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~~PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION~~

*D-note  
Fri. 10-8*

*gen cat*

- 1 AN ACT ...; relating to: priority of claims for distribution in insurance
- 2 liquidations ~~and~~ the insurance security fund ~~conforming~~ the mutual insurance
- 3 holding company provisions to changes made in the nonstock corporation
- 4 provisions

**Analysis by the Legislative Reference Bureau**

**\*\*\* ANALYSIS FROM -0203/P2 \*\*\***

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 remedial changes in those liquidation 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 specifies that any loss claims of the federal government are not subject to the \$200

*Insurer liquidations and the security fund*

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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, except for loss claims, has the same priority of payment as that of the claim. Interest on loss claims of the federal government has the same lower priority that interest on other claims has.

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 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 canceled by the insured, if the policy expires or is replaced or canceled 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

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.

**\*\*\* ANALYSIS FROM -2515/1 \*\*\***

Current law specifies procedures for a mutual insurance company to restructure by forming a mutual insurance holding company and becoming a stock insurance company that is owned by the mutual insurance holding company. The statutes also set out various requirements related to the structure and operation of the mutual insurance holding company that is formed in the restructuring. Because many of these requirements are identical with the requirements in the statutes for nonstock corporations, there are many cross-references to the chapter governing nonstock corporations in the chapter governing the formation of mutual insurance holding companies.

The act that created the chapter in the statutes that governs the formation of mutual insurance holding companies was passed in the 1997-98 session of the legislature. During that same session, the chapter governing nonstock corporations was completely revised. As a consequence, the cross-references in the chapter governing the formation of mutual insurance holding companies are no longer valid. This bill changes those cross-references to conform to the changes that were made in the chapter governing nonstock corporations, sometimes incorporating substantive changes that were made in the law governing nonstock corporations. For example, a provision in current law that governs the bylaws of a mutual insurance holding company specifies that the statutory provision governing the bylaws of a nonstock corporation applies to the bylaws of a mutual insurance holding company. When the chapter governing nonstock corporations was revised, provisions governing bylaws were created to include not only the former provision, which addressed adoption of bylaws, but also provisions on contents of bylaws, adopting emergency bylaws and amendment of bylaws by a corporation's board of directors and members. In changing the cross-references to conform to the current law on nonstock corporations, the bill applies the additional provisions on contents of bylaws, adopting emergency bylaws and amendment of bylaws by the board of directors and members to mutual insurance holding companies.

In addition, the bill makes a technical correction to a provision in the statutes related to a mutual insurance company. The statutes make a distinction between the way in which a sale, lease or exchange of less than all of the property and assets of a mutual may be authorized and the way in which a sale, lease or exchange of all or substantially all of the property and assets may be authorized, but incorrectly attribute both ways to the sale, lease or exchange of less than all of the property and assets. The bill specifies that the methods for authorizing the sale, lease or exchange of all or substantially all of the property and assets of a mutual apply to the sale, lease or exchange of all or substantially all of the property and assets.

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

sub-sub title

mutual insurance holding company provisions



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

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

Insert 4-1

1

\*-0203/P2.1\* SECTION 1. 601.13 (2) of the statutes is amended to read:

2

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.

Insert 4-8

9

\*-2515/1.1\* SECTION 2. 611.78 (1m) (b) (intro.) of the statutes is amended to read:

11

611.78 (1m) (b) (intro.) A sale, lease, exchange or other disposition of all or substantially all of the property and assets under par. (a) of a mutual may be made upon such terms and conditions as may be authorized only in the following manner:

Insert 4-13

14

\*-2515/1.2\* SECTION 3. 644.04 (3) (intro.) of the statutes is amended to read:

15

644.04 (3) (intro.) ~~Subject to s. 611.33, the~~ The converted insurance company, subject to s. 611.33, and any intermediate stock holding company may thereafter issue to 3rd parties debt securities, stock other than voting stock and, subject to s. 644.15, voting stock, so long as all of the following are true:

19

\*-2515/1.3\* SECTION 4. 644.05 (1) of the statutes is amended to read:

20

644.05 (1) POWERS. ~~Section 181.04~~ Subject to s. 644.19 (2) and (3), s. 181.0302 (intro.), (1) to (15), (18) and (19) applies to mutual holding companies.

21

1           \*~~2515/1.4~~\* **SECTION 5.** 644.05 (2) of the statutes is amended to read:

2           644.05 (2) **EFFECT OF UNAUTHORIZED CORPORATE ACTS.** Section ~~181.057 (1) and~~  
3           ~~(2)~~ 181.0304 applies to mutual holding companies, except that, for purposes of this  
4           subsection, “attorney general” used in s. 181.0304 (3) means “commissioner”.

5           \*~~2515/1.5~~\* **SECTION 6.** 644.05 (3) of the statutes is repealed.

6           \*~~2515/1.6~~\* **SECTION 7.** 644.05 (4) of the statutes is amended to read:

7           644.05 (4) **WAIVER OF NOTICE AND INFORMAL ACTION BY MEMBERS OR DIRECTORS.**  
8           Sections ~~181.70 and 181.72~~ 181.0704, 181.0706, 181.0821 and 181.0823 apply to  
9           mutual holding companies. For purposes of this subsection, “board” used in s.  
10          181.0821 includes “committee of the board of a mutual holding company”.

11          \*~~2515/1.7~~\* **SECTION 8.** 644.08 of the statutes is amended to read:

12          **644.08 Reservation of corporate name.** Section ~~181.07~~ applies Sections  
13          181.0402 and 181.0403 (2), (3) and (3m) apply to mutual holding companies.

14          \*~~2515/1.8~~\* **SECTION 9.** 644.09 (1) (intro.) of the statutes is amended to read:

15          644.09 (1) **ARTICLES.** (intro.) Section ~~181.31~~ 181.0202 applies to the articles of  
16          a mutual holding company, except that all of the following apply:

17          \*~~2515/1.9~~\* **SECTION 10.** 644.09 (1) (a) of the statutes is amended to read:

18          644.09 (1) (a) The name of the mutual holding company shall include the word  
19          “mutual” and shall comply with s. ~~181.06 (3)~~ 181.0401 (2) to (4).

20          \*~~2515/1.10~~\* **SECTION 11.** 644.09 (2) of the statutes is amended to read:

21          644.09 (2) **AMENDMENT OF ARTICLES.** A mutual holding company may amend its  
22          articles in the manner provided in ss. ~~181.35 to 181.37 and 181.39~~ 181.1001,  
23          181.1002 (1), 181.1003, 181.1005 and 181.1006, except that papers required by those  
24          sections to be filed with the department of financial institutions shall instead be filed  
25          with the commissioner. The articles may be amended in any desired respect,

1 including substantial changes of its original purposes, except that no amendment  
2 may be made that is contrary to sub. (1). In addition to the requirements of s. ~~181.37~~  
3 181.1005, the articles of amendment of a mutual holding company shall, if mail  
4 voting is used, state the number of members voting by mail and the number of such  
5 members voting for and against the amendment. No amendment may become  
6 effective until the articles of amendment have been filed with the commissioner. No  
7 amendment shall affect any existing cause of action in favor of or against such  
8 mutual holding company, any ~~pending suit~~ civil, criminal, administrative or  
9 investigatory proceeding to which the mutual holding company is a party or the  
10 existing rights of persons other than members. In the event that the corporate name  
11 is changed by amendment, no suit brought by or against such mutual holding  
12 company under its former name shall abate for that reason.

13 **\*-2515/1.11\* SECTION 12.** 644.09 (3) of the statutes is amended to read:

14 644.09 (3) BYLAWS. The bylaws of a mutual holding company shall comply with  
15 this chapter. A copy of the bylaws and any amendments to the bylaws shall be filed  
16 with the commissioner within 60 days after adoption. Subject to this subsection, ~~s.~~  
17 ~~181.13~~ applies ss. 181.0206, 181.0207 and 181.1021 apply to mutual holding  
18 companies.

19 **\*-2515/1.12\* SECTION 13.** 644.09 (4) of the statutes is amended to read:

20 644.09 (4) PRINCIPAL OFFICERS. ~~Section 181.25 (1) and (2) applies~~ Sections  
21 181.0840 and 181.0841 apply to mutual holding companies.

22 **\*-2515/1.13\* SECTION 14.** 644.14 (1) of the statutes is amended to read:

23 644.14 (1) COMMUNICATION TO MEMBERS; MEMBER VOTING. Subject to this section,  
24 ss. 611.41, 611.42 (1), (1e), (1m), (2), (3), (4) (a) and (5), 611.43 and 611.53 (2) apply  
25 to mutual holding companies.

1           **\*-2515/1.14\* SECTION 15.** 644.16 (1) of the statutes is amended to read:

2           644.16 (1) BOARD OF DIRECTORS. Subject to this section, ss. ~~181.18, 181.21~~  
3           181.0801 (1) and (2), 181.0802, 181.0811, 611.51 (2), (3), (5) and (8) and 611.53 (1) and  
4           (3) apply to mutual holding companies. Section ~~181.22~~ 181.0824 applies to the board  
5           of a mutual holding company except as modified by s. ~~181.225~~ 611.10. The board  
6           shall manage the business and affairs of the corporation and may not delegate its  
7           power or responsibility to do so, except to the extent authorized by ss. ~~181.23~~ and  
8           ~~181.25 (2)~~ 181.0825 and 181.0841.

9           **\*-2515/1.15\* SECTION 16.** 644.16 (2) of the statutes is amended to read:

10           644.16 (2) COMMITTEES OF DIRECTORS. Section ~~181.23~~ 181.0825 applies to  
11           mutual holding companies.

12           **\*-2515/1.16\* SECTION 17.** 644.16 (3) (a) of the statutes is amended to read:

13           644.16 (3) (a) Section 611.51 (9) ~~(a)~~ (am) and (b) applies to mutual holding  
14           companies.

15           **\*-2515/1.17\* SECTION 18.** 644.16 (4) of the statutes is amended to read:

16           644.16 (4) DIRECTOR CONFLICTS OF INTEREST. Section ~~181.225~~ 611.60 applies to  
17           mutual holding companies.

18           **\*-2515/1.18\* SECTION 19.** 644.17 of the statutes is amended to read:

19           **644.17 Removal of officers.** Section ~~181.26~~ applies Sections 181.0843 and  
20           181.0844 apply to mutual holding companies.

21           **\*-2515/1.19\* SECTION 20.** 644.18 of the statutes is amended to read:

22           **644.18 Directors' and officers' liability and indemnification. (1)**  
23           LIABILITY. Sections ~~181.283 to 181.29~~ 181.0850 to 181.0855, except s. 181.0855 (2) (c),  
24           apply to mutual holding companies.

1           (2) INDEMNIFICATION. Sections ~~181.041 to 181.051~~ 181.0871 to 181.0881 and  
2 181.0889 apply to mutual holding companies.

3           (3) INSURANCE. Section ~~181.053~~ 181.0883 applies to mutual holding companies.

4           (4) DERIVATIVE ACTIONS. Section ~~181.295~~ applies Sections 181.0740 to 181.0747  
5 apply to mutual holding companies.

6           \***-2515/1.20\*** SECTION 21. 644.19 of the statutes is amended to read:

7           **644.19 Executive compensation.** (1) GENERAL. Sections ~~181.19 and~~ Section  
8 611.63 (4) and (5) ~~apply~~ applies to mutual holding companies.

9           (2) APPROVAL BY MEMBERS. A benefit plan or amendment to a benefit plan that  
10 proposes to provide benefits in the form of stock or stock options of a converted  
11 insurance company or any intermediate stock holding company to the directors or  
12 officers of the converted insurance company, intermediate stock holding company or  
13 mutual holding company may not take effect unless it is submitted to a vote of the  
14 members of the mutual holding company and approved by a majority of the members  
15 voting. Notice of a meeting at which a vote under this subsection will be taken shall  
16 be given in accordance with s. ~~181.15, as provided in s. 644.14 (1), or in accordance~~  
17 ~~with s. 644.14 (2).~~

18           (3) NOTICE TO COMMISSIONER. The commissioner may by rule require that any  
19 action taken by the board of a mutual holding company, or the board of any  
20 intermediate stock holding company, on any of the subjects specified in ~~ss. 181.04(15)~~  
21 ~~and 181.19~~ s. 181.0302 (11) to (14) be reported to the commissioner within 30 days  
22 after the action is taken.

