State of Wisconsin
2009 - 2010 LEGISLATURE

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2009 ASSEMBLY BILL 701

February 3, 2010 – Introduced by Representative CULLEN, cosponsored by Senator TAYLOR, by request of Commissioner of Insurance. Referred to Committee on Insurance.

AN ACT ***to repeal*** 14.83, 601.415 (11), 601.59, 611.33 (2) (b) 1., 611.33 (2) (b) 2. and 646.03 (2n); ***to renumber*** 646.31 (1) (b); ***to renumber and amend*** 615.10 (5); ***to amend*** 149.13 (1), 609.91 (1) (intro.), 609.91 (2), (3) and (4) (a), (b), (cm) and (d), 612.22 (3) (a), (4) and (6), 614.29 (1), 614.42 (1) (a), 615.03 (5), 628.10 (5) (a), 632.32 (2) (at), 632.32 (2) (e) (intro.), 632.32 (2) (e) 2., 632.32 (2) (e) 3., 632.32 (2) (g) (intro.), 632.32 (2) (g) 1., 632.32 (4) (a) (intro.), 632.32 (4r) (a), 632.32 (4r) (c), 645.69 (1), 646.13 (2) (d), 646.13 (4), 646.31 (4) (a), 646.31 (12), 646.32 (1), 646.32 (2), 646.325 (1), 646.325 (2) (a) 1., 646.51 (3) (c), 646.51 (5) and 646.51 (6); and ***to create*** 49.45 (31) (e), 601.31 (1) (Lg), 609.91 (1p), 615.10 (5) (intro.), 615.10 (5) (b), 615.10 (5) (c), 615.10 (5) (d), 632.32 (2) (ag), 632.32 (2) (be), 632.32 (4) (d), 632.897 (11), 646.01 (1) (b) 19., 646.31 (1) (b) 2. and 646.325 (4) of the statutes; **relating to:** the Interstate Insurance Receivership Compact, investment guidelines for charitable gift annuity segregated accounts, Health Insurance Risk-Sharing Plan assessment participation,

reciprocity for long–term care insurance policies, voting by fraternal members, the insurance security fund, modifications to motor vehicle insurance policy and umbrella and excess liability policy requirements, providing an exemption from emergency rule procedures, and granting rule–making authority.

Analysis by the Legislative Reference Bureau

This bill makes a number of changes to the insurance laws, including the following:

1. The Interstate Insurance Receivership Compact was created to develop and facilitate uniform insurer receivership laws. Receiverships are established to oversee and distribute assets of insurers that have become insolvent. Although enacted as part of Wisconsin law, the compact never became effective in this state and now is dissolving. The bill repeals the compact.

2. Under current law, an issuer of a charitable gift annuity must keep its assets in a segregated account. Issuers of charitable gift annuities are subject to the same requirements for investing assets in their segregated accounts as are other annuity insurers for investing their assets, including being limited to investing no more than 20 percent of the assets in common stock and shares of mutual funds and no more than 3 percent in the common stock of a single corporation and its affiliates. The bill increases, for charitable gift annuity segregated accounts, the amount of assets that may be invested in common stock from 20 percent to 50 percent and the assets that may be invested in the common stock of a single corporation and its affiliates from 3 percent to 10 percent. The bill also provides that, if the assets of a charitable gift annuity segregated account are invested in a mutual fund, the investment will be treated as if it consists of the same percentage of common stock or bonds as that held by the mutual fund.

3. Under current law, the Health Insurance Risk–Sharing Plan is funded in part by assessments paid by health insurers. The amount of the assessment paid by each insurer is proportional to the amount of that insurer's health care coverage revenue as compared to all health care coverage revenue for all health insurers in this state. The Commissioner of Insurance (commissioner) may exempt an insurer from paying the assessment if that insurer's assessment would be smaller than the cost of collecting it. The bill allows the commissioner to exempt any insurer from the fee assessment upon the request of the insurer and after holding a public hearing.

4. Under current law, insurers authorized to do business in this state, with a number of exceptions, must participate in the insurance security fund (fund), which protects insureds under certain kinds and lines of direct insurance in the event of a liquidation of an insurer. This bill explicitly exempts from the types of insurance to which the fund applies policies issued to individuals with coverage under Medicare or the Medical Assistance program (MA) and contracts between the federal government and an insurer to provide health care or prescription drug benefits.

