



State of Wisconsin  
2015 - 2016 LEGISLATURE

LRB-2365/en  
CMH:emw

## 2015 SENATE BILL 287

1     **AN ACT to repeal** 601.422, 601.425, 601.428, 612.14 (1) to (12), 612.31 (5), 612.31  
2           (6), 612.32 (4), 612.53 (1) (title), 612.53 (2), 612.71, 623.06 (1c), 628.81, 635.13  
3           (title), 635.13 (2) and 646.51 (3) (am) 1.; **to renumber** 612.53 (1) and 635.13 (1);  
4           **to renumber and amend** 612.14 (intro.), 620.04 (1), 623.06 (1f), 623.06 (8) and  
5           632.43 (6m) (a) 3.; **to consolidate, renumber and amend** 646.51 (3) (am)  
6           (intro.) and 2.; **to amend** 600.01 (1) (b) 10. b., 605.21 (2), 611.07 (4), 611.56 (5),  
7           611.63 (4), 612.02 (2) (a), 612.13 (3), 612.13 (4), 612.31 (4) (m), 612.32 (1), 612.32  
8           (2) (a), 612.33 (1), 612.33 (2) (b), 623.06 (2) (intro.), 628.07, 628.10 (2) (a), 628.10  
9           (2) (am), 628.347 (1) (a), 628.347 (4) (c), 628.347 (4m) (b) 3. c., 631.95 (3) (a),  
10          632.43 (6m) (e) 3. f., 632.43 (6m) (e) 3. g., 632.62 (2), 632.62 (3), 632.62 (4) (a),  
11          632.62 (4) (b), 632.89 (3c) (b), 646.51 (3) (b), 646.51 (4) (a), 646.51 (9) (a), 646.51  
12          (9) (b), 655.27 (3) (b) 1., 655.27 (3) (b) 2., 655.27 (3) (b) 2m., 655.27 (3) (bg) 1.,  
13          655.27 (3) (bg) 2., 655.27 (3) (br) (intro.), 655.27 (3) (d), 655.27 (3) (e) and 655.61  
14          (1); **to repeal and recreate** 623.06 (1) (f); and **to create** 227.01 (13) (pm),

**SENATE BILL 287**

1           601.465 (1m) (c) 8., 601.465 (1m) (c) 9., 601.465 (3) (d), 620.04 (1) (b), 623.06 (1),  
2           623.06 (1f) (b), 623.06 (1m) (intro.), 623.06 (1r), 623.06 (8m), 623.06 (9), 623.06  
3           (10), 623.06 (11), 623.06 (12), 623.06 (13) (b), 632.43 (6m) (a) 3. b., 632.43 (6m)  
4           (a) 4m., 645.675, 646.51 (3) (ar), 646.51 (10), 655.27 (3) (bt) and 655.61 (3) of the  
5           statutes; **relating to:** various miscellaneous changes to the insurance statutes  
6           and granting rule-making authority.

---

*Analysis by the Legislative Reference Bureau*

---

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

7           **SECTION 1.** 227.01 (13) (pm) of the statutes is created to read:

8           227.01 (13) (pm) Relates to setting fees under s. 655.27 (3) for the injured  
9           patients and families compensation fund or setting fees under s. 655.61 for the  
10          mediation fund.

11          **SECTION 2.** 600.01 (1) (b) 10. b. of the statutes is amended to read:

12          600.01 (1) (b) 10. b. The exemption under subd. 10. a. does not apply if the  
13          services offered by the care management organization include hospital, physician or  
14          other acute health care services other than mental health and alcohol and other drug  
15          abuse treatment services.

16          **SECTION 3.** 601.422 of the statutes is repealed.

17          **SECTION 4.** 601.425 of the statutes is repealed.

18          **SECTION 5.** 601.428 of the statutes is repealed.

19          **SECTION 6.** 601.465 (1m) (c) 8. of the statutes is created to read:

20          601.465 (1m) (c) 8. The International Association of Insurance Supervisors.

21          **SECTION 7.** 601.465 (1m) (c) 9. of the statutes is created to read:

**SENATE BILL 287**

1           601.465 (1m) (c) 9. An agent or employee of the International Association of  
2 Insurance Supervisors.

3           **SECTION 8.** 601.465 (3) (d) of the statutes is created to read:

4           601.465 (3) (d) Any information defined as confidential information under s.  
5 623.06 (12) (am), which is subject only to the confidentiality provisions in s. 623.06  
6 (12).

7           **SECTION 9.** 605.21 (2) of the statutes is amended to read:

8           605.21 (2) PREMIUM PAYMENT. Upon receipt of certification of premium due, the  
9 premium shall be paid into the state treasury for the benefit of the property fund,  
10 within ~~60~~ 30 days after the date of certification or the effective date of the policy,  
11 whichever is the later. Premiums for property insured effective at a later date shall  
12 be paid within ~~60~~ 30 days after the effective date of each addition. The amount of a  
13 premium in default shall be a special charge against the local governing unit, and  
14 be included in the next certification of state taxes and charged and collected as other  
15 special charges are collected, with interest from the due date at a rate set by the  
16 commissioner by rule or, in the absence of a rule, at twice the most common prime  
17 rate charged by major banks in this state.

18           **SECTION 10.** 611.07 (4) of the statutes is amended to read:

19           611.07 (4) WAIVER OF NOTICE AND INFORMAL ACTION BY SHAREHOLDERS,  
20 POLICYHOLDERS OR DIRECTORS. Sections 180.0704, 180.0706, 180.0821, and 180.0823  
21 apply to stock corporations and ss. 181.0704, 181.0706, 181.0821, and 181.0823  
22 apply to mutuals. Section 180.0821 also applies to a committee of the board of a stock  
23 corporation and s. 181.0821 also applies to a committee of the board of a mutual,  
24 except that, in both cases, references to “board” shall be read as “committee” and  
25 “directors” shall mean members of the board appointed to serve on the committee.

**SENATE BILL 287****SECTION 11**

1           **SECTION 11.** 611.56 (5) of the statutes is amended to read:

2           611.56 (5) ~~QUORUM MEETINGS, QUORUM, AND VOTING. Section Sections 180.0820,~~  
3           180.0821, and 180.0824 ~~applies~~ apply to a committee of the board of a stock  
4           corporation, except that references in s. 180.0824 to a committee “created under s.  
5           180.0825” shall be read as a committee “created under this section”. Sections  
6           181.0820, 181.0821, and 181.0824 apply to a committee of the board of a mutual,  
7           except that references to “board” shall be read as “committee”, “majority” in s.  
8           181.0824 (1) shall mean a majority of the members of the board appointed to serve  
9           on the committee, and “majority” in s. 181.0824 (2) shall mean a majority of the  
10          members of the board appointed to serve on the committee who are present at the  
11          meeting.

12          **SECTION 11m.** 611.63 (4) of the statutes is amended to read:

13          611.63 (4) ANNUAL REPORT TO COMMISSIONER. The amount of all direct and  
14          indirect remuneration for services, including retirement and other deferred  
15          compensation benefits and stock options, paid or accrued each year for the benefit  
16          of each director and each officer and ~~employee~~ member of executive management, as  
17          defined by the commissioner, whose remuneration exceeds an amount established  
18          by the commissioner, and for all directors and officers as a group shall be included  
19          in the annual report made to the commissioner.

20          **SECTION 12.** 612.02 (2) (a) of the statutes is amended to read:

21          612.02 (2) (a) The name of the corporation ~~which shall contain the words “Town~~  
22          Mutual”;

23          **SECTION 13.** 612.13 (3) of the statutes is amended to read:

**SENATE BILL 287**

1           612.13 (3) DUTIES. The board shall ~~manage~~ direct the business and affairs of  
2           the corporation and shall not delegate its power or responsibility to any person except  
3           as specifically provided otherwise in this chapter.

4           **SECTION 14.** 612.13 (4) of the statutes is amended to read:

5           612.13 (4) ADJUSTMENT COMMITTEE. The directors shall ~~shall~~ may annually appoint  
6           from their own number an adjustment committee of at least 3 persons, to adjust or  
7           supervise the adjustment of losses under s. 612.53. If no adjustment committee is  
8           appointed, the entire board shall act as the adjustment committee to adjust or  
9           supervise the adjustment of losses under s. 612.53.

10          **SECTION 15.** 612.14 (intro.) of the statutes is renumbered 612.14 and amended  
11          to read:

12          **612.14 Reports.** ~~The secretary and the treasurer~~ An officer or person  
13          designated by an officer of the company shall present to the annual meeting written  
14          reports showing the condition of the town mutual on the previous December 31 and  
15          its activity during the preceding calendar year, including: any information required  
16          to be presented by the articles or bylaws or by the commissioner. The officer or person  
17          designated by an officer shall include in the reports a sufficient level of information  
18          to reasonably inform members about the financial condition of the town mutual.

19          **SECTION 16.** 612.14 (1) to (12) of the statutes are repealed.

20          **SECTION 17.** 612.31 (4) (m) of the statutes is amended to read:

21          612.31 (4) (m) Assuming reinsurance, ~~except under sub. (6); or~~

22          **SECTION 18.** 612.31 (5) of the statutes is repealed.

23          **SECTION 19.** 612.31 (6) of the statutes is repealed.