23           \***-2515/1.21\*** SECTION 22. 644.26 of the statutes is repealed and recreated to  
24 read:

1           **644.26 Transfer of business or assets of mutual holding companies. (1)**

2           A sale, lease, exchange or other disposition of less than substantially all of the  
3           property and assets of a mutual holding company, and the mortgage or pledge of any  
4           or all property and assets of a mutual holding company, whether or not made in the  
5           usual and regular course of its affairs, may be made upon the terms and conditions  
6           authorized by the mutual holding company's board of directors. Unless otherwise  
7           provided by the articles of incorporation, consent of the members is not required for  
8           a sale, lease, exchange or other disposition of property, or for a mortgage or pledge  
9           of property, authorized under this subsection.

10           (2) A sale, lease, exchange or other disposition of all or substantially all of the  
11           property and assets of a mutual holding company may be made upon such terms and  
12           conditions as may be authorized in the following manner:

13           (a) If the articles of incorporation give members the right to vote on the sale,  
14           lease, exchange or other disposition of all or substantially all of the mutual holding  
15           company's property and assets, the board of directors shall adopt a resolution  
16           recommending the sale, lease, exchange or other disposition and directing that it be  
17           submitted to a vote at an annual or special meeting of the members. Written notice  
18           stating that the purpose, or one of the purposes, of the meeting is to consider the sale,  
19           lease, exchange or other disposition of all or substantially all of the property and  
20           assets of the mutual holding company shall be given to each member entitled to vote  
21           at the meeting, within the time and in the manner provided by this chapter for  
22           providing notice of member meetings. At the meeting, the members may authorize  
23           the sale, lease, exchange or other disposition and may authorize the board of  
24           directors to fix any or all of the terms and conditions of the sale, lease, exchange or  
25           other disposition. The authorization shall be by the affirmative vote of at least

1 two-thirds of the members present or represented by proxy at the meeting. After the  
2 authorization by a vote of the members, the board of directors, nevertheless, in its  
3 discretion, may abandon the sale, lease, exchange or other disposition, subject to the  
4 rights of 3rd parties under any contracts relating thereto, without further action or  
5 approval by the members.

6 (b) If the articles of incorporation do not give members the right to vote on the  
7 sale, lease, exchange or other disposition of all or substantially all of a mutual  
8 holding company's property and assets, the sale, lease, exchange or other disposition  
9 may be authorized by the vote of the majority of the directors in office.

10 **\*-2515/1.22\* SECTION 23.** 644.28 (1) of the statutes is amended to read:

11 644.28 (1) PLAN OF DISSOLUTION. Subject to this section, ss. ~~181.50 to 181.54 and~~  
12 ~~181.555~~ 181.1401 to 181.1407 apply to mutual holding companies, ~~except that the~~  
13 ~~last sentence of s. 181.555 does not apply.~~

14 **\*-2515/1.23\* SECTION 24.** 644.28 (2) (a) of the statutes is amended to read:

15 644.28 (2) (a) At least 60 days prior to the submission to members of any  
16 proposed voluntary dissolution of a mutual holding company under s. ~~181.50~~  
17 181.1401, the plan shall be filed with the commissioner. The commissioner may  
18 require the submission of additional information relevant to the effect of the  
19 proposed dissolution on the solvency of the converted insurance company. The  
20 commissioner shall approve the dissolution unless, after a hearing, the  
21 commissioner finds that dissolution of the mutual holding company would cause the  
22 converted insurance company to become insolvent, would be unfair or inequitable to  
23 the members of the mutual holding company or would not be in the best interests of  
24 the policyholders of the converted insurance company or the public.

25 **\*-2515/1.24\* SECTION 25.** 644.28 (3) of the statutes is amended to read:

1           644.28 (3) REVOCATION OF VOLUNTARY DISSOLUTION. If the mutual holding  
2 company revokes the voluntary dissolution proceedings under s. ~~181.53~~ 181.1404, a  
3 copy of the resolution revoking the voluntary dissolution proceedings adopted under  
4 s. ~~181.53~~ 181.1404 shall be filed with the commissioner.

5           \*~~2515/1.25~~\* **SECTION 26.** 644.28 (4) of the statutes is amended to read:

6           644.28 (4) FILING AND RECORDING ARTICLES OF DISSOLUTION AND EFFECT THEREOF.  
7 Upon approval by the commissioner under sub. (2) and by the members under s.  
8 ~~181.50~~ 181.1401, the mutual holding company shall file articles of dissolution with  
9 the commissioner. When the articles are filed, the existence of the mutual holding  
10 company shall cease, except for the purpose of suits, other proceedings and  
11 appropriate corporate action of members, directors and officers as provided in this  
12 chapter and in ss. ~~181.50 to 181.54 and 181.555~~ 181.1401 to 181.1407. Upon the  
13 filing of the articles, the commissioner may issue a certificate of dissolution.

14           \*~~2515/1.26~~\* **SECTION 27.** 644.29 of the statutes is amended to read:

15           **644.29 Involuntary dissolution of domestic mutual holding companies.**  
16 A mutual holding company may at any time during a voluntary dissolution under ss.  
17 ~~181.51 to 181.555~~ 181.1401 to 181.1407 apply to the commissioner to have  
18 dissolution continued under the commissioner's supervision, ~~in which case, subject~~  
19 ~~to this section, s. 181.56 (1) and (2) applies to the mutual holding company except~~  
20 ~~that for purposes of this section "attorney general" means the commissioner.~~ Any  
21 distribution to members shall be limited in the same manner as under s. 644.28 (5)  
22 and any excess over such amounts shall be paid into the state treasury to the credit  
23 of the common school fund.

24           \*~~0203/P2.2~~\* **SECTION 28.** 645.68 (intro.) of the statutes is amended to read:

1           **645.68 Order of distribution.** (intro.) The order of distribution of claims  
2 from the insurer's estate shall be as stated in this section. The first \$50 of the amount  
3 allowed on each claim in the classes under subs. ~~(2) (3)~~ to (6), except for claims of the  
4 federal government under subs. (3) and (3c), shall be deducted from the claim and  
5 included in the class under sub. (8). Claims may not be cumulated by assignment  
6 to avoid application of the \$50 deductible provision. Subject to the \$50 deductible  
7 provision, every claim in each class shall be paid in full or adequate funds retained  
8 for the payment before the members of the next class receive any payment. No  
9 subclasses shall be established within any class. That portion of any loss for which  
10 indemnification is provided by other benefits or advantages recovered or recoverable  
11 by the claimant shall not be included in the classes under subs. (3) and (3m), other  
12 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  
14 insurance, or as gratuities. No payment made by an employer to an employe shall  
15 be treated as a gratuity. The claims described in s. 645.69 are among the claims not  
16 included in the classes under subs. (3) and (3m).

17           \***-0203/P2.3**\* SECTION 29. 645.68 (2) of the statutes is renumbered 645.68 (3r).

18           \***-0203/P2.4**\* SECTION 30. 645.68 (3) of the statutes is amended to read:

19           645.68 (3) LOSS CLAIMS. All claims under policies for losses incurred, including  
20 third party claims, ~~and all claims against the insurer for liability for bodily injury or~~  
21 ~~for injury to or destruction of tangible property which are not under policies and~~  
22 federal, state and local government claims, except the first \$200 of losses otherwise  
23 payable to any claimant under this subsection other than the federal government.  
24 All claims under life insurance and annuity policies, whether for death proceeds,  
25 annuity proceeds or investment values, shall be treated as loss claims. Claims may

1 not be cumulated by assignment to avoid application of the \$200 deductible  
2 provision. ~~That portion of any loss for which indemnification is provided by other~~  
3 ~~benefits or advantages recovered or recoverable by the claimant shall not be included~~  
4 ~~in this class, other than benefits or advantages recovered or recoverable in discharge~~  
5 ~~of familial obligations of support or by way of succession at death or as proceeds of~~  
6 ~~life insurance, or as gratuities. No payment made by an employer to an employe shall~~  
7 ~~be treated as a gratuity. The claims described in s. 645.69 are among the claims not~~  
8 ~~subject to this subsection.~~

9 \*~~0203/P2.5~~\* SECTION 31. 645.68 (3c) of the statutes is created to read:

10 645.68 (3c) FEDERAL GOVERNMENT CLAIMS. Claims of the federal government not  
11 included under sub. (3), including interest at the legal rate compounded annually on  
12 all claims in the class under this subsection from the date of the petition for  
13 liquidation or the date on which the claim becomes due, whichever is later, until the  
14 date on which the dividend is declared.

15 \*~~0203/P2.6~~\* SECTION 32. 645.68 (3m) of the statutes is created to read:

16 645.68 (3m) CERTAIN INJURY CLAIMS. Claims against the insurer that are not  
17 under policies and that are for liability for bodily injury or for injury to or destruction  
18 of tangible property.

19 \*~~0203/P2.7~~\* SECTION 33. 645.68 (3r) (c) of the statutes is created to read:

20 645.68 (3r) (c) Notwithstanding pars. (a) and (b) and subs. (3), (3c) and (3m),  
21 if there are no claims of the federal government, the claims in the class under this  
22 subsection shall have priority over all claims in the classes under subs. (3) to (11).

23 \*~~0203/P2.8~~\* SECTION 34. 645.68 (5) of the statutes is amended to read:

24 645.68 (5) RESIDUAL CLASSIFICATION. All other claims, including claims of the  
25 federal or any state or local government, not falling within other classes under this

1 section and claims described in s. 645.69. Claims, including those of any state or local  
2 governmental body, for a penalty or forfeiture, shall be allowed in this class only to  
3 the extent of the pecuniary loss sustained from the act, transaction or proceeding out  
4 of which the penalty or forfeiture arose, with reasonable and actual costs occasioned  
5 thereby. The remainder of such claims shall be postponed to the class of claims under  
6 sub. (8).

7 **\*-0203/P2.9\* SECTION 35.** 645.68 (7) of the statutes is amended to read:

8 645.68 (7) INTEREST ON CLAIMS ALREADY PAID. Interest at the legal rate  
9 compounded annually on all claims in the classes under subs. (1) to (6), except for  
10 claims of the federal government in the class under sub. (3c), from the date of the  
11 petition for liquidation or the date on which the claim becomes due, whichever is  
12 later, until the date on which the dividend is declared. The liquidator, with the  
13 approval of the court, may make reasonable classifications of claims for purposes of  
14 computing interest, may make approximate computations and may ignore certain  
15 classifications and time periods that are trifling.

16 **\*-0203/P2.10\* SECTION 36.** 645.68 (8) (a) of the statutes is amended to read:

17 645.68 (8) (a) The Except for claims of the federal government under subs. (3)  
18 and (3c), the first \$50 of each claim in the classes under subs. (2) (3) to (6)  
19 subordinated under this section;

20 **\*-0203/P2.11\* SECTION 37.** 645.68 (8) (b) of the statutes is amended to read:

21 645.68 (8) (b) Claims under s. 645.63 (2);

22 **\*-0203/P2.12\* SECTION 38.** 645.68 (8) (c) of the statutes is amended to read:

23 645.68 (8) (c) Claims subordinated by s. 645.90;

24 **\*-0203/P2.13\* SECTION 39.** 645.68 (8) (d) of the statutes is amended to read:

25 645.68 (8) (d) Claims filed late;

1           \***-0203/P2.14\*** SECTION 40. 645.68 (8) (e) of the statutes is amended to read:  
2           645.68 (8) (e) Portions of claims subordinated under sub. (5);

3           \***-0203/P2.15\*** SECTION 41. 645.68 (8) (f) of the statutes is amended to read:  
4           645.68 (8) (f) Claims or portions of claims payment of which is provided by other  
5           benefits or advantages recovered or recoverable by the claimant; ~~and,~~

6           \***-0203/P2.16\*** SECTION 42. 646.13 (1) (b) (intro.) of the statutes is renumbered  
7           646.13 (1) (b) and amended to read:

8           646.13 (1) (b) Stand in the position of the insurer in the investigation,  
9           compromise, settlement, denial and payment of claims under s. 646.31 and the  
10          defense of 3rd party claims against insureds, subject to the limitations of s. 645.43.  
11          The board shall consult and cooperate with the liquidator in carrying out these  
12          duties. ~~The board has no duties or liabilities with respect to any claim filed as follows:~~

13          \***-0203/P2.17\*** SECTION 43. 646.13 (1) (b) 1. of the statutes is renumbered  
14          646.13 (3) (a) and amended to read:

15          646.13 (3) (a) With the liquidator under s. 645.61 after the date for filing  
16          specified by the liquidator under s. 645.47 (2), unless the liquidator ~~determines that~~  
17          considers the claim is to have been timely filed under s. 645.61 (2) and the claim  
18          participates fully in the same every distribution to the same extent as other timely  
19          filed claims in the same class.

