy Problem Addressed by the Rule

The federal law requiring annual privacy notices be sent to all consumers was modified to permit an exception when the company's privacy policy had not changed since the last annual notice was provided. This proposed rule change parallels the exception and will save insurers from providing the annual notice if they have not changed their privacy policy. The narrow exception balances the need to keep the insurance market competitive by ensuring regulatory consistency and protecting consumers.

10. Summary of the businesses, business sectors, associations representing business, local governmental units, and individuals that may be affected by the proposed rule that were contacted for comments.

All insurers that are required to comply with the federal Gramm-Leach-Bliley Act (GLBA) will be positively affected by this proposed rule.

OCI solicited comments generally through publication requesting comments from the public utilizing the OCI website. Additionally OCI solicited comments from businesses, individuals. Solicitations were sent to all members of OCI's Advisory Councils and all interested parties. Members included life, property & casualty and health insurance companies, insurance agent associations and representatives, consumer representatives, provider representatives and representatives of small business. No concerns were raised during this time and several positive and supportive comments were received from WCLI, WAHP, WPS and the Wisconsin Restaurant Association.

11. Identify the local governmental units that participated in the development of this EIA.

None

12. Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred)

The proposed rule will decrease costs to insurers, large and small, and agents who currently send consumer privacy notices annually. If their privacy policies have not changed, these entities will not be required to print and mail annual notices until such time as their policy changes or do not comply with requirement governing provision of use of nonpublic personal information.

13. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule

**ADMINISTRATIVE RULES**  
**Fiscal Estimate & Economic Impact Analysis**

The proposed rule creates consistency between the State and Federal law which increases market predictability and stability while balancing consumer protection. One insurer estimates that it would save over \$70,000 due to the exception from annual notification.

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14. Long Range Implications of Implementing the Rule

The proposed rule will maintain the Wisconsin Insurance marketplace in a competitive position without imposition of unnecessary or redundant requirements.

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15. Compare With Approaches Being Used by Federal Government

The approach contained in the proposed rule is consistent with the GLBA.

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16. Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)

All four states have passed or are in the process of implementing the same change as is contained in this proposed rule.

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17. Contact Name

Julie E. Walsh

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18. Contact Phone Number

608-264-8101

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This document can be made available in alternate formats to individuals with disabilities upon request.

**ADMINISTRATIVE RULES**  
**Fiscal Estimate & Economic Impact Analysis**

**ATTACHMENT A**

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1. Summary of Rule's Economic and Fiscal Impact on Small Businesses (Separately for each Small Business Sector, Include Implementation and Compliance Costs Expected to be Incurred)

This proposed rule will have a positive economic impact as it will reduce costs associated with current law in issuing annual privacy notices. With the proposed rule, small businesses will annually save the cost of printing and mailing privacy notices to consumers if their privacy policies have not changed since consumers were last notified.

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2. Summary of the data sources used to measure the Rule's impact on Small Businesses  
Comments received from the insurance industry.

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3. Did the agency consider the following methods to reduce the impact of the Rule on Small Businesses?

- Less Stringent Compliance or Reporting Requirements
- Less Stringent Schedules or Deadlines for Compliance or Reporting
- Consolidation or Simplification of Reporting Requirements
- Establishment of performance standards in lieu of Design or Operational Standards
- Exemption of Small Businesses from some or all requirements
- Other, describe:

The proposed rule contains positive changes for small businesses with potential economic savings.

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4. Describe the methods incorporated into the Rule that will reduce its impact on Small Businesses

The rule reduces the frequency with which a small business is required to issue privacy notices to consumers which will decrease printing and mailing costs for the businesses.

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5. Describe the Rule's Enforcement Provisions

The rule is enforced by s. 601.41 (4), Wis. Stat.

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6. Did the Agency prepare a Cost Benefit Analysis (if Yes, attach to form)

- Yes    No
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