

1999 DRAFTING REQUEST

Bill

Received: **09/17/1998**

Received By: **kahlepj**

Wanted: **As time permits**

Identical to LRB:

For: **Insurance 6-7726**

By/Representing: **Fred Nepple**

This file may be shown to any legislator: **NO**

Drafter: **kahlepj**

May Contact:

Alt. Drafters:

Subject: **Insurance - miscellaneous**

Extra Copies: **Rep. Frank LaSee (for /1)**

Pre Topic:

No specific pre topic given

Topic:

Priority of distribution for the liquidation of insolvent insurance companies

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
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/P2			kfollet 09/08/1999	_____	lrb_docadmin 09/08/1999		S&L
/P3	kahlepj 10/06/1999	ygeller 10/06/1999		_____			S&L

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FE Sent For:

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10-19-99
"/1"



Per
PJK



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To Rep
F. Lasee



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Extra Copies: *Rep. Frank LaSee*

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*******NOTES**

*kjf
10/6*

*MRS
KJF/JF
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Topic:

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			<i>Kjf 9/8</i>	<i>Kjf/Amh 9/8</i>			

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Alt. Drafters:

Subject: Insurance - miscellaneous

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Topic:

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FE Sent For:

<END>

*Do
submit
P'S*



State of Wisconsin / OFFICE OF THE COMMISSIONER OF INSURANCE



Tommy G. Thompson
Governor

Randy Blumer
Commissioner (Acting)

September 11, 1998

Legal Unit

121 East Wilson Street • P.O. Box 7873
Madison, Wisconsin 53707-7873
Phone: (608) 267-9586 • Fax: (608) 264-6228
E-Mail: ocilegal@mail.state.wi.us
http://badger.state.wi.us/agencies/oci/oci_home.htm

To: Pam Kahler, Legislative Reference Bureau

From: Fred Nepple 

Re: Drafting Request-liquidation law revisions

Please find attached a drafting request relating to ch. 645, Wis. Stats. I will be contacting you shortly to brief you on this request. Thank you for your assistance.

1 AN ACT to amend 645.68 of the statutes relating to the priority of distribution in insurance
2 liquidations.

Analysis

This bill rearranges the current priority of distribution for the liquidation of insolvent insurance companies. It is exclusively remedial in nature; it makes no substantive changes, but instead reorders the priorities in order to comply with the recent ruling of the United States Supreme Court in U.S. Department of the Treasury v. Fabe, 113 S. Ct. 2202 (1993), the principal holding of which requires priority for federal claims over all but claims relating to the provision of policy protection and estate administration costs.

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

1 SECTION 1. 645.68 of the statutes is amended to read:

2 **645.68 Order of distribution.** The order of distribution of claims from the insurer's
3 estate shall be as stated in this section. The first \$50 of the amount allowed on each claim in
4 the classes under subs. ~~(2) to (6)~~ ^{number (3) + (3c)} ~~(2)~~ except for claims of the federal government, (4), (5), (6),

5 ~~(7) and (8)~~ shall be deducted from the claim and included in the class under sub. ~~(8)~~ (10).

6 Claims may not be cumulated by assignment to avoid application of the \$50 deductible
7 provision. Subject to the \$50 deductible provision, every claim in each class shall be paid in
8 full or adequate funds retained for the payment before the members of the next class receive
9 any payment. No subclasses shall be established within any class.

10 (1) **ADMINISTRATION COSTS.** The costs and expenses of administration,
11 including but not limited to the following: the actual and necessary costs of preserving or
12 recovering the assets of the insurer; compensation for all services rendered in the liquidation;
13 any necessary filing fees; the fees and mileage payable to witnesses; and reasonable attorney
14 fees.

15 ~~_____ (2) WAGES. (a) Debts due to employes for services performed, not to exceed~~
16 ~~\$1,000 to each employe which have been earned within one year before the filing of the~~
17 ~~petition for liquidation. Officers shall not be entitled to the benefit of this priority.~~

RN (2); (3r)

1 ~~_____ (b) _____ Such priority shall be in lieu of any other similar priority authorized by law as~~
2 ~~to wages or compensation of employees.~~

3 ~~_____ (3)(2) LOSS CLAIMS. All claims under policies for losses incurred including claims~~
4 ~~of the federal, state and local governments and including third party claims, and all claims~~
5 ~~against the insurer for liability for bodily injury or for injury to or destruction of tangible~~
6 ~~property which are not under policies, except the first \$200 of losses otherwise payable to any~~
7 ~~non-federal claimant under this subsection. ^{separate for fed govt} All claims under life insurance and annuity~~
8 ~~policies, whether for death proceeds, annuity proceeds or investment values, shall be treated as~~
9 ~~loss claims. Claims may not be cumulated by assignment to avoid application of the \$200~~
10 ~~deductible provision. That portion of any loss for which indemnification is provided by other~~
11 ~~benefits or advantages recovered or recoverable by the claimant shall not be included in this~~
12 ~~class, other than benefits or advantages recovered or recoverable in discharge of familial~~
13 ~~obligations of support or by way of succession at death or as proceeds of life insurance, or as~~
14 ~~gratuities. No payment made by an employer to an employee shall be treated as a gratuity.~~
15 ~~The claims described in s. 645.69 are among the claims not subject to this subsection.~~

is this language used?

no \$50 deduct for fed claims

16 ~~(3c) (3) FEDERAL GOVERNMENT CLAIMS. Claims of the federal government~~
17 ~~other than those described in subs. (2).~~

no \$50 deduct

including interest?

18 ~~(3m) (4) CERTAIN INJURY CLAIMS. All claims against the insurer for liability for~~
19 ~~bodily injury or for injury to or destruction of tangible property which are not under policies.~~

20 ~~(3r) (4)(5) WAGES. (a) Debts due to employees for services performed, not to exceed~~
21 ~~\$1,000 to each employe which have been earned within one year before the filing of the~~
22 ~~petition for liquidation. Officers shall not be entitled to the benefit of this priority.~~

23 ~~_____ (b) _____ Such priority shall be in lieu of any other similar priority authorized by law as~~
24 ~~to wages or compensation of employees.~~

cr (3r)(c)

low, unpaid claims, this priority stamp at (2)

1 (c) Such priority shall not apply where there are no claims of the federal
2 government, in which case claims in this class shall have priority over all claims in the classes
3 under subs. (2) to (13).

4 ~~(4)(6)~~ UNEARNED PREMIUMS AND SMALL LOSS CLAIMS. Claims under
5 nonassessable policies for unearned premiums or other premium refunds and the first \$200 of
6 loss excepted by the deductible provision in sub. ~~(3)~~ (2).

7 ~~(5)(7)~~ RESIDUAL CLASSIFICATION. All other claims including claims of the
8 federal or any state or local government, not falling within other classes under this section and
9 claims described in s. 645.69. Claims, including those of any state or local governmental
10 body, for a penalty or forfeiture, shall be allowed in this class only to the extent of the
11 pecuniary loss sustained from the act, transaction or proceeding out of which the penalty or
12 forfeiture arose, with reasonable and actual costs occasioned thereby. The remainder of such
13 claims shall be postponed to the class of claims under sub. ~~(8)~~ (10).

is this
to nec?

14 ~~(6)(8)~~ JUDGMENTS. Claims based solely on judgments. If a claimant filed a claim
15 and bases it both on the judgment and on the underlying facts, the claim shall be considered by
16 the liquidator who shall give the judgment such weight as he or she deems appropriate. The
17 claim as allowed shall receive the priority it would receive in the absence of the judgment. If
18 the judgment is larger than the allowance on the underlying claim, the remaining portion of the
19 judgment shall be treated as if it were a claim based solely on a judgment.

20 ~~(7)(9)~~ INTEREST ON CLAIMS ALREADY PAID. Interest at the legal rate
21 compounded annually on all claims in the classes under subs. (1), (2) except for claims of the
22 federal government, (4), (5), (6), (7) and (8) to (6) from the date of the petition for liquidation
23 or the date on which the claim becomes due, whichever is later, until the date on which the
24 dividend is declared. The liquidator, with the approval of the court, may make reasonable
25 classifications of claims for purposes of computing interest, may make approximate

S/ (1), (3) - (6) say
"only to sub. (7)"?

1 computations and may ignore certain classifications and time periods that are trifling.

2 ~~—(8)(10)~~ MISCELLANEOUS SUBORDINATED CLAIMS. The remaining claims or
3 portions of claims not already paid, with interest as in sub. ~~(7) (9)~~:

4 (a) The first \$50 of each claim in the classes under subs. ~~(2) to (6) (2), (4), (5), (6),~~
5 ~~(7) and (8)~~ subordinated under this section;

6 (b) Claims under s. 645.63(2);

7 (c) Claims subordinated by s. 645.90;

8 (d) Claims filed late;

9 (e) Portions of claims subordinated under sub. ~~(5) (7)~~;

10 (f) Claims or portions of claims payment of which is provided by other benefits or
11 advantages recovered or recoverable by the claimant; and

12 (g) Any indemnification recovered as a voidable preference under s. 645.54(1)(c).

13 ~~—(9)(11)~~ BONDS. The claims of the holders of bonds, under s. 611.33(2)(a), 613.33(1)
14 or 614.33, including interest thereon.

15 ~~—(10)(12)~~ CONTRIBUTION NOTES. The claims of the holders of contribution notes
16 under ss. 611.33(2)(b), 613.33(2) and 614.33, including interest thereon.