24          **SECTION 20.** 612.32 (1) of the statutes is amended to read:

**SENATE BILL 287****SECTION 20**

1           612.32 (1) REAL PROPERTY OUTSIDE TERRITORY. Town mutuals may insure real  
2 property and contents in villages and cities partially located in the specified territory,  
3 real property and contents in an immediately adjoining county owned by a member  
4 ~~immediately adjoining and contiguous to land owned by the same member which is~~  
5 who has real property and contents insured by the town mutual within the specified  
6 territory, and real property and contents used exclusively by the member and his or  
7 her family for recreational purposes.

8           **SECTION 21.** 612.32 (2) (a) of the statutes is amended to read:

9           612.32 (2) (a) *Farm property.* A town mutual may provide coverage for  
10 livestock, while temporarily located outside the town mutual's territory, for farm  
11 products, while temporarily located for a period not exceeding 2 years outside the  
12 town mutual's territory, and for farm machinery and farm vehicles while temporarily  
13 located, for a period not exceeding ~~6 months,~~ one year outside its territory, subject  
14 to limitations in the policy or in the articles or bylaws with respect to the distance  
15 from the territory to which the property may be removed without suspension of the  
16 coverage.

17           **SECTION 22.** 612.32 (4) of the statutes is repealed.

18           **SECTION 23.** 612.33 (1) of the statutes is amended to read:

19           612.33 (1) PERMITTED AND PROHIBITED REINSURANCE. A town mutual may cede  
20 reinsurance only ~~under s. 612.31 (6), or~~ to an insurer authorized to do business in this  
21 state under ~~s. 612.71 or~~ ch. 611 or 618, or under arrangements which are approved  
22 in advance by the commissioner and which are subject to the controls the  
23 commissioner prescribes.

24           **SECTION 24.** 612.33 (2) (b) of the statutes is amended to read:

**SENATE BILL 287**

1           612.33 (2) (b) *Nonproperty insurance*. To the extent that a town mutual  
2 provides insurance under s. 612.31 (3), it shall obtain reinsurance of at least a 90%  
3 proportional share of each risk or it shall obtain excess of loss reinsurance with a  
4 retention in a similar dollar amount with an insurer authorized to do such business  
5 in this state, in either instance not to exceed \$25,000 on each risk. The commissioner  
6 may permit a town mutual to retain a larger percentage or have a greater excess of  
7 loss retention level if he or she finds that the interests of the members will not be  
8 endangered thereby, or may require it to reinsure a larger percentage or obtain a  
9 lesser excess of loss retention level if he or she finds that the interests of the members  
10 make it advisable. The commissioner may by rule require other reinsurance.

11           **SECTION 25.** 612.53 (1) (title) of the statutes is repealed.

12           **SECTION 26.** 612.53 (1) of the statutes is renumbered 612.53.

13           **SECTION 27.** 612.53 (2) of the statutes is repealed.

14           **SECTION 28.** 612.71 of the statutes is repealed.

15           **SECTION 29.** 620.04 (1) of the statutes is renumbered 620.04 (1) (intro.) and  
16 amended to read:

17           620.04 (1) ADDITIONAL RESTRICTIONS. (intro.) If the commissioner finds that by  
18 reason of investment conditions generally or of the financial condition or current  
19 investment practice of an individual insurer, the interests of insureds, creditors, or  
20 the public are or may be endangered, the commissioner may do any of the following:

21           (a) For insurers that are not restricted under s. 620.03, impose reasonable and  
22 temporary restrictions upon the investments of an individual insurer, including  
23 prohibition or divestment of a particular investment.

24           **SECTION 30.** 620.04 (1) (b) of the statutes is created to read:

**SENATE BILL 287****SECTION 30**

1           620.04 (1) (b) For insurers that are subject to s. 620.03, impose reasonable  
2 restrictions upon the investments of an individual insurer, including prohibition or  
3 divestment of a particular investment.

4           **SECTION 31.** 623.06 (1) of the statutes is created to read:

5           623.06 (1) In this section:

6           (a) “Accident and health insurance contract” means a contract that  
7 incorporates morbidity risk and provides protection against economic loss resulting  
8 from accident, sickness, or medical conditions and as may be specified in the  
9 valuation manual.

10          (b) “Appointed actuary” means a qualified actuary who is appointed in  
11 accordance with the valuation manual to prepare the actuarial opinion required in  
12 sub. (1r).

13          (c) “Deposit-type contract” means a contract that does not incorporate  
14 mortality or morbidity risks and as may be specified in the valuation manual.

15          (d) “Law enforcement agency,” “National Association of Insurance  
16 Commissioners,” or “regulatory agency” includes the employees, agents,  
17 consultants, and contractors of each such entity.

18          (e) “Life insurance,” “life insurance contract,” “life insurance policy,” or “plan  
19 of life insurance” means a contract that incorporates mortality risk, including  
20 annuity and pure endowment contracts, and as may be specified in the valuation  
21 manual.

22          (f) “Operative date of the valuation manual” means the date determined under  
23 sub. (9) (b).



**SENATE BILL 287**

1 (g) “Principle-based valuation” means a reserve valuation that uses one or  
2 more methods, or one or more assumptions, determined by the insurer and that is  
3 required to comply with sub. (10) as specified in the valuation manual.

4 (h) “Qualified actuary” means an individual who is qualified to sign the  
5 applicable statement of actuarial opinion in accordance with the American academy  
6 of actuaries qualification standards for actuaries signing such statements and who  
7 meets the requirements specified in the valuation manual, if the valuation manual  
8 is in effect, and any other requirements that the commissioner may by rule specify.

9 (i) “Tail risk” means a risk that occurs either when the frequency of low  
10 probability events is higher than expected under a normal probability distribution  
11 or when there are observed events of very significant size or magnitude.

12 (j) “Valuation manual” means the manual of valuation instructions as adopted  
13 by the National Association of Insurance Commissioners under sub. (9) or as  
14 subsequently amended.

15 **SECTION 32.** 623.06 (1) (f) of the statutes, as created by 2015 Wisconsin Act ....  
16 (this act), is repealed and recreated to read:

17 623.06 (1) (f) “Operative date of the valuation manual” means the effective date  
18 of this paragraph .... [LRB inserts date], as determined under sub. (9) (b).

19 **SECTION 33.** 623.06 (1c) of the statutes is repealed.

20 **SECTION 34.** 623.06 (1f) of the statutes is renumbered 623.06 (1f) (a) and  
21 amended to read:

22 623.06 (1f) (a) The For policies and contracts issued before the operative date  
23 of the valuation manual, the commissioner shall annually value, or cause to be  
24 valued, the reserve liabilities (hereinafter called reserves) for all outstanding life  
25 insurance policies and annuity and pure endowment contracts of every life insurance

**SENATE BILL 287****SECTION 34**

1 company doing business in this state, ~~except that in the case of an alien company,~~  
2 ~~such valuation shall be limited to its United States business,~~ and may certify the  
3 amount of any such reserves, specifying the mortality table or tables, rate or rates  
4 of interest and methods (net level premium method or other) used in the calculation  
5 of such reserves. In calculating such reserves, the commissioner may use group  
6 methods and approximate averages for fractions of a year or otherwise. In lieu of the  
7 valuation of the reserves herein required of any foreign or alien company, the  
8 commissioner may accept any valuation made, or caused to be made, by the  
9 insurance supervisory official of any state or other jurisdiction ~~when~~ if such  
10 valuation complies with the minimum standard herein provided and if the official  
11 of such state or jurisdiction accepts as sufficient and valid for all legal purposes the  
12 certificate of valuation of the commissioner when such certificate states the  
13 valuation to have been made in a specified manner according to which the aggregate  
14 reserves would be at least as large as if they had been computed in the manner  
15 prescribed by the law of that state or jurisdiction. Subsections (2) to (7) apply to all  
16 policies and contracts issued before the operative date of the valuation manual.

17 **SECTION 35.** 623.06 (1f) (b) of the statutes is created to read:

18 623.06 (1f) (b) For policies and contracts issued on or after the operative date  
19 of the valuation manual, the commissioner shall annually value, or cause to be  
20 valued, the reserve liabilities (hereinafter called reserves) for all outstanding life  
21 insurance contracts, annuity and pure endowment contracts, accident and health  
22 insurance contracts, and deposit-type contracts of every insurer doing business in  
23 this state. In lieu of the valuation of the reserves required of a foreign or alien  
24 company, the commissioner may accept a valuation made, or caused to be made, by  
25 the insurance supervisory official of any state or other jurisdiction if the valuation

**SENATE BILL 287**

1 complies with the minimum standard provided in this section. Subsections (9) and  
2 (10) apply to all policies and contracts issued on or after the operative date of the  
3 valuation manual.

4 **SECTION 36.** 623.06 (1m) (intro.) of the statutes is created to read:

5 623.06 (1m) (intro.) Before the operative date of the valuation manual, all of  
6 the following apply:

7 **SECTION 37.** 623.06 (1r) of the statutes is created to read:

8 623.06 (1r) Beginning on the operative date of the valuation manual, all of the  
9 following apply:

10 (a) Every insurance company that has outstanding life insurance contracts,  
11 accident and health insurance contracts, or deposit–type contracts in this state and  
12 that is subject to regulation by the commissioner shall submit to the commissioner,  
13 as prescribed in par. (c), the opinion of the appointed actuary as to whether the  
14 reserves and related actuarial items held in support of those outstanding contracts  
15 are computed appropriately, are based on assumptions that satisfy contractual  
16 provisions, are consistent with prior reported amounts, and comply with applicable  
17 laws of this state. The valuation manual shall prescribe the specifics of this opinion,  
18 including any items that are necessary to its scope.

