



State of Wisconsin
2021 - 2022 LEGISLATURE

LRB-4777/1
EKL&TJD:emw

2021 ASSEMBLY BILL 622

October 14, 2021 - Introduced by Representative PETERSEN, cosponsored by Senator FELZKOWSKI, by request of Office of the Commissioner of Insurance. Referred to Committee on Insurance.

1 **AN ACT to repeal** 601.954 (2) (f) 1., 635.05 (7), 635.12 and 646.51 (3) (ar) 1.; **to**
2 **renumber** 632.66; **to consolidate, renumber and amend** 601.954 (2) (f)
3 (intro.) and 2. and 646.51 (3) (ar) (intro.) and 2.; **to amend** 601.64 (3) (c), 611.40
4 (1), 611.42 (1), 611.42 (1e) (b) (intro.), 632.62 (1) (b) 1., 632.62 (1) (b) 2., 645.68
5 (3), 646.13 (2) (g), 646.325 (2) (intro.), 646.325 (2) (a) (intro.), 655.27 (3) (b) 2.,
6 655.27 (3) (bt) and 655.275 (2); and **to create** 551.102 (28) (bm), 601.465 (3) (g),
7 601.465 (3) (h), 601.48 (1m), 611.42 (1b), 611.42 (1g), 611.426, 617.13, 625.03
8 (1m) (f), 632.62 (1) (b) 4., 632.66 (2), 646.01 (1) (b) 21., 646.01 (1) (b) 22. and
9 646.325 (2) (a) 3. of the statutes; **relating to:** various changes to insurance
10 laws, including issuance of funding agreements, granting rule-making
11 authority, and providing a penalty.

Analysis by the Legislative Reference Bureau

This bill modifies various insurance statutes that are generally administered by the Office of the Commissioner of Insurance.

The bill requires that OCI maintain accreditation with the National Association of Insurance Commissioners and allows OCI to adopt minimum

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education and certification requirements for job classifications that monitor the financial solvency of insurers to meet NAIC accreditation and best practice standards.

The bill modifies the penalty for violations of insurance statutes and rules. Under current law, a person who violates an insurance statute or rule, intentionally aids a person in such a violation, or knowingly permits such a violation by a person over whom he or she has authority is subject to a penalty of not more than \$1,000. The bill increases this penalty to not more than \$5,000 if the violation specifically involves a consumer who is an adult at risk or at least 60 years of age.

The bill modifies the policyholder meeting requirements that apply to mutual insurance corporations (mutuals) to allow mutuals to hold meetings by means of remote communication and to allow policyholders to participate by means of remote communication. In order to allow remote participation, a mutual must implement reasonable measures regarding participation and participant verification and must maintain a record of voting and other actions by remote participants. The bill also requires that the meeting notice describe the means of remote communication to be used. The bill also allows remote participation in shareholders' meetings for stock insurance corporations.

Under the bill, a domestic insurer with a certificate of authority to transact the business of life insurance and annuities may issue a "funding agreement," which the bill defines as an annuity without life contingencies that is an agreement for an insurer to accept and accumulate funds and to make one or more payments at future dates in fixed or variable amounts that are not based on mortality or morbidity contingencies. In order to issue a funding agreement, the insurer's board of directors must approve a funding agreement plan, the insurer must comply with form filing requirements, and OCI must determine that the issuance is not adverse to the interest of the insurer's policyholders, although no determination is required if the insurer has more than \$200 billion in admitted assets. Additionally, the bill provides that no amounts may be guaranteed or credited under a funding agreement except upon reasonable assumptions as to investment income and expenses and on a basis equitable to all holders of a given class. The bill specifies that the issuance or delivery of a funding agreement in Wisconsin constitutes doing an insurance business in the state and that an insurer may directly offer funding agreements. The bill provides that amounts payable under funding agreements are treated as loss claims, funding agreements are not subject to rate regulation requirements, and materials provided to OCI related to funding agreements are confidential. The bill also specifies that funding agreements are not securities for purposes of state securities law and that OCI has sole authority to regulate their issuance and sale.