Under current law, the fund has standing to appear in any court having jurisdiction over an impaired or insolvent insurer. An impaired insurer, under current law, is an insurer that is subject to the requirements of the fund that is placed under an order of rehabilitation or conservation by a court of competent jurisdiction but without a finding of insolvency. This bill eliminates the classification of impaired insurer.

Under current law, for an insured with a net worth of over $10,000,000, with some exceptions the fund need only pay claims that in the aggregate exceed 10 percent of the insured's net worth. This bill increases the minimum net worth to $25,000,000 for which the fund can limit payment of claims to 10 percent of the insured's net worth.

Under current law, a person with a claim against the fund whose claim is reduced or declared ineligible may appeal that determination to the board of directors of the fund (board). The person may not pursue a claim in court unless appeal is first made to and decided by the board. This bill specifies that the board may appoint a committee of the board or a hearing examiner to hear appeals, which is currently allowed under the fund's procedures. This bill requires that a person seeking review of the board's, committee's, or hearing examiner's decision in circuit court petition the Dane County Circuit Court within 60 days of the decision.

Under current law, under certain circumstances the fund may recover the costs of defending an insured if the insured has a net worth of more than $10,000,000 or is an affiliate of an insurer in liquidation. This bill does not allow the fund to recover costs unless the insured's net worth is more than $25,000,000. The bill also allows the fund to recover reasonable attorney fees and costs plus interest.

Under current law, an insurer is assessed by the fund, and the insurer may appeal the assessment to the board and then to the circuit court. This bill requires that petitions for review by the circuit court be filed in the Dane County Circuit Court within 60 days of the decision by the board.

Under current law, an insurer may be assessed up to $200 on a nonprorated basis for administrative costs for the fund. The bill increases the maximum nonprorated assessment to $500.

5. Under current law, MA disregards benefits paid under qualifying long–term care insurance policies purchased under the Long–Term Care Partnership Program in this state when considering the assets an applicant for MA has available. The bill requires the Department of Health Services to disregard benefits paid under qualifying long–term care insurance policies purchased by an MA applicant under the same type of program in another state.

6. Under current law, a fraternal insurance organization may elect its directors by mail. This bill allows fraternals to also conduct voting by electronic means or another method approved by the fraternal's board of directors in the bylaws.

7. Under current law, an insurance intermediary whose license is revoked for certain reasons may have the license reinstated if he or she satisfies certain requirements and pays the application fee for original licensure. This bill requires that an intermediary seeking reinstatement of a license pay twice the amount of the license renewal fee as specified by rule.

8. This bill imposes a fee for filing an original electronic resident intermediary license application following completion of prelicensing requirements.

9. Under current law, a person who is covered by a group health insurance policy as or through an employee may continue that coverage if the employee's employment ends. 2009 Wisconsin Act 11, among other things, allows the commissioner to promulgate rules establishing standards requiring insurers to provide continuation coverage to coordinate with provisions of the federal American Recovery and Reinvestment Act. This bill allows the commissioner to promulgate rules establishing standards requiring insurers to provide continuation coverage for an individual covered under a group policy who is eligible under any federal program that provides for a federal premium subsidy for individuals covered under continuation of coverage under a group health insurance policy.

10. Under current law, certain enrollees and policyholders, including certain recipients of Medical Assistance, are not liable for health care costs that are covered under a policy providing prepaid health care. Under this bill, enrollees under a policy issued under Part C or Part D of Medicare are not liable for health care costs that are covered under such a policy providing prepaid or fee–for–service health care or drug benefits.

11. Under current law, one or more town mutuals may merge with an assessable or nonassessable domestic mutual, and all members of the merging mutuals vote to approve the merger plan. This bill specifies that the members of the merging town mutual or mutuals and the members of an assessable domestic mutual have the right to vote on the merger plan.