19 (b) Every insurance company that has outstanding life insurance contracts,  
20 accident and health insurance contracts, or deposit–type contracts in this state and  
21 that is subject to regulation by the commissioner, except as exempted in the  
22 valuation manual, shall also annually include in the opinion required under par. (a)  
23 an opinion of the same appointed actuary as to whether the reserves and related  
24 actuarial items held in support of the policies and contracts specified in the valuation  
25 manual, when considered in light of the assets held by the company with respect to

**SENATE BILL 287****SECTION 37**

1 the reserves and related actuarial items, including the investment earnings on the  
2 assets and the considerations anticipated to be received and retained under the  
3 policies and contracts, make adequate provision for the company's obligations under  
4 the policies and contracts, including the benefits under and expenses associated with  
5 the policies and contracts. The opinion required under this paragraph shall be  
6 governed by the following:

7 1. A memorandum, in form and substance as specified in the valuation manual  
8 and acceptable to the commissioner, shall be prepared to support each actuarial  
9 opinion.

10 2. If the insurance company fails to provide a supporting memorandum at the  
11 request of the commissioner within a period specified in the valuation manual, or the  
12 commissioner determines that the supporting memorandum provided by the  
13 insurance company fails to meet the standards prescribed by the valuation manual  
14 or is otherwise unacceptable to the commissioner, the commissioner may engage a  
15 qualified actuary at the expense of the company to review the opinion and the basis  
16 for the opinion and prepare the supporting memorandum required by the  
17 commissioner.

18 (c) All opinions required under this subsection shall be governed by the  
19 following:

20 1. The opinion shall be in form and substance as specified in the valuation  
21 manual and acceptable to the commissioner.

22 2. The opinion shall be submitted with the annual statement reflecting the  
23 valuation of such reserve liabilities for each year ending after the operative date of  
24 the valuation manual.

**SENATE BILL 287**

1           3. The opinion shall apply to all policies and contracts described in pars. (a) and  
2 (b), plus other actuarial liabilities as may be specified in the valuation manual.

3           4. The opinion shall be based on standards adopted from time to time by the  
4 actuarial standards board or its successor and on any additional standards  
5 prescribed in the valuation manual.

6           5. With respect to an opinion required to be submitted by a foreign or alien  
7 company, the commissioner may accept the opinion filed by that company with the  
8 insurance supervisory official of another state if the commissioner determines that  
9 the opinion reasonably meets the requirements applicable to a company domiciled  
10 in this state.

11           6. Except in cases of fraud or willful misconduct, the appointed actuary shall  
12 not be liable for damages to any person, other than the insurance company and the  
13 commissioner, for any act, error, omission, decision, or conduct with respect to the  
14 appointed actuary's opinion.

15           **SECTION 38.** 623.06 (2) (intro.) of the statutes is amended to read:

16           623.06 (2) (intro.) Except as provided in subs. (2a) and (2m), the minimum  
17 standard for the valuation of all such policies and contracts specified by the  
18 commissioner under sub. (1m) (a) 1. issued prior to the effective date of this section  
19 [see sub. (8) (13) and s. 632.43 (9)] shall be that provided by the laws in effect  
20 immediately prior to such date. Except as provided in subs. (2a) and (2m), the  
21 minimum standard for the valuation of all such policies and contracts issued on or  
22 after the effective date of this section shall be the commissioner's reserve valuation  
23 methods defined in subs. (3) to (4m) and (7), with 3.5 percent interest, or in the case  
24 of policies and contracts, other than annuity and pure endowment contracts, issued  
25 on or after June 19, 1974, and prior to November 8, 1977, 4 percent interest, and for

**SENATE BILL 287****SECTION 38**

1 policies issued on or after November 8, 1977, 4.5 percent interest and the following  
2 tables:

3 **SECTION 39.** 623.06 (8) of the statutes is renumbered 623.06 (13) (a) and  
4 amended to read:

5 623.06 (13) (a) This Except for subs. (1), (1f) (b), (1r), and (8m) to (12), this  
6 section shall become effective on the same date as does s. 632.43.

7 (c) The provisions of this section shall supersede all provisions of law  
8 inconsistent or in conflict therewith.

9 **SECTION 40.** 623.06 (8m) of the statutes is created to read:

10 623.06 (8m) For accident and health insurance contracts issued on or after the  
11 effective date of this subsection ... [LRB inserts date], but before the operative date  
12 of the valuation manual, the minimum standard of valuation is the standard adopted  
13 by the commissioner by rule. For accident and health insurance contracts issued on  
14 or after the operative date of the valuation manual, the standard prescribed in the  
15 valuation manual shall be the minimum standard of valuation required under sub.  
16 (1f) (b).

17 **SECTION 41.** 623.06 (9) of the statutes is created to read:

18 623.06 (9) (a) For policies and contracts issued on or after the operative date  
19 of the valuation manual, the standard prescribed in the valuation manual is the  
20 minimum standard of valuation required under sub. (1f) (b), except as provided in  
21 pars. (e) and (g).

22 (b) The operative date of the valuation manual is January 1 of the first calendar  
23 year beginning after the first July 1 as of which all of the following have occurred:

**SENATE BILL 287**

1           1. The valuation manual has been adopted by the National Association of  
2 Insurance Commissioners by an affirmative vote of at least 42 members or  
3 three-fourths of the members voting, whichever is greater.

4           2. The standard valuation law, as amended by the National Association of  
5 Insurance Commissioners in 2009, or legislation including substantially similar  
6 terms and provisions, has been enacted by states representing more than 75 percent  
7 of the direct premiums written as reported in all of the following annual statements  
8 submitted for 2008:

9           a. Life, accident, and health annual statements.

10          b. Health annual statements.

11          c. Fraternal annual statements.

12          3. The standard valuation law, as amended by the National Association of  
13 Insurance Commissioners in 2009, or legislation including substantially similar  
14 terms and provisions, has been enacted by at least 42 of the following 55  
15 jurisdictions:

16          a. The 50 states of the United States.

17          b. American Samoa.

18          c. The American Virgin Islands.

19          d. The District of Columbia.

20          e. Guam.

21          f. Puerto Rico.

22          (c) Unless a change in the valuation manual specifies a later effective date,  
23 changes to the valuation manual shall be effective on the first January 1 after the  
24 date when such changes have been adopted by the National Association of Insurance  
25 Commissioners by an affirmative vote representing all of the following:

**SENATE BILL 287****SECTION 41**

1           1. At least three-fourths of the members of the National Association of  
2 Insurance Commissioners voting, but not less than a majority of the total  
3 membership.

4           2. Members of the National Association of Insurance Commissioners  
5 representing the jurisdictions specified in par. (b) 3. with more than 75 percent of the  
6 direct premiums written as reported in all of the following annual statements most  
7 recently available before the vote under subd. 1.:

8           a. Life, accident, and health annual statements.

9           b. Health annual statements.

10          c. Fraternal annual statements.

11          (d) The valuation manual must specify all of the following:

12           1. Minimum valuation standards for and definitions of the policies and  
13 contracts subject to sub. (1f) (b). The minimum valuation standards shall be all of  
14 the following:

15           a. The commissioners reserve valuation method for life insurance contracts,  
16 other than annuity contracts, subject to sub. (1f) (b).

17           b. The commissioners annuity reserve valuation method for annuity contracts  
18 subject to sub. (1f) (b).

19           c. Minimum reserves for all other policies and contracts subject to sub. (1f) (b).

20           2. Which policies or contracts, or types of policies or contracts, are subject to the  
21 requirements of a principle-based valuation in sub. (10) (a) and the minimum  
22 valuation standards consistent with those requirements.

23           3. For policies and contracts subject to a principle-based valuation under sub.  
24 (10), all of the following:



**SENATE BILL 287**

1           a. Requirements for the format of reports to the commissioner under sub. (10)  
2           (b) 3., which reports shall include information necessary to determine if the  
3           valuation is appropriate and in compliance with this section.

4           b. Requirements regarding the treatment of risks over which the insurance  
5           company does not have significant control or influence.

6           c. Procedures for corporate governance and oversight of the actuarial function  
7           and a process for appropriate waiver or modification of such procedures.

8           4. The minimum valuation standard for policies not subject to a  
9           principle-based valuation under sub. (10), which minimum valuation standard shall  
10          be the greater of the following:

11          a. Reserves that are consistent with the minimum standard of valuation before  
12          the operative date of the valuation manual.

13          b. Reserves that quantify the benefits, guarantees, and funding associated with  
14          the contracts and their risks at a level of conservatism that reflects conditions that  
15          include unfavorable events that have a reasonable probability of occurring. This  
16          does not preclude, for policies with significant tail risk, reflecting in the reserve  
17          conditions appropriately adverse to quantify that tail risk.