The bill directs OCI to promulgate rules requiring certain insurers, as determined under the rules, to report their group capital calculations and liquidity stress tests.

As enacted in 2021 Wisconsin Act 73, insurers and other entities holding a credential from OCI are required in the insurance laws to provide notification of a cybersecurity breach. Entities, including insurers, that are subject to federal laws protecting against disclosure of nonpublic personal information and fraudulent

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access to financial information and health plans, health care clearinghouses, and certain health care providers that must comply with the privacy requirements of the federal Health Insurance Portability and Accountability Act are exempt from this notification requirement. The bill eliminates the exemption from notification of a cybersecurity breach for the entities and insurers that are subject to federal laws protecting against disclosure of nonpublic personal information and fraudulent access to financial information.

The bill repeals the requirement that small employer insurers annually publish their premium rates.

The bill specifies that the requirements regarding the insurance security fund do not apply to funding agreements or the federal employee health benefit plan. The bill also specifies that the insurance security fund may make contracts for the administration and payment of claims for which the insured is responsible and that the fund may recover costs and expenses incurred in administering a claim.

The bill also modifies statutes relating to the injured patients and families compensation fund. The bill specifies that the payment classifications provided by OCI under current law must be by reference to the applicable Insurance Services Office, Inc., codes and extends the provision in current law providing for passive review by the Joint Committee on Finance of the fund's proposed fees to also include the payment classifications. The bill also provides that the fund's peer review council, which is currently five persons, may be either five or seven persons.

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

1 **SECTION 1.** 551.102 (28) (bm) of the statutes is created to read:

2 551.102 **(28)** (bm) Does not include a funding agreement authorized under s.
3 632.66.

4 **SECTION 2.** 601.465 (3) (g) of the statutes is created to read:

5 601.465 **(3)** (g) Any information designated as confidential under s. 632.66 (2)
6 (g), which is subject to the confidentiality provisions in s. 632.66 (2) (g).

7 **SECTION 3.** 601.465 (3) (h) of the statutes is created to read:

8 601.465 **(3)** (h) Group capital calculation and liquidity stress test filings and
9 any related information provided by an insurer under rules promulgated under s.
10 617.13 (1), which are not subject to subch. II of ch. 19 and are subject only to the
11 confidentiality provisions of s. 617.13 (2).

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1 **SECTION 4.** 601.48 (1m) of the statutes is created to read:

2 601.48 **(1m)** ACCREDITATION. (a) The office shall maintain accreditation with
3 the National Association of Insurance Commissioners.

4 (b) Notwithstanding s. 230.14, the commissioner may adopt minimum
5 education and certification requirements for job classification levels that monitor the
6 financial solvency of insurers as necessary to meet accreditation and best practice
7 standards established by the National Association of Insurance Commissioners.
8 Any minimum education and certification requirement adopted under this
9 paragraph shall apply only to employees placed into the classification level after the
10 requirement is adopted and may not apply to employees who were in that
11 classification level prior to the adoption of the requirement.

12 **SECTION 5.** 601.64 (3) (c) of the statutes is amended to read:

13 601.64 **(3)** (c) *Forfeiture for violation of statute or rule.* Whoever violates an
14 insurance statute or rule or s. 149.13, 2011 stats., intentionally aids a person in
15 violating an insurance statute or rule or s. 149.13, 2011 stats., or knowingly permits
16 a person over whom he or she has authority to violate an insurance statute or rule
17 or s. 149.13, 2011 stats., shall forfeit to the state not more than \$1,000 for each
18 violation, except that whoever violates an insurance statute or rule, intentionally
19 aids a person in violating an insurance statute or rule, or knowingly permits a person
20 over whom he or she has authority to violate an insurance statute or rule shall, if the
21 violation specifically involves a consumer who is an adult at risk, as defined in s.
22 55.01 (1e), or an individual who is at least 60 years of age, forfeit to the state not more
23 than \$5,000 for each violation. If the statute or rule imposes a duty to make a report
24 to the commissioner, each week of delay in complying with the duty is a new violation.

