

1979 Senate Bill 20

Date published: December 8, 1979

### CHAPTER 93, Laws of 1979

AN ACT to renumber 645.03 (intro.), (2) to (4), (7) to (13), (15) and (17); to renumber and amend 625.13; to amend 16.61 (title) and (2) (b), 625.12 (2), 632.48 (2), 645.02 (6), 645.04 (1) and (3), 645.07, 645.08, 645.21 (4), 645.22 (3), 645.23 (4), 645.24 (3) and (5), 645.31 (7) and (8), 645.32 (2), 645.33 (1) and (4), 645.41 (6), 645.46 (intro.), (1) and (18), 645.47 (1) (a), 645.54 (11) (b) and (c), 645.55 (1), 645.56 (2) (intro.), 645.61 (1), 645.65 (1), 645.66, 645.68 (9) and (10) and 645.71; to repeal and recreate 645.76; and to create 625.13 (2), 645.03 (1) (title) and (2) and 645.11 of the statutes, relating to miscellaneous minor corrections in the insurance code.

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

INTRODUCTORY NOTE: This bill combines 3 separate bill drafts approved at the May 25, 1978, meeting of the Insurance Laws Revision Committee. They were combined because of their noncontroversial nature.

SECTION 1. 16.61 (title) and (2) (b) of the statutes are amended to read:

**16.61 (title) Records of state offices and other public records.**

(2) (b) "Public records" means all books, papers, maps, photographs, films, recordings, or other documentary materials or any copy thereof, regardless of physical form or characteristics, made, or received by any agency of the state or its officers or employes in

connection with the transaction of public business, except the records and correspondence of any member of the state legislature. “Public records” includes all records subject to disposal under s. 645.76.

SECTION 2. 625.12 (2) of the statutes is amended to read:

625.12 (2) CLASSIFICATION. Risks may be classified in any reasonable way for the establishment of rates and minimum premiums, except that no classifications may be based on race, color, creed or national origin, and classifications in automobile insurance may not be based on physical condition or developmental disability as defined in s. 51.01 (5). Rates thus produced may be modified for individual risks in accordance with rating plans or schedules which establish reasonable standards for measuring probable variations in hazards, expenses, or both. Rates may also be modified for individual risks under s. 625.13 (2).

SECTION 3. 625.13 of the statutes is renumbered 625.13 (1) and amended to read:

625.13 (1) ~~Every Except as provided in sub. (2), every~~ authorized insurer and every rate service organization licensed under s. 625.31 which has been designated by any insurer for the filing of rates under s. 625.15 (2) shall file with the commissioner all rates and supplementary rate information and all changes and amendments thereof made by it for use in this state within 30 days after they become effective.

SECTION 4. 625.13 (2) of the statutes is created to read:

625.13 (2) CONSENT TO RATE. Upon written application of the insured, stating the insured's reasons therefor, filed with and not disapproved by the commissioner within 10 days after filing, a rate in excess of that provided by a filing otherwise applicable may be applied to any specific risk. The rate may be disapproved without a hearing, subject to s. 601.62 (3). If disapproved, the rate otherwise applicable applies from the effective date of the policy, but the insurer may cancel the policy pro rata on 10 days' notice to the policyholder. If the insurer does not cancel the policy the insurer shall refund any excess premium from the effective date of the policy.

NOTE: This amendment legitimizes a practice that is virtually universal throughout the country. Although it was not specifically provided for in ch. 625, the Office of the Commissioner of Insurance has assumed that ch. 625 intended to continue it and has accepted and handled “consent to rate” filings much as it did prior to the enactment of ch. 625. Adoption of the amendment makes it clear that the department practice is appropriate.

SECTION 5. 632.48 (2) of the statutes is amended to read:

632.48 (2) PROTECTION OF INSURER. An insurer may prescribe formalities to be complied with for the change of beneficiaries, ~~which may be~~ but formalities prescribed under this subsection shall be designed only for its own the protection of the insurer. The insurer discharges its obligation under the insurance policy or certificate of insurance if it pays a properly designated beneficiary unless it has actual notice of either an assignment or a change in beneficiary designation made ~~pursuant to~~ under sub. (1) (b). It has actual notice if the prescribed formalities are complied with or if the change in beneficiary has been requested in the form prescribed by the insurer and delivered to an intermediary representing the insurer.

COMMENT: The amendment adds a situation in which the insured has acted reasonably in dealing with a representative of the insurer. As between the insurer and the insured, the burden should fall upon the insurer if the agent makes an error of this kind. The insurer, of course, may have a cause of action against its agent.

