State of Wisconsin
2011 – 2012 LEGISLATURE

LRB–3967/1
TJD:jld:rs

2011 BILL

AN ACT ***to repeal*** 631.22 (title), (1), (2), (3), (4) and (5); ***to renumber and amend*** 631.22 (6); ***to amend*** 631.20 (2) (e); and ***to create*** 631.225 of the statutes; **relating to:** readability of consumer insurance policies.

Analysis by the Legislative Reference Bureau

Under current law, a consumer insurance policy is a life, disability, property, or casualty insurance policy, or a certificate of a substitute for a certificate for group life, disability, property, or casualty insurance that is issued to a person, for a personal, family, or household purpose and a copy of which is customarily delivered or required to be delivered to the person obtaining coverage. Current law requires that insurers only deliver consumer insurance policies that are coherent, written in commonly understood language, legible, appropriately divided and captioned by its various sections, and presented in a meaningful sequence. The commissioner of insurance (commissioner) is required to promulgate rules establishing standards for determining whether the consumer insurance policy complies with those requirements. The commissioner is allowed under current law to exempt a type of consumer insurance policy from the requirements if the commissioner finds that the type of consumer insurance policy is generally understood by persons to whom it is delivered. Currently, a violation of the readability requirements does not void or render voidable any portion of the insurance policy and is not a defense to an action under the policy.

This bill eliminates the current readability requirements for consumer insurance policies and substitutes other requirements. The bill clarifies that

consumer insurance policies include both health care plans and disability income insurance policies. An insurer is prohibited from delivering or issuing a consumer insurance policy, except for an individual or group annuity, life insurance policy, disability income policy, long−term care policy, or property and casualty insurance policy, unless the score of the applicable text of that policy on the Flesch reading ease test is 50 or higher. All consumer insurance policies that are not required to have a Flesch reading ease score of 50 or higher must have a score of 40 or higher. Generally, under the bill, consumer insurance policies must comply with all of the following: if printed, the print of the policy is in not less than ten−point type with spacing between the lines at least as high as the height of the font with some exceptions; if electronic, the policy appears in final format in not less than ten−point type with some exceptions; the policy is appropriately divided and captioned and presented in a meaningful sequence, the language ensures effective communication for individuals with a disability or with limited English proficiency, and the style, arrangement, and overall appearance of the policy enhances its understandability; if the policy contains more than 3,000 words or more than three pages, it has a table of contents or an index of principal sections; the policy contains a single section listing exclusions and limitations and any exclusions or limitations also appearing within the form are given at least equal prominence with the rest of the language; the policy defines words and expressions not commonly understood and words and expressions of which the commonly understood meaning is not intended by the policy language; cross−references between policy sections are minimized; and the policy contains words and phrases written in active voice. Certain property and casualty policies; individual and group annuities; life insurance policies; disability income policies; and long−term care policies are exempt from the requirement to contain a section listing exclusions and limitations and give equal prominence to exclusion and limitation language and the requirement to have the words and phrases in the policy in active voice. The bill specifies a method for calculating a Flesch reading ease test score for a consumer insurance policy. The requirements of the bill do not apply to any policy that is a security subject to federal jurisdiction; any group policy, except any certificate issued under a group policy; and any group annuity contract that funds a pension, profit−sharing, or deferred compensation plan.

The bill requires an officer of the insurer to certify that the consumer insurance policy that is the subject of the filing meets the minimum reading ease score or has a score lower than the minimum required score but should be approved under an exemption. The commissioner may approve a consumer insurance policy with a lower score than is required if the commissioner finds that the lower score is caused by certain language that is drafted to conform to state law or rule. The officer of the insurer is also required by the bill to provide to the commissioner the actual readability score and the method or computer program used to determine the score.

The bill also requires any insurer authorized to offer a consumer insurance policy to provide information on its Internet site describing how an insured may request or access a paper or electronic copy of a policy. Upon a request by an insured, an insurer must provide, in the format requested, a complete copy of the consumer insurance policy that is in force and any modifications, amendments, riders, and

amendatory endorsements attached as that policy is filed with the commissioner. An insurer that offers a consumer insurance policy except for an individual or group annuity, or a life, disability income, or long−term care insurance policy, must advise each policyholder that a printed or electronic copy of the consumer insurance policy with all modifications, amendments, riders, and amendatory endorsements attached as filed with the commissioner will be provided to the policy within five business days of the request if in electronic format or within ten business days of the request if by mail. As in current law, a violation of the provisions of the bill does not void or render voidable any portion of a consumer insurance policy and is not a defense to an action under the consumer insurance policy.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 631.20 (2) (e) of the statutes is amended to read:

631.20 **(2)** (e) That its use would violate s. ~~631.22~~ 631.225.

SECTION 2. 631.22 (title), (1), (2), (3), (4) and (5) of the statutes are repealed.

SECTION 3. 631.22 (6) of the statutes is renumbered 631.225 (7) and amended to read:

631.225 **(7)** A violation of this section does not void or render voidable any portion of ~~an~~ a consumer insurance policy and is not a defense to an action under the consumer insurance policy.

SECTION 4. 631.225 of the statutes is created to read:

631.225 Consumer insurance policy readability; access to policy. (1) DEFINITIONS. In this section:

(a) "Applicable text" includes all printed or electronic matter in a consumer insurance policy except for all of the following:

1. The name and address of the insurer.

2. The name, number, or title of the consumer insurance policy.

3. The table of contents or index.

4. Captions and subcaptions.

5. Specification pages, schedules, or tables.

6. Any of the following language or terminology that the insurer certifies in writing to the commissioner is entitled to be exempt from readability requirements:

a. Any form language that is drafted to conform to the requirements of any federal law, regulation, or agency interpretation.

b. Any form language required by any collective bargaining agreement.

c. Any medical terminology.

d. Any words that are defined.

e. Any form language required by state law or rule.

7. The title or name of a state or federal government organization or regulatory entity that is required to be named within the consumer insurance policy.

(b) "Consumer insurance policy" means a life, disability income, property, or casualty insurance policy or health care plan or a certificate or a substitute for a certificate for group life, disability income, property, casualty, or health care insurance coverage, which is issued to a person for personal, family, or household purposes and a copy of which is customarily, in the insurance industry, delivered or required by law, rule, or agreement to be delivered, to the person obtaining insurance coverage.

(c) "Health care plan" has the meaning given in s. 628.36 (2) (a) 1.

(d) "Syllable" means a unit of spoken language consisting of one or more letters of a word as divided by a generally accepted dictionary.

(2) MINIMUM READABILITY STANDARDS. (a) In addition to any other requirements and except as provided in sub. (3), no insurer may deliver or issue for delivery a consumer insurance policy in this state unless all of the following apply:

1. Except as provided under sub. (5), the applicable text achieves any of the following scores:

a. For consumer insurance policies, except individual or group annuities, life insurance policies, disability income policies, long−term care policies, or property and casualty insurance policies, a minimum score of 50 on the Flesch reading ease test as described in par. (b).

b. For all other consumer insurance policies not subject to subd. 1. a., a minimum score of 40 on the Flesch reading ease test as described in par. (b).

2. The consumer insurance policy to be delivered to the consumer is an electronic form or printed form that complies with all of the following:

a. If the consumer insurance policy is printed, it is in not less than 10−point type, with spacing between lines at least as high as the height of the type used, except for specification pages, schedules, and tables.

b. If the consumer insurance policy is electronic, it appears as it will in final format and is in not less than a 10−point type except for specification pages, schedules, and tables.

3. The consumer insurance policy is appropriately divided and captioned and presented in a meaningful sequence, the language ensures effective communication for individuals with a disability or with limited English proficiency, and the style, arrangement, and overall appearance of the consumer insurance policy enhances its understandability.

4. If the consumer insurance policy contains more than 3,000 words or more than 3 pages, the consumer insurance policy contains a table of contents or an index of the principal sections of the policy.

5. The consumer insurance policy contains a single section listing exclusions and limitations, and if the exclusions and limitations also appear within the form, the exclusions and limitations are given at least equal prominence with the rest of the form language, including the same type size. This subdivision does not apply to a property and casualty insurance policy as described in sub. (1) (b), an individual or group annuity, a life insurance policy, a disability income policy, or a long−term care insurance policy.

6. The consumer insurance policy defines words and expressions that are not commonly understood and words and expressions the commonly understood meaning of which is not intended by the policy language.

7. Cross−references between sections of the consumer insurance policy are minimized.

8. The consumer insurance policy contains words and phrases written in active voice. This subdivision does not apply to a property and casualty insurance policy as described in sub. (1) (b), an individual or group annuity, a life insurance policy, a disability income policy, or a long−term care insurance policy.

(b) A person measuring a Flesch reading ease test score for a consumer insurance policy under this section shall use the following method:

1. a. For consumer insurance policies containing 10,000 words or less of applicable text, analyze the entire form.

b. For consumer insurance policies containing more than 10,000 words, analyze the entire form or analyze the readability of 2 200−word applicable text samples per page that are separated by at least 20 printed lines.

2. Subject to subd. 5., count the number of words in the applicable text under subd. 1. and divide by the total number of sentences in the text under subd. 1. Multiply the resulting quotient by 1.015.

3. Subject to subd. 5., count the total number of syllables in the applicable text under subd. 1. and divide by the total number of words in the text under subd. 1. Multiply the resulting quotient by 84.6.

4. Subtract the sum of the figures calculated under subds. 2. and 3. from 206.835 to obtain the Flesch reading ease score for the consumer insurance policy.

5. For the counting of the applicable text under subds. 2. and 3., all of the following apply:

a. Numbers and letters, when separated by spaces, a contraction, or a hyphenated word are counted as one word.

b. A unit of words ending with a period, semicolon, or colon, but excluding headings and captions, is counted as a sentence.

c. If a generally accepted dictionary shows 2 or more equally acceptable pronunciations of a word, the pronunciation containing fewer syllables may be used.

(3) EXEMPTIONS. This section does not apply to any of the following:

(a) Any policy that is a security subject to federal jurisdiction.

(b) Any group policy, except any certificate issued under a group policy delivered or issued in this state.

(c) Any group annuity contract that funds a pension, profit−sharing, or deferred compensation plan.

(4) CERTIFICATION; REQUIRED INFORMATION. (a) An officer of the insurer shall provide with a filing of a consumer insurance policies that is subject to this section a certificate signed by that officer stating that the consumer insurance policy that

is the subject of the filing meets the minimum reading ease score or that the consumer insurance policy that is the subject of the filing has a score that is lower than the minimum required score but the filing should be approved under sub. (5).

(b) 1. The insurer shall provide the actual readability score for each consumer insurance policy in the cover letter of the filing or as a data element in an electronic filing.

2. The insurer shall identify in the filing the method or computer program used to determine the readability score.

(c) The commissioner may require the submission of further information to verify the accuracy of the certification under par. (a).

(5) EXEMPTION FOR LOWER SCORE. The commissioner may approve a consumer insurance policy with a lower score than the Flesch reading ease score required under sub. (2) (a) 1. whenever the commissioner finds that the lower score is caused by certain language that is drafted to conform to the requirements of any state law or rule.

(6) INFORMATION TO CONSUMERS; POLICY ACCESS. (a) Any insurer authorized to offer a consumer insurance policy shall provide information on its Internet site describing how an insured may request or access a paper or an electronic copy of his or her insurance policy that is in force. Upon a request by an insured, an insurer shall provide to the insured in the format requested by the insured a complete copy of the consumer insurance policy that is in force and any modifications, amendments, riders, and amendatory endorsements attached as that policy is filed with the commissioner after the date of issuance of the insured's policy.

(b) Except for a consumer insurance policy that is an individual or group annuity or a life, disability income, or long−term care insurance policy, an insurer

that offers a consumer insurance policy shall advise each policyholder that a printed or electronic copy of the complete in force consumer insurance policy with all modifications, amendments, riders, and amendatory endorsements attached as filed with the commissioner since the date of issue of the policy will be provided to the policyholder either in electronic format within 5 business days of receipt by the insurer of the request or by paper copy to be mailed within 10 business days of receipt by the insurer of the request.

(c) Each day the requested copy of a consumer insurance policy is not sent to the insured as requested shall be considered as a separate violation of this subsection.

SECTION 5. Initial applicability.

(1) This act first applies to consumer insurance policies that are newly issued or renewed on the effective date of this subsection.

(END)