18          5. Other requirements, including those relating to reserve methods, models for  
19          measuring risk, generation of economic scenarios, assumptions, margins, use of  
20          insurance company experience, risk measurement, disclosure, certifications,  
21          reports, actuarial opinions and memoranda, transition rules, and internal controls.

22          6. The data and form of the data required under sub. (11) and to whom the data  
23          must be submitted. The valuation manual may specify other related requirements,  
24          including data analyses and reporting of analyses.

**SENATE BILL 287****SECTION 41**

1           (e) In the absence of a specific valuation requirement, or if a specific valuation  
2 requirement in the valuation manual is not, in the opinion of the commissioner, in  
3 compliance with this section, the insurance company shall, with respect to such  
4 requirements, comply with minimum valuation standards prescribed by the  
5 commissioner by rule.

6           (f) The commissioner may engage a qualified actuary, at the expense of the  
7 insurance company, to perform an actuarial examination of the company and opine  
8 on the appropriateness of any reserve assumption or method used by the company,  
9 or to review and opine on a company's compliance with any requirement in this  
10 section. The commissioner may rely on the opinion, regarding provisions in this  
11 section, of a qualified actuary engaged by the commissioner of another state or  
12 district or territory of the United States. As used in this paragraph, the term  
13 "engage" includes both "employ" and "contract with."

14           (g) The commissioner may require an insurance company to make any change  
15 to an assumption or method that, in the opinion of the commissioner, is necessary to  
16 comply with the requirements of the valuation manual or this section. An insurance  
17 company shall adjust the reserves as required by the commissioner. The  
18 commissioner may take any disciplinary action permitted under ss. 601.41 (4) and  
19 601.64.

20           (h) 1. The commissioner may exempt specific product forms or product lines of  
21 a domestic company that is licensed and doing business only in Wisconsin from the  
22 requirements of this subsection if all of the following are satisfied:

23           a. The commissioner has issued an exemption in writing to the company and  
24 has not subsequently revoked the exemption in writing.

**SENATE BILL 287**

1           b. The company computes reserves using assumptions and methods used  
2 before the operative date of the valuation manual in addition to any requirements  
3 established by the commissioner and promulgated by rule.

4           2. For policy forms and product lines for which a company is granted an  
5 exemption under subd. 1., subs. (1f) (a), (1m), and (2) to (7) apply, and any reference  
6 to the valuation manual does not apply.

7           **SECTION 42.** 623.06 (10) of the statutes is created to read:

8           623.06 (10) (a) For policies and contracts issued on or after the operative date  
9 of the valuation manual, an insurer must establish reserves for policies and  
10 contracts as specified in the valuation manual using a principle-based valuation  
11 that does all of the following:

12           1. Quantifies the benefits, guarantees, and funding associated with the  
13 contracts and their risks at a level of conservatism that reflects conditions that  
14 include unfavorable events that have a reasonable probability of occurring during  
15 the lifetime of the contracts. For policies or contracts with significant tail risk, the  
16 principle-based valuation should reflect conditions appropriately adverse to  
17 quantify the tail risk.

18           2. Incorporates assumptions, risk analysis methods and financial models, and  
19 management techniques that are consistent with, but not necessarily identical with,  
20 those used within the company's overall risk assessment process, while recognizing  
21 potential differences in financial reporting structures and any prescribed  
22 assumptions or methods.

23           3. Incorporates assumptions that are derived in one of the following ways:

24           a. The assumption is prescribed in the valuation manual.

**SENATE BILL 287****SECTION 42**

1           b. For an assumption that is not prescribed in the valuation manual, the  
2 assumption is established using the company's available experience to the extent it  
3 is relevant and statistically credible. To the extent that company data is not  
4 available, relevant, or statistically credible, the assumption is established using  
5 other relevant, statistically credible experience.

6           4. Provides margins for uncertainty, including adverse deviation and  
7 estimation error, such that the greater the uncertainty, the larger the margin and  
8 resulting reserve.

9           (b) A company using a principle-based valuation for one or more policies or  
10 contracts subject to this section as specified in the valuation manual shall do all of  
11 the following:

12           1. Establish procedures for corporate governance and oversight of the actuarial  
13 valuation function consistent with those described in the valuation manual.

14           2. Provide to the commissioner and the board of directors an annual  
15 certification of the effectiveness of the internal controls with respect to the  
16 principle-based valuation. The internal controls shall be designed to ensure that all  
17 material risks inherent in the liabilities and associated assets subject to the  
18 valuation are included in the valuation and that valuations are made in accordance  
19 with the valuation manual. The certification shall be based on the controls in place  
20 as of the end of the preceding calendar year.

21           3. Develop, and file with the commissioner upon request, a principle-based  
22 valuation report that complies with standards prescribed in the valuation manual.

23           (c) A principle-based valuation may include a prescribed formulaic reserve  
24 component.

25           **SECTION 43.** 623.06 (11) of the statutes is created to read:

**SENATE BILL 287**

1           623.06 (11) Beginning on the operative date of the valuation manual, a  
2           company shall submit mortality, morbidity, policyholder behavior, or expense  
3           experience and other data for all policies and contracts in force as prescribed in the  
4           valuation manual.

5           **SECTION 44.** 623.06 (12) of the statutes is created to read:

6           623.06 (12) (a) In this subsection:

7           1. “Experience data” means any documents, materials, data, or other  
8           information submitted by a company under sub. (11).

9           2. “Experience materials” means any documents, materials, data, or other  
10          information, including all working papers and copies of working papers, created or  
11          produced in connection with experience data, in each case that include any  
12          potentially company-identifying or personally identifiable information, that is  
13          provided to or obtained by the commissioner, together with any experience data.

14          (am) For purposes of pars. (b) and (c), all of the following are confidential  
15          information:

16          1. A memorandum in support of an opinion submitted under sub. (1m) or (1r)  
17          and any other documents, materials, or other information, including all working  
18          papers and copies of working papers, created, produced, or obtained by or disclosed  
19          to the commissioner or any other person in connection with the memorandum.

20          2. All documents, materials, and other information, including all working  
21          papers and copies of working papers, created, produced, or obtained by or disclosed  
22          to the commissioner or any other person in the course of an examination made under  
23          sub. (9) (f), except that if an examination report or other material prepared in  
24          connection with an examination made under ss. 601.43 and 601.44 is not held as  
25          private and confidential information under s. 601.465 (1m) (b), an examination

**SENATE BILL 287****SECTION 44**

1 report or other material prepared in connection with an examination made under  
2 sub. (9) (f) is not confidential information to the same extent as if the examination  
3 report or other material had been prepared under ss. 601.43 and 601.44.

4 3. Any reports, documents, materials, or other information developed by a  
5 company in support of, or in connection with, an annual certification by the company  
6 under sub. (10) (b) 2. evaluating the effectiveness of the company's internal controls  
7 with respect to a principle-based valuation and any other documents, materials, or  
8 other information, including all working papers and copies of working papers,  
9 created, produced, or obtained by or disclosed to the commissioner or any other  
10 person in connection with the reports, documents, materials, and other information.

11 4. Any principle-based valuation report developed under sub. (10) (b) 3. and  
12 any other documents, materials, or other information, including all working papers  
13 and copies of working papers, created, produced, or obtained by or disclosed to the  
14 commissioner or any other person in connection with the report.

15 5. Experience data, experience materials, and any other documents, materials,  
16 data, or other information, including all working papers and copies of working  
17 papers, created, produced, or obtained by or disclosed to the commissioner or any  
18 other person in connection with experience materials.

19 (b) 1. Information described as confidential under par. (am) is confidential and  
20 privileged; is not subject to receipt, inspection, or copying under s. 19.35 (1); is not  
21 subject to subpoena; and is not subject to discovery or admissible in evidence in any  
22 private civil action. The commissioner is authorized to use the confidential  
23 information in the furtherance of any regulatory or legal action brought against the  
24 company as a part of the commissioner's official duties.

**SENATE BILL 287**

1           2. Neither the commissioner nor any person who received confidential  
2 information while acting under the authority of the commissioner may testify in any  
3 private civil action concerning any confidential information.

4           3. a. In furtherance of the performance of the commissioner’s regulatory duties,  
5 the commissioner may share confidential information with other state, federal, and  
6 international regulatory agencies; the National Association of Insurance  
7 Commissioners and its affiliates and subsidiaries; the Actuarial Board for  
8 Counseling and Discipline or its successor, in the case of confidential information  
9 under par. (am) 1. and 4. only, upon request stating that the confidential information  
10 is required for the purposes of professional disciplinary proceedings; and state,  
11 federal, and international law enforcement agencies.

12           b. Confidential information may be shared under subd. 3. a. only if the recipient  
13 agrees, and has the legal authority to agree, to maintain the confidentiality and  
14 privileged status of such documents, materials, data, and other information in the  
15 same manner and to the same extent as required for the commissioner.

16           c. The commissioner may receive documents, materials, or other information,  
17 including otherwise confidential and privileged documents, materials, data, or  
18 information from the National Association of Insurance Commissioners and its  
19 affiliates and subsidiaries, from regulatory or law enforcement agencies of other  
20 foreign or domestic jurisdictions, and from the Actuarial Board for Counseling and  
21 Discipline or its successor, and shall maintain as confidential or privileged any  
22 document, material, or other information received with notice or the understanding  
23 that it is confidential or privileged under the laws of the jurisdiction that is the source  
24 of the document, material, or information.