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1 **SECTION 6.** 601.954 (2) (f) (intro.) and 2. of the statutes, as created by 2021
2 Wisconsin Act 73, are consolidated, renumbered 601.954 (2) (f) and amended to read:

3 601.954 (2) (f) *Exceptions for certain entities.* This subsection does not apply
4 to any of the following: ~~2. An~~ entity that is described in 45 CFR 164.104 (a), if the
5 entity complies with the requirements of 45 CFR part 164.

6 **SECTION 7.** 601.954 (2) (f) 1. of the statutes is repealed.

7 **SECTION 8.** 611.40 (1) of the statutes is amended to read:

8 611.40 (1) MEETINGS, NOTICES, QUORUMS AND VOTING. Sections 180.0701 to
9 180.0703, 180.0705, 180.0709, 180.0721 to 180.0727 and 180.1708 (3) apply to stock
10 corporations. Each director of a stock corporation shall be elected by a plurality of
11 the votes cast by the shares entitled to vote in the election at a meeting at which a
12 quorum is present.

13 **SECTION 9.** 611.42 (1) of the statutes is amended to read:

14 611.42 (1) GENERAL. Subject to this section and s. 611.53, ss. 181.0701 (1), (2),
15 and (4) to (6), 181.0702 (1) to (3) and (5), ~~181.0705 (1) to (4)~~, 181.0722 (1) to (3),
16 181.0723, and 181.0727 apply to mutuals.

17 **SECTION 10.** 611.42 (1b) of the statutes is created to read:

18 611.42 (1b) PLACE OF MEETINGS. (a) A mutual may hold an annual, regular, or
19 special meeting of policyholders in or outside this state at the place stated in or fixed
20 in accordance with the bylaws. If no place is stated in or fixed in accordance with the
21 bylaws, the mutual shall hold the annual meeting at its principal office.

22 (b) Notwithstanding par. (a), a mutual's bylaws may authorize the board of
23 directors, in its sole discretion, to determine that an annual, regular, or special
24 meeting of policyholders may be held solely by means of remote communication as
25 authorized under s. 611.426.

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1 **SECTION 11.** 611.42 (1e) (b) (intro.) of the statutes is amended to read:

2 611.42 **(1e)** (b) (intro.) The court may fix the time and place of the meeting or
3 determine that the meeting shall be held solely by means of remote communication
4 as provided under s. 611.426. The court shall require that the meeting be called and
5 conducted in accordance with the mutual's articles of incorporation and bylaws, in
6 so far as possible, except that the court may do all of the following:

7 **SECTION 12.** 611.42 (1g) of the statutes is created to read:

8 611.42 **(1g)** NOTICE OF MEETINGS. (a) *When required.* A mutual shall give notice
9 of meetings of policyholders as provided in its bylaws or, if the bylaws are silent, in
10 a manner that is fair and reasonable.

11 (b) *In general.* A notice that conforms to the requirements of par. (c) is fair and
12 reasonable. Except for matters referred to in par. (c) 2., other means of giving notice
13 may also be fair and reasonable when all of the circumstances are considered.
14 Section 181.0141 applies to notices provided under this subsection.

15 (c) *Notice safe harbor.* Notice is fair and reasonable if all of the following
16 conditions exist:

17 1. The mutual notifies its policyholders of the date, time, and, if applicable,
18 place of each annual, regular, and special meeting of policyholders not more than 60
19 days and not less than 10 days, or, if notice is mailed by any type other than first class
20 or registered mail, 30 days, before the meeting date. If the board of directors has
21 authorized participation by means of remote communication under s. 611.426, the
22 notice shall describe the means of remote communication to be used.