17 ~~—(11)(13)~~ PROPRIETARY CLAIMS. The claims of shareholders or other owners,
18 including policyholders of a mutual insurance corporation within the limits of s. 645.72(2).

19 SECTION 2. **Initial applicability.** The amendments to sec. 645.68 of the statutes
20 shall first apply to liquidation proceedings commenced on or after the effective date of this
21 subsection.

Section #. 645.68 of the statutes

645.68 Order of distribution. The order of distribution of claims from the insurer's estate shall be as stated in this section. The first \$50 of the amount allowed on each claim in the classes under subs. (2) to (6) shall be deducted from the claim and included in the class under sub. (8). Claims may not be cumulated by assignment to avoid application of the \$50 deductible provision. Subject to the \$50 deductible provision, every claim in each class shall be paid in full or adequate funds retained for the payment before the members of the next class receive any payment. No subclasses shall be established within any class.

(1) **ADMINISTRATION COSTS.** The costs and expenses of administration, including but not limited to the following: the actual and necessary costs of preserving or recovering the assets of the insurer; compensation for all services rendered in the liquidation; any necessary filing fees; the fees and mileage payable to witnesses; and reasonable attorney fees.

(3r) (2) **WAGES.** (a) Debts due to employes for services performed, not to exceed \$1,000 to each employe which have been earned within one year before the filing of the petition for liquidation. Officers shall not be entitled to the benefit of this priority.

(b) Such priority shall be in lieu of any other similar priority authorized by law as to wages or compensation of employes.

(c) → (3) **LOSS CLAIMS.** All claims under policies for losses incurred including third party claims, and all claims against the insurer for liability for bodily injury or for injury to or destruction of tangible property which are not under policies, except the first \$200 of losses otherwise payable to any claimant under this subsection. ~~All~~ ^{other than the fed. govt.} claims under life insurance and annuity policies, whether for death proceeds, annuity proceeds or investment values, shall be treated as loss claims. Claims may not be cumulated by assignment to avoid application of the \$200 deductible provision. That portion of any loss for which indemnification is provided by other benefits or advantages recovered or recoverable by the claimant shall not be included in this class, other than benefits or advantages recovered

or recoverable in discharge of familial obligations of support or by way of succession at death or as proceeds of life insurance, or as gratuities. No payment made by an employer to an employee shall be treated as a gratuity. The claims described in s. 645.69 are among the claims not subject to this subsection.

(3c)
(3m)
(3r)

→ (4) **UNEARNED PREMIUMS AND SMALL LOSS CLAIMS.** Claims under nonassessable policies for unearned premiums or other premium refunds and the first \$200 of loss excepted by the deductible provision in sub. (3).

(5) **RESIDUAL CLASSIFICATION.** All other claims including claims of the federal or any state or local government, not falling within other classes under this section and claims described in s. 645.69. Claims, including those of any governmental body, for a penalty or forfeiture, shall be allowed in this class only to the extent of the pecuniary loss sustained from the act, transaction or proceeding out of which the penalty or forfeiture arose, with reasonable and actual costs occasioned thereby. The remainder of such claims shall be postponed to the class of claims under sub. (8).

(6) **JUDGMENTS.** Claims based solely on judgments. If a claimant files a claim and bases it both on the judgment and on the underlying facts, the claim shall be considered by the liquidator who shall give the judgment such weight as he or she deems appropriate. The claim as allowed shall receive the priority it would receive in the absence of the judgment. If the judgment is larger than the allowance on the underlying claim, the remaining portion of the judgment shall be treated as if it were a claim based solely on a judgment.

(7) **INTEREST ON CLAIMS ALREADY PAID.** Interest at the legal rate compounded annually on all claims in the classes under subs. (1) to (6) from the date of the petition for liquidation or the date on which the claim becomes due, whichever is later, until the date on which the dividend is declared. The liquidator, with the approval of the court, may make reasonable classifications of claims for purposes of computing interest, may make approximate computations and may ignore certain classifications and time periods that are trifling.

(8) MISCELLANEOUS SUBORDINATED CLAIMS. The remaining claims or portions of claims not already paid, with interest as in sub. (7):

- (a) The first \$50 of each claim in the classes under subs. (2) to (6) subordinated under this section;
- (b) Claims under s. 645.63 (2);
- (c) Claims subordinated by s. 645.90;
- (d) Claims filed late;
- (e) Portions of claims subordinated under sub. (5);
- (f) Claims or portions of claims payment of which is provided by other benefits or advantages recovered or recoverable by the claimant; and
- (g) Any indemnification recovered as a voidable preference under s. 645.54 (1) (c).

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

(10) 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.

(11) PROPRIETARY CLAIMS. The claims of shareholders or other owners, including policyholders of a mutual insurance corporation within the limits of s. 645.72 (2).

History: 1971 c. 260; 1979 c. 93; 1979 c. 102 s. 236 (5); 1979 c. 110; 1989 a. 23, 359; 1993 a. 490.



State of Wisconsin
1999 - 2000 LEGISLATURE

LRB-0203/P1
PJK.....
WLJ + Jlg

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

D-note

gen cat

1 AN ACT relating to: priority of claims for distribution in insurance
2 liquidations.

Analysis by the Legislative Reference Bureau

Current law classifies claims and sets out the priority in which the claim classes are paid when an insolvent insurer is liquidated. This bill makes some minor changes in those priorities to comply with the ruling of the U.S. Supreme Court in *U.S. Department of the Treasury v. Fabe*, 113 S. Ct. 2202 (1993).

Under current law, a \$50 deductible applies to all claims except those that are for administration of the liquidation process. The bill provides that this deductible does not apply to any claims of the federal government.

Under current law, wage claims of employees of the insurer have second priority of payment, immediately after administration claims. The bill places these claims fifth but provides that, if there are no claims of the federal government, these claims are paid immediately after administration claims, as under current law.

Under current law, claims under policies for losses incurred, as well as claims that are not under policies and that are against the insurer for bodily injury or destruction of property, are paid third. Claims under this class are reduced by the first \$200 of losses. The bill places loss claims second in priority of payment and specifies that any loss claims of the federal government are not subject to the \$200 reduction. The bill also establishes at a third priority of payment any claims of the federal government that are not loss claims. In addition, the bill separates out claims that are not under policies and that are against the insurer for bodily injury or destruction of property and places them fourth in priority of payment.

Finally, under current law, interest on claims has its own class of priority of payment that is generally lower than the priority of payment that the claim has. The bill provides that interest on claims of the federal government has the same priority of payment as that of the claim.

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

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1 SECTION 1. 645.68 (intro.) of the statutes is amended to read:

2 **645.68 Order of distribution.** (intro.) The order of distribution of claims
3 from the insurer's estate shall be as stated in this section. The first \$50 of the amount
4 allowed on each claim in the classes under subs. (2) (3) to (6), except for claims of the
5 federal government under subs. (3) and (3c), shall be deducted from the claim and
6 included in the class under sub. (8). Claims may not be cumulated by assignment
7 to avoid application of the \$50 deductible provision. Subject to the \$50 deductible
8 provision, every claim in each class shall be paid in full or adequate funds retained
9 for the payment before the members of the next class receive any payment. No
10 subclasses shall be established within any class.

History: 1971 c. 260; 1979 c. 93; 1979 c. 102 s. 236 (5); 1979 c. 110; 1989 a. 23, 359; 1993 a. 490.

11 SECTION 2. 645.68 (2) of the statutes is renumbered 645.68 (3r).

12 SECTION 3. 645.68 (3) of the statutes is renumbered 645.68 (3) (a) and amended
13 to read:

14 645.68 (3) (a) All claims under policies for losses incurred, including third party
15 claims, ~~and all claims against the insurer for liability for bodily injury or for injury~~
16 ~~to or destruction of tangible property which are not under policies and federal, state~~
17 and local government claims, except the first \$200 of losses otherwise payable to any
18 claimant under this subsection. All other than the federal government.

1 [✓]
2 (c) All claims under life insurance and annuity policies, whether for death
3 proceeds, annuity proceeds or investment values, shall be treated as loss claims.

4 [✓]
5 (d) Claims may not be cumulated by assignment to avoid application of the
6 \$200 deductible provision.

7 [✓]
8 (e) That portion of any loss for which indemnification is provided by other
9 benefits or advantages recovered or recoverable by the claimant shall not be included
10 in this class, other than benefits or advantages recovered or recoverable in discharge
11 of familial obligations of support or by way of succession at death or as proceeds of
12 life insurance, or as gratuities. No payment made by an employer to an employe shall
13 be treated as a gratuity. The claims described in s. 645.69 are among the claims not
14 subject to this subsection.

History: 1971 c. 260; 1979 c. 93; 1979 c. 102 s. 236 (5); 1979 c. ~~10~~¹⁰; 1989 a. 23, 359; 1993 a. 490.

15 **SECTION 4.** 645.68 (3) (b) of the statutes is created to read:

16 645.68 (3) (b) Claims in this class shall include interest at the legal rate
17 compounded annually on all claims of the federal government in this class from the
18 date of the petition for liquidation or the date on which the claim becomes due,
19 whichever is later, until the date on which the dividend is declared.

20 [✓]
21 **SECTION 5.** 645.68 (3c) of the statutes is created to read:

22 645.68 (3c) FEDERAL GOVERNMENT CLAIMS. Claims of the federal government not
23 included under sub. (3),[✓] including interest at the legal rate compounded annually on
24 all claims in this class from the date of the petition for liquidation or the date on
25 which the claim becomes due, whichever is later, until the date on which the dividend
26 is declared.

