2003 DRAFTING REQUEST

Bill

Received: **11/13/2003**

Received By: **pkahler**

Wanted: **Soon**

Identical to LRB:

For: **Dale Schultz (608) 266-0703**

By/Representing: **OCI**

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

Drafter: **pkahler**

May Contact:

Addl. Drafters:

Subject: **Insurance - miscellaneous**

Extra Copies:

Submit via email: **YES**

Requester's email: **Sen.Schultz@legis.state.wi.us**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

OCI's omnibus insurance bill

Instructions:

See Attached

Drafting History:

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
/?	pkahler 11/13/2003	csicilia 11/14/2003		_____ _____			
/1			jfrantze 11/14/2003	_____ _____	sbasford 11/14/2003	sbasford 11/14/2003	

FE Sent For:

<END>

Not Needed

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/?	pkahler	/1 cjs 11/14 03	11/14	11/14			

PA's Jacket "/1" for senate per PJK

FE Sent For:

<END>

11-13

This should be the same as LRB-3601/3, which will be introduced by Rep. Ladwig as an Assembly Bill 681 (Senate companion bill)

Please jacket "1" for the Senate & send to Sen. Schultz's Office

State of Wisconsin
2003 – 2004 LEGISLATURE

LRB–~~2601/3~~ 3735/1
PJK/CMH/RJM:cjs:pg

same

2003 ASSEMBLY BILL

Friday please

AN ACT ***to repeal*** 617.225 (5), 632.435 (12), chapter 641, 646.01 (1) (b) 9. a., 646.01 (1) (b) 9. b., 646.01 (1) (b) 9. c., 646.01 (1) (b) 9. d., 646.31 (2) (b) 1., 646.31 (2) (b) 2. b., 646.31 (2) (b) 3., 646.31 (3), 646.31 (5), 646.35 (2), 646.51 (2), 646.51 (3) (b) and 646.73; ***to renumber*** 646.51 (3) (a) (title); ***to renumber and amend*** 601.41 (4) (a), 611.26 (4), 612.22 (3), 646.01 (1) (b) 9. (intro.), 646.11 (1), 646.31 (10), 646.31 (13), 646.33 (1), 646.35 (3) (intro.) (except 646.35 (3) (title)), 646.35 (3) (a), 646.35 (3) (b), 646.35 (3) (c), 646.35 (4), 646.51 (1), 646.51 (3) (a) 1., 646.51 (3) (a) 2. and 646.51 (4); ***to consolidate, renumber and amend*** 646.31 (2) (b) 2. (intro.) and a.; ***to amend*** 600.03 (21), 601.31 (1) (k) (intro.), 601.465 (3) (intro.), 601.64 (1), 609.98 (1), 609.98 (4) (a), 609.98 (4) (b), 611.56 (1), 611.56 (2), 612.22 (title), 612.22 (1), 612.22 (4), 612.22 (6), 617.225 (1), 632.435 (1) (intro.), 632.435 (1) (a), 632.435 (1) (b), 632.435 (5), 645.58 (1) (intro.), 646.12 (2) (d), 646.12 (2) (f) 2., 646.12 (2) (f) 3., 646.12 (4), 646.13 (title), 646.13 (1) (intro.), 646.13 (1) (b), 646.13 (2) (intro.), 646.13 (2) (b), 646.13 (2) (c), 646.13 (2) (d),

646.13 (3) (intro.), 646.13 (3) (a), 646.13 (3) (b), 646.13 (3) (c) (intro.), 646.13 (3) (c) 2., 646.13 (4), 646.15 (title), 646.15 (1) (a) (intro.), 646.15 (1) (a) 1., 646.15 (1) (a) 2., 646.15 (1) (a) 4., 646.21 (2), 646.31 (2) (a) 1., 646.31 (2) (a) 2., 646.31 (2) (f) (title), 646.31 (2) (f) 2., 646.31 (6) (a), 646.31 (6) (b), 646.31 (7), 646.31 (8), 646.31 (9) (a), 646.31 (9) (b), 646.31 (9) (c), 646.31 (9) (d), 646.31 (11), 646.32 (1), 646.325 (1), 646.325 (2) (intro.), 646.325 (2) (a) (intro.), 646.325 (2) (b), 646.33 (2), 646.33 (3), 646.35 (3) (title), 646.35 (5), 646.35 (6) (a), 646.35 (6) (b), 646.35 (6) (bm), 646.35 (6) (c) (intro.), 646.35 (6) (c) 1. (intro.), 646.35 (6) (c) 1. b., 646.35 (6) (c) 2. (intro.), 646.35 (6) (c) 2. b., 646.51 (3) (c), 646.51 (5), 646.51 (6), 646.51 (7) (a), 646.51 (8), 646.51 (9) (b) 1., 646.51 (9) (b) 2., 646.60 (1) (a) and 646.61 (2); ***to repeal and recreate*** 632.435 (4), 646.01 (1) (b) 1. and 646.01 (1) (b) 11.; and ***to create*** 601.31 (1) (tc), 601.41 (4) (a) 1., 601.41 (4) (a) 2., 611.26 (4) (a), 611.26 (4) (b), 612.13 (1m), 612.22 (3) (b), 628.347, 646.01 (1) (a) 2. k., 646.01 (1) (a) 2. L., 646.01 (1) (b) 11m., 646.01 (1) (b) 15., 646.01 (1) (b) 16., 646.01 (1) (b) 17., 646.01 (1) (b) 18., 646.03 (1m), 646.03 (2n), 646.03 (2p), 646.03 (4), 646.03 (5), 646.11 (1) (d), 646.11 (1) (e), 646.13 (2) (g), 646.16, 646.31 (1) (d) 10. and 11., 646.31 (2) (g), 646.31 (9) (cm), 646.31 (10) (b), 646.31 (13) (b), 646.31 (13) (c), 646.31 (13) (d), 646.33 (1) (b), (c) and (d), 646.33 (2m) (b), 646.35 (4) (b), 646.35 (7), 646.35 (8), 646.35 (9), 646.35 (10), 646.51 (1c), 646.51 (3) (am) 2. and 646.51 (4) (a), (b) and (d) of the statutes; **relating to:** requirements for recommendations made by insurers and insurance intermediaries to senior consumers in annuity transactions; committees of the board of directors of domestic stock and mutual corporations; annuity minimum nonforfeiture amount; merger of town mutual and domestic mutual insurance corporation

1 into a town mutual; the insurance security fund; other miscellaneous changes
2 to the insurance provisions; and granting rule–making authority.

Analysis by the Legislative Reference Bureau

Suitability of recommendations

This bill prohibits an insurance intermediary, or insurer if no intermediary is involved, from making a recommendation to a person who is 65 years old or older (senior consumer) about purchasing or exchanging an annuity that results in the purchase or exchange of an annuity in accordance with the recommendation, unless the intermediary or insurer has reasonable grounds to believe that the recommendation is suitable for the senior consumer based on facts disclosed by the senior consumer. Before making a recommendation, the intermediary or insurer must make reasonable efforts to obtain information from the senior consumer about his or her financial status, tax status, and investment objectives.