23 2. Notice of an annual or regular meeting includes a description of any matter
24 or matters that must be approved by the policyholders under s. 181.0723 (2),
25 181.0831, 181.0873 (4), 181.1003, 181.1021, 181.1105, 181.1202, or 181.1401.

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1 3. Notice of a special meeting includes a description of the matter or matters
2 for which the meeting is called.

3 (d) *Adjourned meetings.* Unless the bylaws require otherwise, if an annual,
4 regular, or special meeting of policyholders is adjourned to a different date, time, or
5 place or will be held by a new means of remote communication, notice need not be
6 given of the new date, time, place, or means of remote communication if the new date,
7 time, place, or means of remote communication is announced at the meeting before
8 adjournment. If a new record date for the adjourned meeting is or must be fixed
9 under s. 181.0707, notice of the adjourned meeting must be given under this
10 subsection to the policyholders of record as of the new record date.

11 **SECTION 13.** 611.426 of the statutes is created to read:

12 **611.426 Remote participation in policyholder meetings.** (1) If
13 authorized by the board of directors in its sole discretion, and subject to sub. (2) and
14 any guidelines and procedures adopted by the board of directors, policyholders and
15 proxies of policyholders not physically present at a meeting of policyholders may
16 participate in the meeting by means of remote communication.

17 (2) If policyholders and proxies of policyholders participate in a meeting of
18 policyholders by means of remote communication, the participating policyholders
19 and proxies of policyholders shall be considered to be present in person and
20 permitted to vote at the meeting, whether the meeting is held at a designated place
21 or solely by means of remote communication, if all of the following apply:

22 (a) The mutual has implemented reasonable measures to verify that each
23 person considered to be present and permitted to vote at the meeting by means of
24 remote communication is a policyholder or proxy of a policyholder.

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1 (b) The mutual has implemented reasonable measures to provide policyholders
2 and proxies of policyholders a reasonable opportunity to participate in the meeting
3 and to vote on matters submitted to the policyholders, including an opportunity to
4 read or hear the proceedings of the meeting concurrently with the proceedings.

5 (c) The mutual maintains a record of voting and other actions by any
6 policyholder or proxy of a policyholder that votes or takes another action at the
7 meeting by means of remote communication.

8 **SECTION 14.** 617.13 of the statutes is created to read:

9 **617.13 Rules requiring group capital calculations and liquidity stress**
10 **tests. (1)** The commissioner shall promulgate rules requiring certain insurers, as
11 determined under the rules, to report their group capital calculations and liquidity
12 stress tests, including the form of the reports and the manner and process for filing
13 the reports.

14 **(2)** Sections 19.31 to 19.37 do not apply to the filings made under sub. (1) or to
15 any information submitted to the commissioner in connection with the filings. The
16 filings made under sub. (1) are not subject to subpoena or discovery and may not be
17 admissible in evidence in any private civil action. The commissioner shall only share
18 a filing made under sub. (1), and any information requested in connection with the
19 filing, with the insurance regulatory authorities of states having statutes or
20 regulations substantially similar to this section and who have agreed in writing not
21 to disclose the information.

22 **SECTION 15.** 625.03 (1m) (f) of the statutes is created to read:

23 625.03 **(1m)** (f) Funding agreements authorized under s. 632.66.

24 **SECTION 16.** 632.62 (1) (b) 1. of the statutes is amended to read:

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1 632.62 (1) (b) 1. Paid-up, temporary, pure endowment insurance and annuity
2 settlements provided in exchange for lapsed, surrendered or matured policies;.

3 **SECTION 17.** 632.62 (1) (b) 2. of the statutes is amended to read:

4 632.62 (1) (b) 2. Annuities beginning within one year of the making of the
5 contract; ~~and.~~

6 **SECTION 18.** 632.62 (1) (b) 4. of the statutes is created to read:

7 632.62 (1) (b) 4. Funding agreements authorized under s. 632.66.