**SENATE BILL 287****SECTION 44**

1           d. The commissioner may enter into agreements governing sharing and use of  
2 information consistent with this subsection.

3           e. No waiver of any applicable privilege or claim of confidentiality in the  
4 confidential information shall occur as a result of disclosure of such information or  
5 documents to the commissioner under this subsection or as a result of the  
6 commissioner sharing such information or documents as authorized in this  
7 subsection.

8           f. A privilege established under the law of any state or jurisdiction that is  
9 substantially similar to the privilege established under this subsection shall be  
10 available and enforced in any proceeding in, and in any court of, this state.

11           (c) Notwithstanding par. (b), any confidential information specified in par. (am)  
12 1. and 4. is subject to all of the following:

13           1. The confidential information may be subject to subpoena for the purpose of  
14 defending an action seeking damages from the appointed actuary submitting the  
15 related memorandum in support of an opinion submitted under sub. (1m) or (1r) or  
16 the principle-based valuation report developed under sub. (10) (b) 3. by reason of an  
17 action required by this section or rules promulgated under this section.

18           2. The confidential information may otherwise be released by the commissioner  
19 with the written consent of the company.

20           3. If any portion of a memorandum in support of an opinion submitted under  
21 sub. (1m) or (1r) or any portion of the principle-based valuation report developed  
22 under sub. (10) (b) 3. is cited by the company in its marketing, is publicly volunteered  
23 to or before a government agency other than a state insurance department, or is  
24 released by the company to the news media, all portions of such memorandum or  
25 report shall no longer be confidential.



**SENATE BILL 287**

1           **SECTION 45.** 623.06 (13) (b) of the statutes is created to read:

2           623.06 (13) (b) Subsections (1), (1f) (b), (1r), and (8m) to (12) shall become  
3 effective on the effective date of this paragraph .... [LRB inserts date].

4           **SECTION 46.** 628.07 of the statutes is amended to read:

5           **628.07 Licensing of nonresidents.** The commissioner may shall waive the  
6 any examination requirement of ~~an examination~~ for a nonresident applicant under  
7 s. 628.04 if ~~the jurisdiction of the applicant's residence has imposed upon the~~  
8 ~~applicant requirements substantially as rigorous as those of this state and has~~  
9 ~~enforced them with comparable rigor~~ home state or state of residence has issued the  
10 applicant a license for which the qualifications are equivalent to the qualifications  
11 for a license issued by this state and if that license is in good standing at the time of  
12 application.

13           **SECTION 47.** 628.10 (2) (a) of the statutes is amended to read:

14           628.10 (2) (a) *For failure to comply with continuing education or annual*  
15 *training requirements.* The license of any intermediary or individual navigator who  
16 fails to produce evidence of compliance with continuing education standards set by  
17 the commissioner or with annual training requirements is revoked, effective on the  
18 date on which the evidence of compliance is due. At least 60 days before that date,  
19 the commissioner shall ~~send by 1st class mail to the intermediary's or navigator's~~  
20 ~~address that is on file with the commissioner notice~~ notify the intermediary or  
21 navigator of the date by which the evidence of compliance is due and that the  
22 intermediary's or navigator's license will be revoked if the evidence is not received  
23 by that date. An intermediary or navigator whose license is revoked under this  
24 paragraph may have his or her license reinstated, or may be relicensed, as provided  
25 in sub. (5).

**SENATE BILL 287****SECTION 48**

1           **SECTION 48.** 628.10 (2) (am) of the statutes is amended to read:

2           628.10 (2) (am) *Nonpayment of fees.* The license of an intermediary or  
3 individual navigator who fails to pay a fee when due is revoked, effective on the date  
4 on which the fee is due. At least 60 days before that date, the commissioner shall send  
5 by ~~1st class mail to the intermediary's or navigator's address that is on file with the~~  
6 ~~commissioner notice~~ notify the intermediary or navigator of the date by which the  
7 fee is due and that the intermediary's or navigator's license will be revoked if timely  
8 payment is not made. An intermediary who is a natural person, or an individual  
9 navigator, whose license is revoked under this paragraph may have his or her license  
10 reinstated, or may be relicensed, as provided in sub. (5).

11           **SECTION 49.** 628.347 (1) (a) of the statutes is amended to read:

12           628.347 (1) (a) “Annuity” means ~~a fixed or variable~~ an annuity that is an  
13 insurance product that is individually solicited, whether the product is classified as  
14 an individual or group annuity.

15           **SECTION 50.** 628.347 (4) (c) of the statutes is amended to read:

16           628.347 (4) (c) This subsection applies to FINRA broker-dealer sales of  
17 ~~variable annuities and fixed~~ annuities if the suitability and supervision are similar  
18 to those applied to variable annuity sales.

19           **SECTION 51.** 628.347 (4m) (b) 3. c. of the statutes is amended to read:

20           628.347 (4m) (b) 3. c. How ~~fixed, variable, and indexed~~ product-specific  
21 annuity contract ~~provisions~~ features affect consumers.

22           **SECTION 52.** 628.81 of the statutes is repealed.

23           **SECTION 53.** 631.95 (3) (a) of the statutes is amended to read:

24           631.95 (3) (a) *Disability insurance.* In establishing premiums for an individual  
25 or group disability insurance policy or a certificate of group disability insurance, an

**SENATE BILL 287**

1 insurer may inquire about a person’s existing medical condition and, based on the  
2 opinion of a qualified actuary, as defined in s. 623.06 (1e) (1) (h), use information  
3 related to a person’s existing medical condition, regardless of whether that condition  
4 is or may have been caused by abuse or domestic abuse.

5 **SECTION 54.** 632.43 (6m) (a) 3. of the statutes is renumbered 632.43 (6m) (a)  
6 3. (intro.) and amended to read:

7 632.43 **(6m)** (a) 3. (intro.) “Nonforfeiture interest rate” means ~~125%~~ either of  
8 the following:

9 a. For all policies other than those described in subd. 3. b., 125 percent of the  
10 applicable calendar year valuation interest rate under s. 623.06 rounded to the  
11 nearest ~~0.25%~~ 0.25 percent, but in no case less than 4 percent.

12 **SECTION 55.** 632.43 (6m) (a) 3. b. of the statutes is created to read:

13 632.43 **(6m)** (a) 3. b. For policies issued on or after the operative date of the  
14 valuation manual, the rate per annum provided in the valuation manual.

15 **SECTION 56.** 632.43 (6m) (a) 4m. of the statutes is created to read:

16 632.43 **(6m)** (a) 4m. “Operative date of the valuation manual” has the meaning  
17 given in s. 623.06 (1) (f).

18 **SECTION 57.** 632.43 (6m) (e) 3. f. of the statutes is amended to read:

19 632.43 **(6m)** (e) 3. f. Any For policies issued before the operative date of the  
20 valuation manual, any ordinary mortality tables adopted after 1980 by the National  
21 Association of Insurance Commissioners, that are approved by rule adopted by the  
22 commissioner for use in determining the minimum nonforfeiture standard, may be  
23 substituted for the commissioners 1980 standard ordinary mortality table with or  
24 without 10–year select mortality factors or for the commissioners 1980 extended  
25 term insurance table. For policies issued on or after the operative date of the

**SENATE BILL 287****SECTION 57**

1 valuation manual, the valuation manual provides the commissioners standard  
2 mortality table for use in determining the minimum nonforfeiture standard that  
3 may be substituted for the commissioners 1980 standard ordinary mortality table  
4 with or without 10-year select mortality factors or for the commissioners 1980  
5 extended term insurance table. If the commissioner approves, by rule, any ordinary  
6 mortality table adopted by the National Association of Insurance Commissioners for  
7 use in determining the minimum nonforfeiture standard for policies issued on or  
8 after the operative date of the valuation manual, then that minimum nonforfeiture  
9 standard supersedes the minimum nonforfeiture standard provided by the valuation  
10 manual.

11 **SECTION 58.** 632.43 (6m) (e) 3. g. of the statutes is amended to read:

12 632.43 **(6m)** (e) 3. g. Any For policies issued before the operative date of the  
13 valuation manual, any industrial mortality tables adopted after 1980 by the  
14 National Association of Insurance Commissioners, that are approved by rule  
15 adopted by the commissioner for use in determining the minimum nonforfeiture  
16 standard, may be substituted for the commissioners 1961 standard industrial  
17 mortality table or the commissioners 1961 industrial extended term insurance table.  
18 For policies issued on or after the operative date of the valuation manual, the  
19 valuation manual provides the commissioners standard mortality table for use in  
20 determining the minimum nonforfeiture standard that may be substituted for the  
21 commissioners 1961 standard industrial mortality table or for the commissioners  
22 1961 industrial extended term insurance table. If the commissioner approves, by  
23 rule, any industrial mortality table adopted by the National Association of Insurance  
24 Commissioners for use in determining the minimum nonforfeiture standard for  
25 policies issued on or after the operative date of the valuation manual, then that

**SENATE BILL 287**

1 minimum nonforfeiture standard supersedes the minimum nonforfeiture standard  
2 provided by the valuation manual.

3 **SECTION 59.** 632.62 (2) of the statutes is amended to read:

4 632.62 (2) PARTICIPATION. Every participating policy shall by its terms give its  
5 holder full right to participate annually in the part of the surplus accumulations from  
6 the participating business of the insurer that are to be distributed make its holder  
7 eligible to share annually in the part of the surplus to be distributed as provided in  
8 sub. (4) (b).

9 **SECTION 60.** 632.62 (3) of the statutes is amended to read:

10 632.62 (3) ACCOUNTING. Every insurer issuing both participating and  
11 nonparticipating policies shall separately account for the 2 classes of business and  
12 no part of the amounts accumulated or credited surplus allocated to the participating  
13 class may be voluntarily transferred to the nonparticipating class.

14 **SECTION 61.** 632.62 (4) (a) of the statutes is amended to read:

15 632.62 (4) (a) *Deferred dividends.* No life insurance policy or certificate may  
16 be issued in which the ~~accounting, apportionment and~~ distribution of surplus  
17 dividends, if any, is deferred for a period longer than one year.

18 **SECTION 62.** 632.62 (4) (b) of the statutes is amended to read:

19 632.62 (4) (b) *Payment.* Every insurer doing a participating business shall  
20 annually ascertain the surplus over required reserves and other liabilities. After  
21 setting aside such contingency reserves amounts as may be lawful and considered  
22 necessary ~~and be lawful, such reasonable nondistributable surplus as is needed to~~  
23 ~~permit orderly growth, by the insurer's board of directors for providing for the growth~~  
24 ~~of the company and for protecting the ability to meet ongoing and future claims and~~  
25 other obligations and needs under both normal and stressed environments, and after

**SENATE BILL 287****SECTION 62**

1 making provision for the payment of reasonable dividends upon capital stock as  
2 determined by the insurer's board of directors and such sums as are required by prior  
3 contracts to be held on account of deferred dividend policies, ~~the remaining surplus~~  
4 ~~shall be equitably apportioned and returned as a dividend to the participating~~  
5 ~~policyholders or certificate holders entitled to share therein~~ an insurer shall  
6 distribute as dividends the remaining surplus, if any, attributable to participating  
7 life insurance and annuity policies in such amounts, including zero, and in such  
8 allocations among the participating life insurance and annuity policies as its board  
9 of directors determines to be reasonably proportioned to its calculation of the life  
10 insurance and annuity policies' contribution to the distributable surplus. A dividend  
11 may be conditioned on the payment of the succeeding year's premium only on the  
12 first and second anniversaries of the policy.

13 **SECTION 63.** 632.89 (3c) (b) of the statutes is amended to read:

14 632.89 (3c) (b) A cost increase specified under par. (a) may not be determined  
15 until the employer's group health benefit plan or self-insured health plan has  
16 complied with the requirements under sub. (3) for at least the first 6 months of the  
17 plan year for which the increase is to be determined. The cost increase shall be  
18 determined, and certified, by a qualified actuary, as defined in s. 623.06 (1e) (1) (h).  
19 A copy of the actuary's determination, and all underlying documentation that the  
20 actuary relied on in making the determination, shall be filed with and, in accordance  
21 with rules promulgated by the commissioner, retained by the insurer issuing the  
22 group health benefit plan or by the self-insured health plan.

23 **SECTION 64.** 635.13 (title) of the statutes is repealed.

24 **SECTION 65.** 635.13 (1) of the statutes is renumbered 635.13.

25 **SECTION 66.** 635.13 (2) of the statutes is repealed.

**SENATE BILL 287**

1           **SECTION 67.** 645.675 of the statutes is created to read:

2           **645.675 Qualified financial contracts. (1)** In this section:

3           (a) “Actual direct compensatory damages” includes normal and reasonable  
4 costs of cover or other reasonable measures of damages used in the derivatives,  
5 securities, or other markets for the contract and agreement claims. “Actual direct  
6 compensatory damages” does not include punitive or exemplary damages, damages  
7 for lost profit or lost opportunity, or damages for pain and suffering.

8           (b) “Business day” means any day other than a Saturday, a Sunday, or a day  
9 on which the New York Stock Exchange, or the Federal Reserve Bank of New York  
10 is closed.

11           (c) “Commodity contract” means any of the following:

12           1. A contract for the purchase or sale of a commodity for future delivery on, or  
13 subject to the rules of, a board of trade or contract market under the federal  
14 Commodity Exchange Act, 7 USC 1, et seq., or a board of trade outside the United  
15 States.

16           2. An agreement that is subject to regulation under the federal Commodity  
17 Exchange Act, 7 USC 23, and that is commonly known to the commodities trade as  
18 a margin account, margin contract, leverage account, or leverage contract.

19           3. An agreement or transaction that is subject to regulation under the federal  
20 Commodity Exchange Act, 7 USC 6c, and that is commonly known to the  
21 commodities trade as a commodity option.

22           4. Any combination of agreements or transactions specified in subds. 1. to 3.

23           5. Any option to enter into an agreement or transaction specified in subds. 1.  
24 to 3.



**SENATE BILL 287****SECTION 67**

1 (d) “Contractual right” includes any right established in a rule or bylaw, or in  
2 a resolution, of the governing board of a derivatives clearing organization or board  
3 of trade as defined in the federal Commodity Exchange Act, 7 USC 1, et seq.; a  
4 multilateral clearing organization, as defined in the federal Deposit Insurance  
5 Corporation Improvement Act of 1991, 12 USC 4402; a national securities exchange,  
6 a national securities association, a securities clearing agency, or a control market  
7 designated under the federal Commodity Exchange Act, 7 USC 1, et seq.; or a  
8 derivatives transaction execution facility registered under the federal Commodity  
9 Exchange Act, 7 USC 1, et seq., or any right, regardless whether it is in writing,  
10 arising under statutory or common law, or under the uniform commercial code, or by  
11 reason of normal business practice.

12 (e) “Counterparty” means a person who enters into a qualified financial  
13 contract with an insurer.

14 (f) “Credit insurance” means insurance against loss arising from failure of  
15 debtors to meet financial obligations to creditors, except mortgage guaranty  
16 insurance.

17 (g) “Credit life insurance” means insurance on the lives of borrowers or  
18 purchasers of goods in connection with specific loans or credit transactions when all  
19 or a portion of the insurance is payable to the creditor to reduce or extinguish the  
20 debt.

21 (h) “Disability insurance” means insurance covering injury or death of persons  
22 caused by accident or insurance covering the health of persons.

23 (i) “Financial guaranty insurance” means a surety bond, insurance policy,  
24 indemnity contract, or any similar guarantee issued by an insurer under which a loss  
25 is payable upon proof of occurrence of financial loss to an insured claimant.



**SENATE BILL 287**

1 “Financial guaranty insurance” does not include credit insurance, credit life  
2 insurance, disability insurance, mortgage guaranty insurance, or long-term care  
3 insurance.

4 (j) “First-method provision” means a contract provision in which the  
5 nondefaulting party is not required to pay if a net or settlement amount is owed to  
6 the defaulting party.

7 (k) “Forward contract” has the meaning given in 12 USC 1821 (e) (8) (D).

8 (L) “Mortgage guaranty insurance” means insurance against loss arising from  
9 any of the following:

10 1. Debtors to meet financial obligations to creditors under evidences of  
11 indebtedness that are secured by any of the following:

12 a. A first lien or charge on residential real estate designed for occupancy by not  
13 more than 4 families.

14 b. A first lien of charge on residential real estate designed for occupancy by 5  
15 or more families.

16 c. A first lien or charge on real estate designed for industrial or commercial  
17 purposes.

18 d. A junior lien or charge on residential real estate.

19 2. Lessees to make payment on rentals under leases of real estate in which the  
20 lease extends for 3 years or longer.

21 (m) “Netting agreement” means any of the following:

22 1. A contract or agreement, or terms and conditions in a contract or agreement,  
23 including a master agreement together with all schedules, confirmations,  
24 definitions, and addenda, that documents one or more transactions between the  
25 parties to the agreement for, or involving, one or more qualified financial contracts

**SENATE BILL 287****SECTION 67**

1 and that provides for either the netting, liquidation, setoff, termination,  
2 acceleration, or close-out under, or in connection with, one or more qualified  
3 financial contracts or present or future payment or delivery obligations or  
4 entitlements, including related liquidation or close-out values, among the parties to  
5 the netting agreement.

6 2. Any master agreement or bridge agreement for one or more master  
7 agreements described in subd. 1.

8 3. Any security agreement or arrangement or other credit enhancement or  
9 guarantee or reimbursement obligation related to any contract or agreement  
10 described in subd. 1. or 2.

11 (n) “Qualified financial contract” means a commodity contract, forward  
12 contract, repurchase agreement, securities contract, swap agreement, or any similar  
13 agreement that the commissioner determines by rule or order to be a qualified  
14 financial contract.

15 (o) “Repurchase agreement” has the meaning given in 12 USC 1821 (e) (8) (D).

16 (p) “Second-method provision” means a contract provision requiring a  
17 nondefaulting party to pay if a net or settlement amount is owed to the defaulting  
18 party.

19 (q) “Securities contract” has the meaning given in 12 USC 1821 (e) (8) (D).

20 (r) “Swap agreement” has the meaning given in 12 USC 1821 (e) (8) (D).

21 (s) “Two-way payment provision” means a contract provision under which both  
22 parties to the contract may have payment obligations to each other.

23 (t) “Walkaway clause” means a provision in a netting agreement or a qualified  
24 financial contract that, after calculation of a value of a party’s position or an amount  
25 due to or from one of the parties in accordance with its terms upon termination,

**SENATE BILL 287**

1 liquidation, or acceleration of the netting agreement or qualified financial contract,  
2 either does not create a payment obligation of a party or extinguishes a payment  
3 obligation of a party, in whole or in part, solely because of the party's status as a  
4 nondefaulting party.

5 (2) (a) On or after 5 p.m. central time on the business day following the date  
6 of appointment of a receiver, with regard to qualified financial contracts with an  
7 insurer that are subject to a proceeding under this chapter, no person may be stayed  
8 or prohibited from exercising any of the following rights, unless that person has  
9 received written notice that the contract has been sold or transferred under s. 645.33  
10 (2) or 645.46 (9):

11 1. A contractual right to cause the termination, liquidation, acceleration, or  
12 close-out of obligations under, or in connection with, any netting agreement or  
13 qualified financial contract with an insurer on account of any of the following:

14 a. The insolvency, financial condition, or default of the insurer at any time, if  
15 the right is enforceable under applicable law other than this chapter.

16 b. The commencement of a formal delinquency proceeding under this chapter.

17 2. Any right under a pledge, security, collateral, reimbursement, or guarantee  
18 agreement or arrangement, or any other similar security agreement or arrangement  
19 or other credit enhancement, relating to one or more netting agreements or qualified  
20 financial contracts.

21 3. Subject to s. 645.56 (2), any right to set-off or net-out any termination value,  
22 payment amount, or other transfer obligation arising under, or in connection with,  
23 one or more qualified financial contracts in which the counterparty or its guarantor  
24 is organized under the laws of the United States or a state or foreign jurisdiction

**SENATE BILL 287****SECTION 67**

1 approved by the National Association of Insurance Commissioners office responsible  
2 for securities validation as eligible for netting.

3 (b) If a counterparty to a master netting agreement or a qualified financial  
4 contract with an insurer subject to a proceeding under this chapter terminates,  
5 liquidates, closes-out, or accelerates the agreement or contract, damages will be  
6 measured as of the date of the termination, liquidation, close-out, or acceleration.  
7 The amount of a claim for damages is the actual direct compensatory damages  
8 calculated in accordance with sub. (6).

9 (3) Upon termination of a netting agreement or qualified financial contract,  
10 notwithstanding any walkaway clause in the netting agreement or qualified  
11 financial contract, the net or settlement amount, if any, owed by a nondefaulting  
12 party to an insurer against which an application or petition has been filed under this  
13 chapter shall be transferred to the receiver of the insurer or as directed by the  
14 receiver of the insurer, even if the insurer is the defaulting party. Any limited 2-way  
15 payment provision or first-method provision in a netting agreement or qualified  
16 financial contract with an insurer that has defaulted shall be considered to be a full  
17 2-way payment provision or 2nd-method provision as against the defaulting  
18 insurer. Any such property or amount is a general asset of the insurer, except to the  
19 extent that it is subject to one or more secondary liens or encumbrances or rights of  
20 netting or setoff.

21 (4) (a) With respect to transferring a netting agreement or qualified financial  
22 contract of an insurer that is the subject of a proceeding under this chapter, the  
23 receiver of the insurer shall do one of the following:

24 1. Transfer to one party, other than an insurer subject to a proceeding under  
25 this chapter, all netting agreements and qualified financial contracts between the

**SENATE BILL 287**

1 counterparty and the insurer that is subject to a proceeding under this chapter,  
2 including all of the following:

3 a. All rights and obligations of each party under each netting agreement and  
4 qualified financial contract.

5 b. All property, including any guarantee or other credit enhancement, securing  
6 any claims of each party under each netting agreement and qualified financial  
7 contract.

8 2. Transfer none of the netting agreements, qualified financial contracts,  
9 rights, obligations, or property referred to in subd. 1. with respect to the  
10 counterparty.

11 (b) If a receiver of an insurer transfers a netting agreement or qualified  
12 financial contract, the receiver shall use its best efforts to notify any person who is  
13 a party to the netting agreement or qualified financial contract of the transfer by  
14 noon, central time, on the business day following the transfer.

15 (5) Notwithstanding s. 645.52 or 645.54, a receiver may not avoid a transfer  
16 of money or other property arising under or in connection with a netting agreement  
17 or qualified financial contract, or any pledge, security, collateral, or guarantee  
18 agreement or any other similar security arrangement or credit support document  
19 relating to a netting agreement or qualified financial contract, that is made before  
20 the commencement of a formal delinquency proceeding under this chapter.

21 (6) (a) In exercising the rights of disaffirmance or repudiation with respect to  
22 a netting agreement or qualified financial contract between a counterparty and an  
23 insurer that is the subject of a proceeding under this chapter, the receiver of the  
24 insurer shall do one of the following:

**SENATE BILL 287****SECTION 67**

1           1. Disaffirm or repudiate all netting agreements and qualified financial  
2 contracts between the counterparty and the insurer.

3           2. Disaffirm or repudiate none of the netting agreements or qualified financial  
4 contracts between the counterparty and the insurer.

5           (b) Notwithstanding any provision of this section to the contrary, any claim of  
6 a counterparty against the estate arising from the receiver's disaffirmance or  
7 repudiation of a netting agreement or qualified financial contract that has not been  
8 previously affirmed in the liquidation or immediately preceding conservation or  
9 rehabilitation case shall be determined and shall be allowed or disallowed as if the  
10 claim had arisen before the date on which the petition for liquidation was filed or, if  
11 a conservation or rehabilitation proceeding is converted to a liquidation proceeding,  
12 as if the claim had arisen before the date on which the petition for conservation or  
13 rehabilitation was filed. The amount of the claim is the actual direct compensatory  
14 damages determined as of the date of the disaffirmance or repudiation of the netting  
15 agreement or qualified financial contract.

16           (7) All rights of counterparties under this chapter that apply to netting  
17 agreements and qualified financial contracts entered into on behalf of a general  
18 account are available only to counterparties of netting agreements and qualified  
19 financial contracts entered into on behalf of that general account. All rights of  
20 counterparties under this chapter that apply to netting agreements and qualified  
21 financial contracts entered into on behalf of a separate account are available only to  
22 counterparties of netting agreements and qualified financial contracts entered into  
23 on behalf of that separate account.

24           (8) (a) This section does not apply to persons who are affiliates of an insurer  
25 subject to a proceeding under this chapter.

**SENATE BILL 287**

1 (b) This section does not apply to qualified financial contracts entered into with  
2 an insurer authorized to write financial guaranty insurance.

3 **SECTION 68.** 646.51 (3) (am) (intro.) and 2. of the statutes are consolidated,  
4 renumbered 646.51 (3) (am) and amended to read:

5 646.51 (3) (am) *General.* Except as provided in pars. (ar), (b) and (c),  
6 assessments shall be calculated as follows: ~~2. For assessments authorized by the~~  
7 ~~board on or after April 30, 2004,~~ as a percentage of premium written in this state by  
8 each insurer in the classes protected by the accounts for the year preceding the year  
9 in which the assessment is authorized by the board.

10 **SECTION 69.** 646.51 (3) (am) 1. of the statutes is repealed.

11 **SECTION 70.** 646.51 (3) (ar) of the statutes is created to read:

12 646.51 (3) (ar) *Disability.* Except as provided in par. (c), with respect to  
13 disability insurance policies, including policies issued by health maintenance  
14 organization insurers, assessments shall be calculated as follows:

15 1. For assessments authorized by the board before the effective date of this  
16 subdivision .... [LRB inserts date], as a percentage of average annual premium  
17 received in this state by each insurer in the classes protected by the accounts for the  
18 3 most recent years preceding the year of entry of the order of liquidation.

19 2. For assessments authorized by the board on or after the effective date of this  
20 subdivision .... [LRB inserts date], as a percentage of premium written in this state  
21 by each insurer in the classes protected by the accounts for the year preceding the  
22 year in which the assessment is authorized by the board.

23 **SECTION 71.** 646.51 (3) (b) of the statutes is amended to read:

24 646.51 (3) (b) *Life and health annuities.* Except as provided in par. (c), with  
25 respect to annuity contracts or life or disability insurance policies, including policies

**SENATE BILL 287****SECTION 71**

1 issued by health maintenance organizations, assessments shall be calculated as a  
2 percentage of average annual premium received in this state by each insurer in the  
3 classes protected by the accounts for the 3 most recent years preceding the year of  
4 the entry of the order of liquidation.

5 **SECTION 72.** 646.51 (4) (a) of the statutes is amended to read:

6 646.51 (4) (a) Subject to pars. (b) and (d), the total of all assessments for an  
7 amount authorized by the board under this section with respect to an insurer may  
8 not, in one calendar year, exceed 2 percent of the insurer's assessable premiums  
9 under sub. (3) (am), (ar), or (b) on the types of policies and contracts that are covered  
10 by the account.