12. The bill makes a number of changes to the current law provisions that relate to motor vehicle insurance policies and umbrella and excess liability policies, including the following:

a. Exempts from the requirements related to coverages and coverage limits, policies insuring motor vehicles that are not owned by the insured or that are leased by the insured for a term that is less than six months.

b. Excludes umbrella and excess liability policies from the uninsured, underinsured, and medical payments coverage requirements that apply to motor vehicle insurance policies. Insurers are still required to affirmatively offer uninsured and underinsured coverages under umbrella and excess liability policies, however.

c. Clarifies that only one named insured is required to reject or request uninsured or underinsured coverage for an umbrella or excess liability policy and that one named insured's rejection of or request for the coverage applies to all persons insured under the policy.

d. Generally, excludes from the definitions of uninsured and underinsured motor vehicles, motor vehicles that are owned by a governmental entity; excludes from the definition of an uninsured motor vehicle, in addition to one that is owned or operated by a person who has furnished proof of financial responsibility, one that is owned or operated by a person who is self–insured under any other applicable motor vehicle law; and includes in the definition of an underinsured motor vehicle, one that is owned or operated by a person who has furnished proof of financial

responsibility or who is self–insured under any other applicable motor vehicle law but with limits that are less than needed to compensate the insured for his or her damages.

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

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

SECTION 1. 14.83 of the statutes is repealed.

SECTION 2. 49.45 (31) (e) of the statutes is created to read:

49.45 **(31)** (e) 1. Notwithstanding par. (b) (intro.), the department, when making a determination under par. (a) 1. or 2. with respect to an individual, shall disregard an amount equal to the insurance benefit payments that are made to or on behalf of the individual under a qualified long–term care insurance policy under 26 USC 7702B (b) that was purchased in a state that had a state plan amendment that provided for a qualified state long–term care partnership, as defined in 42 USC 1396p (b) (1) (C) (iii), at the time of the purchase of the policy.

2. The department shall comply with standards established by the federal department of health and human services in accordance with section 6021 (b) of the federal Deficit Reduction Act of 2005.

SECTION 3. 149.13 (1) of the statutes is amended to read:

149.13 **(1)** Every insurer shall participate in the cost of administering the plan, except the commissioner may ~~by rule exempt as a class those insurers whose share as determined under sub. (2) would be so minimal as to not exceed the estimated cost of levying the assessment~~, at the request of an insurer and after holding a public hearing, exempt an insurer from participating in the cost of administering the plan.

The commissioner shall advise the authority of the insurers participating in the cost of administering the plan.

SECTION 4. 601.31 (1) (Lg) of the statutes is created to read:

601.31 **(1)** (Lg) For filing an original electronic resident intermediary license application following successful completion of any required prelicensing education or examination under s. 628.04, $10.

SECTION 5. 601.415 (11) of the statutes is repealed.

SECTION 6. 601.59 of the statutes is repealed.

SECTION 7. 609.91 (1) (intro.) of the statutes is amended to read:

609.91 **(1)** IMMUNITY OF ENROLLEES AND POLICYHOLDERS. (intro.) Except as provided in sub. (1m) or (1p), an enrollee or policyholder of a health maintenance organization insurer is not liable for health care costs that are incurred on or after January 1, 1990, and that are covered under a policy or certificate issued by the health maintenance organization insurer, if any of the following applies:

SECTION 8. 609.91 (1p) of the statutes is created to read:

609.91 **(1p)** IMMUNITY FOR CERTAIN MEDICARE RECIPIENTS. An enrollee, policyholder, or insured under a policy issued by an insurer under Part C of Medicare under 42 USC 1395w–21 to 1395w–28 or Part D of Medicare under 42 USC 1395w–101 to 1395w–152 to provide prepaid health care, fee–for–service health care, or drug benefits to enrollees of Part C or Part D of Medicare is not liable for health care costs that are covered under the policy.

SECTION 9. 609.91 (2), (3) and (4) (a), (b), (cm) and (d) of the statutes are amended to read:

609.91 **(2)** PROHIBITED RECOVERY ATTEMPTS. No person may bill, charge, collect a deposit from, seek remuneration or compensation from, file or threaten to file with

a credit reporting agency or have any recourse against an enrollee, policyholder or insured, or any person acting on their behalf, for health care costs for which the enrollee, policyholder or insured, or person acting on their behalf, is not liable under sub. (1) ~~or,~~ (1m), or (1p).