8 **SECTION 19.** 632.66 of the statutes is renumbered 632.66 (1).

9 **SECTION 20.** 632.66 (2) of the statutes is created to read:

10 632.66 (2) (a) In this subsection, “funding agreement” means an annuity
11 without life contingencies that is an agreement for an insurer to accept and
12 accumulate funds and to make one or more payments at future dates in fixed or
13 variable amounts, or both, that are not based on mortality or morbidity
14 contingencies.

15 (b) A domestic insurer that holds a valid certificate of authority to transact the
16 business of life insurance and annuities in this state may issue a funding agreement
17 if all of the following conditions are met:

18 1. The domestic insurer’s board of directors, or an authorized committee of the
19 board, approves the domestic insurer’s plan relating to funding agreements.

20 2. The commissioner determines that the issuance of funding agreements by
21 the domestic insurer is not adverse to the interests of the policyholders of the
22 domestic insurer, except that no determination from the commissioner is required
23 if the domestic insurer has more than \$200 billion in admitted assets. In making a
24 determination under this subdivision, the commissioner shall consider the domestic

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1 insurer's specific policy objective and strategies, investment and risk management
2 guidelines, and aggregate maximum limits on the funding agreement business.

3 3. No amounts may be guaranteed or credited under the funding agreement
4 except upon reasonable assumptions as to investment income and expenses and on
5 a basis equitable to all holders of a given class of the funding agreement.

6 4. The domestic insurer complies with the form filing requirements under s.
7 631.20 with respect to the funding agreement.

8 (c) The issuance or delivery of a funding agreement by an insurer in this state
9 shall constitute doing an insurance business herein.

10 (d) A domestic insurer may offer funding agreements directly through the
11 domestic insurer and is not required to use licensed intermediaries when marketing
12 funding agreements.

13 (e) Amounts paid to the domestic insurer, and proceeds applied under optional
14 modes of settlement, under funding agreements may be allocated to one or more
15 separate accounts pursuant to s. 611.24.

16 (f) Notwithstanding ch. 551, the commissioner has sole authority to regulate
17 the issuance and sale of funding agreements, including the persons selling funding
18 agreements on behalf of insurers.

19 (g) Notwithstanding s. 601.465 (1m) and subch. II of ch. 19, any materials
20 submitted to the commissioner pursuant to an approval under par. (b) 2. or pursuant
21 to a request from the commissioner related to a funding agreement shall be held
22 confidential pursuant to s. 601.465 (1n).

23 (h) The commissioner may promulgate rules as necessary for the
24 implementation of this subsection.

25 **SECTION 21.** 635.05 (7) of the statutes is repealed.

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1 **SECTION 22.** 635.12 of the statutes is repealed.

2 **SECTION 23.** 645.68 (3) of the statutes is amended to read:

3 645.68 (3) LOSS CLAIMS. All claims under policies for losses incurred, including
4 3rd-party claims and federal, state, and local government claims, except the first
5 \$200 of losses otherwise payable to any claimant under this subsection other than
6 the federal government. All claims under life insurance and annuity policies,
7 whether for death proceeds, annuity proceeds, or investment values, shall be treated
8 as loss claims. All amounts payable under funding agreements, as defined in s.
9 632.66 (2) (a), whether for principal or interest, shall be treated as loss claims.
10 Claims may not be cumulated by assignment to avoid application of the \$200
11 deductible provision.

12 **SECTION 24.** 646.01 (1) (b) 21. of the statutes is created to read:

13 646.01 (1) (b) 21. A policy issued by an insurer to the federal government or an
14 agency of the federal government for the purpose of providing health insurance
15 coverage to enrollees under the federal employee health benefit plan program under
16 5 USC 8901 et seq.

17 **SECTION 25.** 646.01 (1) (b) 22. of the statutes is created to read:

18 646.01 (1) (b) 22. Funding agreements authorized under s. 632.66.

19 **SECTION 26.** 646.13 (2) (g) of the statutes is amended to read:

20 646.13 (2) (g) Sue and be sued, make contracts, including a contract with an
21 insured for administration and payment of claims for which the insured is
22 responsible, and borrow money necessary to carry out its duties, including money
23 with which to pay claims under s. 646.31 or to continue coverage under s. 646.35.
24 The fund may offer as security for such loans its claims against the liquidator or its
25 power to levy assessments under this chapter.

ASSEMBLY BILL 622**SECTION 27**

1 **SECTION 27.** 646.325 (2) (intro.) of the statutes is amended to read:

2 646.325 (2) RECOVERY FROM CERTAIN INSUREDS AND AFFILIATES. (intro.) Except
3 as provided in sub. (3), the fund may recover from a person the costs and expenses
4 incurred in administering or defending a claim against the person by a 3rd party and
5 the amount of any claim paid on behalf of the person to a 3rd party, if all of the
6 following conditions are satisfied:

7 **SECTION 28.** 646.325 (2) (a) (intro.) of the statutes is amended to read:

8 646.325 (2) (a) (intro.) The person on whose behalf the claim was administered,
9 defended, or paid is any of the following:

10 **SECTION 29.** 646.325 (2) (a) 3. of the statutes is created to read:

11 646.325 (2) (a) 3. A person excluded under s. 646.01 (1) (b) 18.

12 **SECTION 30.** 646.51 (3) (ar) (intro.) and 2. of the statutes are consolidated,
13 renumbered 646.51 (3) (ar) and amended to read:

14 646.51 (3) (ar) *Disability.* Except as provided in par. (c), with respect to
15 disability insurance policies, including policies issued by health maintenance
16 organization insurers, assessments shall be calculated as follows: ~~2. For~~
17 ~~assessments authorized by the board on or after November 13, 2015, as a percentage~~
18 of premium written in this state by each insurer in the classes protected by the
19 accounts for the year preceding the year in which the assessment is authorized by
20 the board. If the assessment data for the year immediately preceding the year in
21 which the assessment is authorized by the board is not available when the
22 assessment is called, the fund may use the assessment data for the most recent year
23 for which data is available.

24 **SECTION 31.** 646.51 (3) (ar) 1. of the statutes is repealed.

25 **SECTION 32.** 655.27 (3) (b) 2. of the statutes is amended to read:

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1 655.27 (3) (b) 2. With respect to fees paid by physicians, the commissioner shall
2 provide for no fewer than 4 payment classifications, based upon the amount of
3 surgery performed and the risk of diagnostic and therapeutic services provided or
4 procedures performed, by reference to the applicable Insurance Services Office, Inc.,
5 codes for specialties and types of practice that are similar in the degree of exposure
6 to loss.

7 **SECTION 33.** 655.27 (3) (bt) of the statutes is amended to read:

8 655.27 (3) (bt) *Report to joint committee on finance.* Annually, no later than
9 April 1, the commissioner shall send to the cochairpersons of the joint committee on
10 finance a report detailing the proposed fees and payment classifications set for the
11 next fiscal year under par. (b) and under s. 655.61 (1). If, within 14 working days after
12 the date that the commissioner submits the report, the cochairpersons of the
13 committee notify the commissioner that the committee has scheduled a meeting for
14 the purpose of reviewing the proposed fees and payment classifications, the
15 commissioner may not impose the fees or payment classifications until the
16 committee approves the report. If the cochairpersons of the committee do not notify
17 the commissioner, the commissioner may impose the proposed fees and payment
18 classifications. In addition to any other method prescribed by rule for advising
19 health care providers of the amount of the fees and payment classifications, the
20 commissioner shall post the fees and payment classifications set under par. (b) for
21 the next fiscal year on the office's Internet site and the director of state courts shall
22 post the fees set under s. 655.61 (1) for the next fiscal year on the mediation fund's
23 Internet site.

24 **SECTION 34.** 655.275 (2) of the statutes is amended to read:

