



1995 SENATE BILL 533

February 7, 1996 - Introduced by Senators SCHULTZ and RUDE, cosponsored by Representatives JOHNSRUD and BALDUS. Referred to Committee on Insurance.

1 **AN ACT** *to renumber* 623.06 (1); *to renumber and amend* 623.06 (5) and 646.31
2 (2) (a); *to amend* 601.31 (1) (p), 601.72 (1) (intro.), 601.72 (2), 601.72 (3), 601.73
3 (1) (intro.), 601.73 (2) (c), 623.06 (6), 645.08 (2) and 646.51 (6); *to repeal and*
4 *recreate* 601.72 and 601.73 (1) (intro.); and *to create* 601.715, 623.06 (1c),
5 623.06 (1m), 623.06 (5) (b), 646.01 (1) (a) 2. i. and 646.31 (2) (f) of the statutes;
6 **relating to:** accreditation for certain insurers, immunity for acts related to reg-
7 ulation of insurer solvency, claims under the insurance security fund, service
8 of process on insurers and granting rule-making authority.

Analysis by the Legislative Reference Bureau

Current law requires the commissioner of insurance (commissioner) to value annually the reserves held in support of the outstanding life insurance policies and annuity and pure endowment contracts of every life insurance company doing business in this state to determine an insurance company's financial soundness. This bill requires every life insurance company doing business in this state to submit annually to the commissioner an actuary's opinion as to whether the company's reserves are computed accurately and are in compliance with requirements under law. With some exceptions specified by the commissioner by rule, each opinion submitted must also contain an opinion as to whether the company's reserves are adequate to cover the company's anticipated obligations under its policies and contracts. The commissioner may by rule provide for a transition period for an insurance company to establish higher reserves if the actuary determines that the company's reserves are not adequate. In support of the opinion regarding the adequacy of the reserves, the actuary must prepare a memorandum, which must be submitted to the commissioner if the

commissioner so requests. The bill provides the actuary with immunity from liability for any act or omission with respect to an opinion, and also sets out requirements regarding the confidentiality of any memorandum or other material submitted to the commissioner in connection with an opinion.

Current law also provides for the creation of the insurance security fund and its administration by a board of directors that includes the attorney general, the state treasurer and the commissioner. The fund is composed primarily of assessments paid by insurers. The purpose of the fund is to pay specified classes of claims against an insurer that is in liquidation. The bill creates another class of claims that may be paid from the fund: a claim under a life or disability insurance policy or annuity contract that is made by a resident or nonresident beneficiary, assignee or payee of a policyholder or certificate holder who is a resident of this state or who, if a nonresident, would have had a claim under the policy or annuity contract that would have been payable from the fund.

Current law also provides for immunity from civil suit for the state, commissioner, special deputy commissioner, rehabilitator or liquidator, their employes or agents, and the insurance security fund and its agents, employes, directors and contributor insurers for acts or omissions in the performance of their powers and duties under the portion of the statutes that regulates the rehabilitation and liquidation of insurers. The bill adds immunity for the same entities and persons for acts or omissions in the performance of their powers and duties relating to regulation of capital or solvency of insurers.

Under current law, every insurer is required to maintain in this state a registered agent for service of process. The registered agent must be an individual who is a resident of this state, a domestic insurer or a nondomestic insurer authorized to do business in this state. If an insurer fails to maintain an agent or if the agent cannot be found, substituted service may be made on the commissioner or, if the legal proceeding is brought by the state, on the secretary of state. The commissioner or secretary of state must send a copy of the process by certified mail to the person served at the person's last-known principal place of business, residence or post-office address. The fee for service on the commissioner is \$10.

This bill requires every insurer authorized to do business in this state (authorized insurer) to maintain a registered agent for service of process. The registered agent must be a natural person who resides in this state, a domestic corporation, non-stock corporation or limited liability company incorporated or organized in this state with a business office in this state or a foreign corporation or limited liability company authorized to transact business in this state with a business office in this state. The bill specifies how an authorized insurer may change its registered agent, how a registered agent may change its registered agent address and how a registered agent may resign. The bill provides that substituted service may be made on the commissioner, by the same procedure as under current law, if an authorized insurer has no registered agent or if the registered agent cannot with reasonable diligence be served. If substituted service is made on the commissioner, an affidavit must be attached to the process served attesting that the authorized insurer has no registered agent or that the registered agent could not with reasonable diligence be served. The

bill also provides that the commissioner is by law constituted attorney to receive service (substituted service) of summons, notices, orders, pleadings and all other legal process for all authorized insurers, surplus lines insurers, unauthorized insurers, risk purchasing groups and nonresident intermediaries and specifies the action or inaction on the part of each of those entities which serves to authorize substituted service on the commissioner on behalf of the entity.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

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

1 **SECTION 1.** 601.31 (1) (p) of the statutes, as affected by 1995 Wisconsin Act 27,
2 is amended to read:

3 601.31 (1) (p) For substituted service of process on the commissioner under s.
4 601.72 (2), \$10.

5 **SECTION 2.** 601.715 of the statutes is created to read:

6 **601.715 Registered agent for service of process. (1)** Every authorized in-
7 surer shall continuously maintain in this state a registered agent for service of pro-
8 cess, notice or demand on the insurer. The authorized insurer shall file the name and
9 address of the registered agent with the commissioner. The registered agent may be
10 any of the following:

11 (a) A natural person who resides in this state.

12 (b) A domestic corporation, nonstock corporation or limited liability company
13 incorporated or organized in this state with a business office in this state.

14 (c) A foreign corporation or limited liability company authorized to transact
15 business in this state with a business office in this state.

16 **(2)** (a) An authorized insurer may change its registered agent by delivering to
17 the commissioner for filing a statement of registered agent change that is signed by
18 an officer of the insurer and that includes all of the following information:

1 1. The name and home office address of the authorized insurer.

2 2. The name of the registered agent, as changed.

3 3. The complete address of the registered agent, as changed.

4 4. Any other information that the commissioner may require.

5 (b) An authorized insurer may change its registered agent no more than one
6 time per year. Any change of registered agent is effective on January 1 of the year
7 following the delivery of the statement under par. (a).

8 **(3)** A registered agent of an authorized insurer may change its registered agent
9 address by doing all of the following:

10 (a) Notifying in writing the authorized insurer for which the registered agent
11 is acting.

12 (b) Delivering to the commissioner for filing a statement that includes all of the
13 following:

14 1. The name and home office address of the authorized insurer for which the
15 registered agent is acting.

16 2. The complete new registered agent address.

17 3. An attached copy of the notice under par. (a).

18 **(4)** (a) A registered agent of an authorized insurer may resign by signing and
19 delivering to the commissioner for filing a statement of resignation that includes all
20 of the following information:

21 1. The name and home office address of the authorized insurer for which the
22 registered agent is acting.

23 2. The name of the registered agent.

24 3. A statement that the registered agent resigns.

1 (b) After filing the statement, the commissioner shall mail a copy to the autho-
2 rized insurer under par. (a) 1.

3 (c) The resignation is effective on the earlier of the following:

4 1. Sixty days after the commissioner receives the statement of resignation for
5 filing.

6 2. The date on which the appointment of a successor registered agent is effec-
7 tive.

8 **(5)** If an authorized insurer has no registered agent for service of process in this
9 state or if the registered agent cannot with reasonable diligence be served, substi-
10 tuted service may be made on the commissioner under ss. 601.72 and 601.73. If sub-
11 stituted service is made on the commissioner, an affidavit attesting that the autho-
12 rized insurer has no registered agent or that the registered agent could not with
13 reasonable diligence be served shall be attached to the process, notice or demand that
14 is served.

15 **(6)** Except as provided in sub. (5), this section does not limit or affect the right
16 to serve summons, notice, orders, pleadings, demands or other process upon an au-
17 thorized insurer in any other manner provided by law.

18 **SECTION 3.** 601.72 of the statutes, as affected by 1995 Wisconsin Act 27, is re-
19 pealed and recreated to read:

20 **601.72 Service of process through state officer.** (1) **GENERAL.** Under pro-
21 cedures specified in s. 601.73, the commissioner is by law constituted attorney, except
22 in cases in which the proceeding is to be brought by the state against an insurer or
23 intermediary other than a risk retention group or risk purchasing group, in which
24 event the secretary of state is by law constituted attorney, to receive service of sum-

1 mons, notices, orders, pleadings and all other legal process relating to any court or
2 administrative agency in this state for all of the following:

3 (a) *Authorized insurers.* All insurers authorized to do business in this state,
4 while authorized to do business in this state, and thereafter in any proceeding aris-
5 ing from or related to any transaction having any connection with this state, provided
6 the requirements under s. 601.715 (5) are satisfied.

7 (b) *Surplus lines insurers.* All insurers as to any proceeding arising out of any
8 contract that is permitted by s. 618.41, or out of any certificate, cover note or other
9 confirmation of such insurance.

10 (c) *Unauthorized insurers.* All insurers or other persons doing an unauthorized
11 insurance business in this state, including but not limited to risk purchasing groups,
12 as to any proceeding arising out of the unauthorized transaction.

13 (d) *Risk purchasing groups and nonresident intermediaries.* All risk purchas-
14 ing groups or nonresident intermediaries as to any proceeding arising out of insur-
15 ance activities within this state or out of insurance activities related to policies on
16 risks within this state.

17 **(2)** APPOINTMENT OF ATTORNEY. Except as provided in sub. (2m), every licensed
18 insurer by applying for and receiving a certificate of authority, every surplus lines
19 insurer by entering into a contract subject to the surplus lines law, and every unau-
20 thorized insurer by doing an insurance business in this state, is deemed to have irre-
21 vocably appointed the commissioner and secretary of state as the insurer's attorneys
22 in accordance with sub. (1).

23 **(2m)** RISK RETENTION GROUPS AND RISK PURCHASING GROUPS. A risk retention
24 group or risk purchasing group may not do an insurance business or engage in any
25 insurance activity in this state until it registers with the commissioner and desig-

1 nates the commissioner as its agent for the purposes described in sub. (1). The com-
2 missioner may prescribe the form of registration under this subsection. If a risk
3 retention group or risk purchasing group fails to designate the commissioner as re-
4 quired by this subsection, the commissioner is appointed agent for the risk retention
5 group or risk purchasing group as provided in sub. (2).

6 **(3) OTHERS AFFECTED.** The commissioner and secretary of state shall also be at-
7 torneys for the executors, administrators or personal representatives, receivers,
8 trustees or other successors in interest of the persons specified in sub. (1).

9 **(4) FEES.** Litigants serving process on the commissioner under this section
10 shall pay the fees specified in s. 601.31 (1) (p).

11 **(5) ORDINARY MEANS OF SERVICE.** The right to substituted service under this sec-
12 tion does not limit the right to serve summons, notice, orders, pleadings, demands
13 or other process upon any person in any manner provided by law.

14 **SECTION 4.** 601.72 (1) (intro.) of the statutes, as affected by 1995 Wisconsin Act
15 (this act), is amended to read:

16 601.72 (1) **GENERAL.** (intro.) Under procedures specified in s. 601.73, the com-
17 missioner is by law constituted attorney, except in cases in which the proceeding is
18 to be brought by the state against an insurer or intermediary other than a risk reten-
19 tion group or risk purchasing group, in which event the ~~secretary of state~~ department
20 of financial institutions is by law constituted attorney, to receive service of summons,
21 notices, orders, pleadings and all other legal process relating to any court or adminis-
22 trative agency in this state for all of the following:

23 **SECTION 5.** 601.72 (2) of the statutes, as affected by 1995 Wisconsin Act (this
24 act), is amended to read:

1 601.72 (2) APPOINTMENT OF ATTORNEY. Except as provided in sub. (2m), every
2 licensed insurer by applying for and receiving a certificate of authority, every surplus
3 lines insurer by entering into a contract subject to the surplus lines law, and every
4 unauthorized insurer by doing an insurance business in this state, is deemed to have
5 irrevocably appointed the commissioner and ~~secretary of state~~ department of finan-
6 cial institutions as the insurer's attorneys in accordance with sub. (1).

7 **SECTION 6.** 601.72 (3) of the statutes, as affected by 1995 Wisconsin Act ... (this
8 act), is amended to read:

9 601.72 (3) OTHERS AFFECTED. The commissioner and ~~secretary of state~~ depart-
10 ment of financial institutions shall also be attorneys for the executors, administra-
11 tors or personal representatives, receivers, trustees or other successors in interest
12 of the persons specified in sub. (1).

13 **SECTION 7.** 601.73 (1) (intro.) of the statutes, as affected by 1995 Wisconsin Act
14 27, section 7011, is amended to read:

15 601.73 (1) REQUIREMENTS FOR EFFECTIVE SERVICE. (intro.) Service upon the com-
16 missioner or secretary of state under s. 601.72 (2) is service on the principal, if:

17 **SECTION 8.** 601.73 (1) (intro.) of the statutes, as affected by 1995 Wisconsin Acts
18 27, section 7012b, and ... (this act), is repealed and recreated to read:

19 601.73 (1) REQUIREMENTS FOR EFFECTIVE SERVICE. (intro.) Service upon the com-
20 missioner or department of financial institutions under s. 601.72 is service on the
21 principal, if:

22 **SECTION 9.** 601.73 (2) (c) of the statutes, as affected by 1995 Wisconsin Act 27,
23 is amended to read:

24 601.73 (2) (c) *Default judgment.* No plaintiff or complainant is entitled to a
25 judgment by default in any proceeding in which process is served under this section

1 and s. 601.72 ~~(2)~~ until the expiration of 20 days from the date of mailing of the process
2 under par. (b).

3 **SECTION 10.** 623.06 (1) of the statutes is renumbered 623.06 (1f).

4 **SECTION 11.** 623.06 (1c) of the statutes is created to read:

5 623.06 **(1c)** In this section, “qualified actuary” means a member in good stand-
6 ing of the American academy of actuaries who meets any other requirements that the
7 commissioner may by rule specify.

8 **SECTION 12.** 623.06 (1m) of the statutes is created to read:

9 623.06 **(1m)** (a) 1. For each year ending on or after December 31, 1996, every
10 life insurance company doing business in this state shall submit to the commissioner,
11 with its annual statement due by March 1 of the following year, an opinion by a quali-
12 fied actuary as to whether the reserves and related actuarial items held in support
13 of the policies and contracts specified by the commissioner by rule satisfy all of the
14 following:

- 15 a. They are computed appropriately.
16 b. They are based on assumptions that satisfy contractual provisions.
17 c. They are consistent with prior reported amounts.
18 d. They comply with the applicable laws of this state.

19 2. The commissioner shall by rule specify in detail the nature of the information
20 required in the opinion under subd. 1. and may by rule require any additional in-
21 formation that the commissioner determines is necessary to the scope of the opinion.

22 (b) 1. Every life insurance company not exempted by rule shall include with the
23 opinion required under par. (a) the opinion of the qualified actuary as to whether the
24 reserves and related actuarial items held in support of the policies and contracts spe-
25 cified by the commissioner by rule, when considered in light of the assets held by the

1 company with respect to the reserves and related actuarial items, including but not
2 limited to the investment earnings on the assets and the considerations anticipated
3 to be received and retained under the policies and contracts, make adequate provi-
4 sion for the company's obligations under the policies and contracts, including but not
5 limited to the benefits under and expenses associated with the policies and contracts.
6 The commissioner may by rule provide for a transition period for an insurance com-
7 pany to establish any higher reserves that the qualified actuary determines are nec-
8 essary to make adequate provision for the company's obligations under the policies
9 and contracts.

10 2. An insurance company that is required to submit an opinion under subd. 1.
11 shall have prepared by the qualified actuary who renders the opinion a memoran-
12 dum in support of the opinion under subd. 1. The commissioner shall specify by rule
13 the form and content of the memorandum. The insurance company shall provide the
14 memorandum to the commissioner, at the commissioner's request, for his or her ex-
15 amination. After examination, the commissioner shall return the memorandum to
16 the insurance company. The memorandum shall not be considered a record of the
17 commissioner's office.

18 3. If an insurance company fails to provide a supporting memorandum to the
19 commissioner upon request within the period specified by rule, or if the commission-
20 er determines that the supporting memorandum provided by an insurance company
21 fails to meet the standards prescribed by rule or is otherwise unacceptable, the com-
22 missioner may retain a qualified actuary at the expense of the insurance company
23 to review the opinion required under subd. 1. and the basis for the opinion and to pre-
24 pare such supporting memorandum as the commissioner requires.

25 (c) The following provisions apply to an opinion required under par. (a) or (b):

1 1. The opinion shall apply to all business in force, including individual and
2 group health insurance plans, in form and substance acceptable to the commissioner
3 as specified by rule.

4 2. The opinion shall be based on standards adopted from time to time by the
5 actuarial standards board established by the American academy of actuaries and on
6 such additional standards as the commissioner may by rule prescribe.

7 3. In the case of an opinion required to be submitted by a foreign or alien compa-
8 ny, the commissioner may accept the opinion filed by that company with the insur-
9 ance supervisory official of another state if the commissioner determines that the
10 opinion reasonably meets the requirements applicable to a company domiciled in
11 this state.

12 (d) Except for fraud or wilful misconduct, a qualified actuary may not be held
13 liable for damages to any person other than the insurance company or the commis-
14 sioner for any act, error, omission, decision or conduct with respect to an opinion re-
15 quired under this subsection.

16 (e) The commissioner shall specify by rule any disciplinary action that the com-
17 missioner may take against an insurance company or a qualified actuary related to
18 any of the requirements under this subsection.

19 (f) 1. The commissioner shall keep confidential any memorandum in support
20 of, and any other material provided by an insurance company to the commissioner
21 in connection with, an opinion required under this subsection. Any such memoran-
22 dum or other material may not be made public and may not be subject to subpoena
23 except for the purpose of defending an action seeking damages from any person on
24 account of an act required under this subsection or required by a rule authorized or
25 required under this subsection.

1 2. The commissioner may release any such memorandum or other material
2 with the written consent of the insurance company, or to the American academy of
3 actuaries upon its request if the memorandum or other material is required for pro-
4 fessional disciplinary proceedings and if the request sets forth procedures that are
5 satisfactory to the commissioner for preserving the confidentiality of the memoran-
6 dum or other material.

7 3. A memorandum loses its confidentiality if the insurance company cites any
8 portion of the memorandum for marketing purposes or before any governmental
9 agency other than a state insurance department or if the insurance company releases
10 any portion of the memorandum to the news media.

11 **SECTION 13.** 623.06 (5) of the statutes is renumbered 623.06 (5) (a) and
12 amended to read:

13 623.06 (5) (a) In no event shall may a company's aggregate reserves for all life
14 insurance policies, excluding disability and accidental death benefits, issued on or
15 after the effective date of this section, be less than the aggregate reserves calculated
16 in accordance with the method set forth in subs. (3) to (4m) and (7) and the mortality
17 table or tables and rate or rates of interest used in calculating nonforfeiture benefits
18 for such policies.

19 **SECTION 14.** 623.06 (5) (b) of the statutes is created to read:

20 623.06 (5) (b) In no event may a company's aggregate reserves for all policies,
21 contracts and benefits be less than the aggregate reserves determined by a qualified
22 actuary in an opinion under sub. (1m) (b) 1. to be necessary to make adequate provi-
23 sion for the company's obligations under the policies and contracts.

24 **SECTION 15.** 623.06 (6) of the statutes is amended to read:

1 623.06 (6) Reserves for all policies and contracts issued prior to the effective
2 date of this ~~section~~ subsection may be calculated, at the option of the company, ac-
3 cording to any standards ~~which~~ that produce greater aggregate reserves for all such
4 policies and contracts than the minimum reserves required by the laws in effect im-
5 mediately prior to such date. Reserves for any category of policies, contracts or bene-
6 fits as established by the commissioner, issued on or after the effective date of this
7 ~~section~~ subsection, may be calculated, at the option of the company, according to any
8 standards ~~which~~ that produce greater aggregate reserves for such category than
9 those calculated according to the minimum standard herein provided, but the rate
10 or rates of interest used for policies and contracts, other than annuity and pure en-
11 dowment contracts, shall not be higher than the corresponding rate or rates of inter-
12 est used in calculating any nonforfeiture benefits provided for therein. Any such
13 company ~~which~~ that at any time has adopted any standard of valuation producing
14 greater aggregate reserves than those calculated according to the minimum stan-
15 dard herein provided may, with the approval of the commissioner, adopt any lower
16 standard of valuation, but not lower than the minimum herein provided. For the pur-
17 poses of this subsection, holding any additional reserves that a qualified actuary, in
18 an opinion under sub. (1m) (b) 1., determined to be necessary to make adequate pro-
19 vision for the company's obligations under the policies and contracts shall not be con-
20 sidered the adoption of a higher standard of valuation.

21 **SECTION 16.** 645.08 (2) of the statutes is amended to read:

22 645.08 (2) IMMUNITY. No civil cause of action may arise against and no civil li-
23 ability may be imposed upon the state, commissioner, special deputy commissioner,
24 rehabilitator or liquidator, or their employes or agents, or the insurance security
25 fund under ch. 646 or its agents, employes, directors or contributor insurers, for an

1 act or omission by any of them in the performance of their powers and duties under
2 this chapter or in the performance of their powers and duties relating to regulation
3 of the capital or solvency of an insurer under chs. 600 to 646, including the compulso-
4 ry or security surplus requirements under ch. 623. This subsection does not apply
5 to a civil cause of action arising from an act or omission that is criminal under ch. 943,
6 ~~if the.~~ Such a cause of action is not, however, may be barred or limited by common
7 law, sovereign immunity, governmental immunity or otherwise by law.

8 **SECTION 17.** 646.01 (1) (a) 2. i. of the statutes is created to read:

9 646.01 (1) (a) 2. i. Nondomestic insurers that have not obtained a certificate
10 of authority to do business in this state and that are doing business under s. 618.41
11 or 618.42.

12 **SECTION 18.** 646.31 (2) (a) of the statutes is renumbered 646.31 (2) (a) 1. and
13 amended to read:

14 646.31 (2) (a) 1. The claim of a policyholder, including a ceding assessable do-
15 mestic insurer which is organized under ch. 612 and a domestic insurer which is a
16 bona fide policyholder of the insurer in liquidation, ~~or,~~

17 2. Except for a claim of a beneficiary, assignee or payee under a life or disability
18 insurance policy or annuity contract, the claim of an insured, including a certificate
19 holder, under a policy or annuity who at the time of the insured event or of the liqui-
20 dation order was a resident of this state; ~~or,~~

21 **SECTION 19.** 646.31 (2) (f) of the statutes is created to read:

22 646.31 (2) (f) *Beneficiaries, assignees and payees.* Except for a claim of a non-
23 resident certificate holder under a group policy or contract, a claim made under a life
24 or disability insurance policy or annuity contract by a resident or nonresident benefi-
25 ciary, assignee or payee of a person who fulfills all of the following criteria:

