

1985 Assembly Bill 595

Date of enactment: **April 10, 1986**
Date of publication: **April 21, 1986**

1985 Wisconsin Act 216

AN ACT to renumber 646.12 (2) (f) and (g); to renumber and amend 646.31 (2) (b) and 646.51 (3) (b); to amend 645.60, 645.88, 646.13 (2) (b), 646.31 (1), 646.35 (2) (a), 646.51 (3) (c) and 646.51 (4) and (6); to repeal and recreate 646.11 (5), 646.31 (3) (b) and 646.51 (3) (a); and to create 646.01 (1) (b) 9 and 10, 646.12 (2) (f), 646.12 (4), 646.31 (2) (b) 2 and 3, 646.31 (10), 646.35 (6) (c) and 646.51 (3) (b) 2 of the statutes, relating to changes to the insurance security fund.

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

SECTION 1. 645.60 of the statutes is amended to read:

645.60 Applicability of claims settlement provisions to loss claims. Sections 645.46 (18), ~~645.61 to 645.61~~ (2) and (3), 645.63 (1), (3), (4) and (6), 645.64 (3),

645.65, 645.71, ~~645.83 (3)~~, 645.86 and ~~645.87~~ 645.87 (2) do not apply to those loss claims that are subject to ch. 646 or to corresponding laws of other states that conform to s. 646.60 (1). In addition, ss. 645.61 (1), 645.62 (1), 645.63 (2), 645.64 (1), (2) and (4), 645.83 (3) and 645.87 (1) do not apply to those loss claims under contracts subject to s. 646.35 or to corresponding laws

of other states that conform to ss. 646.35 and 646.60 (1).

SECTION 2. 645.88 of the statutes is amended to read:

645.88 Attachment, garnishment and levy of execution. During the pendency in this or any other state of a liquidation proceeding, whether called by that name or not, no action or proceeding that is in the nature of an attachment, garnishment or levy of execution or that would interfere with proceedings under this chapter or ch. 646 shall be commenced or maintained in this state or elsewhere against the delinquent insurer or its assets.

SECTION 3. 646.01 (1) (b) 9 and 10 of the statutes are created to read:

646.01 (1) (b) 9. Any self-funded or partially or wholly uninsured plan of an employer or other person to provide life insurance, annuity or disability benefits to its employes or members to the extent that the plan is self-funded or uninsured, including benefits payable by an employer or other person under any of the following:

a. A multiple employer welfare arrangement as defined in 29 USC 1002.

b. A minimum premium group insurance plan.

c. A stop-loss group insurance plan.

d. A contract for administrative services only.

10. Any liability for dividends or experience rating credits payable after the date of entry of the order of liquidation under an insurance or annuity contract, and any fees or allowances due any person, including the policyholder, in connection with service to or administration of the contract.

SECTION 4. 646.11 (5) of the statutes is repealed and recreated to read:

646.11 (5) No cause of action of any nature may arise against and no liability may be imposed upon the fund, its agents, employes, directors or contributor insurers, the commissioner or representatives of the commissioner for any act or omission by any of them in the performance of their powers and duties under this chapter.

SECTION 5. 646.12 (2) (f) and (g) of the statutes are renumbered 646.12 (2) (g) and (h).

SECTION 6. 646.12 (2) (f) of the statutes is created to read:

646.12 (2) (f) 1. Keep records of all meetings of the fund and of its subcommittees that involve discussions of the activities of the fund in carrying out its powers and duties under this chapter.

2. Keep confidential the records under subd. 1 pertaining to specific liquidation proceedings involving an insurer until the termination of the liquidation proceedings or until sooner ordered to make the records public by a court.

3. Keep confidential the records under subd. 1 pertaining to specific rehabilitation proceedings involv-

ing an insurer unless ordered to make the records public by a court.

SECTION 7. 646.12 (4) of the statutes is created to read:

646.12 (4) **OTHER POWERS.** The board may join an organization consisting of one or more entities of other states performing comparable functions, in order to assist the board in carrying out its powers and duties under this chapter and otherwise further the purposes of this chapter.

SECTION 8. 646.13 (2) (b) of the statutes is amended to read:

646.13 (2) (b) Exercise with respect to loss claims the powers that the liquidator has with respect to other claims under ~~s. 645.46 (18)~~ ch. 645.

SECTION 9. 646.31 (1) of the statutes is amended to read:

646.31 (1) **CONDITIONS OF ELIGIBILITY.** A claim is not eligible for payment from the fund unless it is a claim for a loss insured under the policy or annuity and all of the following conditions are met:

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

(b) *Assessability of insurer.* ~~Arises~~ The claim arises out of business not exempt from assessment under s. 646.01 (1); ~~and.~~

(c) *Contact with state.* ~~Is~~ The claim is a member of one of the classes of claims under sub. (2).

SECTION 11. 646.31 (2) (b) of the statutes is renumbered 646.31 (2) (b) 1 and amended to read:

646.31 (2) (b) 1. ~~The~~ Except with regard to claims under contracts that are held by residents of a state that does not provide substantially equivalent coverage with regard to contracts of residents of this state, the claim is made under a life or disability insurance policy or annuity contract subject to this section and issued by a domestic insurer, whether or not the claimant is a resident of this state.

SECTION 12. 646.31 (2) (b) 2 and 3 of the statutes are created to read:

646.31 (2) (b) 2. The claim is made under a life or disability insurance policy or annuity contract subject to this section and issued by a domestic insurer if all of the following conditions are met:

a. The claimant is a resident of another state that provides coverage similar to the coverage provided under this chapter but does not provide coverage for the claimant.

b. The insurer never held a license or certificate of authority in the state in which the claimant resides.

3. The claim is made before January 1, 1990, under a life or disability insurance policy or annuity contract

subject to this section and issued by a domestic insurer if all of the following conditions are met:

a. The claimant was a resident of this state when the policy or contract was issued.

b. The claimant is a resident of a state which does not provide coverage similar to the coverage provided under this chapter.

SECTION 13. 646.31 (3) (b) of the statutes is repealed and recreated to read:

646.31 (3) (b) With regard to contracts subject to s. 646.35 (2) or (3), in lieu of the deductible under par. (a), the board may impose a deductible not to exceed the lesser of 10% or \$200 on any claim or other benefit payment if the board deems the imposition of this deductible more equitable or practical than that under par. (a).

SECTION 14. 646.31 (10) of the statutes is created to read:

646.31 (10) TEMPORARY MORATORIUMS. Before being obligated to make payments under this chapter to holders of life insurance or annuity contracts the fund may impose, with court approval, temporary moratoriums of not more than 90 days on payments of cash values and policy loans in addition to any deferrals of cash or policy loan value by contractual provision. A temporary moratorium may be renewed for successive periods of not more than 90 days with court approval.

SECTION 15. 646.35 (2) (a) of the statutes is amended to read:

646.35 (2) (a) Guarantee, assume or reinsure or cause to be guaranteed, assumed or reinsured all policies of the insurer within the scope of this section except contracts that are held by residents of a state that does not provide substantially equivalent coverage with regard to contracts of residents of this state other than policies and contracts under s. 646.31 (2) (b) 3;

SECTION 16. 646.35 (6) (c) of the statutes is created to read:

646.35 (6) (c) In the case of a life insurance or annuity contract, the board is not obligated to perform the responsibilities set forth in sub. (2) or (3) with respect to either of the following.

1. Any benefit payment liability, arising on or after the date of entry of the order of liquidation, to the extent that the payment is based upon a rate of interest that exceeds the larger of the following:

a. The minimum guaranteed rate specified in the contract.

b. The rate of interest determined by subtracting 3 percentage points from the monthly corporate bond yield average, as published by Moody's investors service or its successor and as adjusted on a monthly basis.

2. Any benefit payment liability, arising before the date of entry of the order of liquidation, to the extent

that the payment is based upon a rate of interest that exceeds the larger of the following:

a. The minimum guaranteed rate specified in the contract.

b. The rate of interest determined by subtracting 2 percentage points from the monthly corporate bond yield average, as published by Moody's investors service or its successor, when averaged for the 4-year period ending on the date the fund becomes obligated with respect to the contract or averaged for such lesser period if the contract was issued less than 4 years before that date.

SECTION 17. 646.51 (3) (a) of the statutes is repealed and recreated to read:

646.51 (3) (a) *General.* 1. In this section, "premiums" means gross premiums and other considerations received for direct insurance and annuities less return premiums and other considerations, dividends and experience credits paid or credited to policyholders on the direct business. The term "premiums" does not include any amounts received for any contracts or for the portions of any contracts for which coverage is excluded under s. 646.01 (1) (b).

2. Except as provided in pars. (b) and (c), assessments shall be calculated as a percentage of premiums written in this state by each insurer in the classes protected by the account, for the year preceding the year of entry of the order of liquidation.

SECTION 18. 646.51 (3) (b) of the statutes is renumbered 646.51 (3) (b) 1 and amended to read:

646.51 (3) (b) 1. Assessments to provide protection under s. 646.35 (2) shall for each account be made separately for each state in which the domestic insurer in liquidation was authorized to transact business at any time, excluding every state that does not provide substantially equivalent coverage with regard to contracts of residents of this state. The assessment attributable to each state shall be in the proportion that the average annual premiums the insurer received on business in that state on policies covered by the account, ~~as reported in its annual statement for the year~~ 3 years preceding the year of the liquidation order, bears to the average annual premiums it received in all such states in that period. Assessments against insurers shall be in the proportion that those premiums received on business in each such state by each assessed insurer on ~~policies~~ contracts covered by each account bears to such premiums received on business in each state by all assessed insurers.

SECTION 19. 646.51 (3) (b) 2 of the statutes is created to read:

646.51 (3) (b) 2. Assessments to provide protection under s. 646.35 (3) shall be calculated as a percentage of average annual premiums received in this state by each insurer in the classes protected by the account for the 3 years preceding the year of entry of the order of liquidation.

SECTION 20. 646.51 (3) (c) of the statutes is amended to read:

646.51 (3) (c) *Administrative assessments.* The board may make assessments on a prorated or non-prorated basis to meet administrative costs and other expenses whether or not related to the liquidation or rehabilitation of a particular insurer. ~~These~~ Non-prorated assessments may not exceed \$150 ~~\$200~~ per insurer in any year.

SECTION 21. 646.51 (4) and (6) of the statutes are amended to read:

646.51 (4) LIMITS. The maximum assessment under this section in any calendar year is 2% of the assessable premiums of the previous year under sub. (3). If the maximum assessment does not enable the fund to meet its obligations, an additional assessment shall be made in each succeeding year until the amounts available enable the fund to meet its obligations. No

assessment may be levied if the assets held in the appropriate account of the fund are sufficient to cover all estimated payments for liquidations in progress.

(6) APPEAL AND REVIEW. Within 10 days after receipt of 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 on the appeal is subject to judicial review, ~~after payment has been made under protest~~.

SECTION 22. **Initial applicability.** This act first applies to insurers that file a petition for rehabilitation or liquidation on the effective date of this SECTION, except that the treatment of section 646.31 (10) of the statutes by this act first applies on the effective date of this SECTION.