(3) DEDUCTIBLES, COPAYMENTS AND PREMIUMS. Subsections (1) to (2) do not affect the liability of an enrollee, policyholder or insured for any deductibles, copayments or premiums owed under the policy or certificate issued by the health maintenance organization insurer or by the insurer described in sub. (1m) or (1p).

(4) (a) An agreement, other than a notice of election or termination of election in accordance with s. 609.92 or 609.925, entered into by the provider, the health maintenance organization insurer, the insurer described in sub. (1m) or (1p) or any other person, at any time, whether oral or written and whether implied or explicit, including an agreement that purports to hold the enrollee, policyholder or insured liable for health care costs.

(b) A breach of or default on an agreement by the health maintenance organization insurer, the insurer described in sub. (1m) or (1p) or any other person to compensate the provider, directly or indirectly, for health care costs, including health care costs for which the enrollee, policyholder or insured is not liable under sub. (1) ~~or,~~ (1m), or (1p).

(cm) The insolvency of the insurer described in sub. (1m) or (1p) or any person contracting with the insurer or provider, or the commencement or the existence of conditions permitting the commencement of insolvency, delinquency or bankruptcy proceedings involving the insurer or other person, including delinquency proceedings, as defined in s. 645.03 (1) (b), under ch. 645, despite whether the insurer or other person has agreed to compensate, directly or indirectly, the provider for

health care costs for which the enrollee, policyholder or insured is not liable under sub. (1m) or (1p).

(d) The inability of the provider or other person who is owed compensation for health care costs to obtain compensation from the health maintenance organization insurer, the insurer described in sub. (1m) or (1p), or any other person for health care costs for which the enrollee, policyholder or insured is not liable under sub. (1) ~~or~~, (1m), or (1p).

SECTION 10. 611.33 (2) (b) 1. of the statutes is repealed.

SECTION 11. 611.33 (2) (b) 2. of the statutes is repealed.

SECTION 12. 612.22 (3) (a), (4) and (6) of the statutes are amended to read:

612.22 **(3)** (a) Each of the participating corporations shall file with the commissioner for approval a copy of the resolution and any explanatory material proposed to be issued to the members who have the right to vote on the merger under sub. (4), together with so much of the information under s. 611.13 (2) or 612.02 (4), whichever is appropriate, for the surviving or new corporation as the commissioner reasonably requires. The commissioner shall approve the plan unless he or she finds, after a hearing, that it would be contrary to the law, or that the surviving or new corporation would not satisfy the requirements for a certificate of authority under s. 611.20 or 612.02 (6), whichever is appropriate, or that the plan would be contrary to the interest of insureds or of the public.

(4) APPROVAL BY MEMBERS OF THE MUTUALS. After being approved by the commissioner under sub. (3), the plan shall be submitted for approval to the members of the participating town mutual or mutuals ~~for their approval~~ and to the members of the participating domestic mutual if the domestic mutual is assessable.

The members of each participating mutual who have the right to vote on the merger shall vote separately.

(6) REPORTS TO COMMISSIONER. Each participating mutual, the members of which have the right to vote under sub. (4), shall file with the commissioner a copy of the resolution adopted under sub. (4), stating the number of members entitled to vote, the number of members voting, and the number of votes cast in favor of the plan, stating separately in each case the mail votes and the votes cast in person.

SECTION 13. 614.29 (1) of the statutes is amended to read:

614.29 **(1)** RIGHT TO AMEND ARTICLES. The articles of a fraternal may provide for amendment by the supreme governing body or by the board of directors, and may provide also for amendment by the members by referendum. If amendment is by referendum, a majority of those members who vote must vote affirmatively. Votes cast within 60 days from the date of mailing of the ~~first ballot~~ ballots by the fraternal shall be counted. The timeliness of a vote is determined by the date of its mailing as proved by its postmark or other suitable evidence.

