

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

To renumber Ins 6.77(3)(c) and (d); **To amend** Ins 6.77 Title, (1) and (2), 6.77(4)(a); and **To create** Ins 6.77(3)(c), Wis. Adm. Code, **Relating to** underinsured and uninsured motorist coverage in umbrella and commercial policies.

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:

These changes will modify the rule in light of the recent Supreme Court decisions, *Rebernick v American Family Mutual Ins Company*, 2006 WI 27 and *Rocker v USAA Casualty Ins Company*, 2006 WI 26. In *Rebernick*, the court held that s. 632.32(4m), Stats, applies to personal umbrella policies. In *Rocker*, the court held that s. 632.32(6)(a), Stats, applies to commercial general liability policies and commercial umbrella policies. These interpretations are inconsistent with current insurer practices and OCI's expectation of what would be covered in these types of policies.

Compliance with this interpretation would create significant, if not impossible compliance problems for insurers. Many insurers who write umbrella coverage do not write and are not even licensed to write automobile coverage. A second, difficult issue is that the limits for umbrella coverages are generally very high, \$1,000,000. It is unclear how an umbrella policy would reconcile these limits with the underlying auto policy and underinsured motorist coverage. For this reason, OCI had previously by rule exempted umbrella policies from the similar requirements of the uninsured motorist coverages in s. 632.32, Stats. For similar reasons, the same revision is being made for commercial liability policies.

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

1. Statutes interpreted:

ss. 600.01, 631.36, 632.32, Stats.

2. Statutory authority:

ss. 600.01(2), 601.41(3), 628.34(12), 631.01(5), 631.36(1)(c), Stats.

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

Under s. 631.01(5), the commissioner is given authority to exempt certain classes of insurance from the requirements of 631.36 or 632.32, Stats. 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 remove the requirement that umbrella and commercial policies give notice of the availability of underinsured motorists coverage. The obligation to give this notice would rest solely with the insurer writing the auto coverage.

In addition, the current exemption from the requirement to offer uninsured motorists for umbrella policies would be expanded to include commercial liability 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: 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 complaints, NAIC models, insurer's financial 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 change will continue the existing practice used by insurers issuing umbrella and commercial policies. As such, it will have no impact.

10. If these changes may have a significant fiscal effect on the private sector, the anticipated costs that will be incurred by private sector in complying with the rule:

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.

12. Agency contact person:

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

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

Phone: (608) 264-8110

Email: Inger.Williams@OCI.State.WI.US

Address: 125 South Webster St – 2nd Floor Madison WI 53702

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13. Place where comments are to be submitted:

Mailing address:

Robert Luck

Legal Unit - OCI Rule Comment for Rule Ins 6

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The proposed rule changes are:

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

Ins 6.77 Exemption from mid-term cancellation requirements and requirements, required uninsured ~~motorist~~ 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) (b) and (c) , 632.32(4), and ~~632.32 (4)~~, 632.32 (4m), 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. Section Ins 6.77(3)(c) and (d) are renumbered to Ins 6.77(3)(d) and (e).

SECTION 3. Section Ins 6.77(3)(c) is created to read:

Ins 6.77(3)(c) *Commercial liability policy* means any form of commercial insurance contract providing coverage for the insured's liability arising out of the ownership , maintenance or use of an automobile or other motor vehicle. For purposes of this section, commercial liability policy includes policies written on farms and agricultural operations but excludes worker's compensation policies.

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

6.77(4) EXEMPTION. (a) Any umbrella or excess liability insurance policy as defined in sub. (3) is exempt from the requirements of ss. 631.36 (2) (a), and any commercial liability or umbrella or excess liability insurance policy as defined in sub. (3) is exempt from the requirements of ss. 632.32(4) and ~~632.32 (4)~~, 632.32 (4m), Stats.

SECTION 5. These emergency rule changes will take effect on September 29, 2006, the day of publication in the state newspaper as provided in s. 227.24(1)(c), Stats.

Dated at Madison, Wisconsin, this 15th day of September, 2006.

Jorge Gomez
Commissioner of Insurance

Office of the Commissioner of Insurance
Private Sector Fiscal Analysis

for Rule Ins 6 relating to underinsured and uninsured motorist coverage
in umbrella and commercial policies

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

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

Subject
underinsured motorist coverage in umbrella and commercial policies

One-time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):
None

Annualized Costs:	Annualized Fiscal impact on State funds from:	
A. State Costs by Category	Increased Costs	Decreased Costs
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>

Prepared by: Robert Luck	Telephone No. (608) 266-0082	Agency Insurance
Authorized Signature:	Telephone No.	Date (mm/dd/ccyy)

FISCAL ESTIMATE

- ORIGINAL UPDATED
 CORRECTED SUPPLEMENTAL

LRB Number	Amendment No. if Applicable
Bill Number	Administrative Rule Number INS 6

Subject
underinsured motorist coverage in umbrella and commercial policies

Fiscal Effect
State: No State Fiscal Effect
 Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.
 Increase Existing Appropriation Increase Existing Revenues
 Decrease Existing Appropriation Decrease Existing Revenues
 Create New Appropriation
 Increase Costs - May be possible to Absorb Within Agency's Budget Yes No
 Decrease Costs

Local: No local government costs

1. <input type="checkbox"/> Increase Costs <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	3. <input type="checkbox"/> Increase 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 _____
2. <input type="checkbox"/> Decrease Costs <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	4. <input type="checkbox"/> Decrease Revenues <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	<input type="checkbox"/> School Districts <input type="checkbox"/> WTCS Districts

Fund Sources Affected <input type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEG-S	Affected Chapter 20 Appropriations
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Assumptions Used in Arriving at Fiscal Estimate

Long-Range Fiscal Implications

None

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Authorized Signature:	Telephone No.	Date (mm/dd/ccyy)
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