PRELIMINARY NOTE to amendments to ch. 645: Experience with liquidations will produce some additional revisions of ch. 645. The following changes include not only terminological and other corrections but some changes sug-

gested by the experience with the liquidation of the Wisconsin Surety Corporation, resulting from communications from the special deputy handling the liquidation. These changes are noncontroversial and clear enough to be dealt with in this "clean-up" phase of the Wisconsin insurance laws revision project.

Other revisions will be less obvious, for suretyship differs in important respects from other lines of insurance.

Additional changes in ch. 645 that are necessitated by amendments to ch. 646 are dealt with in a separate bill [LRB-137/1].

SECTION 6. 645.02 (6) of the statutes is amended to read:

645.02 (6) All licensees under ch. 615 or 616.

SECTION 7. 645.03 (intro.), (2), (3), (4), (7), (8), (9), (10), (11), (12), (13), (15) and (17) of the statutes are renumbered 645.03 (1) (intro.), (h), (f), (b), (c), (a), (i), (e), (g), (k), (j), (d) and (L), respectively.

SECTION 8. 645.03 (1) (title) and (2) of the statutes are created to read:

645.03 (1) (title) GENERAL DEFINITIONS.

(2) DEFINITIONS APPLICABLE TO PROCEEDINGS INVOLVING SURETY INSURANCE. If the subject of a rehabilitation or liquidation proceeding under this chapter is an insurer engaged in a surety business:

- (a) "Policy" as used in this chapter includes a bond issued by a surety.
- (b) "Policyholder" as used in this chapter includes a principal on a bond.
- (c) "Beneficiary" as used in this chapter includes an obligee of a bond.
- (d) "Insured" as used in this chapter includes both the principal and obligee of a bond.

NOTE: Section 645.03 (2) clarifies a possible semantic difficulty that may arise when the insurer is engaged in a surety business.

SECTION 9. 645.04 (1) and (3) of the statutes are amended to read:

645.04 (1) ACTIONS BY COMMISSIONER. Except as provided in sub. (2) and s. 645.45 (1), no delinquency proceeding ~~shall~~ may be commenced under this chapter by anyone other than the commissioner of this state and no court ~~shall have~~ has jurisdiction to entertain, hear or determine any proceeding commenced by any other person.

(3) EXCLUSIVENESS OF PROCEEDINGS. No court of this state ~~shall have~~ has jurisdiction to entertain, hear or determine any complaint praying for the dissolution, liquidation, rehabilitation, sequestration, conservation or receivership of any insurer, or praying for an injunction or restraining order or other relief preliminary to, incidental to or relating to such proceedings other than in accordance with this chapter.

SECTION 10. 645.07 of the statutes is amended to read:

**645.07 (title) Cooperation of officers and employees.** (1) (title) DUTY TO COOPERATE. Any officer, manager, trustee or general agent of any insurer, any attorney representing an insurer on any matter, and any other person with executive authority over or in charge of any segment of the insurer's affairs shall ~~co-operate~~ cooperate with the commissioner in any proceeding under this chapter or any investigation preliminary or incidental to the proceeding. "To ~~co-operate~~ cooperate" includes, ~~but is not limited to the following:~~

(a) To reply promptly in writing to any inquiry from the commissioner requesting ~~such~~ a reply; and

(b) To make available and deliver to the commissioner any books, accounts, documents or other records, or information or property of or pertaining to the insurer and in his the person's possession, custody or control.

(2) DUTY NOT TO OBSTRUCT. No person ~~shall~~ may obstruct or interfere with the commissioner in the conduct of any delinquency proceeding or any investigation preliminary or incidental thereto.

(3) RIGHT TO DEFEND. This section ~~shall~~ does not ~~render~~ make it illegal to resist by legal proceedings the petition for liquidation or other delinquency proceedings, or other orders.

(4) SANCTION. Any person included within sub. (1) who fails to ~~co-operate~~ cooperate with the commissioner, or any person who obstructs or interferes with the commissioner in the conduct of any delinquency proceeding or any investigation preliminary or incidental thereto, ~~may be fined not more than \$5,000 or imprisoned in the county jail not more than one year or both~~ is subject to s. 601.64.

NOTE: Although s. 645.07 (1) (intro.) and (b) and (4), as already written, should govern recalcitrant attorneys, sub. (1) is amended to remove any doubt. One of the purposes of ch. 601 is the elimination of the fragmentation and variability of sanctions for violations of the insurance law. For that reason this sanction is keyed to the appropriate general section in ch. 601.

SECTION 11. 645.08 of the statutes is amended to read:

**645.08 Bonds.** In any proceeding under this chapter the commissioner and ~~his~~ the commissioner's deputies ~~shall be~~ are responsible on their official bonds for the faithful performance of their duties. If the court deems it desirable for the protection of the assets, it may at any time require an additional bond from the commissioner or ~~his~~ the commissioner's deputies.

SECTION 12. 645.11 of the statutes is created to read:

**645.11 Effect of amendments of this chapter.** Every proceeding commenced under this chapter before the effective date of this act (1979), is subject to the amendments of this chapter by chapter .... (this act), laws of 1979, except as to rights which have fully vested before the effective date of this act (1979).

SECTION 13. 645.21 (4) of the statutes is amended to read:

645.21 (4) JUDICIAL RELIEF. If the commissioner issues a summary order before hearing under sub. (2), the insurer may at any time waive the commissioner's hearing and apply for immediate judicial relief by means of any remedy afforded by law without first exhausting administrative remedies. Subsequent to a hearing the insurer or any person whose interests are substantially affected ~~shall be~~ is entitled to judicial review of any order issued by the commissioner.

SECTION 14. 645.22 (3) of the statutes is amended to read:

645.22 (3) ANTICIPATORY BREACH. Entry of a seizure order under this section ~~shall~~ does not constitute an anticipatory breach of any contract of the insurer.

SECTION 15. 645.23 (4) of the statutes is amended to read:

645.23 (4) ANTICIPATORY BREACH. Entry of a seizure order under this section ~~shall~~ does not constitute an anticipatory breach of any contract of the insurer.

SECTION 16. 645.24 (3) and (5) of the statutes are amended to read:

645.24 (3) RECORDS. In all summary proceedings and judicial reviews thereof, all records of the company, other documents, and all office of the commissioner of insurance files and court records and papers, so far as they pertain to or are a part of the record of the summary proceedings, shall be and remain confidential except as is necessary to obtain compliance therewith, unless the court, after hearing arguments from the parties in chambers, ~~shall order~~ orders otherwise, or unless the insurer requests that the matter be made public. Until ~~such~~ the court order is issued, all papers filed with the clerk of the court shall be held by ~~him~~ the clerk in a confidential file.

(5) SANCTIONS. Any person having possession or custody of and refusing to deliver any of the property, books, accounts, documents or other records of an insurer against which a seizure order or a summary order has been issued by the commissioner or by the court, ~~may be fined not more than \$10,000 or imprisoned in the county jail for not more than one year or both~~ is subject to s. 601.64.

NOTE: One of the purposes of ch. 601 is to eliminate the fragmentation and variability of sanctions for violations of the insurance laws. For that reason this sanction is keyed to the appropriate general section in ch. 601.

SECTION 17. 645.31 (7) and (8) of the statutes are amended to read:

645.31 (7) That after demand by the commissioner the insurer has failed to submit promptly any of its own property, books, accounts, documents or other records, or those of any subsidiary or ~~related company~~ other affiliate within the control of the insurer, or those of any person having executive authority in the insurer so far as they pertain to the insurer, to reasonable inspection or examination by the commissioner or ~~his~~ the commissioner's authorized representative. If the insurer is unable to submit the property, books, accounts, documents or other records of a person having executive authority in the insurer, it shall be excused from doing so if it promptly and effectively terminates the relationship of the person to the insurer;

(8) That less than 30 days after reporting the proposed action to the commissioner ~~unless it is earlier approved by the commissioner~~, or after the action has been disapproved by the commissioner, the insurer has transferred, or attempted to transfer, substantially its entire property or business, or has entered into any transaction the effect of which is to merge, consolidate or reinsure substantially its entire property or business in or with the property or business of any other person;

SECTION 18. 645.32 (2) of the statutes is amended to read:

645.32 (2) ANTICIPATORY BREACH. Entry of an order of rehabilitation ~~shall~~ does not constitute an anticipatory breach of any contracts of the insurer.

SECTION 19. 645.33 (1) and (4) of the statutes are amended to read:

645.33 (1) SPECIAL DEPUTY COMMISSIONER. The ~~commissioner~~ as rehabilitator shall make every reasonable effort to employ an active or retired senior executive from a successful insurer to serve as special deputy commissioner to rehabilitate the insurer. The special deputy shall have all of the powers of the rehabilitator granted under this section. To obtain a suitable special deputy, the commissioner may consult with and obtain the assistance and advice of executives of insurers doing business in this state. Subject to court approval, the ~~commissioner~~ rehabilitator shall make such arrangements for compensation as are necessary to obtain a special deputy of proven ability. The special deputy shall serve at the pleasure of the ~~commissioner~~ rehabilitator.

(4) PURSUIT OF INSURER'S CLAIMS AGAINST INSIDERS. If the rehabilitator finds that there has been criminal or tortious conduct or breach of any contractual or fiduciary obligation detrimental to the insurer by any ~~officer, manager, agent, broker, employe or other person~~, he the rehabilitator may pursue all appropriate legal remedies on behalf of the insurer.

SECTION 20. 645.41 (6) of the statutes is amended to read:

645.41 (6) That within any part of the previous 12 months the insurer has systematically attempted to compromise with its creditors on the ground that it is financially unable to pay its claims in full;

SECTION 21. 645.46 (intro.), (1) and (18) of the statutes are amended to read:

**645.46 Powers of liquidator.** (intro.) The liquidator shall report to the court monthly, or at other intervals specified by the court, on the progress of the liquidation in whatever detail the court orders. Subject to the court's control, ~~he~~ the liquidator may:

(1) Appoint a special deputy to act for ~~him~~ the liquidator under this chapter, and determine ~~his~~ the special deputy's compensation. The special deputy shall have all powers of the liquidator granted by this section. The special deputy shall serve at the pleasure of the liquidator.

(18) Assert all defenses available to the insurer as against ~~third~~ 3rd persons, including statutes of limitations, statutes of frauds and the defense of usury. A waiver of any defense by the insurer after a petition for liquidation has been filed ~~shall~~ does not bind the liquidator.

SECTION 22. 645.47 (1) (a) of the statutes is amended to read:

645.47 (1) (a) *General requirements.* The liquidator shall give notice of the liquidation order as soon as possible by first class mail and either by telegram or telephone to the insurance commissioner of each jurisdiction in which the insurer is licensed to do business, by first class mail and by telephone to the department of industry, labor and human relations of this state if the insurer is or has been an insurer of worker's compensation, by first class mail ~~within this state and by airmail outside this state~~ to all insurance agents having a duty under s. 645.48, by first class mail to the persons designated in s. 601.53 (1) if the insurer is does a surety ~~company~~ business and by first class mail ~~within this state and by airmail outside this state~~ at the ~~last known~~ last-known address to all persons known or reasonably expected from the insurer's records to have claims against the insurer, including all policyholders. The liquidator also shall publish a class 3 notice, under ch. 985, in a newspaper of general circulation in the county in which the liquidation is pending or in Dane county, the last publication to be not less than 3 months before the earliest deadline specified in the notice under sub. (2).

NOTE: The amendments recognize that a special airmail service has been discontinued within the United States. The paragraph is further amended to clarify that there is no obligation to give notice unless there is some ground to expect claims. Purely inchoate or potential claims, such as those of 3rd parties not yet identified except by class, were not intended to be embraced in the notice requirements.

SECTION 23. 645.54 (11) (b) and (c) of the statutes are amended to read:

645.54 (11) (b) Every person receiving any property from the insurer or the benefit thereof as a preference voidable under sub. (1) (b) ~~shall be~~ is personally liable therefor and ~~shall be~~ is bound to account to the liquidator.

(c) Nothing in this subsection ~~shall prejudice~~ prejudices any other claim by the liquidator against any person.

SECTION 24. 645.55 (1) of the statutes is amended to read:

645.55 (1) **DISALLOWANCE FOR FAILURE TO SURRENDER PROPERTY.** No claims of a creditor who has received or acquired a preference, lien, conveyance, transfer, assignment or encumbrance, voidable under this chapter, ~~shall~~ may be allowed unless ~~he~~ the creditor surrenders the preference, lien, conveyance, transfer, assignment or encumbrance. If the avoidance is effected by a proceeding in which a final judgment has been entered, the claim shall not be allowed unless the money is paid or the property is delivered to the liquidator within 30 days from the date of the entering of the final judgment, except that the court having jurisdiction over the liquidation may allow further time if there is an appeal or other continuation of the proceeding.

SECTION 25. 645.56 (2) (intro.) of the statutes is amended to read:

645.56 (2) **EXCEPTIONS.** (intro.) No setoff or counterclaim ~~shall~~ may be allowed in favor of any person where:

SECTION 26. 645.61 (1) of the statutes is amended to read:

645.61 (1) DEADLINE FOR FILING. Proof of all claims must be filed with the court liquidator in the form required by s. 645.62 on or before the last day for filing specified in the notice required under s. 645.47, except that proof of claims under s. 645.68 (9) to (11) need not be filed at all, and proof of claims for unearned premiums and claims for cash surrender values or other investment values in life insurance and annuities need not be filed unless the liquidator expressly so requires.

NOTE: The requirement of filing with the court, under prior law, created extra work. The liquidator was required to go to court, arrange for the withdrawal of claims, copy them and return the originals to court. It is obviously the liquidator who needs accurate copies of all claims. The court can require periodic reports of proof of claims filed. See note to s. 645.71 as contained in ch. 89, laws of 1967.

SECTION 27. 645.65 (1) of the statutes is amended to read:

645.65 (1) NOTICE OF REJECTION AND REQUEST FOR HEARING. When a claim is denied in whole or in part by the liquidator, written notice of the determination and of the right to object shall be given promptly to the claimant and his the claimant's attorney by first class mail at the address shown in the proof of claim. Within 60 days from the mailing of the notice, the claimant may file his objections with the court. If no such filing is made objections are not filed within that period, the claimant may not further object to the determination.

NOTE: Fairness requires that a claimant should be advised of the right to object for a 60-day period.

SECTION 28. 645.66 of the statutes is amended to read:

**645.66 Claims of surety.** Whenever a creditor whose claim against an insurer is secured in whole or in part by the undertaking of another person fails to prove and file that claim, the other person may do so in the creditor's name, and ~~shall be~~ is subrogated to the rights of the creditor, whether the claim has been filed by the creditor or by the other person in the creditor's name, to the extent that ~~he the other person~~ discharges the undertaking. In the absence of an agreement with the creditor to the contrary, the other person shall not be entitled to any dividend until the amount paid to the creditor on the undertaking plus the dividends paid on the claim from the insurer's estate to the creditor equals the amount of the entire claim of the creditor. Any excess received by the creditor shall be held by ~~him~~ the creditor in trust for such other person.

SECTION 29. 645.68 (9) and (10) of the statutes are amended to read:

645.68 (9) (title) BONDS. The claims of the holders of ~~mutual~~ bonds, under s. 611.33 (2) (a), 613.33 (1) or 614.33, including interest thereon.

(10) (title) CONTRIBUTION NOTES. The claims of the holders of contribution notes under ss. 611.33 (2) (b), 613.33 (2) and 614.33, including interest thereon.

SECTION 30. 645.71 of the statutes is amended to read:

**645.71 Liquidator's recommendations to the court.** (1) RECOMMENDED CLAIMS. The liquidator shall review all claims duly filed in the liquidation and shall make such all further investigation as ~~he deems necessary~~. ~~He~~ deemed necessary by the liquidator. The liquidator may compound, compromise or in any other manner negotiate the amount for which claims will be recommended to the court. Unresolved disputes shall be determined under s. 645.65. As often as practicable, ~~he~~ the liquidator shall present to the court reports of claims against the insurer with his or her recommendations. The liquidator shall notify claimants of the liquidator's recommendations. The reports shall include the name and address of each claimant, the particulars of the claim and the amount of the claim finally recommended, if any. As soon as reasonably possible after the last day for filing claims, ~~he~~ the liquidator shall present a list of all claims not already reported. If the insurer has issued annuities or life insurance policies, the liquidator shall report the per-

sons to whom, according to the records of the insurer, amounts are owed as cash surrender values or other investment values and the amounts owed. If the insurer has issued policies on the advance premium plan, the liquidator shall report the persons to whom, according to the records of the insurer, unearned premiums are owed and the amounts owed.

(2) ALLOWANCE OF CLAIMS. The court may approve, disapprove or modify any report on claims by the liquidator, except that the liquidator's agreements with other parties shall be final and binding on the court on claims of any size settled for \$500 or less. No claim under a policy of insurance shall ~~may~~ be allowed for an amount in excess of the applicable policy limits.

NOTE: The change in sub. (1) is a corollary of the amendments to s. 645.61 (1).

SECTION 31. 645.76 of the statutes is repealed and recreated to read:

**645.76 Disposition of records during and after termination of liquidation.** Records of any insurer in the process of liquidation or completely liquidated under this chapter shall be disposed of by the public records board in the same manner as state records under s. 16.61.

NOTE: This section makes disposition of the records of insurers subject to liquidation under this chapter subject to the procedures established in s. 16.61, a system which did not exist at the time the former s. 645.76 was created.

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