20          \***-0203/P2.18\*** SECTION 44. 646.13 (1) (b) 2. of the statutes is renumbered  
21          646.13 (3) (b) and amended to read:

22          646.13 (3) (b) With a liquidator or court under the laws of any other state after  
23          the date for filing specified by the liquidator or court, unless the liquidator or court  
24          ~~determines that~~ considers the claim is to have been timely filed under a law

1 substantially similar to s. 645.61 (2) and the claim participates fully in the same  
2 every distribution to the same extent as other timely filed claims in the same class.

3 **\*-0203/P2.19\* SECTION 45.** 646.13 (2) (e) of the statutes is created to read:

4 646.13 (2) (e) Pursue salvage and subrogation with respect to paid covered  
5 claims obligations and retain any amounts recovered.

6 **\*-0203/P2.20\* SECTION 46.** 646.13 (2) (f) of the statutes is created to read:

7 646.13 (2) (f) Appoint and direct legal counsel for the defense of covered claims  
8 under insurance policies.

9 **\*-0203/P2.21\* SECTION 47.** 646.13 (3) (intro.) of the statutes is created to read:

10 646.13 (3) NO DUTY OR LIABILITY. (intro.) The board has no duty or liability with  
11 respect to any claim filed as follows:

12 **\*-0203/P2.22\* SECTION 48.** 646.13 (3) (c) of the statutes is created to read:

13 646.13 (3) (c) Except for claims under life insurance policies, annuities and  
14 noncancelable or guaranteed renewable disability insurance policies and except as  
15 provided in pars. (a) and (b), with a liquidator or court after the earlier of the  
16 following:

17 1. Eighteen months after the order of liquidation is entered.

18 2. The final date for filing specified by the liquidator or court.

19 **\*-0203/P2.23\* SECTION 49.** 646.13 (4) of the statutes is created to read:

20 646.13 (4) WHEN DUTY TO DEFEND TERMINATES. Any obligation of the board to  
21 defend an insured ceases upon the board's payment, by settlement releasing the  
22 insured or on a judgment, of an amount equal to the lesser of the board's covered  
23 claim obligation limit or the applicable policy limit, subject to any express policy  
24 terms regarding tender of limits.

25 **\*-0203/P2.24\* SECTION 50.** 646.15 (1) (a) 2. of the statutes is amended to read:

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

3           \***-0203/P2.25\*** SECTION 51. 646.31 (1) (a) of the statutes is amended to read:

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

10          \***-0203/P2.26\*** SECTION 52. 646.31 (1) (cm) of the statutes is created to read:

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

15           1. The policy expires, if the expiration date is less than 30 days after the order  
16 of liquidation is entered.

17           2. The insured replaces or cancels the policy, if either action is taken within 30  
18 days after the order of liquidation is entered.

19          \***-0203/P2.27\*** SECTION 53. 646.31 (2) (c) of the statutes is amended to read:

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

23          \***-0203/P2.28\*** SECTION 54. 646.31 (2) (d) (intro.) and 1. of the statutes are  
24 consolidated, renumbered 646.31 (2) (d) and amended to read:

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

4           \*~~-0203/P2.29~~\* SECTION 55. 646.31 (2) (d) 2. of the statutes is repealed.

5           \*~~-0203/P2.30~~\* SECTION 56. 646.31 (2) (d) 3. of the statutes is repealed.

6           \*~~-0203/P2.31~~\* SECTION 57. 646.31 (2m) of the statutes is created to read:

7           646.31 (2m) RESIDENCY. For purposes of determining residency in sub. (2), the  
8 residency of a claimant, insured or policyholder that is not a natural person is the  
9 state in which the claimant's, insured's or policyholder's principal place of business  
10 is located.

11          \*~~-0203/P2.32~~\* SECTION 58. 646.51 (9) of the statutes is created to read:

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

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

20           1. Assessments made or called before the insurer's license or certificate of  
21 authority terminated or expired.

22           2. Assessments made or called after the insurer's license or certificate of  
23 authority terminated or expired that relate to a liquidation order entered before the  
24 insurer's license or certificate of authority terminated or expired.

25          \*~~-0203/P2.33~~\* SECTION 59. 646.60 (1) (a) of the statutes is amended to read:

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

4           \***-0203/P2.34\*** SECTION 60. 646.60 (1) (b) (intro.) of the statutes is amended to  
5           read:

6           646.60 (1) (b) *Settlements by comparable funds.* (intro.) The liquidator is  
7           bound by determinations and settlements of covered loss claims, and by payments  
8           of claims, made by funds or organizations of other states that are comparable to the  
9           fund under this chapter ~~provided~~ if all of the following apply:

10          \***-0203/P2.35\*** SECTION 61. 646.60 (1) (b) 1. of the statutes is amended to read:

11          646.60 (1) (b) 1. ~~That the~~ The laws of the other states give equivalent  
12          recognition to the determinations and settlements of loss claims, and to payments  
13          of claims, made by the fund; and,

14          \***-0203/P2.36\*** SECTION 62. 646.60 (1) (b) 2. of the statutes is amended to read:

15          646.60 (1) (b) 2. ~~That if~~ If the same claim is reported as paid by 2 or more funds,  
16          payment shall be to the fund with a prior obligation under s. 646.31 ~~(7)~~ (9).

17          \***-0203/P2.37\*** SECTION 63. **Initial applicability.**

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

22          (2) The treatment of sections 646.13 (1) (b) (intro.), 1. and 2., (2) (e) and (f), (3)  
23          (intro.) and (4), 646.15 (1) (a) 2., 646.31 (1) (a) and (2) (c) and (d) (intro.), 1., 2. and

1 3., 646.51 (9) and 646.60 (1) (a) and (b) (intro.), 1. and 2. of the statutes first applies  
2 to liquidation proceedings pending on the effective date of this subsection.

3 (END)

*D-into*

1999-2000 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-0203/P3ins  
PJK:...:ch

INSERT 4-1

1 SECTION 1. 600.03 (28p) of the statutes is renumbered 600.03 (28p) (intro.) and  
2 amended to read:

3 600.03 (28p) (intro.) "Medicare replacement policy" means a any of the  
4 following:

5 (a) A disability insurance policy or certificate issued to a resident of this state  
6 pursuant to a contract between the federal health care financing administration and  
7 a federally qualified health maintenance organization or a federally certified  
8 competitive medical plan to provide health care benefits to persons eligible for  
9 medicare under 42 USC 1395f, 1395x and 1395mm.

History: 1971 c. 260; 1973 c. 22; Sup. Ct. Order, 67 Wis. 2d 585, 776 (1975); 1975 c. 223, 371, 374, 375, 421; 1977 c. 339; 1979 c. 89 ss. 383, 543; 1979 c. 102 ss. 49 to 53, 236 (22); 1979 c. 177; 1981 c. 38, 82; 1983 a. 120, 189, 274, 358; 1985 a. 29; 1987 a. 167, 247; 1989 a. 23, 31; 1989 a. 187 s. 29; 1993 a. 201; 1995 a. 225.

10 SECTION 2. 600.03 (28p) (b) of the statutes is created to read:

11 600.03 (28p) (b) A medicare+choice plan, as defined in 42 USC 1395w-28 (b)  
12 (1), or a contract with a medicare+choice organization, as defined in 42 USC  
13 1395w-28 (a) (1).

14 SECTION 3. 600.03 (28p) (c) of the statutes is created to read:

15 600.03 (28p) (c) A plan, contract or policy that the commissioner by rule  
16 determines is similar to, or supplements or replaces, a program described in par. (a)  
17 or (b).

\*\*\*\*NOTE: If a plan, contract or policy supplements a program described in par. (a)  
or (b), wouldn't it be a medicare supplement policy instead?

(END OF INSERT 4-1)

(under A. 600.03 (28r))

INSERT 4-8

18 SECTION 4. 601.43 (3) of the statutes is amended to read:

19 601.43 (3) AUDITS OR ACTUARIAL OR OTHER EVALUATIONS. In lieu of all or part of  
20 an examination under subs. (1) and (2), or in addition to it, the commissioner may

1 order an independent audit by certified public accountants or an actuarial or other  
2 evaluation by actuaries or other experts approved by the commissioner of any person  
3 subject to the examination requirement. Any accountant ~~or~~, actuary ✓ or other expert  
4 selected is subject to rules respecting conflicts of interest promulgated by the  
5 commissioner. Any audit or evaluation under this section is subject to s. 601.44, so  
6 far as appropriate.

7 History: 1977 c. 203; 1977 c. 339 s. 43; 1979 c. 89; 1979 c. 102 ~~ss.~~ <sup>✓</sup> 70, 71, 236 (6), (9); 1979 c. 177; 1981 c. 20; 1983 a. 358; 1985 a. 29; 1987 a. 247; 1989 a. 23.

SECTION 5. 601.43 (4) of the statutes is amended to read:

8 601.43 (4) ALTERNATIVES TO EXAMINATION. In lieu of all or part of an examination  
9 under this section, the commissioner may accept the report of an audit already made  
10 by certified public accountants or of ~~an~~ actuarial or other <sup>e</sup> evaluation by actuaries or other experts   
11 approved by the commissioner, or the report of an examination made  
12 by the insurance department of another state or of the examination by another  
13 government agency in this state, the federal government or another state.

14 History: 1977 c. 203; 1977 c. 339 s. 43; 1979 c. 89; 1979 c. 102 ~~ss.~~ <sup>✓</sup> 70, 71, 236 (6), (9); 1979 c. 177; 1981 c. 20; 1983 a. 358; 1985 a. 29; 1987 a. 247; 1989 a. 23.

SECTION 6. 601.465 (3) (e) of the statutes is created to read:

15 601.465 (3) (e) ✓ An international, federal, state or local regulatory or law  
16 enforcement agency.

17 SECTION 7. 601.465 (3) (f) <sup>✓</sup> of the statutes is created to read:

18 601.465 (3) (f) An agent or employe of an agency described in par. ✓ (e).

19 SECTION 8. 601.715 (2) (b) <sup>✓</sup> of the statutes is amended to read:

20 601.715 (2) (b) An authorized insurer may change its registered agent no more  
21 than one time per year. ✓ ~~Any change of registered agent is effective on January 1 of~~  
22 ~~the year following the delivery of the statement under par. (a).~~

23 History: 1995 a. 396.

SECTION 9. 611.26 (1) <sup>✓</sup> of the statutes is amended to read:

1           611.26 (1) INSURANCE SUBSIDIARIES. An insurance corporation may form or  
 2 acquire subsidiaries to do any lawful insurance business. There is no limit on the  
 3 amount of investment in such subsidiaries except that the commissioner may by  
 4 order or rule establish a limit and, for purposes of ss. 623.11 and 623.12, the total  
 5 value of the outstanding shares of such a subsidiary shall be deemed to equal the  
 6 amount of surplus possessed by the subsidiary in excess of its security surplus, as  
 7 determined by the commissioner under s. 623.12.

History: 1971 c. 260; 1979 c. 279 s. 9; 1981 c. 307.

8           **SECTION 10.** 611.72 (3) (intro.)<sup>✓</sup> of the statutes is amended to read:

9           611.72 (3) GROUNDS FOR DISAPPROVAL. (intro.) The commissioner shall approve  
 10 the plan if the commissioner finds, after a hearing, unless a hearing is not required  
 11 under sub. (3m)<sup>✓</sup>, that it would not violate the law or be contrary to the interests of  
 12 the insureds of any participating domestic corporation or of the Wisconsin insureds  
 13 of any participating nondomestic corporation and that:

History: 1971 c. 260; 1973 c. 184; 1979 c. 94; 1989 a. 303; 1995 s. 27<sup>✓</sup>.

14           **SECTION 11.** 611.72 (3m)<sup>✓</sup> of the statutes is created to read:

15           611.72 (3m)<sup>✓</sup> HEARING NOT REQUIRED. A hearing is not required under sub. (3)  
 16 before approval of a proposed plan of merger or other plan for acquisition of control  
 17 if the proposed merger is with, or the proposed acquirer is, an affiliate of the insurer  
 18 and the proposed merger or other acquisition of control does not change the  
 19 controlling person of the insurer.

(END OF INSERT 4-8)

INSERT 4-13

20           **SECTION 12.** 628.10 (2) (a)<sup>✓</sup> of the statutes is amended to read:

21           628.10 (2) (a) *For failure to comply with continuing education requirements.*  
 22           ~~The commissioner may by order suspend the license of any intermediary who fails~~

1 to produce evidence of compliance with continuing education standards set by the  
 2 commissioner is suspended, effective on the day on which the evidence of compliance  
 3 is due. If an intermediary whose license has been suspended under this paragraph  
 4 produces evidence of compliance within 60 days after the date on which the license  
 5 is suspended, the commissioner shall reinstate the license effective on the date of  
 6 suspension. If such an intermediary does not produce evidence of compliance within  
 7 60 days, the license is revoked and the intermediary may be relicensed only after  
 8 satisfying all requirements under s. 628.04.

History: 1975 c. 371, 421; 1977 c. 363; 1979 c. 102; 1981 c. 38; 1991 a. 214; 1995 a. 27; 1997 a. 191, 237.

\*\*\*\*NOTE: Since an intermediary must submit evidence of compliance within 60 days after the date of suspension, I had to pick a date for the the suspension. Is this okay? I don't know if there is one particular date on which evidence of compliance is due.

9 SECTION 13. 628.77 of the statutes is repealed.

10 SECTION 14. 632.47 (3) of the statutes is renumbered 632.47 (3) (intro.) and  
 11 amended to read:

12 632.47 (3) (intro.) ~~GROUP ANNUITIES PROHIBITION ON ASSIGNMENT~~ Assignment  
 13 may be expressly prohibited by a any of the following:

14 (a) A group contract providing annuities as retirement benefits.

History: 1975 c. 373, 375, 422.

15 SECTION 15. 632.47 (3) (b) of the statutes is created to read:

16 632.47 (3) (b) An annuity contract that is subject to transferability restrictions  
 17 under any federal or state tax, employee benefit or securities law.

18 SECTION 16. 632.55 of the statutes is repealed.

(END OF INSERT 4-13)

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

LRB-0203/PJdn  
PJK.:ch

4  
Jlg

1. Because I have some questions on the new additions, I made this a preliminary draft again. In addition to this drafter's note, I included a few <sup>four</sup> star notes in the draft itself. The analysis includes the analyses from LRB-0203 and LRB-2515, but does not yet include an analysis for the new additions.

2. I have not as yet included anything for number 1. on your list of additions (to revoke a license that has been suspended for 60 days for child support delinquency). The request is problematic. Section 49.857 sets out the standard procedures that are to be followed for license-issuing agencies when applicants for or holders of licenses are, generally, delinquent in paying child support. Variations for individual agencies are to be contained in the memoranda of understanding (between each licensing agency and DWD) that are required under s. 49.857. The general scheme is for an agency to "restrict, limit, suspend, withhold, deny or refuse to grant or issue or renew" a license if an applicant for or a holder of a license is delinquent in paying child support. The federal law requiring this provision did not authorize revoking a license. In addition, under the standard procedure of s. 49.857, a delinquent person's license is to be affected until he or she pays the delinquent amount or makes satisfactory alternative payment arrangements, at which time DWD is required to notify the agency, which is to reinstate the license. However, in no event is the effect on the license to last longer than five years (or six months for failure to comply with a subpoena or warrant). The change that you want made is in conflict with these requirements. Making exceptions for OCI would probably be the beginning of exceptions for many, if not all, other licensing agencies. The following would have to be amended to make exceptions for OCI from the standard procedure: s. 49.857 (2) (a), (b) 1. and 3. c. and d., (c) 1. and 2. and (d) <sup>and</sup> (3) (a) 3., (am) 3., (b) 3. and (d) 1. and 2. and (4). In addition, a special type of notice for OCI licenses would probably have to be included in s. 49.857. Please let me know how you want to proceed.

3. I included the second part of number 6. on your list of additions but did not know what to include for the first part: the creation of s. 601.42 (7). The first sentence of the suggested language seems to simply authorize the commissioner to employ experts to assist in examinations or reviews of any transactions subject to approval under the insurance chapters, but the second sentence seems to imply that an examination or a review of a transaction subject to approval would only apply to an insurer or person controlling or attempting to acquire the insurer. Wouldn't it be preferable to make the language broader and require the person that is the subject of the examination or review to pay the cost of the expert?

4. For number 8. on your list of additions (the exception from the hearing requirement under s. 611.72 (3)), it seems strange that the end result of a proposed transfer of control does not change control. Is there any way to expand on this so that it does not seem illogical?

5. For number 9. on your list of additions, I don't think that you need the language inserted in s. 601.465 (3) (intro.). Section 601.465 (intro.) authorizes OCI to prevent any other person from disclosing information obtained by OCI from any of the sources listed in sub. (3) (a) to (d). That is, if OCI discloses information obtained from any of those sources, OCI may prevent further disclosure.

It doesn't make sense to say that OCI may refuse to disclose information disclosed by OCI, unless the information disclosed by OCI is obtained from a source other than the sources listed in s. 601.465; in which case, it would be preferable to add a new source or to simply state the type of information. Please let me know if I'm missing the point on this one.

6. Do you want to specify any initial applicability for any of the new additions?

Pamela J. Kahler  
Senior Legislative Attorney  
Phone: (608) 266-2682  
E-mail: Pam.Kahler@legis.state.wi.us

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

LRB-0203/P4dn  
PJK:jlg:kjf

October 6, 1999

1. Because I have some questions on the new additions, I made this a preliminary draft again. In addition to this drafter's note, I included a few four-star notes in the draft itself. The analysis includes the analyses from LRB-0203 and LRB-2515, but does not yet include an analysis for the new additions.

2. I have not as yet included anything for number 1. on your list of additions (to revoke a license that has been suspended for 60 days for child support delinquency). The request is problematic. Section 49.857 sets out the standard procedures that are to be followed for license-issuing agencies when applicants for or holders of licenses are, generally, delinquent in paying child support. Variations for individual agencies are to be contained in the memoranda of understanding (between each licensing agency and DWD) that are required under s. 49.857. The general scheme is for an agency to "restrict, limit, suspend, withhold, deny or refuse to grant or issue or renew" a license if an applicant for or a holder of a license is delinquent in paying child support. The federal law requiring this provision did not authorize revoking a license. In addition, under the standard procedure of s. 49.857, a delinquent person's license is to be affected until he or she pays the delinquent amount or makes satisfactory alternative payment arrangements, at which time DWD is required to notify the agency, which is to reinstate the license. However, in no event is the effect on the license to last longer than five years (or six months for failure to comply with a subpoena or warrant). The change that you want made is in conflict with these requirements. Making exceptions for OCI would probably be the beginning of exceptions for many, if not all, other licensing agencies. The following would have to be amended to make exceptions for OCI from the standard procedure: s. 49.857 (2) (a), (b) 1. and 3. c. and d., (c) 1. and 2. and (d) and (3) (a) 3., (am) 3., (b) 3. and (d) 1. and 2. and (4). In addition, a special type of notice for OCI licenses would probably have to be included in s. 49.857. Please let me know how you want to proceed.

3. I included the second part of number 6. on your list of additions but did not know what to include for the first part: the creation of s. 601.42 (7). The first sentence of the suggested language seems to simply authorize the commissioner to employ experts to assist in examinations or reviews of any transactions subject to approval under the insurance chapters, but the second sentence seems to imply that an examination or a review of a transaction subject to approval would only apply to an insurer or person controlling or attempting to acquire the insurer. Wouldn't it be preferable to make the language broader and require the person that is the subject of the examination or review to pay the cost of the expert?

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It doesn't make sense to say that OCI may refuse to disclose information disclosed by OCI, unless the information disclosed by OCI is obtained from a source other than the sources listed in s. 601.465; in which case, it would be preferable to add a new source or to simply state the type of information. Please let me know if I'm missing the point on this one.

6. Do you want to specify any initial applicability for any of the new additions?

Pamela J. Kahler  
Senior Legislative Attorney  
Phone: (608) 266-2682  
E-mail: Pam.Kahler@legis.state.wi.us

## Kahler, Pam

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**From:** Nepple, Fred  
**Sent:** Friday, October 15, 1999 5:39 PM  
**To:** Kahler, Pam  
**Cc:** Mallow, Eileen  
**Subject:** 203/p4dn

Pam:

I just finished meeting with Chris Wilcox representing the WISF and Mark Femal, the Director, relating to the liquidation and WISF portions of the draft. Chris had a number of changes requested for the draft. Most if not all of them fall in the category of "preferred" language. I'd appreciate it if you would make the following changes:

- ✓ 1. Chris notes that on page 3, third paragraph, second line, there is an "or" which should be an "of".
- ✓ 2. On page 16, line 16, please substitute "subject to" for "included in the classes under." This restores the existing language.
- yes ✓ 3. On page 17, lines 9-14, no change is requested, but we ask that you confirm our understanding that this provision includes interest on federal claims under policies. We believe that it does and that the language is adequate. ←
- ✓ 4. On page 19, lines 17 and 18, restore the language so as to substitute "unless the liquidate determines that the claim is considered to have been timely filed." for the equivalent text now in the draft. Chris feels that this makes it clear that the liquidate must make a specific determination.
- ✓ 5. Please make a conforming revision as described in 4 to line 24, page 19.
- ✓ 6. On page 20, line 14, after "except" insert: "for claims determined to be excused late filings". Chris feels this makes it clear that the process of a determination of for cause must be followed and that merely filing within a longer than 18 month filing deadline will not be adequate.
- ✓ 7. On page 22, line 7, substitute "this section" for "sub. (2)." This includes the reference to residency in sub. (9).
- ✓ 8. On page 23, line 23, after 3. insert "(2m) and (6)." (2m) appears to have been inadvertently left out.
- ✓ 9. Insert an amendment to 646.31 (6) substituting "classes" for "class" and "described" for "defined" and changing the cross reference from 645.68 (3) to s. 645.68 (intro). *described in ?*
- ✓ 10. On page 20, line 5, substitute "obligation" for "obligations". *any? what's the difference? ?*

If you have any questions, I am available at 266-7726.

Thanks

## Kahler, Pam

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**From:** Nepple, Fred  
**Sent:** Friday, October 15, 1999 6:28 PM  
**To:** Kahler, Pam  
**Subject:** Additional items

Pam:

Two items:

- ✓ 1. I noted in Elleen's e mail she suggested that we wanted to stick with the previous language on costs for experts. However I believe we concluded that your suggestion was acceptable to please substitute: "The person which is the subject of the examination or which is a party to a transaction subject to review, including the person attempting to acquire acquiring or controlling the insurer, shall pay the reasonable costs incurred by the commissioner for the expert and related expenses."
- ✓ 2. On page 4, line 4, after "following" insert, ", to the extent applicable federal law does not prevent the application of state law".

The purpose of this language is to reflect that federal law, to an extent, preempts state law, particularly with respect to the setting o minimum benefits for meicare+choice plans. (Although our office is working with the Wisconsin congressional delegation for an amendment which would permit Wisconsin to standardize medicare+choice benefits.)

## Kahler, Pam

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**From:** Mallow, Eileen  
**Sent:** Friday, October 15, 1999 5:21 PM  
**To:** Kahler, Pam  
**Cc:** O'Connell, Connie; Blumer, Randy; Nepple, Fred; Wadium, Mark  
**Subject:** LRB 0203

Pam - We have a couple of minor changes to LRB 0203 in response to your comments and drafting notes. I will relay the ones we know at this time. Fred is meeting with parties who have an interest in the Security Fund changes to make sure they don't have any problems with the language. He may be submitting some additional changes. I will be out Mon-Wed, so if you have any questions about the material, please contact Fred at 6-7726.

When the draft is ready, please also release a copy to Rep. Lasee's and Sen Breske's office. Rep Lasee has scheduled a hearing for Oct 21. Thanks.

### Drafters Notes:

- ✓ 1. I answered those below.
- ✓ 2. Questions about license revocations. We're not going to proceed any further with this at this time so the current draft is OK.
3. We suggest using the language we had originally drafted for this section, as it accomplishes our purposes to make the acquiring entity bear the cost of any additional experts that may be needed to assist in our review of the transaction.

→ ✓ Section 601.42 (7) is created to read  
601.42 (7) The commissioner may employ experts to assist the commissioner in an examination or in the review of any transaction subject to approval under chs. 600 to 646. The insurer or the person attempting to acquire, acquiring or controlling the insurer shall pay the reasonable costs incurred by the commissioner for the expert and related expenses.

- ✓ 4. OCI is comfortable with the language as drafted.
- ✓ 5. We agree with you.
- ✓ 6. The initial applicability for the new sections should be the effective date of the bill.

You had also left a couple of notes in the text.

- ✓ Following Section 3, you had asked about the definitions in 600.03 (28p). There are policies that can be disability policies that meet this definition, but that are not Medicare Supp policies, so we need the additional clarification requested.
- ✓ Following Section 14, you had asked about the date of which evidence of compliance is due for purposes of suspension. The language you drafted is OK.

Thanks!

Eileen Mallow  
Program and Planning Analyst  
Office of the Commissioner of Insurance  
608/266-7843  
608/261-8579 FAX  
email: eileen.mallow@oci.state.wi.us

**Kahler, Pam**

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**From:** Mallow, Eileen  
**Sent:** Sunday, October 17, 1999 4:56 PM  
**To:** Kahler, Pam  
**Cc:** Nepple, Fred; Wadium, Mark  
**Subject:** Irb 0203

Pam - I forgot one item from my message the other day. We would like the language amending the CAPCO statute added to our draft as well. It is LRB b1739/2.

Thanks.

Eileen Mallow  
Program and Planning Analyst  
Office of the Commissioner of Insurance  
608/266-7843  
608/261-8579 FAX  
email: eileen.mallow@oci.state.wi.us



State of Wisconsin  
1999 - 2000 LEGISLATURE

LRB-0203/74  
PJK:jlg&wlj:kjf

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

needed  
by Tues

WPO: Inserts are  
out of order.

regenerate  
↓

1 AN ACT to repeal 628.77, 632.55, 644.05 (3), 646.31 (2) (d) 2. and 646.31 (2) (d)  
2 3.; to renumber 645.68 (2); to renumber and amend 600.03 (28p), 632.47 (3),  
3 646.13 (1) (b) (intro.), 646.13 (1) (b) 1. and 646.13 (1) (b) 2.; to consolidate,  
4 renumber and amend 646.31 (2) (d) (intro.) and 1.; to amend 601.13 (2),  
5 601.43 (3), 601.43 (4), 601.715 (2) (b), 611.26 (1), 611.72 (3) (intro.), 611.78 (1m)  
6 (b) (intro.), 628.10 (2) (a), 644.04 (3) (intro.), 644.05 (1), 644.05 (2), 644.05 (4),  
7 644.08, 644.09 (1) (intro.), 644.09 (1) (a), 644.09 (2), 644.09 (3), 644.09 (4),  
8 644.14 (1), 644.16 (1), 644.16 (2), 644.16 (3) (a), 644.16 (4), 644.17, 644.18,  
9 644.19, 644.28 (1), 644.28 (2) (a), 644.28 (3), 644.28 (4), 644.29, 645.68 (intro.),  
10 645.68 (3), 645.68 (5), 645.68 (7), 645.68 (8) (a), 645.68 (8) (b), 645.68 (8) (c),  
11 645.68 (8) (d), 645.68 (8) (e), 645.68 (8) (f), 646.15 (1) (a) 2., 646.31 (1) (a), 646.31  
12 (2) (c), 646.60 (1) (a), 646.60 (1) (b) (intro.), 646.60 (1) (b) 1. and 646.60 (1) (b)  
13 2.; to repeal and recreate 644.26; and to create 600.03 (28p) (b), 600.03 (28p)  
14 (c), 601.465 (3) (e), 601.465 (3) (f), 611.72 (3m), 632.47 (3) (b), 645.68 (3c), 645.68  
15 (3m), 645.68 (3r) (c), 646.13 (2) (e), 646.13 (2) (f), 646.13 (3) (intro.), 646.13 (3)

- 1 (c), 646.13 (4), 646.31 (1) (cm), 646.31 (2m) and 646.51 (9) of the statutes;
- 2 **relating to:** priority of claims for distribution in insurance liquidations, the
- 3 insurance security fund, conforming the mutual insurance holding company
- 4 provisions to changes made in the nonstock corporation provisions. *Subs 2-4*

**Analysis by the Legislative Reference Bureau**

**Insurer liquidation and the security fund**

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 remedial changes in those liquidation 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 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 all other claims of the federal government that have the same lower priority than interest on other claims.~~

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 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 policies*

*all*

*however*

*claims of the federal government that are not loss claims under policies*

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.

af → The bill provides that the duty of the board to defend an insured ceases upon the board's payment of 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 canceled by the insured, if the policy expires or is replaced or canceled 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 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.

#### ***Mutual insurance holding company provisions***

Current law specifies procedures for a mutual insurance company to restructure by forming a mutual insurance holding company and becoming a stock insurance company that is owned by the mutual insurance holding company. The statutes also set out various requirements related to the structure and operation of the mutual insurance holding company that is formed in the restructuring. Because many of these requirements are identical with the requirements in the statutes for nonstock corporations, there are many cross-references to the chapter governing nonstock corporations in the chapter governing the formation of mutual insurance holding companies.

The act that created the chapter in the statutes that governs the formation of mutual insurance holding companies was passed in the 1997-98 session of the

legislature. During that same session, the chapter governing nonstock corporations was completely revised. As a consequence, the cross-references in the chapter governing the formation of mutual insurance holding companies are no longer valid. This bill changes those cross-references to conform to the changes that were made in the chapter governing nonstock corporations, sometimes incorporating substantive changes that were made in the law governing nonstock corporations. For example, a provision in current law that governs the bylaws of a mutual insurance holding company specifies that the statutory provision governing the bylaws of a nonstock corporation applies to the bylaws of a mutual insurance holding company. When the chapter governing nonstock corporations was revised, provisions governing bylaws were created to include not only the former provision, which addressed adoption of bylaws, but also provisions on contents of bylaws, adopting emergency bylaws and amendment of bylaws by a corporation's board of directors and members. In changing the cross-references to conform to the current law on nonstock corporations, the bill applies the additional provisions on contents of bylaws, adopting emergency bylaws and amendment of bylaws by the board of directors and members to mutual insurance holding companies.

In addition, the bill makes a technical correction to a provision in the statutes related to a mutual insurance company. The statutes make a distinction between the way in which a sale, lease or exchange of less than all of the property and assets of a mutual may be authorized and the way in which a sale, lease or exchange of all or substantially all of the property and assets may be authorized, but incorrectly attribute both ways to the sale, lease or exchange of less than all of the property and assets. The bill specifies that the methods for authorizing the sale, lease or exchange of all or substantially all of the property and assets of a mutual apply to the sale, lease or exchange of all or substantially all of the property and assets.

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

Insert 4-AAV

Insert 4-AB

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

Insert 4-1

- 1
- 2
- 3
- 4
- 5
- 6
- 7

SECTION 1. 600.03 (28p) of the statutes is renumbered 600.03 (28p) (intro.) and amended to read:

600.03 (28p) (intro.) "Medicare replacement policy" means any of the following:

(a) A disability insurance policy or certificate issued to a resident of this state pursuant to a contract between the federal health care financing administration and a federally qualified health maintenance organization or a federally certified

to the extent permitted under federal law

1 competitive medical plan to provide health care benefits to persons eligible for  
2 medicare under 42 USC 1395f, 1395x and 1395mm.

3 SECTION 2. 600.03 (28p) (b) of the statutes is created to read:

4 600.03 (28p) (b) A medicare+choice plan, as defined in 42 USC 1395w-28 (b)  
5 (1), or a contract with a medicare+choice organization, as defined in 42 USC  
6 1395w-28 (a) (1).

7 SECTION 3. 600.03 (28p) (c) of the statutes is created to read:

8 600.03 (28p) (c) A plan, contract or policy that the commissioner by rule  
9 determines is similar to, or supplements or replaces, a program described in par. (a)  
10 or (b).

→ \*\*\*NOTE: If a plan, contract or policy supplements a program described in par. (a) or (b), wouldn't it be a medicare supplement policy (under s. 600.03 (28r)) instead?

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

12 601.13 (2) TERMS OF DEPOSIT. Unless otherwise provided by the law requiring  
13 or permitting the deposit, each deposit shall be held in trust: first, for the claimants  
14 under s. 645.68 (3); 2nd, for the claimants under s. 645.68 (3c); 3rd, for the claimants  
15 under s. 645.68 (3m); 4th, for the claimants under s. 645.68 (4); and thereafter, for  
16 all other creditors in the order of priority established by s. 645.68. No claim may be  
17 made against the deposit of an alien insurer unless the claim arises out of a  
18 transaction in the United States.

Insert 5-18

19 SECTION 5. 601.43 (3) of the statutes is amended to read:

20 601.43 (3) AUDITS OR ACTUARIAL OR OTHER EVALUATIONS. In lieu of all or part of  
21 an examination under subs. (1) and (2), or in addition to it, the commissioner may  
22 order an independent audit by certified public accountants or an actuarial or other  
23 evaluation by actuaries or other experts approved by the commissioner of any person

1 subject to the examination requirement. Any accountant ~~or~~ actuary or other expert  
2 selected is subject to rules respecting conflicts of interest promulgated by the  
3 commissioner. Any audit or evaluation under this section is subject to s. 601.44, so  
4 far as appropriate.

5 SECTION 6. 601.43 (4) of the statutes is amended to read:

6 601.43 (4) ALTERNATIVES TO EXAMINATION. In lieu of all or part of an examination  
7 under this section, the commissioner may accept the report of an audit already made  
8 by certified public accountants or of an actuarial or other evaluation already made  
9 by actuaries or other experts approved by the commissioner, or the report of an  
10 examination made by the insurance department of another state or of the  
11 examination by another government agency in this state, the federal government or  
12 another state.

13 SECTION 7. 601.465 (3) (e) of the statutes is created to read:

14 601.465 (3) (e) An international, federal, state or local regulatory or law  
15 enforcement agency.

16 SECTION 8. 601.465 (3) (f) of the statutes is created to read:

17 601.465 (3) (f) An agent or employe of an agency described in par. (e).

18 SECTION 9. 601.715 (2) (b) of the statutes is amended to read:

19 601.715 (2) (b) An authorized insurer may change its registered agent no more  
20 than one time per year. ~~Any change of registered agent is effective on January 1 of~~  
21 ~~the year following the delivery of the statement under par. (a).~~

22 SECTION 10. 611.26 (1) of the statutes is amended to read:

23 611.26 (1) INSURANCE SUBSIDIARIES. An insurance corporation may form or  
24 acquire subsidiaries to do any lawful insurance business. There is no limit on the  
25 amount of investment in such subsidiaries except that the commissioner may by

1 order or rule establish a limit and, for purposes of ss. 623.11 and 623.12, the total  
2 value of the outstanding shares of such a subsidiary shall be deemed to equal the  
3 amount of surplus possessed by the subsidiary in excess of its security surplus, as  
4 determined by the commissioner under s. 623.12.

5 **SECTION 11.** 611.72 (3) (intro.) of the statutes is amended to read:

6 611.72 (3) **GROUNDS FOR DISAPPROVAL.** (intro.) The commissioner shall approve  
7 the plan if the commissioner finds, after a hearing, unless a hearing is not required  
8 under sub. (3m), that it would not violate the law or be contrary to the interests of  
9 the insureds of any participating domestic corporation or of the Wisconsin insureds  
10 of any participating nondomestic corporation and that:

11 **SECTION 12.** 611.72 (3m) of the statutes is created to read:

12 611.72 (3m) **HEARING NOT REQUIRED.** A hearing is not required under sub. (3)  
13 before approval of a proposed plan of merger or other plan for acquisition of control  
14 if the proposed merger is with, or the proposed acquirer is, an affiliate of the insurer  
15 and the proposed merger or other acquisition of control does not change the  
16 controlling person of the insurer.

17 **SECTION 13.** 611.78 (1m) (b) (intro.) of the statutes is amended to read:

18 611.78 (1m) (b) (intro.) A sale, lease, exchange or other disposition of all or  
19 substantially all of the property and assets under par. (a) of a mutual may be made  
20 upon such terms and conditions as may be authorized only in the following manner:

21 **SECTION 14.** 628.10 (2) (a) of the statutes is amended to read:

22 628.10 (2) (a) *For failure to comply with continuing education requirements.*  
23 ~~The commissioner may by order suspend the license of any intermediary who fails~~  
24 ~~to produce evidence of compliance with continuing education standards set by the~~  
25 ~~commissioner is suspended, effective on the day on which the evidence of compliance~~

1 is due. If an intermediary whose license has been suspended under this paragraph  
2 produces evidence of compliance within 60 days after the date on which the license  
3 is suspended, the commissioner shall reinstate the license effective on the date of  
4 suspension. If such an intermediary does not produce evidence of compliance within  
5 60 days, the license is revoked and the intermediary may be relicensed only after  
6 satisfying all requirements under s. 628.04.

→ \*\*\*NOTE: Since an intermediary must submit evidence of compliance within 60 days after the date of suspension, I had to pick a date for the the suspension. Is this okay? I don't know if there is one particular date on which evidence of compliance is due.

7 SECTION 15. 628.77 of the statutes is repealed.

8 SECTION 16. 632.47 (3) of the statutes is renumbered 632.47 (3) (intro.) and  
9 amended to read:

10 632.47 (3) ~~GROUP ANNUITIES~~ PROHIBITION ON ASSIGNMENT (intro.) Assignment  
11 may be expressly prohibited by a any of the following:

12 (a) A group contract providing annuities as retirement benefits.

13 SECTION 17. 632.47 (3) (b) of the statutes is created to read:

14 632.47 (3) (b) An annuity contract that is subject to transferability restrictions  
15 under any federal or state tax, employe benefit or securities law.

16 SECTION 18. 632.55 of the statutes is repealed.

17 SECTION 19. 644.04 (3) (intro.) of the statutes is amended to read:

18 644.04 (3) (intro.) ~~Subject to s. 611.33, the~~ The converted insurance company,  
19 subject to s. 611.33, and any intermediate stock holding company may thereafter  
20 issue to 3rd parties debt securities, stock other than voting stock and, subject to s.  
21 644.15, voting stock, so long as all of the following are true:

22 SECTION 20. 644.05 (1) of the statutes is amended to read:

1           644.05 (1) POWERS. ~~Section 181.04~~ Subject to s. 644.19 (2) and (3), s. 181.0302  
2 (intro.), (1) to (15), (18) and (19) applies to mutual holding companies.

3           SECTION 21. 644.05 (2) of the statutes is amended to read:

4           644.05 (2) EFFECT OF UNAUTHORIZED CORPORATE ACTS. ~~Section 181.057 (1) and~~  
5 ~~(2)~~ 181.0304 applies to mutual holding companies, except that, for purposes of this  
6 subsection, "attorney general" used in s. 181.0304 (3) means "commissioner".

7           SECTION 22. 644.05 (3) of the statutes is repealed.

8           SECTION 23. 644.05 (4) of the statutes is amended to read:

9           644.05 (4) WAIVER OF NOTICE AND INFORMAL ACTION BY MEMBERS OR DIRECTORS.  
10 Sections ~~181.70 and 181.72~~ 181.0704, 181.0706, 181.0821 and 181.0823 apply to  
11 mutual holding companies. For purposes of this subsection, "board" used in s.  
12 181.0821 includes "committee of the board of a mutual holding company".

13           SECTION 24. 644.08 of the statutes is amended to read:

14           **644.08 Reservation of corporate name.** ~~Section 181.07~~ applies Sections  
15 181.0402 and 181.0403 (2), (3) and (3m) apply to mutual holding companies.

16           SECTION 25. 644.09 (1) (intro.) of the statutes is amended to read:

17           644.09 (1) ARTICLES. (intro.) ~~Section 181.31~~ 181.0202 applies to the articles of  
18 a mutual holding company, except that all of the following apply:

19           SECTION 26. 644.09 (1) (a) of the statutes is amended to read:

20           644.09 (1) (a) The name of the mutual holding company shall include the word  
21 "mutual" and shall comply with s. ~~181.06 (3)~~ 181.0401 (2) to (4).

22           SECTION 27. 644.09 (2) of the statutes is amended to read:

23           644.09 (2) AMENDMENT OF ARTICLES. A mutual holding company may amend its  
24 articles in the manner provided in ss. ~~181.35 to 181.37 and 181.39~~ 181.1001,  
25 181.1002 (1), 181.1003, 181.1005 and 181.1006, except that papers required by those

1 sections to be filed with the department of financial institutions shall instead be filed  
2 with the commissioner. The articles may be amended in any desired respect,  
3 including substantial changes of its original purposes, except that no amendment  
4 may be made that is contrary to sub. (1). In addition to the requirements of s. ~~181.97~~  
5 181.1005, the articles of amendment of a mutual holding company shall, if mail  
6 voting is used, state the number of members voting by mail and the number of such  
7 members voting for and against the amendment. No amendment may become  
8 effective until the articles of amendment have been filed with the commissioner. No  
9 amendment shall affect any existing cause of action in favor of or against such  
10 mutual holding company, any ~~pending suit~~ civil, criminal, administrative or  
11 investigatory proceeding to which the mutual holding company is a party or the  
12 existing rights of persons other than members. In the event that the corporate name  
13 is changed by amendment, no suit brought by or against such mutual holding  
14 company under its former name shall abate for that reason.

15 **SECTION 28.** 644.09 (3) of the statutes is amended to read:

16 644.09 (3) BYLAWS. The bylaws of a mutual holding company shall comply with  
17 this chapter. A copy of the bylaws and any amendments to the bylaws shall be filed  
18 with the commissioner within 60 days after adoption. Subject to this subsection, s.  
19 ~~181.13~~ applies ss. 181.0206, 181.0207 and 181.1021 apply to mutual holding  
20 companies.

21 **SECTION 29.** 644.09 (4) of the statutes is amended to read:

22 644.09 (4) PRINCIPAL OFFICERS. ~~Section 181.25 (1) and (2) applies~~ Sections  
23 181.0840 and 181.0841 apply to mutual holding companies.

24 **SECTION 30.** 644.14 (1) of the statutes is amended to read:

1           644.14 (1) COMMUNICATION TO MEMBERS; MEMBER VOTING. Subject to this section,  
2           ss. 611.41, 611.42 (1), (1e), (1m), (2), (3), (4) (a) and (5), 611.43 and 611.53 (2) apply  
3           to mutual holding companies.

4           **SECTION 31.** 644.16 (1) of the statutes is amended to read:

5           644.16 (1) BOARD OF DIRECTORS. Subject to this section, ss. ~~181.18, 181.21~~  
6           181.0801 (1) and (2), 181.0802, 181.0811, 611.51 (2), (3), (5) and (8) and 611.53 (1) and  
7           (3) apply to mutual holding companies. Section ~~181.22~~ 181.0824 applies to the board  
8           of a mutual holding company except as modified by s. ~~181.225~~ 611.10. The board  
9           shall manage the business and affairs of the corporation and may not delegate its  
10          power or responsibility to do so, except to the extent authorized by ss. ~~181.23~~ and  
11          ~~181.25 (2)~~ 181.0825 and 181.0841.

12          **SECTION 32.** 644.16 (2) of the statutes is amended to read:

13          644.16 (2) COMMITTEES OF DIRECTORS. Section ~~181.23~~ 181.0825 applies to  
14          mutual holding companies.

15          **SECTION 33.** 644.16 (3) (a) of the statutes is amended to read:

16          644.16 (3) (a) Section 611.51 (9) ~~(a)~~ (am) and (b) applies to mutual holding  
17          companies.

18          **SECTION 34.** 644.16 (4) of the statutes is amended to read:

19          644.16 (4) DIRECTOR CONFLICTS OF INTEREST. Section ~~181.225~~ 611.60 applies to  
20          mutual holding companies.

21          **SECTION 35.** 644.17 of the statutes is amended to read:

22          **644.17 Removal of officers.** Section ~~181.26~~ applies Sections 181.0843 and  
23          181.0844 apply to mutual holding companies.

24          **SECTION 36.** 644.18 of the statutes is amended to read:

1           **644.18 Directors' and officers' liability and indemnification. (1)**  
2           **LIABILITY.** Sections ~~181.283 to 181.29~~ 181.0850 to 181.0855, except s. 181.0855 (2)(c).  
3           apply to mutual holding companies.

4           **(2) INDEMNIFICATION.** Sections ~~181.041 to 181.051~~ 181.0871 to 181.0881 and  
5           181.0889 apply to mutual holding companies.

6           **(3) INSURANCE.** Section ~~181.053~~ 181.0883 applies to mutual holding companies.

7           **(4) DERIVATIVE ACTIONS.** Section ~~181.295~~ applies Sections 181.0740 to 181.0747  
8           apply to mutual holding companies.

9           **SECTION 37.** 644.19 of the statutes is amended to read:

10           **644.19 Executive compensation. (1) GENERAL.** Sections ~~181.19 and Section~~  
11           611.63 (4) and (5) apply applies to mutual holding companies.

12           **(2) APPROVAL BY MEMBERS.** A benefit plan or amendment to a benefit plan that  
13           proposes to provide benefits in the form of stock or stock options of a converted  
14           insurance company or any intermediate stock holding company to the directors or  
15           officers of the converted insurance company, intermediate stock holding company or  
16           mutual holding company may not take effect unless it is submitted to a vote of the  
17           members of the mutual holding company and approved by a majority of the members  
18           voting. Notice of a meeting at which a vote under this subsection will be taken shall  
19           be given in accordance with s. ~~181.15, as provided in s. 644.14 (1), or in accordance~~  
20           with s. 644.14 (2).

21           **(3) NOTICE TO COMMISSIONER.** The commissioner may by rule require that any  
22           action taken by the board of a mutual holding company, or the board of any  
23           intermediate stock holding company, on any of the subjects specified in ~~ss. 181.04(15)~~  
24           and 181.19 s. 181.0302 (11) to (14) be reported to the commissioner within 30 days  
25           after the action is taken.

1           **SECTION 38.** 644.26 of the statutes is repealed and recreated to read:

2           **644.26 Transfer of business or assets of mutual holding companies. (1)**

3           A sale, lease, exchange or other disposition of less than substantially all of the  
4           property and assets of a mutual holding company, and the mortgage or pledge of any  
5           or all property and assets of a mutual holding company, whether or not made in the  
6           usual and regular course of its affairs, may be made upon the terms and conditions  
7           authorized by the mutual holding company's board of directors. Unless otherwise  
8           provided by the articles of incorporation, consent of the members is not required for  
9           a sale, lease, exchange or other disposition of property, or for a mortgage or pledge  
10          of property, authorized under this subsection.

11          (2) A sale, lease, exchange or other disposition of all or substantially all of the  
12          property and assets of a mutual holding company may be made upon such terms and  
13          conditions as may be authorized in the following manner:

14          (a) If the articles of incorporation give members the right to vote on the sale,  
15          lease, exchange or other disposition of all or substantially all of the mutual holding  
16          company's property and assets, the board of directors shall adopt a resolution  
17          recommending the sale, lease, exchange or other disposition and directing that it be  
18          submitted to a vote at an annual or special meeting of the members. Written notice  
19          stating that the purpose, or one of the purposes, of the meeting is to consider the sale,  
20          lease, exchange or other disposition of all or substantially all of the property and  
21          assets of the mutual holding company shall be given to each member entitled to vote  
22          at the meeting, within the time and in the manner provided by this chapter for  
23          providing notice of member meetings. At the meeting, the members may authorize  
24          the sale, lease, exchange or other disposition and may authorize the board of  
25          directors to fix any or all of the terms and conditions of the sale, lease, exchange or

1 other disposition. The authorization shall be by the affirmative vote of at least  
2 two-thirds of the members present or represented by proxy at the meeting. After the  
3 authorization by a vote of the members, the board of directors, nevertheless, in its  
4 discretion, may abandon the sale, lease, exchange or other disposition, subject to the  
5 rights of 3rd parties under any contracts relating thereto, without further action or  
6 approval by the members.

7 (b) If the articles of incorporation do not give members the right to vote on the  
8 sale, lease, exchange or other disposition of all or substantially all of a mutual  
9 holding company's property and assets, the sale, lease, exchange or other disposition  
10 may be authorized by the vote of the majority of the directors in office.

11 SECTION 39. 644.28 (1) of the statutes is amended to read:

12 644.28 (1) PLAN OF DISSOLUTION. Subject to this section, ss. ~~181.50 to 181.54 and~~  
13 ~~181.555~~ 181.1401 to 181.1407 apply to mutual holding companies, ~~except that the~~  
14 ~~last sentence of s. 181.555 does not apply.~~

15 SECTION 40. 644.28 (2) (a) of the statutes is amended to read:

16 644.28 (2) (a) At least 60 days prior to the submission to members of any  
17 proposed voluntary dissolution of a mutual holding company under s. ~~181.50~~  
18 181.1401, the plan shall be filed with the commissioner. The commissioner may  
19 require the submission of additional information relevant to the effect of the  
20 proposed dissolution on the solvency of the converted insurance company. The  
21 commissioner shall approve the dissolution unless, after a hearing, the  
22 commissioner finds that dissolution of the mutual holding company would cause the  
23 converted insurance company to become insolvent, would be unfair or inequitable to  
24 the members of the mutual holding company or would not be in the best interests of  
25 the policyholders of the converted insurance company or the public.

1           **SECTION 41.** 644.28 (3) of the statutes is amended to read:

2           **644.28 (3) REVOCATION OF VOLUNTARY DISSOLUTION.** If the mutual holding  
3 company revokes the voluntary dissolution proceedings under s. ~~181.53~~ 181.1404, a  
4 copy of the resolution revoking the voluntary dissolution proceedings adopted under  
5 s. ~~181.53~~ 181.1404 shall be filed with the commissioner.

6           **SECTION 42.** 644.28 (4) of the statutes is amended to read:

7           **644.28 (4) FILING AND RECORDING ARTICLES OF DISSOLUTION AND EFFECT THEREOF.**  
8 Upon approval by the commissioner under sub. (2) and by the members under s.  
9 ~~181.50~~ 181.1401, the mutual holding company shall file articles of dissolution with  
10 the commissioner. When the articles are filed, the existence of the mutual holding  
11 company shall cease, except for the purpose of suits, other proceedings and  
12 appropriate corporate action of members, directors and officers as provided in this  
13 chapter and in ss. ~~181.50 to 181.54 and 181.555~~ 181.1401 to 181.1407. Upon the  
14 filing of the articles, the commissioner may issue a certificate of dissolution.

15           **SECTION 43.** 644.29 of the statutes is amended to read:

16           **644.29 Involuntary dissolution of domestic mutual holding companies.**

17 A mutual holding company may at any time during a voluntary dissolution under ss.  
18 ~~181.51 to 181.555~~ 181.1401 to 181.1407 apply to the commissioner to have  
19 dissolution continued under the commissioner's supervision, ~~in which case, subject~~  
20 ~~to this section, s. 181.56 (1) and (2) applies to the mutual holding company except~~  
21 ~~that for purposes of this section "attorney general" means the commissioner.~~ Any  
22 distribution to members shall be limited in the same manner as under s. 644.28 (5)  
23 and any excess over such amounts shall be paid into the state treasury to the credit  
24 of the common school fund.

25           **SECTION 44.** 645.68 (intro.) of the statutes is amended to read:

1           **645.68 Order of distribution.** (intro.) The order of distribution of claims  
 2 from the insurer's estate shall be as stated in this section. The first \$50 of the amount  
 3 allowed on each claim in the classes under subs. ~~(2)~~ (3) to (6), except for claims of the  
 4 federal government under subs. (3) and (3c), shall be deducted from the claim and  
 5 included in the class under sub. (8). Claims may not be cumulated by assignment  
 6 to avoid application of the \$50 deductible provision. Subject to the \$50 deductible  
 7 provision, every claim in each class shall be paid in full or adequate funds retained  
 8 for the payment before the members of the next class receive any payment. No  
 9 subclasses shall be established within any class. That portion of any loss for which  
 10 indemnification is provided by other benefits or advantages recovered or recoverable  
 11 by the claimant shall not be included in the classes under subs. (3) and (3m), other  
 12 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  
 14 insurance, or as gratuities. No payment made by an employer to an employe shall  
 15 be treated as a gratuity. The claims described in s. 645.69 are among the claims not

subject to

16 ~~the claims described in s. 645.69 are among the claims not~~  
 17 ~~to be treated as a gratuity.~~

17           **SECTION 45.** 645.68 (2) of the statutes is renumbered 645.68 (3r).

18           **SECTION 46.** 645.68 (3) of the statutes is amended to read:

19           **645.68 (3) LOSS CLAIMS.** All claims under policies for losses incurred, including  
 20 third party claims, and all claims against the insurer for liability for bodily injury or  
 21 for injury to or destruction of tangible property which are not under policies and  
 22 federal, state and local government claims, except the first \$200 of losses otherwise  
 23 payable to any claimant under this subsection other than the federal government.  
 24 All claims under life insurance and annuity policies, whether for death proceeds,  
 25 annuity proceeds or investment values, shall be treated as loss claims. Claims may

1 not be cumulated by assignment to avoid application of the \$200 deductible  
 2 provision. ~~That portion of any loss for which indemnification is provided by other~~  
 3 ~~benefits or advantages recovered or recoverable by the claimant shall not be included~~  
 4 ~~in this class, other than benefits or advantages recovered or recoverable in discharge~~  
 5 ~~of familial obligations of support or by way of succession at death or as proceeds of~~  
 6 ~~life insurance, or as gratuities. No payment made by an employer to an employee shall~~  
 7 ~~be treated as a gratuity. The claims described in s. 645.69 are among the claims not~~  
 8 ~~subject to this subsection.~~

9 SECTION 47. 645.68 (3c) of the statutes is created to read: <sup>(c)</sup>  
 10 645.68 (3c) FEDERAL GOVERNMENT CLAIMS. Claims of the federal government not  
 11 included under sub. (3), ~~including~~ <sup>and</sup> interest at the legal rate compounded annually on  
 12 all claims in the class under this subsection <sup>and on all claims of</sup> from the date of the petition for  
 13 liquidation or the date on which the claim becomes due, whichever is later, until the  
 14 date on which the dividend is declared.

15 SECTION 48. 645.68 (3m) of the statutes is created to read:  
 16 645.68 (3m) CERTAIN INJURY CLAIMS. Claims against the insurer that are not  
 17 under policies and that are for liability for bodily injury or for injury to or destruction  
 18 of tangible property.

19 SECTION 49. 645.68 (3r) (c) of the statutes is created to read:  
 20 645.68 (3r) (c) Notwithstanding pars. (a) and (b) and subs. (3), (3c) and (3m),  
 21 if there are no claims of the federal government, the claims in the class under this  
 22 subsection shall have priority over all claims in the classes under subs. (3) to (11).

23 SECTION 50. 645.68 (5) of the statutes is amended to read:  
 24 645.68 (5) RESIDUAL CLASSIFICATION. All other claims, including claims of the  
 25 federal or any state or local government, not falling within other classes under this

*no federal government in the class under sub. (3)*

1 section and claims described in s. 645.69. Claims, including those of any state or local  
2 governmental body, for a penalty or forfeiture, shall be allowed in this class only to  
3 the extent of the pecuniary loss sustained from the act, transaction or proceeding out  
4 of which the penalty or forfeiture arose, with reasonable and actual costs occasioned  
5 thereby. The remainder of such claims shall be postponed to the class of claims under  
6 sub. (8).

7 **SECTION 51.** 645.68 (7) of the statutes is amended to read:

8 645.68 (7) INTEREST ON CLAIMS ALREADY PAID. Interest at the legal rate  
9 compounded annually on all claims in the classes under subs. (1) to (6), except for  
10 claims of the federal government in the ~~class~~ <sup>classes</sup> under ~~sub. (3c)~~ <sup>subs. (3) and</sup> (3c), from the date of the  
11 petition for liquidation or the date on which the claim becomes due, whichever is  
12 later, until the date on which the dividend is declared. The liquidator, with the  
13 approval of the court, may make reasonable classifications of claims for purposes of  
14 computing interest, may make approximate computations and may ignore certain  
15 classifications and time periods that are trifling.

16 **SECTION 52.** 645.68 (8) (a) of the statutes is amended to read:

17 645.68 (8) (a) The ~~Except for claims of the federal government under subs. (3)~~  
18 and (3c), the first \$50 of each claim in the classes under subs. ~~(2)~~ (3) to (6)  
19 subordinated under this section.

20 **SECTION 53.** 645.68 (8) (b) of the statutes is amended to read:

21 645.68 (8) (b) Claims under s. 645.63 (2).

22 **SECTION 54.** 645.68 (8) (c) of the statutes is amended to read:

23 645.68 (8) (c) Claims subordinated by s. 645.90.

24 **SECTION 55.** 645.68 (8) (d) of the statutes is amended to read:

25 645.68 (8) (d) Claims filed late.

1 SECTION 56. 645.68 (8) (e) of the statutes is amended to read:

2 645.68 (8) (e) Portions of claims subordinated under sub. (5);

3 SECTION 57. 645.68 (8) (f) of the statutes is amended to read:

4 645.68 (8) (f) Claims or portions of claims payment of which is provided by other  
5 benefits or advantages recovered or recoverable by the claimant; and

6 SECTION 58. 646.13 (1) (b) (intro.) of the statutes is renumbered 646.13 (1) (b)  
7 and amended to read:

8 646.13 (1) (b) Stand in the position of the insurer in the investigation,  
9 compromise, settlement, denial and payment of claims under s. 646.31 and the  
10 defense of 3rd party claims against insureds, subject to the limitations of s. 645.43.  
11 The board shall consult and cooperate with the liquidator in carrying out these  
12 duties. ~~The board has no duties or liabilities with respect to any claim filed as follows:~~

13 SECTION 59. 646.13 (1) (b) 1. of the statutes is renumbered 646.13 (3) (a) and  
14 amended to read:

15 646.13 (3) (a) With the liquidator under s. 645.61 after the date for filing  
16 specified by the liquidator under s. 645.47 (2), unless the liquidator determines that  
17 ~~the claim is~~ <sup>plain</sup> to have been <sup>considered</sup> timely filed under s. 645.61 (2) and the claim  
18 participates fully in the same every distribution to the same extent as other timely  
19 filed claims in the same class.

20 SECTION 60. 646.13 (1) (b) 2. of the statutes is renumbered 646.13 (3) (b) and  
21 amended to read:

22 646.13 (3) (b) With a liquidator or court under the laws of any other state after  
23 the date for filing specified by the liquidator or court, unless the liquidator or court  
24 determines that ~~considers~~ <sup>considered</sup> the claim is to have been timely filed under a law

plain text

plain

1 substantially similar to s. 645.61 (2) and the claim participates fully in the same  
2 every distribution to the same extent as other timely filed claims in the same class.

3 SECTION 61. 646.13 (2) (e) of the statutes is created to read:

4 646.13 (2) (e) Pursue salvage and subrogation with respect to paid covered  
5 claims obligations and retain any amounts recovered.

6 SECTION 62. 646.13 (2) (f) of the statutes is created to read:

7 646.13 (2) (f) Appoint and direct legal counsel for the defense of covered claims  
8 under insurance policies.

9 SECTION 63. 646.13 (3) (intro.) of the statutes is created to read:

10 646.13 (3) NO DUTY OR LIABILITY. (intro.) The board has no duty or liability with  
11 respect to any claim filed as follows:

12 SECTION 64. 646.13 (3) (c) of the statutes is created to read:

13 646.13 (3) (c) Except for claims under life insurance policies, annuities and  
14 noncancelable or guaranteed renewable disability insurance policies and except as  
15 provided in pars. (a) and (b), with a liquidator or court after the earlier of the  
16 following:

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

19 SECTION 65. 646.13 (4) of the statutes is created to read:

20 646.13 (4) WHEN DUTY TO DEFEND TERMINATES. Any obligation of the board to  
21 defend an insured ceases upon the board's payment, by settlement releasing the  
22 insured or on a judgment, of an amount equal to the lesser of the board's covered  
23 claim obligation limit or the applicable policy limit, subject to any express policy  
24 terms regarding tender of limits.

25 SECTION 66. 646.15 (1) (a) 2. of the statutes is amended to read:

*for claims determined to be excused late filings*

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

3           **SECTION 67.** 646.31 (1) (a) of the statutes is amended to read:

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

10          **SECTION 68.** 646.31 (1) (cm) of the statutes is created to read:

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

15           1. The policy expires, if the expiration date is less than 30 days after the order  
16 of liquidation is entered.

17           2. The insured replaces or cancels the policy, if either action is taken within 30  
18 days after the order of liquidation is entered.

19          **SECTION 69.** 646.31 (2) (c) of the statutes is amended to read:

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

23          **SECTION 70.** 646.31 (2) (d) (intro.) and 1. of the statutes are consolidated,  
24 renumbered 646.31 (2) (d) and amended to read:

Insert 22-5

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

4           **SECTION 71.** 646.31 (2) (d) 2. of the statutes is repealed.

5           **SECTION 72.** 646.31 (2) (d) 3. of the statutes is repealed.

6           **SECTION 73.** 646.31 (~~2~~)<sup>13</sup> of the statutes is created to read:

7           646.31 (~~2~~)<sup>13</sup> RESIDENCY. For purposes of determining residency in ~~the~~<sup>the</sup>  
8           residency of a claimant, insured or policyholder that is not a natural person is the  
9           state in which the claimant's, insured's or policyholder's principal place of business  
10          is located.

this section

11          **SECTION 74.** 646.51 (9) of the statutes is created to read:

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

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

20           1. Assessments made or called before the insurer's license or certificate of  
21           authority terminated or expired.

22           2. Assessments made or called after the insurer's license or certificate of  
23           authority terminated or expired that relate to a liquidation order entered before the  
24           insurer's license or certificate of authority terminated or expired.

25          **SECTION 75.** 646.60 (1) (a) of the statutes is amended to read:

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

4           **SECTION 76.** 646.60 (1) (b) (intro.) of the statutes is amended to read:

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

9           **SECTION 77.** 646.60 (1) (b) 1. of the statutes is amended to read:

10           646.60 (1) (b) 1. ~~That the~~ The laws of the other states give equivalent  
11           recognition to the determinations and settlements of loss claims, and to payments  
12           of claims, made by the fund; ~~and.~~

13           **SECTION 78.** 646.60 (1) (b) 2. of the statutes is amended to read:

14           646.60 (1) (b) 2. ~~That if~~ If the same claim is reported as paid by 2 or more funds,  
15           payment shall be to the fund with a prior obligation under s. 646.31 ~~(7)~~ (9).

16           **SECTION 79. Initial applicability.**

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

21           (2) The treatment of sections 646.13 (1) (b) (intro.), 1. and 2., (2) (e) and (f), (3)  
22           (intro.) and (4), 646.15 (1) (a) 2., 646.31 (1) (a) ~~and~~ (2) (c) and (d) (intro.), 1., 2. and  
23           3., 646.51 (9) and 646.60 (1) (a) and (b) (intro.), 1. and 2. of the statutes first applies  
24           to liquidation proceedings pending on the effective date of this subsection.

25           (END)

(a) 22  
23  
25  
Inset 23-24 ✓

**1999 BILL**

and miscellaneous changes to insurance statutes

Insert 2-4

1 AN ACT to amend 76.635 (2), 76.635 (3) and 76.67 (2) of the statutes, relating  
2 to the certified capital investment credit for insurers.

Insert 4-AB

**Analysis by the Legislative Reference Bureau**

Under current law, rather than pay an income tax or a franchise tax, certain insurers pay a license fee that is based on a percentage of an insurer's gross premiums. Such an insurer, however, may claim as a credit against the license fee an amount that is based on the amount the insurer paid as an investment in a capital company that is certified as a capital company by the department of commerce.

Under current law, if an in-state insurer is licensed to conduct business in another state, this state may not require a similar insurer from the other state who is licensed to conduct business in this state to pay more in license fees to this state than the in-state insurer pays to the other state. Under this bill, this state may not require a similar insurer from the other state who is licensed to conduct business in this state to pay to this state a greater amount for license fees than the amount which an in-state insurer pays to the other state, less the amount of the credits it receives from this state for investments in capital companies.

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

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

(end of ins 4-AB)

Sub-Part  
Title  
Certified capital investment credit

INSERT 4-AA

*Miscellaneous changes to insurance statutes*

→ Under current law, a group life insurance policy may ~~not~~ be issued to a group that is formed for purposes other than to obtain insurance. The bill eliminates this provision. Current law places no such limitation on any other type of group insurance.

→ Under current law, an insurer may change its registered agent for service of process no more than once per year, and any change takes effect on the January 1 of the year following the delivery to the commissioner of insurance (commissioner) of the statement changing the registered agent. The bill still limits a change of registered agent to once per year, but any change takes effect immediately with the delivery of the statement.

→ The bill authorizes the commissioner to employ experts to assist the commissioner with examinations and reviews of insurers and insurance transactions, and provides that the subject of an examination or a person involved in a transaction under review will be responsible for the costs of the expert and related expenses.

→ Under current law, a life insurer is prohibited from providing any bonus, prize, award or similar additional compensation on insurance business in this state as a result of a competition among insurance intermediaries. Awards may be given as recognition of merit, however, as long as the cost of any such award does not exceed \$150 and the aggregate cost of such awards in a calendar year does not exceed 1.5% of the insurer's total first year life insurance premium income derived from sales in this state. This bill eliminates this provision related to bonuses and awards.

(END OF INSERT 4-AA)

only

The

BILL

*insert 4-1*

1 SECTION ~~4~~<sup>\*</sup> 76.635 (2) of the statutes, as created by 1997 Wisconsin Act 215, is  
2 amended to read:

3 76.635 (2) CREDIT. An insurer that makes a certified capital investment may  
4 credit against the fees due under s. 76.60, 76.63, 76.65 ~~or~~, 76.66 or 76.67, for 10 years  
5 beginning with the year of the investment, either 10% of that investment or the  
6 amount by which the sum of the insurer's certified capital investments and the  
7 insurer's qualified investments exceeds the insurer's qualified investments in the  
8 taxable year before the insurer first claimed the credit under this section, whichever  
9 is less.

10 SECTION ~~4~~<sup>\*</sup> 76.635 (3) of the statutes, as created by 1997 Wisconsin Act 215, is  
11 amended to read:

12 76.635 (3) CARRY-FORWARD. If the credit under sub. (2) is not entirely offset  
13 against the fees under s. 76.60, 76.63, 76.65 ~~or~~, 76.66 or 76.67 otherwise due, the  
14 unused balance may be carried forward and credited against those fees in the  
15 following years to the extent that it is not offset by those fees otherwise due in all the  
16 years between the year in which the investment was made and the year in which the  
17 carry-forward credit is claimed.

18 SECTION ~~4~~<sup>\*</sup> 76.67 (2) of the statutes is amended to read:

19 76.67 (2) If any domestic insurer is licensed to transact insurance business in  
20 another state, this state may not require similar insurers domiciled in that other  
21 state to pay taxes greater in the aggregate than the aggregate amount of taxes that  
22 a domestic insurer is required to pay to that other state for the same year less the  
23 credit under s. 76.635, except that the amount imposed shall not be less than the total  
24 of the amounts due under ss. 76.65 (2) and 601.93 and, if the insurer is subject to s.  
25 76.60, 0.375% of its gross premiums, as calculated under s. 76.62, less offsets allowed



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*insert 4-1 cont'd*

1 under s. 646.51 (7) or under s. 76.635 against that total, and except that the amount  
2 imposed shall not be less than the amount due under s. 601.93.

*end of ins 4-1*

3 SECTION 4. Initial applicability.

4 ~~(1) This act~~ first applies to taxable years beginning on January 1, 2000.

5 ~~(END)~~

*insert 23-24*

*(4) (3) The treatment of sections 76.635(2)<sup>v</sup>  
and (3)<sup>v</sup> and 76.67(2)<sup>v</sup> of the  
statutes*

*(end of ins 23-24)*

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LRB-0203/lins  
PJK:jlg&wlj:kjf

INSERT 5-18

1            ~~§~~ SECTION ~~4~~. 601.42 (7) of the statutes is created to read:

2            601.42 (7) EXPERTS. The commissioner may employ experts to assist the  
3 commissioner in an examination or in the review of any transaction subject to  
4 approval under chs. 600 to 646. The person that is the subject of the examination,  
5 or that is a party to a transaction under review, including the person acquiring,  
6 controlling or attempting to acquire the insurer, shall pay the reasonable costs  
7 incurred by the commissioner for the expert and related expenses.

(END OF INSERT 5-18)

INSERT 22-5

8            ~~§~~ SECTION ~~6~~ 646.31 (6) (a) of the statutes is amended to read:

9            646.31 (6) (a) The portion of a loss claim for which indemnification is provided  
10 by other benefits or advantages, which may not be included in the ~~class~~ classes of  
11 claims defined by specified in s. 645.68 (3) (intro.), may not be claimed from the fund  
12 under this chapter.

History: 1979 c. 109; 1983 a. 120 ss. 6 to 11, 19; 1985 a. 216; 1987 a. 325; 1989 a. 23, 31; 1995 a. 396; 1997 a. 237.

(END OF INSERT 22-5)

**SUBMITTAL  
FORM**

**LEGISLATIVE REFERENCE BUREAU  
Legal Section Telephone: 266-3561  
5th Floor, 100 N. Hamilton Street**

The attached draft is submitted for your inspection. Please check each part carefully, proofread each word, and sign on the appropriate line(s) below.

Date: 10/19/1999

To: Insurance

*Attn: Fred Nepple*

Relating to LRB drafting number: LRB-0203

**Topic**

Priority of distribution for the liquidation of insolvent insurance companies

**Subject(s)**

Insurance - miscellaneous

1. **JACKET** the draft for introduction \_\_\_\_\_

in the **Senate** \_\_\_\_ or the **Assembly**  (check only one). Only the requester under whose name the drafting request is entered in the LRB's drafting records may authorize the draft to be submitted. Please allow one day for the preparation of the required copies.

*per  
PJK*

2. **REDRAFT.** See the changes indicated or attached \_\_\_\_\_.

A revised draft will be submitted for your approval with changes incorporated.

3. Obtain **FISCAL ESTIMATE NOW**, prior to introduction \_\_\_\_\_.

If the analysis indicates that a fiscal estimate is required because the proposal makes an appropriation or increases or decreases existing appropriations or state or general local government fiscal liability or revenues, you have the option to request the fiscal estimate prior to introduction. If you choose to introduce the proposal without the fiscal estimate, the fiscal estimate will be requested automatically upon introduction. It takes about 10 days to obtain a fiscal estimate. Requesting the fiscal estimate prior to introduction retains your flexibility for possible redrafting of the proposal.

If you have any questions regarding the above procedures, please call 266-3561. If you have any questions relating to the attached draft, please feel free to call me.

Pamela J. Kahler, Senior Legislative Attorney  
Telephone: (608) 266-2682