11 **SECTION 73.** 646.51 (9) (a) of the statutes is amended to read:

12 646.51 (9) (a) Except as provided in par. (b), if an insurer's license or certificate  
13 of authority to do business in this state terminates ~~or~~, expires, or is surrendered, the  
14 insurer's obligation to pay assessments under this section ceases beginning on the  
15 day after the insurer's license or certificate of authority terminates ~~or~~, expires, or is  
16 surrendered.

17 **SECTION 74.** 646.51 (9) (b) of the statutes is amended to read:

18 646.51 (9) (b) An insurer whose license or certificate of authority to do business  
19 in this state terminates ~~or~~, expires, or is surrendered remains liable after the  
20 termination ~~or~~, expiration, or surrender to pay all of the following:

21 1. Assessments authorized or called before the insurer's license or certificate  
22 of authority terminated ~~or~~, expired, or was surrendered.

23 2. Assessments authorized or called after the insurer's license or certificate of  
24 authority terminated ~~or~~, expired, or was surrendered that relate to a liquidation



**SENATE BILL 287**

1 order entered before the insurer's license or certificate of authority terminated or,  
2 expired, or was surrendered.

3 **SECTION 75.** 646.51 (10) of the statutes is created to read:

4 646.51 (10) ASSESSMENT OF CONVERTING INSURERS. When an insurer converts to  
5 a different type of entity or license and the effect of the conversion is to subject the  
6 insurer to the liabilities of a different account or accounts of the fund, the converting  
7 insurer's obligation to pay assessments is as follows:

8 (a) *Assessments authorized prior to or during the year of conversion.* For  
9 assessments authorized by the board prior to or during the year in which the  
10 insurer's conversion to a different type of entity or license is effective, the insurer is  
11 liable for assessments to cover the obligations of the account or accounts to which it  
12 was subject prior to conversion.

13 (b) *Assessments authorized after the year of conversion.* For assessments  
14 authorized by the board after the year in which the insurer's conversion to a different  
15 type of entity or license is effective, the insurer is liable for assessments to cover the  
16 obligations of the account or accounts to which it is subject after conversion.

17 **SECTION 76.** 655.27 (3) (b) 1. of the statutes is amended to read:

18 655.27 (3) (b) 1. The commissioner, after approval by the board of governors,  
19 shall ~~by rule~~ set the fees under par. (a). ~~The rule shall provide that~~ fees may be paid  
20 annually or in semiannual or quarterly installments. In addition to the prorated  
21 portion of the annual fee, semiannual and quarterly installments shall include an  
22 amount sufficient to cover interest not earned and administrative costs incurred  
23 because the fees were not paid on an annual basis. This paragraph does not impose  
24 liability on the board of governors for payment of any part of a fund deficit.

25 **SECTION 77.** 655.27 (3) (b) 2. of the statutes is amended to read:

**SENATE BILL 287****SECTION 77**

1           655.27 (3) (b) 2. With respect to fees paid by physicians, the ~~rule~~ commissioner  
2 shall provide for not more 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.

5           **SECTION 78.** 655.27 (3) (b) 2m. of the statutes is amended to read:

6           655.27 (3) (b) 2m. In addition to the fees and payment classifications described  
7 under subds. 1. and 2., the commissioner, after approval by the board of governors,  
8 may ~~by rule~~ establish a separate payment classification for physicians satisfying s.  
9 655.002 (1) (b) and a separate fee for nurse anesthetists satisfying s. 655.002 (1) (b)  
10 which take into account the loss experience of health care providers for whom  
11 Michigan is a principal place of practice.

12           **SECTION 79.** 655.27 (3) (bg) 1. of the statutes is amended to read:

13           655.27 (3) (bg) 1. ~~Every rule under par. (b)~~ The commissioner shall provide for  
14 an automatic increase in a health care provider's fees, except as provided in subd. 2.,  
15 if the loss and expense experience of the fund and other sources with respect to the  
16 health care provider or an employee of the health care provider exceeds either a  
17 number of claims paid threshold or a dollar volume of claims paid threshold, both as  
18 established ~~in the rule~~ by the commissioner. The ~~rule~~ commissioner shall specify  
19 applicable amounts of increase corresponding to the number of claims paid and the  
20 dollar volume of awards in excess of the respective thresholds.

21           **SECTION 80.** 655.27 (3) (bg) 2. of the statutes is amended to read:

22           655.27 (3) (bg) 2. The ~~rule~~ commissioner shall provide that the automatic  
23 increase does not apply if the board of governors determines that the performance  
24 of the injured patients and families compensation fund peer review council in

**SENATE BILL 287****SECTION 80**

1 making recommendations under s. 655.275 (5) (a) adequately addresses the  
2 consideration set forth in par. (a) 2m.

3 **SECTION 81.** 655.27 (3) (br) (intro.) of the statutes is amended to read:

4 655.27 (3) (br) *Limit on fees.* (intro.) ~~Every rule~~ The commissioner, in setting  
5 fees for a particular fiscal year under par. (b), shall ensure that the fees assessed do  
6 not exceed the greatest of the following:

7 **SECTION 82.** 655.27 (3) (bt) of the statutes is created 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 set for the next fiscal year under par. (b)  
11 and under s. 655.61 (1). If, within 14 working days after the date that the  
12 commissioner submits the report, the cochairpersons of the committee notify the  
13 commissioner that the committee has scheduled a meeting for the purpose of  
14 reviewing the proposed fees, the commissioner may not impose the fees until the  
15 committee approves the report. If the cochairpersons of the committee do not notify  
16 the commissioner, the commissioner may impose the proposed fees. In addition to  
17 any other method prescribed by rule for advising health care providers of the amount  
18 of the fees, the commissioner shall post the fees set under par. (b) for the next fiscal  
19 year on the office's Internet site and the director of state courts shall post the fees set  
20 under s. 655.61 (1) for the next fiscal year on the mediation fund's Internet site.

21 **SECTION 83.** 655.27 (3) (d) of the statutes is amended to read:

22 655.27 (3) (d) ~~Rule not effective;~~ Late establishment or approval of fees. If the  
23 rule establishing fees under par. (b) ~~does not take effect prior to~~ for any particular  
24 fiscal year are not established by the commissioner, approved by the board of  
25 governors, or approved under par. (bt) by the joint committee on finance before June

**SENATE BILL 287****SECTION 83**

1 2 of any that fiscal year, the commissioner may elect to collect fees as established for  
2 the previous fiscal year. If the commissioner so elects and the rule fees for that fiscal  
3 year are subsequently takes effect established by the commissioner, approved by the  
4 board of governors, or approved under par. (bt) by the joint committee on finance, the  
5 balance for the fiscal year shall be collected or refunded or the remaining semiannual  
6 or quarterly installment payments shall be adjusted except the commissioner may  
7 elect not to collect, refund, or adjust for minimal amounts.

8 **SECTION 84.** 655.27 (3) (e) of the statutes is amended to read:

9 655.27 (3) (e) *Podiatrist fees.* The commissioner, after approval by the board  
10 of governors, may ~~by rule~~ assess fees against podiatrists for the purpose of paying the  
11 fund's portion of medical malpractice claims and expenses resulting from claims  
12 against podiatrists based on occurrences before July 1, 1986.

13 **SECTION 85.** 655.61 (1) of the statutes is amended to read:

14 655.61 (1) The mediation fund created under s. 655.68 shall be financed from  
15 fees charged to health care providers. The director of state courts shall, by February  
16 1 annually, determine the revenues needed for the operation of the mediation system  
17 during the succeeding fiscal year and inform the board of governors of that amount.  
18 The director of state courts shall also inform the board of governors of the number  
19 of requests for mediation involving each type of health care provider set out in s.  
20 655.002 for the most recent fiscal year for which statistics are available. The board  
21 of governors shall, ~~by rule~~, set fees to charge health care providers at a level sufficient  
22 to provide the necessary revenue.

23 **SECTION 86.** 655.61 (3) of the statutes is created to read:

24 655.61 (3) If the fees under sub. (1) for any particular fiscal year are not  
25 established by the board of governors or approved by the joint committee on finance

**SENATE BILL 287**

1 under s. 655.27 (3) (bt) before June 2 of that fiscal year, the commissioner may elect  
2 to collect fees as established for the previous fiscal year. If the commissioner so elects  
3 and the fees for that fiscal year are subsequently established by the board of  
4 governors or approved by the joint committee on finance under s. 655.27 (3) (bt), the  
5 balance for the fiscal year shall be collected or refunded, except that the  
6 commissioner may elect not to collect or refund minimal amounts.

7 **SECTION 87. Nonstatutory provisions.**

8 (1) OPERATIVE DATE OF THE VALUATION MANUAL. As soon as possible after the  
9 requirements under section 623.06 (9) (b) of the statutes, as created by this act, are  
10 met, the office of the commissioner of insurance shall submit to the legislative  
11 reference bureau for publication in the Wisconsin Administrative Register a notice  
12 specifying the date that is the operative date of the valuation manual, as provided  
13 in section 623.06 (9) (b) of the statutes, as created by this act.

14 **SECTION 88. Effective dates.** This act takes effect on the day after publication,  
15 except as follows:

16 (1) OPERATIVE DATE OF VALUATION MANUAL. The repeal and recreation of section  
17 623.06 (1) (f) of the statutes takes effect on the date specified in the notice published  
18 in the Wisconsin Administrative Register under SECTION 87 (1) of this act.

19 (END)