SECTION 14. 614.42 (1) (a) of the statutes is amended to read:

614.42 **(1)** (a) *Board of directors.* A board with some directors elected directly by the members or by their representatives in intermediate assemblies under sub. (2), and other directors prescribed in the fraternal's laws. The elected directors shall constitute a majority in number and not less than the number of votes required to amend those articles or bylaws of the fraternal that can be amended without consent of the members. The board shall meet at least quarterly to conduct the business of the fraternal. The elected directors shall be elected on a plan that ensures equal weight to each fraternal member's vote. Voting may be conducted by mail, by

electronic means, or by any other method or combination of methods approved by the board and prescribed in the fraternal's bylaws.

SECTION 15. 615.03 (5) of the statutes is amended to read:

615.03 **(5)** APPLICATION OF CHAPTERS 600 TO 646. The commissioner may by rule or order impose on licensees under this chapter any other provisions of chs. 600 to 646 applicable to ch. 611 corporations, if necessary to protect the interests of annuitants or the public, except that the commissioner may not impose the provisions of s. 620.23 (1) (d), (2) (a), and (5) on a licensee under this chapter.

SECTION 16. 615.10 (5) (intro.) of the statutes is created to read:

615.10 **(5)** (intro.) All of the following apply to the investment of the assets of a segregated account under this section:

SECTION 17. 615.10 (5) of the statutes, as affected by 2009 Wisconsin Act 33, is renumbered 615.10 (5) (a) and amended to read:

615.10 **(5)** (a) Assets ~~of a segregated account under this section~~ shall be invested in accordance with ch. 881.

SECTION 18. 615.10 (5) (b) of the statutes is created to read:

615.10 **(5)** (b) No more than 50 percent of the assets may be invested in common stock.

SECTION 19. 615.10 (5) (c) of the statutes is created to read:

615.10 **(5)** (c) No more than 10 percent of the assets may be invested in the common stock of any single corporation and its affiliates.

SECTION 20. 615.10 (5) (d) of the statutes is created to read:

615.10 **(5)** (d) Assets that are invested in a mutual fund or other investment company shall be treated as if the licensee directly owned, in proportion to the

amount invested, the same types of assets and in the same proportional share as the assets owned by the mutual fund or other investment company.

SECTION 21. 628.10 (5) (a) of the statutes is amended to read:

628.10 **(5)** (a) *Reinstatement within 12 months.* An intermediary who is a natural person and whose license is revoked under sub. (2) (a), (am), or (cm) may have his or her license reinstated within 12 months after the date on which the license was revoked without having to satisfy any prelicensing education or examination requirements under s. 628.04. To have his or her license reinstated, the intermediary must satisfy the requirement under sub. (2) (a), (am), or (cm) for which the license was revoked, satisfactorily complete a reinstatement application, and pay ~~the application fee for original licensure~~ twice the amount of the license renewal fee as specified by rule. The reinstatement is effective on the date on which the commissioner actually reinstates the license. If the intermediary is also a resident who is required to complete continuing education, the intermediary must have satisfied all previous continuing education requirements to have his or her license reinstated under this paragraph.

SECTION 22. 632.32 (2) (ag) of the statutes is created to read:

632.32 **(2)** (ag) "Governmental unit" has the meaning given in s. 50.33 (1r).

SECTION 23. 632.32 (2) (at) of the statutes, as affected by 2009 Wisconsin Act 28, is amended to read:

632.32 **(2)** (at) "Motor vehicle" means a self–propelled land motor vehicle designed for travel on public roads and subject to motor vehicle registration under ch. 341. ~~It includes trailers and semitrailers~~ A trailer or semitrailer that is designed for use with ~~such vehicles. It~~ and connected to a motor vehicle shall be considered

a single unit with the motor vehicle. "Motor vehicle" does not include farm tractors, well drillers, road machinery, or snowmobiles.

SECTION 24. 632.32 (2) (be) of the statutes is created to read:

632.32 **(2)** (be) "Owned motor vehicle" means a motor vehicle that is owned by the insured or that is leased by the insured for a term of 6 months or longer.

SECTION 25. 632.32 (2) (e) (intro.) of the statutes, as created by 2009 Wisconsin Act 28, is amended to read:

632.32 **(2)** (e) (intro.) "Underinsured motor vehicle" means a motor vehicle, other than a motor vehicle owned by a governmental unit, to which all of the following apply:

SECTION 26. 632.32 (2) (e) 2. of the statutes, as created by 2009 Wisconsin Act 28, is amended to read:

632.32 **(2)** (e) 2. ~~A~~ At the time of the accident, a bodily injury liability insurance policy applies to the motor vehicle ~~at the time of the accident~~ or the owner or operator of the motor vehicle has furnished proof of financial responsibility for the future under subch. III of ch. 344 and it is in effect or is a self–insurer under another applicable motor vehicle law.

SECTION 27. 632.32 (2) (e) 3. of the statutes, as created by 2009 Wisconsin Act 28, is amended to read:

632.32 **(2)** (e) 3. The limits under the bodily injury liability insurance policy or with respect to the proof of financial responsibility or self–insurance are less than the amount needed to fully compensate the insured for his or her damages.

SECTION 28. 632.32 (2) (g) (intro.) of the statutes, as created by 2009 Wisconsin Act 28, is amended to read:

632.32 **(2)** (g) (intro.) "Uninsured motor vehicle" means a motor vehicle, other than a motor vehicle owned by a governmental unit, that is involved in an accident with a person who has uninsured motorist coverage and with respect to which, at the time of the accident, a bodily injury liability insurance policy is not in effect and the owner or operator has not furnished proof of financial responsibility for the future under subch. III of ch. 344 and is not a self–insurer under any other applicable motor vehicle law. "Uninsured motor vehicle" also includes any of the following motor vehicles, other than a motor vehicle owned by governmental unit, involved in an accident with a person who has uninsured motorist coverage:

SECTION 29. 632.32 (2) (g) 1. of the statutes, as created by 2009 Wisconsin Act 28, is amended to read:

632.32 **(2)** (g) 1. An insured motor vehicle, or a motor vehicle with respect to which the owner or operator is a self–insurer under any applicable motor vehicle law, if before or after the accident the liability insurer of the motor vehicle, or the self–insurer, is declared insolvent by a court of competent jurisdiction.

SECTION 30. 632.32 (4) (a) (intro.) of the statutes, as affected by 2009 Wisconsin Act 28, is amended to read:

632.32 **(4)** (a) (intro.) ~~Every~~ Except as provided in par. (d), every policy of insurance subject to this section that insures with respect to any owned motor vehicle registered or principally garaged in this state against loss resulting from liability imposed by law for bodily injury or death suffered by any person arising out of the ownership, maintenance, or use of a motor vehicle shall contain therein or supplemental thereto provisions for all of the following coverages:

SECTION 31. 632.32 (4) (d) of the statutes is created to read:

632.32 **(4)** (d) This subsection does not apply to umbrella or excess liability policies, which are subject to sub. (4r).

SECTION 32. 632.32 (4r) (a) of the statutes, as created by 2009 Wisconsin Act 28, is amended to read:

632.32 **(4r)** (a) An insurer writing umbrella or excess liability policies that insure with respect to ~~a~~ an owned motor vehicle registered or principally garaged in this state against loss resulting from liability imposed by law for bodily injury or death suffered by a person arising out of the ownership, maintenance, or use of a motor vehicle shall provide written offers of uninsured motorist coverage and underinsured motorist coverage, which offers shall include a brief description of the coverage offered. An insurer is required to provide the offers required under this subsection only one time with respect to any policy in the manner provided in par. (b).

SECTION 33. 632.32 (4r) (c) of the statutes, as created by 2009 Wisconsin Act 28, is amended to read:

632.32 **(4r)** (c) An applicant or a named ~~insureds~~ insured may reject one or both of the coverages offered, but must do so in writing. If the applicant or named ~~insureds reject~~ insured rejects either of the coverages offered, the insurer is not required to provide the rejected coverage under ~~a~~ the policy ~~that is renewed to the person~~ at renewal by that insurer unless an insured under the policy subsequently requests the rejected coverage in writing. The action of one named insured to reject or request coverage applies to all persons insured under the policy.

SECTION 34. 632.897 (11) of the statutes is created to read:

632.897 **(11)** (a) Notwithstanding subs. (2) to (10), the commissioner may promulgate rules establishing standards requiring insurers to provide continuation

of coverage for any individual covered at any time under a group policy who is a terminated insured or an eligible individual under any federal program that provides for a federal premium subsidy for individuals covered under continuation of coverage under a group policy, including rules governing election or extension of election periods, notice, rates, premiums, premium payment, application of preexisting condition exclusions, election of alternative coverage, and status as an eligible individual, as defined in s. 149.10 (2t).

(b) The commissioner may promulgate the rules under par. (a) as emergency rules under s. 227.24. Notwithstanding s. 227.24 (1) (c), emergency rules promulgated under this paragraph may remain in effect for one year and may be extended under s. 227.24 (2). Notwithstanding s. 227.24 (1) (a) and (3), the commissioner is not required to provide evidence that promulgating a rule under this paragraph as an emergency rule is necessary for the preservation of the public peace, health, safety, or welfare and is not required to provide a finding of emergency for a rule promulgated under this paragraph.

SECTION 35. 645.69 (1) of the statutes is amended to read:

645.69 **(1)** A claim against a health maintenance organization insurer or an insurer described in s. 609.91 (1m) or (1p) for health care costs, as defined in s. 609.01 (1j), for which an enrollee, as defined in s. 609.01 (1d), policyholder or insured of the health maintenance organization insurer or other insurer is not liable under ss. 609.91 to 609.935.

SECTION 36. 646.01 (1) (b) 19. of the statutes is created to read:

646.01 **(1)** (b) 19. A policy issued by an insurer to an enrollee under Title XVIII of the federal social security act, 42 USC 1395 to 1395ccc, or Title XIX of the federal social security act, 42 USC 1396 to 1396v, or a contract entered into by an insurer

with the federal government or an agency of the federal government under Title XVIII or Title XIX of the federal social security act, to provide health care or prescription drug benefits to persons enrolled in Title XVIII or Title XIX programs.

SECTION 37. 646.03 (2n) of the statutes is repealed.

SECTION 38. 646.13 (2) (d) of the statutes is amended to read:

646.13 **(2)** (d) Have standing to appear in any liquidation proceedings in this state involving an insurer in liquidation, and have authority to appear or intervene before a court or agency of any other state having jurisdiction over an ~~impaired or~~ insolvent insurer, in accordance with the laws of that state, with respect to which the fund is or may become obligated or that has jurisdiction over any person or property against which the fund may have subrogation or other rights. Standing shall extend to all matters germane to the powers and duties of the fund, including proposals for reinsuring, modifying, or guaranteeing the policies or contracts of the ~~impaired or~~ insolvent insurer and the determination of the policies or contracts and contractual obligations.

SECTION 39. 646.13 (4) of the statutes is amended to read:

646.13 **(4)** WHEN DUTY TO DEFEND TERMINATES. Any obligation of the fund to defend an insured ceases upon the fund's payment, by settlement ~~releasing the insured~~ or on a judgment, of an amount equal to the lesser of the fund's covered claim obligation limit or the applicable policy limit, subject to any express policy terms regarding tender of limits.

SECTION 40. 646.31 (1) (b) of the statutes is renumbered 646.31 (1) (b) 1.

SECTION 41. 646.31 (1) (b) 2. of the statutes is created to read:

646.31 **(1)** (b) 2. The claim does not arise out of business against which assessments are prohibited under any federal or state law.

SECTION 42. 646.31 (4) (a) of the statutes is amended to read:

646.31 **(4)** (a) Except in regard to worker's compensation insurance and except as provided in par. (b), the obligation of the fund on a single risk, loss or life may not exceed $300,000, regardless of the number of policies or contracts.

SECTION 43. 646.31 (12) of the statutes is amended to read:

646.31 **(12)** NET WORTH OF INSURED. Except for claims under s. 646.35, payment of a first–party claim under this chapter to an insured whose net worth, as defined in s. 646.325 (1), exceeds ~~$10,000,000~~ $25,000,000 is limited to the amount by which the aggregate of the insured's claims that satisfy subs. (1) to (7), (9) and (9m) plus the amount, if any, recovered from the insured under s. 646.325 exceeds 10% of the insured's net worth.

SECTION 44. 646.32 (1) of the statutes is amended to read:

646.32 **(1)** APPEAL. A claimant whose claim is reduced or declared ineligible shall promptly be given notice of the determination and of the right to object under this section. The claimant may appeal to the board within 30 days after the mailing of the notice. The board may appoint a committee of the board or a hearing examiner to decide any such appeal. The claimant may not pursue the claim in court except as provided in sub. (2).

SECTION 45. 646.32 (2) of the statutes is amended to read:

646.32 **(2)** REVIEW. Decisions of the board or its appointed committee or hearing examiner under sub. (1) are subject to judicial review in the circuit court for Dane County. A petition for judicial review shall be filed within 60 days of the decision.

SECTION 46. 646.325 (1) of the statutes is amended to read:

646.325 **(1)** DEFINITION. In this section, "net worth" means the amount of an insured's total assets less the insured's total liabilities at the end of the insured's

fiscal year immediately preceding the date the liquidation order was entered, as shown on the insured's audited financial statement~~, and~~ or other substantiated financial information acceptable to the fund in its sole discretion. "Net worth" includes the consolidated net worth of all of the corporate affiliates, subsidiaries, operating divisions, holding companies, ~~and~~ parent entities ~~that are~~, and, if the insured is privately owned, natural persons who have an ownership interest, shown as insureds or additional insureds on the policy issued by the insurer. If the insured is a natural person, "net worth" means the insured's total assets less the insured's total liabilities on December 31 immediately preceding the date the liquidation order was entered.

SECTION 47. 646.325 (2) (a) 1. of the statutes is amended to read:

646.325 **(2)** (a) 1. An insured whose net worth exceeds ~~$10,000,000~~ $25,000,000.

SECTION 48. 646.325 (4) of the statutes is created to read:

646.325 **(4)** COSTS AND FEES. In addition to recovery under sub. (2), the fund may recover reasonable attorney fees, disbursements, and all other actual costs expended in pursuing recovery under sub. (2), plus interest calculated at the legal rate under s. 138.04, which shall begin to accrue on all amounts not paid within 30 days after the date of the fund's written notification to the insured of the amount due.

SECTION 49. 646.51 (3) (c) of the statutes is amended to read:

646.51 **(3)** (c) *Administrative assessments.* The board may authorize assessments on a prorated or nonprorated basis to meet administrative costs and other expenses whether or not related to the liquidation or rehabilitation of a particular insurer. Nonprorated assessments may not exceed ~~$200~~ $500 per insurer in any year.

SECTION 50. 646.51 (5) of the statutes is amended to read:

646.51 **(5)** COLLECTION. After the rate of assessment has been fixed, the fund shall send to each insurer a statement of the amount it is to pay. The fund shall designate whether the assessments shall be made payable in one sum or in installments. ~~Assessments shall be collected by the same procedures as premium taxes or license fees under ch. 76.~~

SECTION 51. 646.51 (6) of the statutes is amended to read:

646.51 **(6)** APPEAL AND REVIEW. Within 30 days after the fund sends the statement under sub. (5), an insurer, after paying the assessment under protest, may appeal the assessment to the board or a committee thereof. The decision of the board or committee on the appeal is subject to judicial review in the circuit court for Dane County. A petition for judicial review shall be filed within 60 days of the board's or committee's decision.

SECTION 52. Initial applicability.

(1) The treatment of sections 646.32 (2) and 646.51 (6) of the statutes first applies to decisions of the board of directors of the insurance security fund or its appointed committee or hearing examiner that are issued on the effective date of this subsection.

(2) The treatment of sections 646.31 (12) and 646.325 (2) (a) 1. of the statutes first applies to liquidations for which an order of liquidation is issued on the effective date of this subsection.

(3) If a motor vehicle insurance policy or an umbrella or excess liability policy that is in effect on the effective date of this subsection contains a provision that is inconsistent with the treatment of section 632.32 (2) (ag), (at), (be), (e) (intro.), 2., or 3., (g) (intro.) or 1., (4) (a) (intro.) or (d), or (4r) (a) or (c) of the statutes, the treatment

of section 632.32 (2) (ag), (at), (be), (e) (intro.), 2., or 3., (g) (intro.) or 1., (4) (a) (intro.) or (d), or (4r) (a) or (c) of the statutes, whichever is applicable, first applies to that motor vehicle insurance policy or umbrella or excess liability policy on the date on which it is renewed.

(END)