27 [✓]
28 **SECTION 6.** 645.68 (3m) of the statutes is created to read:

1 645.68 (3m) CERTAIN INJURY CLAIMS. Claims against the insurer that are not
2 under policies for liability for bodily injury or for injury to or destruction of tangible
3 property.

4 SECTION 7. 645.68 (3r) (c) of the statutes is created to read:

5 645.68 (3r) (c) Notwithstanding pars. (a) and (b), if there are no claims of the
6 federal government, the claims in the class under this subsection shall have priority
7 over all claims in the classes under subs. (3) to (11).

8 SECTION 8. 645.68 (5) of the statutes is amended to read:

9 645.68 (5) RESIDUAL CLASSIFICATION. All other claims, including claims of the
10 federal or any state or local government, not falling within other classes under this
11 section and claims described in s. 645.69. Claims, including those of any state or local
12 governmental body, for a penalty or forfeiture, shall be allowed in this class only to
13 the extent of the pecuniary loss sustained from the act, transaction or proceeding out
14 of which the penalty or forfeiture arose, with reasonable and actual costs occasioned
15 thereby. The remainder of such claims shall be postponed to the class of claims under
16 sub. (8).

17 History: 1971 c. 260; 1979 c. 93; 1979 c. 102 s. 236 (5); 1979 c. 110; 1989 a. 23, 359; 1993 a. 490.

18 SECTION 9. 645.68 (7) of the statutes is amended to read:

19 645.68 (7) INTEREST ON CLAIMS ALREADY PAID. Interest at the legal rate
20 compounded annually on all claims in the classes under subs. (1) to (6), except for
21 claims of the federal government in the classes under subs. (3) and (3c), from the date
22 of the petition for liquidation or the date on which the claim becomes due, whichever
23 is later, until the date on which the dividend is declared. The liquidator, with the
approval of the court, may make reasonable classifications of claims for purposes of

1 computing interest, may make approximate computations and may ignore certain
2 classifications and time periods that are trifling.

3 History: 1971 c. 260; 1979 c. 93; 1979 c. 102 s. 236 (5); 1979 c. 110; 1989 a. 23, 359; 1993 a. 490.

3 SECTION 10. 645.68 (8) (a) of the statutes is amended to read:

4 645.68 (8) (a) ~~The~~ Except for claims of the federal government under subs. (3)
5 and (3c), the first \$50 of each claim in the classes under subs. ~~(2)~~ (3) to (6)
6 subordinated under this section; ✓

7 History: 1971 c. 260; 1979 c. 93; 1979 c. 102 s. 236 (5); 1979 c. 110; 1989 a. 23, 359; 1993 a. 490.

7 SECTION 11. 645.68 (8) (b) of the statutes is amended to read:

8 645.68 (8) (b) Claims under s. 645.63 (2); ✓

9 History: 1971 c. 260; 1979 c. 93; 1979 c. 102 s. 236 (5); 1979 c. 110; 1989 a. 23, 359; 1993 a. 490.

9 SECTION 12. 645.68 (8) (c) of the statutes is amended to read:

10 645.68 (8) (c) Claims subordinated by s. 645.90; ✓

11 History: 1971 c. 260; 1979 c. 93; 1979 c. 102 s. 236 (5); 1979 c. 110; 1989 a. 23, 359; 1993 a. 490.

11 SECTION 13. 645.68 (8) (d) of the statutes is amended to read:

12 645.68 (8) (d) Claims filed late; ✓

13 History: 1971 c. 260; 1979 c. 93; 1979 c. 102 s. 236 (5); 1979 c. 110; 1989 a. 23, 359; 1993 a. 490.

13 SECTION 14. 645.68 (8) (e) of the statutes is amended to read:

14 645.68 (8) (e) Portions of claims subordinated under sub. (5); ✓

15 History: 1971 c. 260; 1979 c. 93; 1979 c. 102 s. 236 (5); 1979 c. 110; 1989 a. 23, 359; 1993 a. 490.

15 SECTION 15. 645.68 (8) (f) of the statutes is amended to read:

16 645.68 (8) (f) Claims or portions of claims payment of which is provided by other
17 benefits or advantages recovered or recoverable by the claimant; ~~and~~.

18 History: 1971 c. 260; 1979 c. 93; 1979 c. 102 s. 236 (5); 1979 c. 110; 1989 a. 23, 359; 1993 a. 490.

18 SECTION 16. Initial applicability.

19 (1) This act first applies to liquidation proceedings commenced on the effective
20 date of this subsection.

21 (END) ✓

D-note

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-0203/dn

PJK.....

WLJ + JG

1. Do any of the following need to be amended to account for the creation of s. 645.68 (3m), which was formerly part of s. 645.68 (3)?

- (a) Section 646.31 (6)
- (b) Section 646.35 (6) (a)

2. Since new s. 645.68 (3m) was formerly part of s. 645.68 (3), should sub. (3m) also be subject to a \$200 deductible? Should it include language about not including any portion of a loss for which indemnification is provided by other benefits or advantages?

3. Does s. 601.13 (2) need to be amended, since now there are two new subsections before s. 645.68 (4)?

4. I made the assumption that, by excepting federal government claims from the subsection dealing with interest, the intention was to give interest on federal government claims the same priority as the claims themselves. The intention could also have been not to give interest on federal government claims any priority or to give interest on all federal claims the priority under sub. (3c). Let me know if you want the priority that I have given interest on federal government claims changed in any way.

Pamela J. Kahler
Senior Legislative Attorney
266-2682

5. As we discussed, this draft can be compiled with the draft on the insurance security fund, if you wish.

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-0203/P1dn
PJK:wlj&jlg:ijs

November 20, 1998

1. Do any of the following need to be amended to account for the creation of s. 645.68 (3m), which was formerly part of s. 645.68 (3)?

(a) Section 646.31 (6)

(b) Section 646.35 (6) (a)

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5. As we discussed, this draft can be compiled with the draft on the insurance security fund, if you wish.

Pamela J. Kahler
Senior Legislative Attorney
266-2682

CHAPTER 646 ANALYSIS

These changes represent the first extended revision of Chapter 646 from the property and casualty perspective in over a decade. Very few P&C changes have been attempted since 1985, and certain provisions are greatly in need of updating. The intervening period has been the most active in the nearly 30 years since the Fund was created, with all of the largest insolvencies hitting their full stride from 1985-1989. This means that most current P&C provisions were drafted in the absence of experience drawn from any of these complex liquidations (Mission, American Mutual, Ideal, Integrity, Transit and Midland). These revisions take advantage of this extensive experience and reflect the lessons learned regarding the modern realities of multi-state guaranty fund operations.

Technical Changes. A major purpose of these provisions is remedial, in order to correct or make adjustments for technical problems which have been exposed during the heightened liquidation activity, so as to increase the effectiveness of the Wisconsin Fund as part of the nationwide safety net of guaranty funds.

Interstate Cooperation. A second goal of these changes is to promote the cooperation in administrative operations between the Fund and the guaranty funds of the other states.

Assessment Capacity. Third, some of the changes are designed to preserve Fund assessment capacity and to assure a reasonable balance between various interest groups competing for benefits from the Wisconsin Fund.

The changes in Section 3 are intended to correct the abuses for court extensions of the bar date to more than 18 months after the order of liquidation. The changes in Section 11 clarify that the only time the fund of the location of the property is triggered is when there is a first party claim for damage to property, that in every other instance the responsible fund is the fund of the residence of the insured, and that these changes are in the context of property with a permanent location rather than a temporary one. Also involving interstate cooperation are the changes in Sections 13, 15 and 16. The changes in Sections 4, 6 and 14 address the assessment capacity concerns. The remaining changes are primarily technical in nature.

1 AN ACT to renumber 646.31(1)(d); to renumber and amend 646.13(1)(b); to amend
2 646.15(1)(a), 646.31(1)(a), 646.31(2)(c), 646.31(2)(d), 646.51(3)(a), 646.60(1)(a) and
3 646.60(1)(b); and to create 646.03(1m), 646.13(1)(d), 646.13(1)(e), 646.13(2)(e),
4 646.13(2)(f), 646.31(1)(d) and 646.31(2)(g) of the statutes; relating to: property, casualty and
5 liability claims obligations of the Fund, and to its assessment capacity.

Analysis

6
7
8 The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

9 SECTION 1. 646.03(1m) of the statutes is created to read:

10 (1m) “Final order” means an order which has not been stayed.

11 SECTION 2. 646.13(1)(b) is renumbered 646.13(1)(b) and (c) and amended to read:

12 (b) Stand in the position of the insurer in the investigation, compromise, settlement,
13 denial and payment of claims under s. 646.31 and the defense of 3rd party claims against
14 insureds, subject to the limitations of s. 645.43. The board shall consult and cooperate with
15 the liquidator in carrying out these duties.

16 (c) The board has no duties or liabilities with respect to any claim filed as follows:

17 1. With the liquidator under s. 645.61 (2) after the date for filing specified by the
18 liquidator under s. 645.47 (2), unless the liquidator determines that the claim is deemed timely
19 filed and participates fully in the same every distribution to the same extent as timely filed
20 claims in the same class.

21 2. With a liquidator or court under the laws of any other state substantially similar to
22 s. 645.61 (2) after the date for filing specified by the liquidator or court, unless the liquidator
23 or court determines that the claim is deemed timely filed and participates fully in the
24 same every distribution to the same extent as timely filed claims in the same class.

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SECTION 3. 646.13(1)(d) of the statutes is created to read:

(d) Except in regard to life, annuity, and noncancellable or guaranteed renewable disability, notwithstanding any other provisions of this Chapter except par. (c), the board has no duties or liabilities with respect to any claim filed after the earlier of:

- 1. 18 months after the date of the order of liquidation, or
- 2. The final date for filing specified by the liquidator or court.

SECTION 4. 646.13(1)(e) of the statutes is created to read:

(e) Any obligation of the Board to defend an insured shall cease upon the Board's payment, by settlement releasing the insured or on a judgment, of an amount equal to the lesser of the Board's covered claim obligation limit or the applicable policy limit, subject to any express policy terms regarding tender of limits.

SECTION 5. 646.13(2)(e) of the statutes is created to read:

(e) Pursue ~~and retain~~ salvage and subrogation recoverable on paid covered claim obligations.

SECTION 6. 646.13(2)(f) of the statutes is created to read:

(f) Exercise the right to appoint and direct legal counsel retained under liability insurance policies for the defense of covered claims.

SECTION 7. 646.15(1)(a) of the statutes is amended to read:

646.15 Proceedings involving nondomestic insurers. (1) INJUNCTIONS AND ORDERS. (a) If a nondomestic insurer is in liquidation, the board may apply to the circuit court for Dane county for, and the court may grant, restraining orders, temporary and permanent injunctions, and other orders considered necessary and proper to prevent any of the following:

- 1. Interference with the board or with its administrative proceedings.
- 2. The institution or further prosecution of any action or proceeding involving the insurer or in which the board is obligated to defend a party.

not (d) - does not flow from (1) intro.

be more specific

not (e) - see (d) above

by?

(is not and any assets recovered)

?

1 3. The obtaining of a preference, judgment, garnishment or lien against the insurer or
2 its assets.

3 4. Any other threatened or contemplated action that might prejudice the rights of
4 policyholders or the administration of the liquidation or board proceedings.

5 **SECTION 8.** 646.31(1)(a) of the statutes is amended to read:

6 **646.31 Eligible claims. (1) CONDITIONS OF ELIGIBILITY.** A claim is not
7 eligible for payment from the fund unless it is an unpaid claim for a loss insured under the
8 policy or annuity and all of the following conditions are met:

9 (a) *Issued by authorized insurer.* The claim arises out of an insurance policy or
10 annuity issued by an insurer which ~~is in liquidation and which~~ was authorized to do business in
11 this state either at the time the policy or annuity was issued or when the insured event
12 occurred, and against which a final order of liquidation has been entered by a state court of
13 competent jurisdiction in the insurer's domicile in a state of the United States. *use dom state?*

14 **SECTION 9.** 646.31(1)(d) of the statutes is renumbered 646.31(1)(e): *→ out*

15 **SECTION 10.** 646.31(1)(d) of the statutes is created to read:

16 (d) Termination of Coverage. Except in regard to life, annuity, and noncancellable or
17 guaranteed renewable disability, the claim arises within 30 days after the order of liquidation
18 or before the policy expiration date if less than 30 days after the order of liquidation, or before
19 the insured replaces the policy or causes its cancellation if done within 30 days of the order of
20 liquidation.

21 **SECTION 11.** 646.31(2)(c) of the statutes is amended to read:

22 (c) *Owners of property interests.* The first party claim of a person having an
23 insurable interest in or related to property with a permanent location ~~which was situated~~ in this
24 state at the time of the insured event.

25 **SECTION 12.** 646.31(2)(d) of the statutes is amended to read:

1 (d) *Third party claimants.* A claim under a liability or workers' compensation
2 insurance policy, if:

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

5 2. ~~The claim is for bodily or other personal injuries suffered in this state or by a~~
6 ~~person who suffered the injuries while a resident of this state; or~~

7 3. ~~The claim is for damage to property situated in this state at the time the damage~~
8 ~~occurred.~~

9 SECTION 13. 646.31(2)(g) of the statutes is created to read:

10 (g) *Residency.* In this section, for entities other than an individual the residence of a
11 claimant, insured or policyholder is the state in which its principal place of business is located.

12 SECTION 14. 646.51(3)(a) of the statutes is amended to read:

13 (3) CALCULATION. (a) *General.* 1. In this section, "premiums" means gross
14 premiums and other considerations received for direct insurance and annuities, including
15 considerations for a plan established under ss. 185.981 to 185.985, less return premiums and
16 other considerations, dividends and experience credits paid or credited to policyholders on the
17 direct business. The term "premiums" does not include any amounts received for any
18 contracts or for the portions of any contracts for which coverage is excluded under
19 s. 646.01 (1) (b).

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

23 3. An insurer shall cease to be a contributing insurer effective on the day following the
24 termination or expiration of its license or certificate of authority to do business in this state;
25 however the insurer shall remain liable as a contributing insurer for any and all obligations for

What other phrase?

ceases to be obligated to pay an amount?

1 assessments made or levied prior to the termination or expiration of the insurer's license or
2 certificate and assessments levied after the termination or expiration, which relate to any
3 insurer which became subject to a liquidation order prior to such termination or expiration.

4 **SECTION 15.** 646.60(1)(a) of the statutes is amended to read:

5 **646.60 Claims by security funds. (1) RECOGNITION. (a) Settlements by the**
6 ***fund.*** The liquidator is bound by settlements and determinations of covered loss claims made
7 by the board and by payments of claims made by the board under this chapter.

8 **SECTION 16.** 646.60(1)(b) of the statutes is amended to read:

9 **(b) Settlements by comparable funds.** The liquidator is bound by settlements and
10 determinations of covered loss claims and by payments of claims made by funds or
11 organizations of other states that are comparable to the fund under this chapter provided:

12 1. That the laws of the other states give equivalent recognition to the settlements of
13 loss claims by the fund; and

14 2. That if the same claim is reported as paid by 2 or more funds, payment shall be to
15 the fund with a prior obligation under s. 646.31 (7).

16 **SECTION 17. Initial applicability. (1) NEW LIQUIDATION PROCEEDINGS.**

17 The treatment of s. 646.31(1)(d) of the statutes and the renumbering of s. 646.31(1)(d) of the
18 statutes first apply to liquidation proceedings in which a liquidation order is issued on or after
19 the effective date of this subsection. *By order issued on ?*

20 **(2) PENDING LIQUIDATION PROCEEDINGS.** The treatment of ss. 646.03(1m),
21 646.13(1)(b) and (c), 646.13(1)(d), 646.13(1)(e), 646.13(2)(e), 646.13(2)(f), 646.15(1)(a),
22 646.31(1)(a), 646.31(2)(c), 646.31(2)(d), 646.31(2)(g), 646.51(3)(a), 646.60(1)(a), and
23 646.60(1)(b) of the statutes first apply to liquidation proceedings pending on the effective date
24 of this subsection. *Commenced or pending ?*



PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

1 **AN ACT to repeal** 646.31 (2) (d) 2. and 646.31 (2) (d) 3.; **to renumber and amend**
2 646.13 (1) (b) (intro.), 646.13 (1) (b) 1. and 646.13 (1) (b) 2.; **to consolidate,**
3 **renumber and amend** 646.31 (2) (d) (intro.) and 1.; **to amend** 646.15 (1) (a)
4 2., 646.31 (1) (a), 646.31 (2) (c), 646.60 (1) (a), 646.60 (1) (b) (intro.), 646.60 (1)
5 (b) 1. and 646.60 (1) (b) 2.; and **to create** 646.13 (2) (e), 646.13 (2) (f), 646.13 (3)
6 (intro.), 646.13 (3) (c), 646.13 (4), 646.31 (1) (cm) and 646.51 (9) of the statutes;
7 **relating to:** the insurance security fund.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a later version.

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

8 **SECTION 1.** 646.13 (1) (b) (intro.) of the statutes is renumbered 646.13 (1) (b)
9 and amended to read:
10 646.13 (1) (b) Stand in the position of the insurer in the investigation,
11 compromise, settlement, denial and payment of claims under s. 646.31 and the

1 646.13 (2) (f) Exercise the right to appoint and direct legal counsel retained
2 under liability insurance policies for the defense of covered claims.

 ****NOTE: I'm lost on this one. From where does this right that the board may exercise arise? Should the language just be "Appoint and direct" rather than "Exercise the right to appoint and direct"? What liability insurance policies are we talking about? Who retained the legal counsel? Why does the board need to appoint legal counsel that has already been retained? I didn't change the wording at all on this one (because I couldn't), but it needs to be changed so that the meaning is clear.

3 **SECTION 6.** 646.13 (3) (intro.) of the statutes is created to read:

4 646.13 (3) **NO DUTY OR LIABILITY.** (intro.) The board has no duty or liability with
5 respect to any claim filed as follows:

6 **SECTION 7.** 646.13 (3) (c) of the statutes is created to read:

7 646.13 (3) (c) Except for claims related to life insurance policies, annuities and
8 noncancelable or guaranteed renewable disability insurance policies, with a
9 liquidator or court after the earlier of the following:

- 10 1. Eighteen months after the date of the order of liquidation.
11 2. The final date for filing specified by the liquidator or court.

 ****NOTE: The proposed language for this provision contained the language "notwithstanding any other provisions of this chapter". I did not include the language because it is too broad. Is the entire chapter in conflict with par. (c)? If not, is it possible to pinpoint a more specific provision or provisions that are in conflict?

12 **SECTION 8.** 646.13 (4) of the statutes is created to read:

13 646.13 (4) **WHEN DUTY TO DEFEND TERMINATES.** Any obligation of the board to
14 defend an insured ceases upon the board's payment, by settlement releasing the
15 insured or on a judgment, of an amount equal to the lesser of the board's covered
16 claim obligation limit or the applicable policy limit, subject to any express policy
17 terms regarding tender of limits.

18 **SECTION 9.** 646.15 (1) (a) 2. of the statutes is amended to read:

19 646.15 (1) (a) 2. The institution or further prosecution of any action or
20 proceeding involving the insurer or in which the board is obligated to defend a party.

1 **SECTION 13.** 646.31 (2) (d) (intro.) and 1. of the statutes are consolidated,
2 renumbered 646.31 (2) (d) and amended to read:

3 646.31 (2) (d) *Third party claimants.* A claim under a liability or workers'
4 compensation insurance policy, if: ~~1. Either either~~ the insured or the 3rd party
5 claimant was a resident of this state at the time of the insured event;

6 **SECTION 14.** 646.31 (2) (d) 2. of the statutes is repealed.

7 **SECTION 15.** 646.31 (2) (d) 3. of the statutes is repealed.

8 **SECTION 16.** 646.51 (9) of the statutes is created to read:

9 646.51 (9) OBLIGATION TO CONTRIBUTE CEASES. (a) Except as provided in par. (b),
10 if an insurer's license or certificate of authority to do business in this state terminates
11 or expires, the insurer's obligation to pay assessments under this section ceases
12 beginning on the day after the insurer's license or certificate of authority terminates
13 or expires.

14 (b) An insurer whose license or certificate of authority to do business in this
15 state terminates or expires remains liable after the termination or expiration to pay
16 all of the following:

17 1. Assessments levied before the insurer's license or certificate of authority
18 terminated or expired.

19 2. Assessments levied after the insurer's license or certificate of authority
20 terminated or expired that relate to a liquidation order issued before the insurer's
21 license or certificate of authority terminated or expired.

22 **SECTION 17.** 646.60 (1) (a) of the statutes is amended to read:

23 646.60 (1) (a) *Settlements by the fund.* The liquidator is bound by
24 determinations and settlements of covered loss claims, and by payments of claims,
25 made by the board under this chapter.

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0204/P1dn
PJK:pgt&jlg:ijs

January 6, 1999

1. This is a rough, preliminary draft. I have included a number of ****NOTES within the text of the bill draft.

2. I did not include s. 646.31 (2) (g) from the proposed draft because I was unsure of its applicability. The provision relates to residency and the proposed language begins with "In this section", but because of its placement in the proposed draft, I wondered if the provision is actually intended to apply in only s. 646.31 (2).

3. Does "disability insurance" in ch. 646 have the meaning given in s. 632.895 (1) (a)? Perhaps a definition would be a good idea.

4. I added a couple of sections to the initial applicability provision related to liquidation orders issued on the effective date. Please review them to make sure my additions are okay.

Pamela J. Kahler
Senior Legislative Attorney
266-2682

Kahler, Pam

From: Nepple, Fred
Sent: Friday, July 30, 1999 2:22 AM
To: Kahler, Pam
Subject: Revised insurance liquidation and security fund drafts



Liquidation draft.doc

Pam:

I've attached a memo requesting revisions to the two preliminary drafts you did for OCI on liquidation and WISF. Please contact Eileen Mallow if you have any questions. Also please feel free to discuss drafting issues with Noreen Parrett 257-3911 who represents the WISF. At this point OCI and WISF are in agreement on the draft. As the memo notes I will be out of the office for two weeks but will be checking in (after a backpack trip) on August 11 with Eileen.

I think you will find that we recognized that you raised a number of valid points in your drafting notes and we largely accepted your suggestions where you made them.

I will send the memo in paper form with the preliminary drafts attached.

Thanks



State of Wisconsin / OFFICE OF THE COMMISSIONER OF INSURANCE

Tommy G. Thompson
Governor

Connie L. O'Connell
Commissioner

July 29, 1999

Legal Unit
121 East Wilson Street • P.O. Box 7873
Madison, Wisconsin 53707-7873
Phone: (608) 267-9586 • Fax: (608) 264-6228
E-Mail: Legal@oci.state.wi.us
http://badger.state.wi.us/agencies/oci_home.htm

To: Pam Kahler, Attorney, Legislative Reference Bureau

From: Fred Nepple, General Counsel

Subject: Drafts-0203/P1; 0204/P1

We would appreciate it if you would finalize and combine the above drafts. Eileen Mallow (266-7843) is coordinating this legislation for the office. In my absence in the next two weeks please feel to contact and discuss these security fund and liquidation law drafts with the attorney for the Wisconsin Insurance Security Fund ("WISF"), Noreen Parrett (257-3911). I will be back on August 16 and will be calling Eileen Mallow August 11 to determine whether you have any questions. We appreciated your efforts on the preliminary drafts. You identified a number of issues that should be resolved.

The office's response to your drafting notes and requests for modifications are as follows:

0203/P1

- ✓ 1. Section 46.31 (6) should be amended to substitute a cross-reference to s. 645.68- (3) (e) for the current cross-reference to s. 645.68 (3). The cross-reference in s. 646.35 (6) (a) need not be amended.
- ✓ 2. Section 645.68 (3m) created in the bill should not be subject to a \$200 deductible. However it should be subject to the exclusion for indemnification provided by other benefits or advantages such as is contained in s. 645.68-(3) (e) in the draft. Please note that the WISF requests that s. 645.68 (3), if LRB drafting style permits, not be broken into separate paragraphs.
- ✓ 3. Section 601.13 (2) should be amended to read "2nd, for the claimants under s. 645.68 (3c); 3rd, for claimants under s. 645.68 (3m); and 4th, for claimant under s. 645.68 (4)...".
- ← 4. Interest on federal government loss claims should be given the same (lower) priority as interest for other loss claims. Interest on claims of the federal government other than loss claims should be given the same priority as those claims. To accomplish we suggest eliminating s. 645.68-(3) (b) and deleting the reference to s. 645.68 (3) in s. 645.68 (7) in the draft.

←
if not broken down, no (e)?

↓
language of (3c) → would claim not incl in (3) include interest on (3)?

Additional drafting requests:

- ✓ 5. The analysis includes a statement that the draft makes changes to reflect the Fabe decision. We would appreciate it, although we understand that the analysis is a merely a plan language description with the LRB prerogative to compose, if the draft could be described as follows in lieu or in addition to the reference to Fabe: "The bill makes remedial changes in the liquidation priorities." We believe this accurately describes the purpose of legislation and that it is useful to have such a statement in the history of the bill.
- ✓ 6. Under current law s. 645.68 (3) includes "claims against the insurer for liability for bodily injury or...which are not under policies." The draft moves this category to s. 645.68 (3m). However the sentence is changed to read "Claims against the insurer under policies for liability". A concern has been raised that this change in the sentence structure could be interpreted as substantive. For example it could be interpreted as referring to claims arising under policies other than those which insurer for liability. While this may be a remote possibility we would appreciate it if the draft could retain the structure of the original sentence.
- ✓ 7. Please change the applicability provision to apply the changes to liquidation proceedings that are commenced by entry of a liquidation order on or after the effective date of the act. We believe that the date of entry of a liquidation order is more precise than the date of commencement of a proceeding.

0204/P1dn

1. Notes:

✓ Page 2: The intent is that the board does not have duties with respect to a claim falling under s. 645.61 (3). The intent is that the board must treat a claim as eligible for coverage under the security fund if, as you say, the liquidator "considers or treats the claim as timely filed under s. 645.61 (2). We suggest on line 6 inserting 645.61 (2), on line after "claim is" inserting "considered", on line 14 after "claim is" inserting "considered".

✓ The changes to the salvage and subrogation language are acceptable except the fund requests that on line 19 "obligations" be inserted after "claims." "Salvage" is a commonly understood term in the industry.

✓ Page 3: We suggest: "Appoint and direct legal counsel for the defense of covered claims under insurance policies." As you suggest we dropped "exercise the right" although the purpose is to make it clear that the WISF "steps in the shoes" of the liquidator (and, of course of the company). Either the company or liquidator might have retained counsel before the board is in a position to exercise its authority. Please note that the provision as redrafted applies to all policies, not just liability policies.

✓ The deletion of the phrase "notwithstanding any other provisions of this chapter" is acceptable.

X
Want a
X-ref to
645.61(2)?
yes

July 29, 1999
Page 3

✓ Page 4: Your understanding of the intended usage of the term "final order" is accurate. It means an order not currently stayed. The references in s. 646.31 (cm) should be to 30 days after the date the order is entered.

✓ Page 6: Your technical correction is fine. However we also noted that the current reference is incorrect. Please amend it to refer to s. 646.31 (9).

2. You are correct; the proposed creation of s. 646.31 (2) (g) should read "In this subsection."

✓ 3. The term "disability insurance" in ch. 646 has a broader meaning than s. 632.89- (1) (a). While we recognize the historic loose use of the term "disability policy" sometimes confuses readers we don't wish to undertake the wholesale revisions that an effective "fix" would require.

✓ 4. The applicability provisions should be revised by moving the treatment of s. 646.31 (2) (d) to SECTION 21 (1)-that is apply the treatment to pending claims.

Additional drafting requests:

✓ 5. On page 2, line 13, insert s. 645.61 (2).

✓ 6. On page 3, line 7, substitute "under" for "related to".

← 7. On page 3, line 8, after "policies" insert "and as provided under pars. (a) and (b)".

✓ 8. On page 4, line 9 substitute "under" for "related to".

← 9. On page 5, line 17 substitute "made or called" for "levied".

← 10. On page 5, line 19, substitute "made or called" for "levied".

✓ 11. On page 5, line 20, substitute "entered" for "issued".

what's relationship among (a), (b) + (c)?

*X s/initial op be dated entered, instead of issued?
yes*



State of Wisconsin
1999 - 2000 LEGISLATURE

P2
LRB-0203/P2
PJK:wj&jlg:ijs
rm not run

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

D-note
(this draft combines
LRB-0203+0204)

and the insurance
security fund

regenerate ↓

1 AN ACT to renumber 645.68 (2); to renumber and amend 645.68 (3); to amend
2 645.68 (intro.), 645.68 (5), 645.68 (7), 645.68 (8) (a), 645.68 (8) (b), 645.68 (8) (c),
3 645.68 (8) (d), 645.68 (8) (e) and 645.68 (8) (f); and to create 645.68 (3) (b),
4 645.68 (3c), 645.68 (3m) and 645.68 (3r) (c) of the statutes; relating to: priority
5 of claims for distribution in insurance liquidations.

liquidation

Analysis by the Legislative Reference Bureau

Current law classifies claims and sets out the priority in which the claim classes are paid when an insolvent insurer is liquidated. This bill makes some minor changes in those priorities to comply with the ruling of the U.S. supreme court in *U.S. Department of the Treasury v. Fabe*, 113 S. Ct. 2202 (1993).

Under current law, a \$50 deductible applies to all claims except those that are for administration of the liquidation process. The bill provides that this deductible does not apply to any claims of the federal government.

Under current law, wage claims of employes of the insurer have second priority of payment, immediately after administration claims. The bill places these claims fifth but provides that, if there are no claims of the federal government, these claims are paid immediately after administration claims, as under current law.

Under current law, claims under policies for losses incurred, as well as claims that are not under policies and that are against the insurer for bodily injury or destruction of property, are paid third. Claims under this class are reduced by the first \$200 of losses. The bill places loss claims second in priority of payment and

remedial ↗

specifies that any loss claims of the federal government are not subject to the \$200 reduction. The bill also establishes at a third priority of payment any claims of the federal government that are not loss claims. In addition, the bill separates out claims that are not under policies and that are against the insurer for bodily injury or destruction of property and places them fourth in priority of payment.

Finally, under current law, interest on claims has its own class of priority of payment that is generally lower than the priority of payment that the claim has. The bill provides that interest on claims of the federal government has the same priority of payment as that of the claim.

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

), except for loss claims)

Insert 2-B

Insert 2-1

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

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SECTION 1. 645.68 (intro.) of the statutes is amended to read:

645.68 Order of distribution. (intro.) The order of distribution of claims from the insurer's estate shall be as stated in this section. The first \$50 of the amount allowed on each claim in the classes under subs. (2) (3) to (6), except for claims of the federal government under subs. (3) and (3c), shall be deducted from the claim and included in the class under sub. (8). Claims may not be cumulated by assignment to avoid application of the \$50 deductible provision. Subject to the \$50 deductible provision, every claim in each class shall be paid in full or adequate funds retained for the payment before the members of the next class receive any payment. No subclasses shall be established within any class.

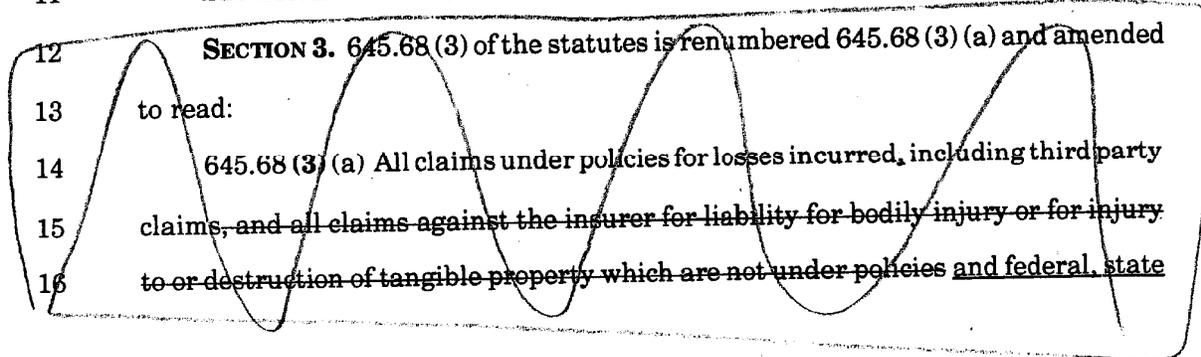
11

SECTION 2. 645.68 (2) of the statutes is renumbered 645.68 (3r).

12
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14
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16

SECTION 3. 645.68 (3) of the statutes is renumbered 645.68 (3) (a) and amended to read:

645.68 (3) (a) All claims under policies for losses incurred, including third party claims, and all claims against the insurer for liability for bodily injury or for injury to or destruction of tangible property which are not under policies and federal, state



1 and local government claims, except the first \$200 of losses otherwise payable to any
2 claimant under this subsection. All other than the federal government.

3 (c) All claims under life insurance and annuity policies, whether for death
4 proceeds, annuity proceeds or investment values, shall be treated as loss claims.

5 (d) Claims may not be cumulated by assignment to avoid application of the
6 \$200 deductible provision.

7 (e) That portion of any loss for which indemnification is provided by other
8 benefits or advantages recovered or recoverable by the claimant shall not be included
9 in this class, other than benefits or advantages recovered or recoverable in discharge
10 of familial obligations of support or by way of succession at death or as proceeds of
11 life insurance, or as gratuities. No payment made by an employer to an employe shall
12 be treated as a gratuity. The claims described in s. 645.69 are among the claims not
13 subject to this subsection.

14 SECTION 4. 645.68 (3) (b) of the statutes is created to read:

15 645.68 (3) (b) Claims in this class shall include interest at the legal rate
16 compounded annually on all claims of the federal government in this class from the
17 date of the petition for liquidation or the date on which the claim becomes due,
18 whichever is later, until the date on which the dividend is declared.

Amend 3-16

19 SECTION 5. 645.68 (3c) of the statutes is created to read:

20 645.68 (3c) FEDERAL GOVERNMENT CLAIMS. Claims of the federal government not
21 included under sub. (3), including interest at the legal rate compounded annually on
22 all claims in ~~the~~ ^{the} class ^{under this subsection} from the date of the petition for liquidation or the date on
23 which the claim becomes due, whichever is later, until the date on which the dividend
24 is declared.

25 SECTION 6. 645.68 (3m) of the statutes is created to read:

and that are

1 645.68 (3m) CERTAIN INJURY CLAIMS. Claims against the insurer that are not
2 under policies for liability for bodily injury or for injury to or destruction of tangible
3 property.

4 SECTION 7. 645.68 (3r) (c) of the statutes is created to read:
5 645.68 (3r) (c) Notwithstanding pars. (a) and (b) *and subs. (3), (3c) and (3m)* if there are no claims of the
6 federal government, the claims in the class under this subsection shall have priority
7 over all claims in the classes under subs. (3) to (11).

8 SECTION 8. 645.68 (5) of the statutes is amended to read:
9 645.68 (5) RESIDUAL CLASSIFICATION. All other claims, including claims of the
10 federal or any state or local government, not falling within other classes under this
11 section and claims described in s. 645.69. Claims, including those of any state or local
12 governmental body, for a penalty or forfeiture, shall be allowed in this class only to
13 the extent of the pecuniary loss sustained from the act, transaction or proceeding out
14 of which the penalty or forfeiture arose, with reasonable and actual costs occasioned
15 thereby. The remainder of such claims shall be postponed to the class of claims under
16 sub. (8).

17 SECTION 9. 645.68 (7) of the statutes is amended to read:
18 645.68 (7) INTEREST ON CLAIMS ALREADY PAID. Interest at the legal rate
19 compounded annually on all claims in the classes under subs. (1) to (6), except for
20 claims of the federal government in the classes under ~~subs. (3) to (6)~~ (3c), from the date
21 of the petition for liquidation or the date on which the claim becomes due, whichever
22 is later, until the date on which the dividend is declared. The liquidator, with the
23 approval of the court, may make reasonable classifications of claims for purposes of
24 computing interest, may make approximate computations and may ignore certain
25 classifications and time periods that are trifling.

sub.

1 SECTION 10. 645.68 (8) (a) of the statutes is amended to read:

2 645.68 (8) (a) The Except for claims of the federal government under subs. (3)
3 and (3c), the first \$50 of each claim in the classes under subs. (2) (3) to (6)
4 subordinated under this section;

5 SECTION 11. 645.68 (8) (b) of the statutes is amended to read:

6 645.68 (8) (b) Claims under s. 645.63 (2);

7 SECTION 12. 645.68 (8) (c) of the statutes is amended to read:

8 645.68 (8) (c) Claims subordinated by s. 645.90;

9 SECTION 13. 645.68 (8) (d) of the statutes is amended to read:

10 645.68 (8) (d) Claims filed late;

11 SECTION 14. 645.68 (8) (e) of the statutes is amended to read:

12 645.68 (8) (e) Portions of claims subordinated under sub. (5);

13 SECTION 15. 645.68 (8) (f) of the statutes is amended to read:

14 645.68 (8) (f) Claims or portions of claims payment of which is provided by other
15 benefits or advantages recovered or recoverable by the claimant; and.

16 SECTION 16. Initial applicability.

17 (1) This act first applies to liquidation proceedings commenced on the effective
18 date of this subsection.

19 (END)



Continue



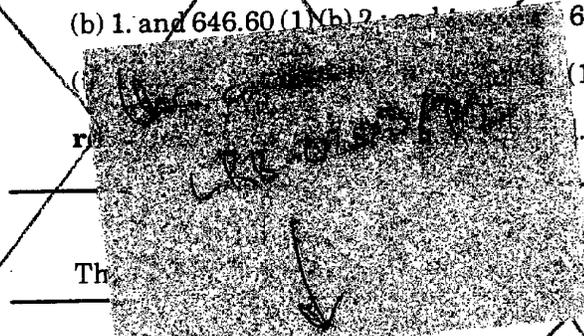
State of Wisconsin
1999 - 2000 LEGISLATURE

LRB-0204/P1
PJK:pgt&jlg:ijs

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

1 **AN ACT to repeal 646.31 (2) (d) 2. and 646.31 (2) (d) 3.; to renumber and amend**
2 **646.13 (1) (b) (intro.), 646.13 (1) (b) 1. and 646.13 (1) (b) 2.; to consolidate,**
3 **renumber and amend 646.31 (2) (d) (intro.) and 1.; to amend 646.15 (1) (a).**
4 **2., 646.31 (1) (a), 646.31 (2) (c), 646.60 (1) (a), 646.60 (1) (b) (intro.), 646.60 (1)**
5 **(b) 1. and 646.60 (1) (b) 2.; and to amend 646.13 (2) (e), 646.13 (2) (f), 646.13 (3)**
6 **(1) (cm) and 646.51 (9) of the statutes;**

7



Reference Bureau
will be provided in a later version.

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

8 **SECTION 4.** 646.13 (1) (b) (intro.) of the statutes is renumbered 646.13 (1) (b)
9 and amended to read:
10 646.13 (1) (b) Stand in the position of the insurer in the investigation,
11 compromise, settlement, denial and payment of claims under s. 646.31 and the

1 defense of 3rd party claims against insureds, subject to the limitations of s. 645.43.
2 The board shall consult and cooperate with the liquidator in carrying out these
3 duties. ~~The board has no duties or liabilities with respect to any claim filed as follows:~~

4 SECTION 2. 646.13 (1) (b) 1. of the statutes is renumbered 646.13 (3) (a) and
5 amended to read:

6 646.13 (3) (a) With the liquidator under s. 645.61 ~~after~~ after the date for filing
7 specified by the liquidator under s. 645.47 (2), unless the liquidator determines that
8 the claim is timely filed ^{under A. 645.61 (2)} and the claim participates fully in the same every
9 distribution to the same extent as other timely filed claims in the same class.

10 SECTION 3. 646.13 (1) (b) 2. of the statutes is renumbered 646.13 (3) (b) and
11 amended to read:

12 646.13 (3) (b) With a liquidator or court under the laws of any other state
13 ~~substantially similar to the laws of any other state~~ after the date for filing specified by the liquidator
14 or court, unless the liquidator or court determines that the claim is timely filed and
15 the claim participates fully in the same every distribution to the same extent as other
16 timely filed claims in the same class.

****NOTE: For both s. 646.13 (1) (b) 1. and 2., I was unsure of the intent behind the proposed language changes. Why are these subdivisions limited to claims filed under s. 646.61(2)? Do you mean to say that the board does have duties and liabilities with respect to claims filed late under s. 645.61 (3)? And what is meant by "unless the liquidator determines that the claim is deemed timely filed"? Do you mean "unless the liquidator determines that the claim was actually timely filed"? Do you mean "unless the liquidator considers the claim to have been timely filed"?

17 SECTION 4. 646.13 (2) (e) of the statutes is created to read:

18 646.13 (2) (e) Pursue salvage and subrogation with respect to paid covered
19 claims and retain any amounts recovered. ^{obligations}

****NOTE: Is this language okay? The proposed language was "pursue and retain". Is salvage a commonly used term in this situation or does it need a definition?

20 SECTION 5. 646.13 (2) (f) of the statutes is created to read:

to have been

considers

under a law substantially similar to A. 645.61 (2)

1 646.13 (2) (f) ~~Exercise the right to~~ appoint and direct legal counsel ~~to defend~~
2 under ~~liability~~ insurance policies for the defense of covered claims

***NOTE: I'm lost on this one. From where does this right that the board may exercise arise? Should the language just be "Appoint and direct" rather than "Exercise the right to appoint and direct"? What liability insurance policies are we talking about? Who retained the legal counsel? Why does the board need to appoint legal counsel that has already been retained? I didn't change the wording at all on this one (because I couldn't), but it needs to be changed so that the meaning is clear.

3 SECTION 6. 646.13 (3) (intro.) of the statutes is created to read:

4 646.13 (3) NO DUTY OR LIABILITY. (intro.) The board has no duty or liability with
5 respect to any claim filed as follows:

6 SECTION 7. 646.13 (3) (c) of the statutes is created to read:

7 646.13 (3) (c) Except for claims ~~under~~ ^{under} life insurance policies, annuities and
8 noncancelable or guaranteed renewable disability insurance policies, with a
9 liquidator or court after the earlier of the following:

- 10 1. Eighteen months after the ~~liability~~ order of liquidation. ^{is entered}
- 11 2. The final date for filing specified by the liquidator or court.

***NOTE: The proposed language for this provision contained the language "notwithstanding any other provisions of this chapter". I did not include the language because it is too broad. Is the entire chapter in conflict with par. (c)? If not, is it possible to pinpoint a more specific provision or provisions that are in conflict?

12 SECTION 8. 646.13 (4) of the statutes is created to read:

13 646.13 (4) WHEN DUTY TO DEFEND TERMINATES. Any obligation of the board to
14 defend an insured ceases upon the board's payment, by settlement releasing the
15 insured or on a judgment, of an amount equal to the lesser of the board's covered
16 claim obligation limit or the applicable policy limit, subject to any express policy
17 terms regarding tender of limits.

18 SECTION 9. 646.15 (1) (a) 2. of the statutes is amended to read:

19 646.15 (1) (a) 2. The institution or further prosecution of any action or
20 proceeding involving the insurer or in which the board is obligated to defend a party

and except as provided in para. (a) and (b)

1 SECTION 10. 646.31 (1) (a) of the statutes is amended to read:

2 646.31 (1) (a) *Issued by authorized insurer.* The claim arises out of an insurance
3 policy or annuity issued by an insurer which is ~~in liquidation and~~ which was
4 authorized to do business in this state either at the time the policy or annuity was
5 issued or when the insured event occurred, and against which an order of liquidation,
6 which is not stayed, has been entered by a court of competent jurisdiction in the
7 insurer's domiciliary state.

→ *****NOTE: Because this would be the only occurrence of "final order", I did not add a definition at the beginning of the chapter. I assumed you meant an order which is not currently stayed, rather than an order which has never been stayed. Let me know if I assumed incorrectly.

8 SECTION 11. 646.31 (1) (cm) of the statutes is created to read:

9 646.31 (1) (cm) *Termination of coverage.* Except for claims ~~under~~ ^{under} life
10 insurance policies, annuities or noncancelable or guaranteed renewable disability
11 insurance policies, the claim arises within 30 days after the order of liquidation ^{or}
12 before any of the following occur:

- 13 1. The policy expires, if the expiration date is less than 30 days after the order
14 of liquidation.
- 15 2. The insured replaces or cancels the policy, if either action is taken within 30
16 days after the order of liquidation.

→ *****NOTE: Should these references be to 30 days after the date of the order? Or 30 days after the day on which the order is issued? Or 30 days after the day on which the order is entered?

is entered

17 SECTION 12. 646.31 (2) (c) of the statutes is amended to read:

18 646.31 (2) (c) *Owners of property interests.* The first-party claim of a person
19 having an insurable interest in or related to property which ~~was situated with a~~
20 permanent location in this state at the time of the insured event.

1 SECTION 13. 646.31 (2) (d) (intro.) and 1. of the statutes are consolidated,
2 renumbered 646.31 (2) (d) and amended to read:

3 646.31 (2) (d) *Third party claimants.* A claim under a liability or workers'
4 compensation insurance policy, if: 1. ~~Either~~ either the insured or the 3rd party
5 claimant was a resident of this state at the time of the insured event;

6 SECTION 14. 646.31 (2) (d) 2. of the statutes is repealed.

7 SECTION 15. 646.31 (2) (d) 3. of the statutes is repealed.

8 SECTION 16. 646.51 (9) of the statutes is created to read:

9 646.51 (9) OBLIGATION TO CONTRIBUTE CEASES. (a) Except as provided in par. (b),
10 if an insurer's license or certificate of authority to do business in this state terminates
11 or expires, the insurer's obligation to pay assessments under this section ceases
12 beginning on the day after the insurer's license or certificate of authority terminates
13 or expires.

14 (b) An insurer whose license or certificate of authority to do business in this
15 state terminates or expires remains liable after the termination or expiration to pay
16 all of the following:

17 1. Assessments ~~made~~ before the insurer's license or certificate of authority
18 terminated or expired. *made or called*

19 2. Assessments ~~made~~ after the insurer's license or certificate of authority
20 terminated or expired that relate to a liquidation order ~~issued~~ *entered* before the insurer's
21 license or certificate of authority terminated or expired.

