

## CHAPTER 646

## INSURANCE SECURITY FUND

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**646.01 Scope and purpose. (1) SCOPE.** This chapter shall apply to all kinds and lines of direct insurance, except variable annuities and variable value life insurance contracts, and to all insurers authorized to do business in this state except fraternal, assessable mutual corporations including town mutuals, issuers of gift annuities under ch. 615, service insurance corporations under ch. 613 and state insurance funds.

**(2) PURPOSE.** The purpose of this chapter is to maintain public confidence in the promises of insurers by providing a mechanism for protecting insureds in this state from excessive delay and loss in the event of liquidation of insurers and by assessing the cost of such protection among insurers.

History: 1971 c. 260; 1975 c. 373, 374, 422.

**646.02 Organization and administration of fund. (1) ORGANIZATION.** There is created a fund to be known as the "Insurance Security Fund", hereinafter referred to as the "fund". The fund shall consist of all payments made by insurers under s. 646.21, of the earnings resulting from investments under s. 646.05 and of the amounts recovered under s. 646.14.

**(2) ACCOUNTS.** The fund shall be divided into 3 separate accounts, one for life insurance and annuities, one for disability insurance and one for all other covered insurance. There shall also be a temporary worker's compensation insurance security fund, under s. 646.23. When its assets have been distributed under s. 646.23 (2) that temporary fund shall be terminated. Until then, all provisions relating to the fund shall apply to the worker's compensation insurance security fund, unless either obviously inappropriate or expressly inapplicable.

**(3) ADMINISTRATION.** The commissioner shall be administrator of the fund. He shall receive no additional compensation for administering it.

**(4) EXPENSES OF FUND.** The fund's necessary expenses of administration in connection with an actual liquidation shall be charged to the fund. All other expenses shall be charged to the budget of the office of the commissioner of insurance.

**(5) LIABILITY.** No one shall be personally liable for any obligations of the fund, and the rights of creditors shall be solely against the assets of the fund.

History: 1975 c. 147 s. 54.

**646.03 Board of the fund. (1) COMPOSITION.** The fund shall have a board of not less than 5 nor more than 11 members. The attorney general, the treasurer and the commissioner of insurance shall be ex officio members with full right to vote. The commissioner shall be chairman of the board. The other members shall represent domestic and foreign or alien insurers subject to this chapter. They shall be selected through a procedure to be specified in a rule promulgated by the commissioner. The rule may provide that instead of individual persons, particular insurers or associations of insurers can be selected as members of the board, to act through any duly authorized representative.

**(2) POWERS.** The board shall:

(a) Adopt rules for the administration of this chapter, including its own procedure;

(b) Create committees for each of the accounts of the fund, and delegate to them any of the powers under pars. (c) to (f);

(c) Reduce awards under s. 646.12 (2);

(d) Determine the rate of assessments under s. 646.21;

(e) Decide on appeals under ss. 646.13 and 646.21 (8); and

(f) Approve the plan of distribution under s. 646.22.

**(3) COMPENSATION.** The members of the board shall receive no compensation for their services as members but shall be entitled to reimbursement for all reasonable and necessary

expenses incurred in connection with the performance of their duties as members.

History: 1971 c. 211 s. 126

**646.04 Custody of assets.** The treasurer shall be custodian of the fund. He shall not receive additional compensation for his services as custodian, but his reasonable and necessary expenses in performing his duties as custodian shall be charged to the fund.

**646.05 Investments.** The fund shall be invested by the investment board under s. 25.17. All income from the investments shall be credited to the fund.

**646.11 Eligible claims. (1) CONDITIONS OF ELIGIBILITY FOR PAYMENT.** Payment shall be made under this chapter for a claim that:

(a) *Issued by authorized insurer.* Arises out of an insurance policy or annuity issued by an insurer which was authorized to do an insurance business in this state either at the time the policy or annuity was issued or when the insured event occurred; and

(b) *Assessability of insurer.* Arises out of a class of business with respect to which the insurer is not exempt from assessment under s. 646.21 (2); and

(c) *Approved in liquidation.* Has been approved in the liquidation of the insurer issuing the policy or annuity, carried out under ch. 645 or under the similar laws of another state or foreign country; and

(d) *Contact with state.* Is a member of one of the classes of claims under sub. (2).

**(2) CLASSES OF CLAIMS TO BE PAID.** A claim shall not be paid unless it is:

(a) *Residents.* The claim of a policyholder or an insured of, or a beneficiary under, a policy or annuity, who at the time of the insured event or of the liquidation order was a resident of this state; or

(b) *Owners of property interests.* The claim of a person having an insurable interest in or related to property which was situated in this state at the time of the insured event; or

(c) *Third party claimants.* A claim under a liability or worker's compensation insurance policy, if:

1. Either the insured or the 3rd party claimant was a resident of this state at the time of the insured event; or

2. The claim is for bodily or personal injuries suffered in this state or by a person who when he suffered the injuries was a resident of this state; or

3. The claim is for damage to property situated in this state at the time of damage.

(d) *Assignees.* The claim of a direct or indirect assignee of a person who except for the assignment might have claimed under par. (a) or (b).

**(3) LIMITATION OF AMOUNT.** Payment under this chapter shall be limited to the amount by which the allowance on any claim exceeds \$200 and, if the insurer is not liquidated under ch. 645, to the amount in excess of \$200 for which the claim would be allowable in a liquidation under ch. 645, as determined under s. 646.12 (2).

History: 1975 c. 147 s. 54; 1977 c. 26.

**646.12 Procedure for payment. (1) LIQUIDATION.** The claims found by the administrator to be eligible under s. 646.11 shall be paid out of the fund as soon as they have been approved or settled under ss. 645.71 (2) and 645.87 (2) or the corresponding laws of another jurisdiction, subject to the board's power under sub. (2) to reduce the amount of the award.

**(2) CERTIFICATE OF APPROVAL.** For each claim found by the administrator to be eligible under s. 646.11 and approved or settled as specified in sub. (1), the administrator shall execute a certificate, upon receipt of which the treasurer shall pay the indicated amount to the claimant. If in the judgment of the administrator, an improper award is made or an excessive amount is awarded in a liquidation under the laws of another jurisdiction, he may recommend to the board that the award shall be paid only in part out of the fund, and the board shall thereupon determine the amount to be paid.

**(3) INELIGIBLE CLAIMS.** If the administrator finds that a claim for which the claimant has requested payment out of the fund is not eligible under s. 646.11 or the board reduces the amount of the award under sub. (2), the administrator shall notify the claimant in writing and advise him of his rights under s. 646.13.

**646.13 Appeal and review. (1) APPEAL.** A claimant whose claim has been declared to be ineligible or reduced by the administrator under s. 646.12 (3) may appeal to the board within 30 days after the claimant has been notified of the administrator's decision and of his rights under this section.

**(2) REVIEW.** Decisions of the board under sub. (1) and s. 646.12 (2) shall be subject to judicial review.

**646.14 Subrogation and cooperation. (1) SUBROGATION.** Upon payment to any claimant under s. 646.12 the fund shall be subrogated to the claimant's full right of recovery against the insurer, its conservator or liquidator. The fund

shall retain the amount it has paid to the claimant and expended to enforce the recovery, and pay over any balance to the claimant.

(2) **COOPERATION.** The claimant shall cooperate with the fund in pursuing its rights under sub. (1) and if cooperation is unreasonably withheld, the fund shall have a right to recover from the claimant any payment made to him.

**646.21 Assessments. (1) INSURERS SUBJECT TO ASSESSMENTS.** All insurers to which this chapter applies shall be subject to assessments as provided in this section.

(2) **EXEMPTIONS FROM ASSESSMENTS.** If the commissioner finds that a foreign or alien insurer is subject to another guaranty fund plan providing substantially the same protection to claimants under s. 646.11 as would be provided by this chapter, he shall exempt the insurer from assessments on the classes of business to which the other plan applies.

(3) **CONDITIONS AND PROCEDURE.** As soon as practicable after a liquidation order as specified in s. 646.12 (1) has been issued, the administrator shall make an estimate of the amount that will be necessary to make the payments provided by this chapter, separately for each of the accounts of s. 646.02 (2) and shall submit the estimate to the board, together with his recommendations for the assessment to be levied.

(4) **CALCULATION.** The board shall fix assessments separately for each account as a percentage of the gross premiums and other consideration received for direct insurance and annuities written in this state in the classes protected by the account, less return premiums and dividends paid in cash to policyholders or applied in part payment of premiums, as reported in the most recent annual statements. Assessments may be made payable in one sum or in instalments.

(5) **LIMITS.** The maximum assessment upon an insurer in any year shall be 2% of the assessable premiums as defined in sub. (4).

(6) **USE OF ASSETS.** No assessment shall be levied as long as the assets held by the appropriate account of the fund are sufficient to cover all estimated payments for liquidations in process.

(7) **COLLECTION.** After the rate of assessment has been fixed by the board, the administrator shall send to each insurer a statement of the exact amount to be paid by it. The assessments or instalments shall be paid and collected in the same manner as premium taxes or license fees under ch. 76.

(8) **APPEAL AND REVIEW.** Any insurer may, within 10 days after receipt of the statement under sub. (7), appeal to the board with respect to the amount of the assessment demanded by the administrator. The decision of the board on this appeal is subject to judicial review. However, there shall be no delay in payment by reason of the pendency of an appeal or of review.

(9) **RECOUPMENT.** Rates used by an insurer shall not be deemed excessive because they contain an amount reasonably calculated to recoup assessments made under this chapter.

**646.22 Disposal of unused assets.** After the termination of all liquidations initiated in any year in either account of the fund, all surplus assets left in that account and attributable to those liquidations shall be redistributed among those who paid assessments, in proportion to the amounts they paid. After all claims against the fund arising from such liquidations have been paid, partial distributions may be made as dividends are received from the liquidations.

**646.23 Transition provisions for worker's compensation security fund. (1) CONSOLIDATION AND TRANSFORMATION.** The stock worker's compensation security fund established under s. 102.65 (2) [Stats. 1967], the mutual worker's compensation security fund established under s. 102.65 (4) and the reciprocal worker's compensation security fund established under s. 102.65 (6) are hereby consolidated and transformed into the temporary worker's compensation insurance security fund.

(2) **PAYMENTS FROM TEMPORARY WORKER'S COMPENSATION INSURANCE FUND.** After August 22, 1969, whenever an assessment is levied against insurers under s. 646.21 that portion of any assessment attributable under s. 646.21 (4) to worker's compensation insurance shall be transferred from the temporary fund under sub. (1) to the account for all other covered insurance under s. 646.02 (2). When the temporary fund under sub. (1) is exhausted it shall cease to exist.

History: 1975 c. 147 s. 54.

**646.31 Unfair trade practices.** It is an unfair trade practice for any insurer or agent to make use in any manner of the protection given policyholders by this chapter as a reason for buying insurance from him.