22 SECTION 17. 646.60 (1) (a) of the statutes is amended to read:

23 646.60 (1) (a) *Settlements by the fund.* The liquidator is bound by
24 determinations and settlements of covered loss claims, and by payments of claims.
25 made by the board under this chapter.

Insert 10-7
2

1 SECTION 18. 646.60 (1) (b) (intro.) of the statutes is amended to read:

2 646.60 (1) (b) *Settlements by comparable funds.* (intro.) The liquidator is
3 bound by determinations and settlements of covered loss claims, and by payments
4 of claims, made by funds or organizations of other states that are comparable to the
5 fund under this chapter provided if all of the following apply:

6 SECTION 19. 646.60 (1) (b) 1. of the statutes is amended to read:

7 646.60 (1) (b) 1. ~~That the~~ The laws of the other states give equivalent
8 recognition to the determinations and settlements of loss claims, and to payments
9 of claims, made by the fund; ~~and.~~

10 SECTION 20. 646.60 (1) (b) 2. of the statutes is amended to read:

11 646.60 (1) (b) 2. ~~That if~~ If the same claim is reported as paid by 2 or more funds,
12 payment shall be to the fund with a prior obligation under s. 646.31 ~~(7)~~ (9)

****NOTE: Since I was amending this subsection anyway, I made a technical amendment to conform the format to standard drafting format

13 SECTION 21. Initial applicability.

14 ~~(f)~~ The treatment of sections 646.13 (1) (b) (intro.), 1. and 2., (2) (e) and (f), (3)
15 (intro.) and (4), 646.15 (1) (a) 2., 646.31 (1) (a) and (2) (c), 646.51 (9) and 646.60 (1)
16 (a) and (b) (intro.), 1. and 2. of the statutes first applies to liquidation proceedings
17 pending on the effective date of this subsection.

18 (2) The treatment of sections 646.13 (3) (c) and 646.31 (1) (cm) ~~and (2) (a)~~
19 ~~and (2) (a)~~ of the statutes first applies to liquidation proceedings in which
20 a liquidation order is ~~is~~ on the effective date of this subsection.

21

(END)

Insert 11-13

D-note

and (d) (intro.), 1., 2. and 3.

1999-2000 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0203/P1ins
PJK:wlj&ljg:ijs

INSERT 2-A

No
CT

^{gx}
Interest on loss claims of the federal government has the same lower priority that interest on other claims has.

(END OF INSERT 2-A)

INSERT 2-B

In current law, the insurance security fund, which is funded through assessments paid by insurers, pays claims on behalf of insurers in liquidation. The fund is administered by a board of directors made up of the commissioner of insurance, the attorney general, the state treasurer and representatives of insurers. The board stands in the position of an insurer in liquidation for purposes of not only paying claims but also investigating, settling and denying claims and defending ~~and~~ ^{third} party claims against insureds. The bill makes a number of changes, many of which are technical in nature, to the provisions relating to the fund and the board.

Under current law, the board of directors of the insurance security fund has no duty or liability with respect to any claim that is filed with the liquidator after the date for filing specified by the liquidator in the notice of the liquidation unless, for reasons specified in the statutes, the late filing is excused. The bill adds that, except for excused late filings and claims under life insurance policies, annuities and noncancelable or guaranteed renewable disability insurance policies, the board has no duty or liability with respect to claims that are filed after the earlier of the date for filing specified by the liquidator or 18 months after the order of liquidation is entered. The effect of the change is to place a maximum time on filing extensions that may be granted by the liquidator or a court.

Among the powers that the board of directors has under current law are the power to review settlements and judgments to which an insurer or its insureds were parties to determine whether they should be contested and the power to appear in any liquidation proceeding in this state involving an insurer in liquidation. The bill adds the power to pursue salvage or subrogation with respect to paid covered claim obligations and to retain any amounts recovered and the power to appoint and direct legal counsel for the defense of covered claims under insurance policies.

The bill provides that the duty of the board to defend an insured ceases upon the board's payment or an amount equal to its covered claim obligation limit or the applicable policy limit. In addition to the requirements in current law related to whether a claim is eligible for payment, the bill adds that, except for claims under life insurance policies, annuities and noncancelable or guaranteed renewable disability insurance policies, a claim must have arisen within 30 days after the liquidation order was entered or before the policy expires or is replaced or cancelled by the insured, if the policy expires or is replaced or cancelled less than 30 days after the liquidation order was entered. The bill also provides that an insurer's obligation to pay assessments to the insurance security fund terminates if the insurer's license or certificate of authority to do business in this state terminates or expires. Such an

No ff

insurer remains liable, however, to pay assessments that were made or called before the insurer's license or certificate terminated or expired and assessments that were made or called after the insurer's license or certificate of authority terminated or expired but that relate to a liquidation order entered before the license or certificate of authority terminated or expired.

(END OF INSERT 2-B)

INSERT 2-1

SECTION 4. 601.13 (2) of the statutes is amended to read:

601.13 (2) TERMS OF DEPOSIT. Unless otherwise provided by the law requiring or permitting the deposit, each deposit shall be held in trust: first, for the claimants under s. 645.68 (3); 2nd, for the claimants under s. 645.68 (3c); 3rd, for the claimants under s. 645.68 (3m); 4th, for the claimants under s. 645.68 (4); and thereafter, for all other creditors in the order of priority established by s. 645.68. No claim may be made against the deposit of an alien insurer unless the claim arises out of a transaction in the United States.

History: 1971 c. 40 s. 93; 1971 c. 260 s. 92 (6); 1977 c. 203 ss. 102, 103; 1977 c. 339 s. 43; 1979 c. 89, 102, 177; 1991 a. 221.

(END OF INSERT 2-1)

INSERT 2-10

No ff

That portion of any loss for which indemnification is provided by other benefits or advantages recovered or recoverable by the claimant shall not be included in the classes under subs. (3) and (3m), other than benefits or advantages recovered or recoverable in discharge of familial obligations of support or by way of succession at death or as proceeds of life insurance, or as gratuities. No payment made by an employer to an employe shall be treated as a gratuity. The claims described in s. 645.69 are among the claims not included in the classes under subs. (3) and (3m).

(END OF INSERT 2-10)

INSERT 3-18

SECTION ~~§~~[#] 645.68 (3)[✓] of the statutes is amended to read:

645.68 (3) LOSS CLAIMS. All claims under policies for losses incurred, including third party claims, ~~and all claims against the insurer for liability for bodily injury or for injury to or destruction of tangible property which are not under policies and federal, state and local government claims,~~ except the first \$200 of losses otherwise payable to any claimant under this subsection other than the federal government. All claims under life insurance and annuity policies, whether for death proceeds, annuity proceeds or investment values, shall be treated as loss claims. Claims may not be cumulated by assignment to avoid application of the \$200 deductible provision. ~~That portion of any loss for which indemnification is provided by other benefits or advantages recovered or recoverable by the claimant shall not be included in this class, other than benefits or advantages recovered or recoverable in discharge of familial obligations of support or by way of succession at death or as proceeds of life insurance, or as gratuities. No payment made by an employer to an employe shall be treated as a gratuity. The claims described in s. 645.69 are among the claims not subject to this subsection.~~

History: 1971 c. 260; 1979 c. 93; 1979 c. 102 s. 236 (5); 1979 c. 110; 1989 a. 23, 359; 1993 a. 490.
(END OF INSERT 3-18)

INSERT 10-7

SECTION ~~§~~[#] 646.31 (2m)[✓] of the statutes is created to read:

646.31 (2m) RESIDENCY. For purposes of determining residency in sub. (2), the residency of a claimant, insured or policyholder that is not a natural person is the

No
ff

state in which the claimant's, insured's or policyholder's principal place of business is located.

(END OF INSERT 10-7)

INSERT 11-13

ff #
(9) The treatment of sections 601.13 (2), 645.68 (intro.), (2), (3), (3c), (3m), (3r) (c), (5), (7) and (8) (a), (b), (c), (d), (e) and (f), 646.13 (3) (c) and 646.31 (1) (cm) of the statutes first applies to liquidation proceedings for which liquidation orders are entered on the effective date of this subsection.

(END OF INSERT 11-13)

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-0203/PJdn²
PJK.wj@legis

WJ

1. I added the sections included in the second initial applicability subsection in LRB-0204 to the initial applicability subsection for LRB-0203 (the first initial applicability subsection in this draft). Thus, what ^{was} used to refer to liquidation orders *issued* on the effective date now refers to liquidation orders *entered* on the effective date. Is this okay?

2. I changed s. 646.13 (3) (c) 1. to 18 months after the date of *entry* of the liquidation order, rather than 18 months after the *date* of the order. Is this okay?

3. Notice how I changed s. 646.13 (3) (a) and (b) with respect to the cross-reference to s. 645.61 (2). I thought this more accurately reflected your intent. Okay?

→ Is 4. s. 646.31 (3) (c) correctly drafted to set up the proper relationship with pars. (a) and (b)? In other words, if the liquidator finds a late filing excusable, may that late filing even exceed 18 months beyond the entry of the liquidation order? Alternatively, should par. (c) be the maximum limit?

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DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0203/P2dn
PJK:wlj:kjf

September 8, 1999

1. I added the sections included in the second initial applicability subsection in LRB-0204 to the initial applicability subsection for LRB-0203 (the first initial applicability subsection in this draft). Thus, what was used to refer to liquidation orders *issued* on the effective date now refers to liquidation orders *entered* on the effective date. Is this okay?

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