The bill requires insurers either to ensure that a system for supervising annuity transaction recommendations that are made to senior consumers is established and maintained or to establish and maintain its own system, and provides certain requirements with which the supervisory system must comply. The bill authorizes the commissioner of insurance (commissioner) to order an insurer or intermediary to take corrective action if a senior consumer is harmed by a violation of the provisions regulating annuity transaction recommendations and authorizes the commissioner to promulgate rules to reduce or eliminate penalties for violations of the provisions if, after a violation is discovered, corrective action is promptly taken for the senior consumer.

Insurance security fund

This bill makes a number of changes to the insurance security fund provisions to make them more uniform with the insurance guaranty fund laws of other states, thus facilitating the administration of liquidations that involve national insurers. In general, the insurance security fund (fund), which is created as a nonprofit organization and funded through assessments paid by insurers covered under the fund, pays claims against insolvent insurers.

Current law specifies types of insurers and insurance that are not covered under the fund. The bill adds some exclusions, including the state Health Insurance Risk–Sharing Plan, the patients compensation fund, a warranty or service contract, any contractual liability policy issued to a warrantor or service contract provider, and the deductible portion of a claim under a liability or worker's compensation insurance policy. The bill clarifies that, although reinsurance is generally not covered under the fund, reinsurance ceded by an assessable town mutual and reinsurance for which the reinsurer has issued assumption certificates are covered.

The bill transfers some of the responsibilities of the fund's board of directors (board) to the fund, including establishing procedures and acceptable forms of proof for eligible claims, exercising the powers of the liquidator in any action against an insurer in liquidation, and having standing to appear in any liquidation proceeding

in this state involving an insurer in liquidation. The bill also gives the fund the authority to appear or intervene before a court or agency of any other state that has jurisdiction over an impaired or insolvent insurer with respect to which the fund is or may become obligated.

Current law specifies the types of claims that are payable by the fund. The bill adds a number of types of claims that are not payable, including a claim based on marketing materials, a claim for bad faith damages, and a claim based on misrepresentations regarding policy benefits. The bill specifies the eligibility requirements for claims of payees under structured settlement annuities, which current law does not address. The bill also eliminates a $200 deductible that is required under current law before the fund pays any portion of a claim.

Under current law, the fund may recover from a person any amount paid on behalf of the person to a third party. The bill provides that if the fund defends a claim against the person by a third party, the fund may also recover from the person the costs and expenses incurred in defending the claim. The bill expands on the subrogation rights of the fund under current law.

Under current law, the fund may guarantee, assume, or reinsure coverage under an annuity or a life or disability insurance policy. The bill prohibits the fund from providing such coverage, however, to any person who has coverage under any other state's security fund statutes. The bill also provides authority for the fund to succeed, if it so elects, to an insolvent insurer's rights and obligations under a contract covered by the fund under an indemnity reinsurance agreement.

Current law generally provides that assessments paid by insurers to support the fund are based on premium written in the year before the year in which the order of liquidation is entered. The bill changes the assessment base to the year preceding the year in which the assessment is approved by the board. Under current law the maximum assessment in any calendar year is two percent of premium. Under the bill the maximum assessment in any calendar year may not exceed two percent of average annual premium received in this state during the three calendar years preceding the year in which the liquidation order is entered.

Town mutuals

Under current law, one or more town mutual corporations may merge with a single domestic mutual corporation to form a single domestic mutual corporation. Approval of the merger must be given by the commissioner, based on a plan of merger that is filed with the commissioner.

This bill provides that, if a domestic mutual merging with one or more town mutuals is nonassessable, the merging mutuals must form a domestic mutual but, if the merging domestic mutual is assessable, the merging mutuals may form either a domestic mutual or a town mutual. If the merging mutuals form a town mutual, the plan of merger filed with the commissioner must include a time schedule for bringing the resulting town mutual into compliance with the insurance laws relating to town mutuals. The commissioner may approve any reasonable schedule not exceeding three years.

The bill also provides that, if the board of a town mutual has fewer than nine directors, no more than one director may be an employee or representative of the

town mutual and that in no case may employees and representatives of a town mutual constitute a majority of its board. These limitations, which apply under current law to domestic mutual corporations, will apply to town mutuals in two years unless the commissioner allows further delay for up to one year.

Minimum nonforfeiture amount

Under current law, the minimum amount that must be paid under an annuity contract (called the minimum nonforfeiture amount) is calculated by using an interest rate of three percent. This bill changes the interest rate that is used to calculate the minimum nonforfeiture amount to an indexed rate that is based on the monthly yield on actively traded U.S. treasury securities, adjusted to a constant maturity of five years (five–year constant maturity treasury rate), as published by the Federal Reserve Board. The actual rate used, however, may not exceed three percent or be lower than one percent. If the contract so provides, the interest rate may be redetermined at different times during the term of the contract. Thus, the interest rate used over the term of the annuity contract may be the five–year constant maturity treasury rate at times and three percent or one percent at other times.

Committees

Under current law, the board of directors of an insurer that is a domestic stock or mutual corporation may appoint committees to exercise various powers of the board of directors in the management of the business and affairs of the corporation. Generally, a committee of the board must consist of three or more directors. This bill adds that such a committee may include one or more nonvoting members who are not directors.

Miscellaneous

The bill makes a few additional miscellaneous changes including: specifically providing that orders of the commissioner may be for remedial measures or restitution; clarifying that, in addition to information obtained from insurance regulators, the Office of the Commissioner of Insurance (OCI) may refuse to disclose and prevent any other person from disclosing information provided by OCI to those insurance regulators; limiting the amount that an insurance corporation may invest in a subsidiary; removing an exemption for payment of extraordinary dividends by a domestic insurer to a domestic insurer from a requirement to report the payment to the commissioner at least 30 days in advance; and providing for an annual fee of $500 to be listed by the commissioner for surplus lines insurance. The bill also repeals chapter 641, relating to the authority of the commissioner to conduct examinations and impose certain enforcement measures with respect to employee benefit plans, because it is largely preempted by the federal Employee Retirement Income Security Act.

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

1 **SECTION 1.** 600.03 (21) of the statutes is amended to read:

2 600.03 **(21)** "Form" means a policy, group certificate, or application prepared
3 for general use and does not include one specially prepared for use in an individual
4 case. See also "policy".

5 **SECTION 2.** 601.31 (1) (k) (intro.) of the statutes is amended to read:

6 601.31 **(1)** (k) (intro.) For filing an annual statement~~, except as provided in s.~~
7 ~~641.13~~:

8 **SECTION 3.** 601.31 (1) (tc) of the statutes is created to read:

9 601.31 **(1)** (tc) For each annual listing by the commissioner for surplus lines
10 insurance under s. 618.41 (6) (d), $500.

11 **SECTION 4.** 601.41 (4) (a) of the statutes is renumbered 601.41 (4) (a) (intro.)
12 and amended to read:

13 601.41 **(4)** (a) (intro.) The commissioner shall issue such prohibitory,
14 mandatory, and other orders as are necessary to secure compliance with the law. An
15 order requiring remedial measures or restitution may include any of the following:

16 **SECTION 5.** 601.41 (4) (a) 1. of the statutes is created to read:

17 601.41 **(4)** (a) 1. Remedial measures or restitution under s. 628.347 (5).

18 **SECTION 6.** 601.41 (4) (a) 2. of the statutes is created to read:

19 601.41 **(4)** (a) 2. Remedial measures or restitution to enforce s. 611.72 or ch.
20 617, including seizure or sequestering of voting securities of an insurer owned
21 directly or indirectly by a person who has acquired or who is proposing to acquire
22 voting securities in violation of s. 611.72 or ch. 617.

23 **SECTION 7.** 601.465 (3) (intro.) of the statutes is amended to read:

24 601.465 **(3)** (intro.) Testimony, reports, records, communications, and
25 information that are obtained by the office from, or provided by the office to, any of

the following, under a pledge of confidentiality or for the purpose of assisting in the conduct of an investigation or examination:

SECTION 8. 601.64 (1) of the statutes is amended to read:

601.64 **(1)** INJUNCTIONS AND RESTRAINING ORDERS. The commissioner may commence an action in circuit court in the name of the state to restrain by temporary or permanent injunction or by temporary restraining order any violation of chs. 600 to 655, s. 149.13 or 149.144, any rule promulgated under chs. 600 to 655 or any order issued under s. 601.41 (4). ~~Except as provided in s. 641.20, the~~ The commissioner need not show irreparable harm or lack of an adequate remedy at law in an action commenced under this subsection.

SECTION 9. 609.98 (1) of the statutes is amended to read:

609.98 **(1)** DEFINITION. In this section, "premiums" has the meaning given under s. 646.51 ~~(3) (a) 1~~ (1c) (c).

SECTION 10. 609.98 (4) (a) of the statutes is amended to read:

609.98 **(4)** (a) To pay an assessment under s. 646.51 (3) ~~(a) or (b)~~ (am).

SECTION 11. 609.98 (4) (b) of the statutes is amended to read:

609.98 **(4)** (b) To the extent that the amount on deposit exceeds 1% of premiums written in this state by the health maintenance organization insurer in the preceding calendar year and the deposit is not necessary to pay an assessment under s. 646.51 (3) ~~(a) or (b)~~ (am).

SECTION 12. 611.26 (4) of the statutes is renumbered 611.26 (4) (intro.) and amended to read:

611.26 **(4)** OTHER SUBSIDIARIES. (intro.) An insurance corporation may form or acquire other subsidiaries than those under subs. (1) to (3). The investment in such subsidiaries may be counted toward satisfaction of the compulsory surplus

requirement of s. 623.11 and the security surplus standard of s. 623.12 to the extent that the investment is a part of the leeway investments of s. 620.22 (9) for the first $200,000,000 of assets or to the extent that the investment is within the limitations under s. 620.23 (2) (a) and (b) for other assets. The commissioner may limit investment in subsidiaries under this subsection by rule or order. Unless approved by the commissioner, an insurance corporation may not do any of the following:

SECTION 13. 611.26 (4) (a) of the statutes is created to read:

611.26 **(4)** (a) Invest in a subsidiary more than 10 percent of its assets or 50 percent of its capital and surplus, whichever is less.

SECTION 14. 611.26 (4) (b) of the statutes is created to read:

611.26 **(4)** (b) Invest in a subsidiary to the extent that the insurer's capital and surplus with regard to policyholders will not be reasonable in relation to the insurer's outstanding liabilities or adequate to meet the insurer's financial needs.

SECTION 15. 611.56 (1) of the statutes is amended to read:

611.56 **(1)** APPOINTMENT. If the articles or bylaws of a corporation so provide, the board by resolution adopted by a majority of the full board may designate one or more committees, each consisting of at least 3 ~~or more~~ directors serving at the pleasure of the board. The board may designate one or more directors as alternate members of any committee to substitute for any absent member at any meeting of the committee. Any committee under this section may include one or more nonvoting members who are not directors. The designation of a committee and delegation of authority to it shall not relieve the board or any director of any responsibility imposed by law.

SECTION 16. 611.56 (2) of the statutes is amended to read:

611.56 **(2)** DELEGATION; MAJOR COMMITTEES. When the board is not in session, a committee satisfying all of the requirements for the composition of a board under s. 611.51 (2) to (4) may exercise any of the powers of the board in the management of the business and affairs of the corporation, including action under ss. 611.60 and 611.61, to the extent authorized in the resolution or in the articles or bylaws; except that any such committee may ~~be composed of~~ include 7 or more directors if the corporation has 9 or more directors.

SECTION 17. 612.13 (1m) of the statutes is created to read:

612.13 **(1m)** INSIDE DIRECTORS. (a) Beginning 2 years after the effective date of this paragraph .... [revisor inserts date], all of the following apply:

1. If a town mutual has fewer than 9 directors, no more than one director may be an employee or representative of the town mutual.

2. Employees and representatives of a town mutual may not constitute a majority of its board.

(b) Notwithstanding par. (a), the commissioner may allow a town mutual an extension of up to one year to come into compliance with the requirements under par. (a).

SECTION 18. 612.22 (title) of the statutes is amended to read:

612.22 (title) **Merger of town mutuals ~~into~~ and mutual insurance corporations.**

SECTION 19. 612.22 (1) of the statutes is amended to read:

612.22 **(1)** CONDITIONS FOR MERGER. One or more town mutuals may merge with a single domestic mutual under ch. 611. ~~The~~ If the domestic mutual is nonassessable, the surviving corporation shall be a mutual under ch. 611. If the domestic mutual

is assessable, the surviving corporation may be either a mutual under ch. 611 or a town mutual under this chapter.

SECTION 20. 612.22 (3) of the statutes is renumbered 612.22 (3) (a) and amended to read:

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

SECTION 21. 612.22 (3) (b) of the statutes is created to read:

612.22 **(3)** (b) If the surviving corporation will be a town mutual, the plan filed with the commissioner under par. (a) shall include a time schedule for bringing the surviving corporation into compliance with this chapter. The commissioner may approve a reasonable time schedule that does not exceed 3 years.

SECTION 22. 612.22 (4) of the statutes is amended to read:

612.22 **(4)** APPROVAL BY MEMBERS OF THE ~~TOWN~~ MUTUALS. After being approved by the commissioner under sub. (3), the plan shall be submitted to the members of the participating ~~town~~ mutuals for their approval. The members of each ~~town~~ participating mutual shall vote separately.

SECTION 23. 612.22 (6) of the statutes is amended to read:

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

SECTION 24. 617.225 (1) of the statutes is amended to read:

617.225 **(1)** ~~Except as provided under sub. (5), a~~ A domestic insurer may not pay an extraordinary dividend to its shareholders and an affiliate of the insurer may not accept an extraordinary dividend unless the insurer reports the extraordinary dividend to the commissioner at least 30 days before payment and the commissioner does not disapprove the extraordinary dividend within that period.

SECTION 25. 617.225 (5) of the statutes is repealed.

SECTION 26. 628.347 of the statutes is created to read:

628.347 Suitability of annuity sales to senior consumers. (1) DEFINITIONS. In this section:

(a) "Annuity" means a fixed or variable annuity that is individually solicited, whether the product is classified as individual or group.

(b) "Recommendation" means advice provided by an insurance intermediary, or an insurer if no intermediary is involved, to an individual senior consumer that results in the purchase or exchange of an annuity in accordance with that advice.

(c) "Senior consumer" means a person who is 65 years of age or older. The term includes any joint owner of an annuity who is less than 65 years of age if at least one joint owner is 65 years of age or older, and any prospective joint purchaser of an annuity who is less than 65 years of age if at least one prospective joint purchaser is 65 years of age or older.

1 **(2)** DUTIES OF INSURERS AND INSURANCE INTERMEDIARIES WITH REGARD TO
2 RECOMMENDATIONS. (a) Except as provided in par. (c), an insurance intermediary, or
3 insurer if no intermediary is involved, may not recommend to a senior consumer the
4 purchase or exchange of an annuity if the recommendation results in an insurance
5 transaction or series of insurance transactions unless the intermediary or insurer
6 has reasonable grounds to believe that the recommendation is suitable for the senior
7 consumer on the basis of facts disclosed by the senior consumer as to his or her
8 investments, other insurance products, and financial situation and needs.

9 (b) Before making a recommendation described in par. (a), an insurance
10 intermediary, or insurer if no intermediary is involved, shall make reasonable efforts
11 to obtain information concerning all of the following:

12 1. The senior consumer's financial status.

13 2. The senior consumer's tax status.

14 3. The senior consumer's investment objectives.

15 4. Any other information that is reasonably appropriate for determining the
16 suitability of a recommendation to the senior consumer.

17 (c) An insurance intermediary, or insurer if no intermediary is involved, has no
18 obligation under par. (a) to a senior consumer related to a recommendation if the
19 senior consumer does any of the following:

20 1. Refuses to provide relevant information requested by the insurer or
21 insurance intermediary.

22 2. Fails to provide complete or accurate information.

23 3. Decides to enter into an insurance transaction that is not based on a
24 recommendation of the insurer or insurance intermediary.

1 (d) Any recommendation of an insurer or insurance intermediary that, under
2 par. (c), is not subject to the obligation under par. (a) shall be reasonable under all
3 circumstances actually known to the insurer or insurance intermediary at the time
4 the recommendation is made.

5 **(3)** INSURER'S SUPERVISORY RESPONSIBILITY. (a) An insurer either shall ensure
6 that a system to supervise recommendations that is reasonably designed to achieve
7 compliance with this section is established and maintained by complying with pars.
8 (c) to (e), or shall establish and maintain such a system, which shall include at least
9 all of the following:

10 1. Maintaining written procedures.

11 2. Conducting periodic reviews of its records that are reasonably designed to
12 assist in detecting and preventing violations of this section.

13 (b) A general agent or independent agency either shall adopt a system
14 established by an insurer to supervise recommendations of its insurance
15 intermediaries that is reasonably designed to achieve compliance with this section,
16 or shall establish and maintain such a system, which shall include at least all of the
17 following:

18 1. Maintaining written procedures.

19 2. Conducting periodic reviews of records that are reasonably designed to assist
20 in detecting and preventing violations of this section.

21 (c) An insurer may contract with a 3rd party, which may be a general agent or
22 independent agency, to establish and maintain a system of supervision as required
23 under par. (a) with respect to insurance intermediaries under contract with or
24 employed by the 3rd party.

1 (d) An insurer shall make reasonable inquiry to ensure that any 3rd party with
2 which the insurer contracts under par. (c) is performing the functions required under
3 par. (a) and shall take such action as is reasonable under the circumstances to enforce
4 the contractual obligation to perform the functions. An insurer may comply with its
5 obligation to make reasonable inquiry in all of the following ways:

6 1. The insurer annually obtains from a senior manager of the 3rd party who
7 has responsibility for the delegated functions a representation that the 3rd party is
8 performing the required functions and that the senior manager has a reasonable
9 basis for making the representation.

10 2. The insurer, based on reasonable selection criteria, periodically selects 3rd
11 parties contracting under par. (c) for reviews to determine whether the 3rd parties
12 are performing the required functions. The insurer shall perform those procedures
13 to conduct the reviews that are reasonable under the circumstances.

14 (e) An insurer that contracts with a 3rd party under par. (c) and that complies
15 with the supervisory requirement under par. (d) satisfies its responsibilities under
16 par. (a) as to insurance intermediaries under contract with or employed by the 3rd
17 party.

18 (f) An insurer is not required under par. (a), and a general agent or independent
19 agency is not required under par. (b), to do any of the following:

20 1. Review, or provide for the review of, all insurance intermediary solicited
21 transactions.

22 2. Include in its system of supervision an insurance intermediary's
23 recommendations made to senior consumers of products other than annuities offered
24 by the insurer, general agent, or independent agency.

1 (g) A general agent or independent agency contracting with an insurer under
2 par. (c) shall promptly, upon request by the insurer under par. (d), provide a
3 representation as described in par. (d) 1. or give a clear statement that it is unable
4 to meet the representation criteria.

5 (h) No person may provide a representation under par. (d) 1. unless the person
6 satisfies all of the following:

7 1. The person is a senior manager with responsibility for the delegated
8 functions.

9 2. The person has a reasonable basis for making the representation.

10 **(4)** NATIONAL ASSOCIATION OF SECURITIES DEALERS CONDUCT RULES. Compliance
11 with the National Association of Securities Dealers Conduct Rules pertaining to
12 suitability satisfies the requirements under sub. (2) for the recommendation of
13 variable annuities. Nothing in this subsection, however, limits the commissioner's
14 ability to enforce this section.

15 **(5)** REMEDIAL MEASURES. The commissioner may do any of the following:

16 (a) Order an insurer to take reasonably appropriate corrective action for any
17 senior consumer harmed by a violation of this section by the insurer or the insurer's
18 insurance intermediary.

19 (b) Order an insurance intermediary to take reasonably appropriate corrective
20 action for any senior consumer harmed by a violation of this section by the insurance
21 intermediary.

22 (c) Order a general agent or independent agency that employs or contracts with
23 an insurance intermediary to sell, or solicit the sale of, annuities to senior consumers
24 to take reasonably appropriate corrective action for any senior consumer harmed by
25 a violation of this section by the insurance intermediary.

1 **(6)** PENALTIES; MITIGATION. (a) Any person who violates this section is subject
2 to the penalties provided under s. 601.64, suspension or revocation of a license or
3 certificate of authority, and an order under s. 601.41 (4).

4 (b) A penalty under par. (a) for a violation of sub. (2) (a), (b), or (d), including
5 a forfeiture, may be reduced or eliminated to the extent provided by rule of the
6 commissioner if corrective action is taken for the senior consumer promptly after the
7 violation is discovered.

8 (c) The commissioner may promulgate rules related to the reduction or
9 elimination of penalties for violations of this section on the basis of prompt action
10 taken to correct any harm caused to senior consumers by the violations.

11 **(7)** RECORD KEEPING. An insurer and an insurance intermediary, including a
12 general agent and an independent agency, shall maintain, or be able to make
13 available to the commissioner, records of the information collected from a senior
14 consumer and other information used in making a recommendation that was the
15 basis for an insurance transaction for 6 years after the insurance transaction is
16 completed by the insurer, except as otherwise permitted by the commissioner by rule.
17 An insurer may, but is not required to, maintain records on behalf of an insurance
18 intermediary, including a general agent and an independent agency.

19 **(8)** EXEMPTIONS. This section does not apply to any of the following:

20 (a) Direct response solicitations in which no recommendation is made based on
21 information collected from the senior consumer.

22 (b) Recommendations related to contracts used to fund any of the following:

23 1. An employee pension or welfare benefit plan that is covered by the federal
24 Employee Retirement and Income Security Act.

2. A plan described in section 401 (a) or (k), 403 (b), or 408 (k) or (p) of the Internal Revenue Code, if the plan is established or maintained by an employer.

3. A government or church plan as defined in section 414 of the Internal Revenue Code, a government or church welfare benefit plan, or a deferred compensation plan of a state or local government or tax exempt organization under section 457 of the Internal Revenue Code.

4. A nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor.

5. A settlement or assumption of liability associated with personal injury litigation or any dispute or claim resolution process.

6. A formal prepaid funeral or burial contract.

SECTION 27. 632.435 (1) (intro.) of the statutes is amended to read:

632.435 **(1)** (intro.) ~~In the case of contracts issued on or after the operative date of this section as defined in sub. (12), no~~ No contract of annuity shall be delivered or issued for delivery in this state unless it contains in substance the following provisions or corresponding provisions which in the opinion of the commissioner are at least as favorable to the contract holder:

SECTION 28. 632.435 (1) (a) of the statutes is amended to read:

632.435 **(1)** (a) Upon cessation of payment of considerations under a contract, or upon the written request of the contract owner, the company ~~will~~ shall grant a paid–up annuity on a plan stipulated in the contract of such value as is specified in subs. (5) to (8) and (10).

SECTION 29. 632.435 (1) (b) of the statutes is amended to read:

632.435 **(1)** (b) If a contract provides for a lump sum settlement at maturity or at any other time, upon surrender of the contract at or prior to the commencement

of any annuity payments, the company ~~will~~ shall pay in lieu of any paid–up annuity benefit a cash surrender benefit of such amount as is specified in subs. (5), (6), (8), and (10). The company ~~shall~~ may reserve the right to defer the payment of such cash surrender benefit, for a period ~~of~~ not exceeding 6 months after demand therefor with surrender of the contract, if the company receives written approval from the commissioner upon the company's written request, which shall address the deferral's necessity and equitability to all policyholders.

SECTION 30. 632.435 (4) of the statutes is repealed and recreated to read:

632.435 **(4)** (a) In this subsection, "net considerations" means, for a given contract year, an amount equal to 87.5 percent of the gross considerations credited to the contract during that contract year.

(b) The minimum nonforfeiture amount at or prior to the commencement of any annuity payments shall be equal to an accumulation up to such time, at one or more rates of interest as indicated in pars. (c) to (e), of the net considerations paid prior to such time, decreased by the sum of all of the following:

1. Any prior withdrawals from or partial surrenders of the contract accumulated at one or more rates of interest as indicated in pars. (c) to (e).

2. An annual contract charge of $50, accumulated at one or more rates of interest as indicated in pars. (c) to (e).

3. Any premium tax paid by the company for the contract, accumulated at one or more rates of interest as indicated in pars. (c) to (e).

4. The amount of any indebtedness to the company on the contract, including interest due and accrued.

(c) The interest rate used to determine minimum nonforfeiture amounts shall be an annual rate of interest that is the lower of 3 percent and the higher of either of the following:

1. The 5–year constant maturity treasury rate reported by the federal reserve board as of a date, or average over a period, specified in the contract no longer than 15 months prior to the contract issue date or redetermination date under par. (d), less 125 basis points or, if the contract provides substantive participation in an equity indexed benefit during the period or term, the contract may increase the reduction by up to an additional 100 basis points to reflect the value of the equity index benefit, and rounded to the nearest one–twentieth of 1 percent.

2. One percent.

(d) The interest rate determined under par. (c) shall apply for an initial period and may be redetermined for additional periods. The redetermination date, basis, and period, if any, shall be stated in the contract. The basis is the date or average over a specified period that produces the value of the 5–year constant maturity treasury rate to be used at each redetermination date. The method for determining the interest rate under par. (c) shall be specified in the contract if the interest rate will be reset.

(e) The present value at the contract issue date, and at each redetermination date, of the additional reduction under par. (c) 1. for substantive participation in an equity index benefit may not exceed the market value of the benefit. The commissioner may require a demonstration that the present value of the additional reduction does not exceed the market value of the benefit. The commissioner may disallow or limit the additional reduction if the commissioner determines that the demonstration is unacceptable.

(f) The commissioner may promulgate rules for the implementation of par. (e) and to provide for further adjustments to the calculation of minimum nonforfeiture amounts for contracts that provide substantive participation in an equity index benefit and for other contracts for which the commissioner determines adjustments are justified.

SECTION 31. 632.435 (5) of the statutes is amended to read:

632.435 **(5)** Any paid–up annuity benefit available under a contract shall be such that its present value on the date annuity payments are to commence is at least equal to the minimum nonforfeiture amount on that date. Such present value shall be computed using the mortality table, if any, and the interest rate <u>or rates</u> specified in the contract for determining the minimum paid–up annuity benefits guaranteed in the contract.

SECTION 32. 632.435 (12) of the statutes is repealed.

SECTION 33. Chapter 641 of the statutes, as affected by 2001 Wisconsin Act 109, is repealed.

SECTION 34. 645.58 (1) (intro.) of the statutes, as affected by 2003 Wisconsin Act 44, is amended to read:

645.58 **(1)** LIABILITY. (intro.) Except as provided in this subsection <u>and in s. 646.35 (8) (e)</u>, the amount recoverable by the liquidator from a reinsurer shall not be reduced as a result of delinquency proceedings, regardless of any provision in the reinsurance contract or other agreement. Payment made directly to an insured or other creditor shall not diminish the reinsurer's obligation to the insurer's estate except when any of the following applies:

SECTION 35. 646.01 (1) (a) 2. k. of the statutes is created to read:

646.01 **(1)** (a) 2. k. Risk–sharing plans under chs. 149 and 619.

1 **SECTION 36.** 646.01 (1) (a) 2. L. of the statutes is created to read:

2 646.01 **(1)** (a) 2. L. The patients compensation fund under s. 655.27.

3 **SECTION 37.** 646.01 (1) (b) 1. of the statutes is repealed and recreated to read:

4 646.01 **(1)** (b) 1. Any portion of a life insurance policy or annuity contract that
5 is not guaranteed by the insurer or under which the risk is borne by the policy or
6 policyholder.

7 **SECTION 38.** 646.01 (1) (b) 9. (intro.) of the statutes is renumbered 646.01 (1)
8 (b) 9. and amended to read:

9 646.01 **(1)** (b) 9. Any self–funded, self–insured, or partially or wholly uninsured
10 plan of an employer or other person to provide life insurance, annuity, or disability
11 benefits to its employees or members to the extent that the plan is self–funded,
12 self–insured, or uninsured~~, including benefits payable by an employer or other~~
13 ~~person under any of the following:~~.

14 **SECTION 39.** 646.01 (1) (b) 9. a. of the statutes is repealed.

15 **SECTION 40.** 646.01 (1) (b) 9. b. of the statutes is repealed.

16 **SECTION 41.** 646.01 (1) (b) 9. c. of the statutes is repealed.

17 **SECTION 42.** 646.01 (1) (b) 9. d. of the statutes is repealed.

18 **SECTION 43.** 646.01 (1) (b) 11. of the statutes is repealed and recreated to read:

19 646.01 **(1)** (b) 11. Any warranty or service contract.

20 **SECTION 44.** 646.01 (1) (b) 11m. of the statutes is created to read:

21 646.01 **(1)** (b) 11m. Any contractual liability policy that is issued to a warrantor,
22 warranty plan, warranty plan administrator, or service contract provider and that
23 provides coverage of any liability or performance arising out of or in connection with
24 a warranty or service contract.

25 **SECTION 45.** 646.01 (1) (b) 15. of the statutes is created to read:

1 646.01 **(1)** (b) 15. An unallocated annuity contract.

2 **SECTION 46.** 646.01 (1) (b) 16. of the statutes is created to read:

3 646.01 **(1)** (b) 16. A contractual agreement that obligates an insurer to provide
4 a book value accounting guarantee for defined contribution benefit plan participants
5 by reference to a portfolio of assets that is owned by the benefit plan or its trustee,
6 neither of which is an affiliate of the insurer.

7 **SECTION 47.** 646.01 (1) (b) 17. of the statutes is created to read:

8 646.01 **(1)** (b) 17. Any liability under a policy or contract to the extent that it
9 provides for interest or other changes in value that are to be determined by the use
10 of an index or other external reference stated in the policy or contract and to the
11 extent that the interest or other changes in value have not been credited to the policy
12 or contract as of the date of the entry of the order of liquidation and are subject to
13 forfeiture. If a policy's or contract's interest or other changes in value are credited
14 less frequently than annually, for purposes of determining the values that have been
15 credited and that are not subject to forfeiture, the interest or change in value
16 determined by using the procedures specified in the policy or contract will be credited
17 as if the contractual date of crediting interest or other changes in value was the date
18 of entry of the order of liquidation and will not be subject to forfeiture.

19 **SECTION 48.** 646.01 (1) (b) 18. of the statutes is created to read:

20 646.01 **(1)** (b) 18. The deductible, self–funded, or self–insured portion of a claim
21 under a liability or worker's compensation insurance policy, regardless of the timing
22 or method provided in the policy, endorsement, or any other agreement for payment
23 of the deductible, self–funded, or self–insured amount by the insured. This
24 subdivision does not apply to a worker's compensation insurance policy if the insured

1 under the policy is a debtor under 11 USC 701, et seq., as of the deadline set by the
2 liquidator for filing claims against the insolvent insurer.

3 **SECTION 49.** 646.03 (1m) of the statutes is created to read:

4 646.03 **(1m)** "Direct insurance" does not include a policy or contract of
5 reinsurance, except for the following:

6 (a) Reinsurance for which the reinsurer has issued assumption certificates
7 under the reinsurance policy or contract.

8 (b) Reinsurance ceded by an assessable town mutual company.

9 **SECTION 50.** 646.03 (2n) of the statutes is created to read:

10 646.03 **(2n)** "Impaired insurer" means an insurer subject to this chapter that
11 is placed under an order of rehabilitation or conservation by a court of competent
12 jurisdiction.

13 **SECTION 51.** 646.03 (2p) of the statutes is created to read:

14 646.03 **(2p)** "Insolvent insurer" means an insurer subject to this chapter that
15 is placed under an order of liquidation by a court of competent jurisdiction with a
16 finding of insolvency.

17 **SECTION 52.** 646.03 (4) of the statutes is created to read:

18 646.03 **(4)** With respect to a life or disability insurance policy or an annuity
19 contract, "owner" or "policyholder" means the person who is identified as the legal
20 owner under the terms of the policy or contract or who is otherwise vested with legal
21 title to the policy or contract through a valid assignment completed in accordance
22 with the terms of the policy or contract and properly recorded as the owner on the
23 books of the insurer. "Owner" or "policyholder" does not include a person with only
24 a beneficial interest in a policy or contract.

25 **SECTION 53.** 646.03 (5) of the statutes is created to read:

646.03 **(5)** "Unallocated annuity contract" means an annuity contract or group annuity certificate that is not issued to and owned by an individual, except to the extent of any annuity benefits guaranteed to an individual by an insurer under the contract or certificate.

SECTION 54. 646.11 (1) of the statutes is renumbered 646.11 (1) (intro.) and amended to read:

646.11 **(1)** (intro.) ORGANIZATION. There is created ~~a fund~~ an organization to be known as the "insurance security fund~~".~~." All insurers subject to this chapter are contributors to the fund as a result of their authority to transact business in this state. The fund shall consist of all of the following:

(a) All payments made by insurers under s. 646.51~~, of the~~.

(b) The earnings resulting from investments under s. 646.21 (2) ~~and of the~~.

(c) The amounts recovered under s. 645.72 (2) or a substantially similar law in the state of domicile of the insolvent insurer.

SECTION 55. 646.11 (1) (d) of the statutes is created to read:

646.11 **(1)** (d) Amounts reimbursed to the fund through its subrogation and assignment rights.

SECTION 56. 646.11 (1) (e) of the statutes is created to read:

646.11 **(1)** (e) Any other moneys received by the fund from time to time.

SECTION 57. 646.12 (2) (d) of the statutes is amended to read:

646.12 **(2)** (d) Employ or retain the personnel necessary to carry out ~~its~~ the fund's duties and set compensation for the personnel~~, sue or be sued, make contracts and borrow money necessary to carry out its duties in the most efficient way, including money with which to pay claims under s. 646.31 or to continue coverage under s. 646.35. The board may offer as security for such loans its claims against the~~

1 ~~liquidator or its power to levy assessments under this chapter~~. Personnel employed
2 under this paragraph are not employees of the state and are not subject to s. 20.922
3 or ch. 230.

4 **SECTION 58.** 646.12 (2) (f) 2. of the statutes is amended to read:

5 646.12 **(2)** (f) 2. Keep confidential the records under subd. 1. pertaining to
6 specific liquidation proceedings involving an insurer until the termination of the
7 liquidation proceedings or until sooner ordered to make the records public by a court
8 of competent jurisdiction.

9 **SECTION 59.** 646.12 (2) (f) 3. of the statutes is amended to read:

10 646.12 **(2)** (f) 3. Keep confidential the records under subd. 1. pertaining to
11 specific rehabilitation proceedings involving an insurer unless ordered to make the
12 records public by a court of competent jurisdiction.

13 **SECTION 60.** 646.12 (4) of the statutes is amended to read:

14 646.12 **(4)** OTHER POWERS. The ~~board~~ fund may join an organization consisting
15 of one or more entities of other states performing comparable functions, in order to
16 assist the ~~board~~ fund in carrying out its powers and duties under this chapter and
17 otherwise further the purposes of this chapter.

18 **SECTION 61.** 646.13 (title) of the statutes is amended to read:

19 **646.13** (title) **Special duties and powers of the ~~board~~ fund related to loss**
20 **claims.**

21 **SECTION 62.** 646.13 (1) (intro.) of the statutes is amended to read:

22 646.13 **(1)** DUTIES. (intro.) The ~~board~~ fund shall:

23 **SECTION 63.** 646.13 (1) (b) of the statutes is amended to read:

24 646.13 **(1)** (b) Stand in the position of the insurer in the investigation,
25 compromise, settlement, denial, and payment of claims under s. 646.31 and the

defense of 3rd party claims against insureds, subject to the limitations of s. 645.43. The ~~board~~ fund shall consult and cooperate with the liquidator in carrying out these duties.

SECTION 64. 646.13 (2) (intro.) of the statutes is amended to read:

646.13 **(2)** POWERS. (intro.) The ~~board~~ fund may:

SECTION 65. 646.13 (2) (b) of the statutes is amended to read:

646.13 **(2)** (b) Exercise with respect to loss claims the powers that the liquidator has with respect to other claims under ch. 645 or a substantially similar law in the state of domicile of the insolvent insurer.

SECTION 66. 646.13 (2) (c) of the statutes is amended to read:

646.13 **(2)** (c) With respect to any action against an insurer which is in liquidation, exercise the powers of the liquidator under s. 645.49 (1) or a substantially similar law in the state of domicile of the insolvent insurer.

SECTION 67. 646.13 (2) (d) of the statutes is amended to read:

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

SECTION 68. 646.13 (2) (g) of the statutes is created to read:

646.13 **(2)** (g) Sue and be sued, make contracts, and borrow money necessary to carry out its duties, including money with which to pay claims under s. 646.31 or to continue coverage under s. 646.35. The fund may offer as security for such loans its claims against the liquidator or its power to levy assessments under this chapter.

SECTION 69. 646.13 (3) (intro.) of the statutes is amended to read:

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

SECTION 70. 646.13 (3) (a) of the statutes is amended to read:

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

SECTION 71. 646.13 (3) (b) of the statutes is amended to read:

646.13 **(3)** (b) With a liquidator or court under the laws of any other state after the original date for filing specified by the liquidator or court, unless the liquidator or court determines that the claim is considered to have been timely filed under a law substantially similar to s. 645.61 (2) and the claim participates fully in every distribution to the same extent as other timely filed claims in the same class.

SECTION 72. 646.13 (3) (c) (intro.) of the statutes is amended to read:

646.13 **(3)** (c) (intro.) Except for claims under life insurance policies, annuities ~~and~~, or noncancelable or guaranteed renewable disability insurance policies, and except for claims determined to be excused late filings as provided in pars. (a) and (b), if the original date for filing is extended by the liquidator or court, with a liquidator or court after the earlier of the following:

1 **SECTION 73.** 646.13 (3) (c) 2. of the statutes is amended to read:

2 646.13 **(3)** (c) 2. The ~~final~~ extended date for filing specified by the liquidator or
3 court.

4 **SECTION 74.** 646.13 (4) of the statutes is amended to read:

5 646.13 **(4)** WHEN DUTY TO DEFEND TERMINATES. Any obligation of the ~~board~~ fund
6 to defend an insured ceases upon the ~~board's~~ fund's payment, by settlement releasing
7 the insured or on a judgment, of an amount equal to the lesser of the ~~board's~~ fund's
8 covered claim obligation limit or the applicable policy limit, subject to any express
9 policy terms regarding tender of limits.

10 **SECTION 75.** 646.15 (title) of the statutes is amended to read:

11 **646.15** (title) **Proceedings involving ~~nondomestic~~ insurers.**

12 **SECTION 76.** 646.15 (1) (a) (intro.) of the statutes is amended to read:

13 646.15 **(1)** (a) (intro.) If ~~a nondomestic~~ an insurer is in liquidation, the ~~board~~
14 fund may apply to the circuit court for Dane County for, and the court may grant,
15 restraining orders, temporary and permanent injunctions, and other orders
16 considered necessary and proper to prevent any of the following:

17 **SECTION 77.** 646.15 (1) (a) 1. of the statutes is amended to read:

18 646.15 **(1)** (a) 1. Interference with the ~~board~~ fund or with its administrative
19 proceedings.

20 **SECTION 78.** 646.15 (1) (a) 2. of the statutes is amended to read:

21 646.15 **(1)** (a) 2. The institution or further prosecution of any action or
22 proceeding involving the insurer or in which the ~~board~~ fund is obligated to defend a
23 party.

24 **SECTION 79.** 646.15 (1) (a) 4. of the statutes is amended to read:

646.15 **(1)** (a) 4. Any other threatened or contemplated action that might prejudice the rights of policyholders or the administration of the liquidation or ~~board~~ fund proceedings.

SECTION 80. 646.16 of the statutes is created to read:

646.16 Payment of deposits made for benefit of creditors. (1) The commissioner shall promptly pay to the fund any deposit held in this state that was paid, as required by law or the commissioner, by the insolvent insurer for the benefit of creditors, including policyholders, and not turned over to the domiciliary liquidator upon the entry of a final order of liquidation of an insurer domiciled in this state or in a reciprocal state, as defined in s. 645.03 (1) (i). Of the amount paid to the fund under this subsection, the fund may retain the percentage determined by dividing the aggregate amount of policyholders' claims that are related to the insolvency and for which the fund has provided benefits under this chapter by the aggregate amount of all policyholders' claims in this state that are related to the insolvency. The fund shall remit the balance to the domiciliary liquidator.

(2) Any amount retained by the fund under sub. (1) shall be treated as a distribution of estate assets under s. 645.72 or a similar provision of the state of domicile of the insolvent insurer. Deposits subject to this section shall not be treated as deposits as security, escrow, or other security under s. 645.03 (1) (j).

SECTION 81. 646.21 (2) of the statutes is amended to read:

646.21 **(2)** INVESTMENT OF ASSETS. The board may request that assets of the fund not needed currently be invested by the investment board under s. 25.17. If so requested, the investment board shall invest those assets in investments with maturities and liquidity appropriate to the probable needs of the fund for money to perform its duties. All income attributable to the investments shall be credited to

the fund, and both income and principal shall be transferred to the ~~board of the~~ fund on request of the board. Assets held by the ~~board of the~~ fund shall be invested in a similar manner.

SECTION 82. 646.31 (1) (d) 10. and 11. of the statutes are created to read:

646.31 **(1)** (d) 10. Based on an obligation that does not arise under the express written terms of the policy or contract, including any of the following:

a. A claim based on marketing materials.

b. A claim based on misrepresentations regarding policy benefits.

c. An extra–contractual claim, including a claim for punitive or exemplary damages.

d. A claim for statutorily imposed multiple damages.

e. A claim for penalties or consequential or incidental damages.

f. A claim for bad faith damages.

11. In the case of a life or disability insurance policy or an annuity contract, based on side letters, riders, or other documents that do not meet or comply with applicable policy form filing or approval requirements.

SECTION 83. 646.31 (2) (a) 1. of the statutes is amended to read:

646.31 **(2)** (a) 1. The claim of a policyholder, including a ceding assessable domestic insurer ~~which~~ that is organized under ch. 612 and a domestic insurer ~~which~~ that is a bona fide policyholder of the insurer in liquidation, who ~~at the time of the insured event or of the liquidation order was~~ is a resident of this state under sub. (13).

SECTION 84. 646.31 (2) (a) 2. of the statutes is amended to read:

646.31 **(2)** (a) 2. Except for a claim of a beneficiary, assignee, or payee under a life or disability insurance policy or annuity contract, the claim of an insured, including a certificate holder, under a policy or annuity contract who ~~at the time of~~

1 ~~the insured event or of the liquidation order was~~ is a resident of this state under sub.
2 (13).

3 **SECTION 85.** 646.31 (2) (b) 1. of the statutes is repealed.

4 **SECTION 86.** 646.31 (2) (b) 2. (intro.) and a. of the statutes are consolidated,
5 renumbered 646.31 (2) (b) and amended to read:

6 646.31 **(2)** (b) *Certain nonresidents.* The claim is made under a life or disability
7 insurance policy or annuity contract subject to this section and issued by a domestic
8 insurer ~~if all of the following conditions are met: a. The~~ and the claimant is a resident
9 of another state that provides coverage similar to the coverage provided under this
10 chapter but does not provide coverage for the claimant because the insurer was not
11 licensed in that state at the time specified as a requirement for coverage under that
12 state's guaranty association law.

13 **SECTION 87.** 646.31 (2) (b) 2. b. of the statutes is repealed.

14 **SECTION 88.** 646.31 (2) (b) 3. of the statutes is repealed.

15 **SECTION 89.** 646.31 (2) (f) (title) of the statutes is amended to read:

16 646.31 **(2)** (f) (title) *Beneficiaries, assignees, and payees; life or disability policy*
17 *or annuity contract.*

18 **SECTION 90.** 646.31 (2) (f) 2. of the statutes is amended to read:

19 646.31 **(2)** (f) 2. The person is a resident of this state or could have made a claim
20 under par. (b) ~~2~~.

21 **SECTION 91.** 646.31 (2) (g) of the statutes is created to read:

22 646.31 **(2)** (g) *Payees; structured settlement annuity.* 1. Notwithstanding par.
23 (f), the claim of a payee, or of a beneficiary of a deceased payee, under a structured
24 settlement annuity if the payee, or deceased payee's beneficiary, is a resident of this

1 state, regardless of where the policyholder of the structured settlement annuity
2 resides.

3 2. Notwithstanding pars. (b) and (f), the claim of a payee, or of a beneficiary of
4 a deceased payee, under a structured settlement annuity if the payee, or deceased
5 payee's beneficiary, is not a resident of this state, if neither the payee, or deceased
6 payee's beneficiary, nor the policyholder of the structured settlement annuity is
7 eligible for coverage by an organization that is comparable to the fund in the state
8 of which the payee, or deceased payee's beneficiary, or the policyholder is a resident,
9 and if either of the following applies:

10 a. The policyholder is a resident of this state.

11 b. The policyholder is not a resident of this state, but the insurer that issued
12 the structured settlement annuity is domiciled in this state, and the state in which
13 the policyholder resides has an organization that is comparable to the fund.

14 **SECTION 92.** 646.31 (3) of the statutes is repealed.

15 **SECTION 93.** 646.31 (5) of the statutes is repealed.

16 **SECTION 94.** 646.31 (6) (a) of the statutes is amended to read:

17 646.31 **(6)** (a) The portion of ~~a~~ an otherwise eligible loss claim for which
18 indemnification is provided by other benefits or advantages, which may not be
19 included in the classes of claims specified in s. 645.68 (intro.), may not be claimed
20 from the fund under this chapter or from the insured or policyholder. The claimant
21 must exhaust such collateral sources before pursuing payment from the fund. This
22 paragraph does not apply to the claim of an insured or payee under a structured
23 settlement annuity.

24 **SECTION 95.** 646.31 (6) (b) of the statutes is amended to read:

646.31 **(6)** (b) The ~~board~~ fund may waive the application of par. (a) to claims under contracts subject to s. 646.35 ~~(2) or~~ (3), to the extent that the ~~board~~ fund determines that application of par. (a) would be impracticable.

SECTION 96. 646.31 (7) of the statutes is amended to read:

646.31 **(7)** SETOFFS AND COUNTERCLAIMS. Section 645.56 applies to the settlement of loss claims. The ~~board~~ fund shall give the liquidator a reasonable opportunity to inform the ~~board~~ fund of possible setoffs and counterclaims before paying loss claims.

SECTION 97. 646.31 (8) of the statutes is amended to read:

646.31 **(8)** NOTICE TO CLAIMANTS. The ~~board~~ fund shall provide notice under s. 645.47 (2) to those potential loss claimants to whom the fund is liable under the section, if the liquidator has not done so.

SECTION 98. 646.31 (9) (a) of the statutes is amended to read:

646.31 **(9)** (a) By any security fund with an obligation to pay all loss claims of the insurer~~;~~.

SECTION 99. 646.31 (9) (b) of the statutes is amended to read:

646.31 **(9)** (b) If it is a first party claim for damage to property with a permanent location, by the fund of the location of the property~~;~~.

SECTION 100. 646.31 (9) (c) of the statutes is amended to read:

646.31 **(9)** (c) If it is a workers' compensation claim, by the fund of the residence of the claimant~~;~~.

SECTION 101. 646.31 (9) (cm) of the statutes is created to read:

646.31 **(9)** (cm) If it is a liability claim, by the fund of the residence of the policyholder.

SECTION 102. 646.31 (9) (d) of the statutes is amended to read:

646.31 **(9)** (d) In any other case, by the fund of the residence of the insured~~; and~~.

SECTION 103. 646.31 (10) of the statutes is renumbered 646.31 (10) (intro.) and amended to read:

646.31 **(10)** TEMPORARY MORATORIUMS. (intro.) Before being obligated to make payments under this chapter to holders of life insurance or annuity contracts the fund may impose, with court approval, ~~temporary~~ any of the following:

(a) Temporary moratoriums ~~of not more than 90 days on payments of cash values and policy loans in addition to any deferrals of cash or policy loan value by contractual provision. A temporary moratorium may be renewed for successive periods of not more than 90 days with court approval~~ or liens on payments of cash values and policy loans, or on any other right to withdraw funds held in conjunction with those policies or contracts, in addition to any contractual provisions for deferral of cash or policy loan value. If the court imposes a temporary moratorium or a moratorium charge on the payment of cash values or policy loans out of the assets of the insolvent insurer, or on any other right to withdraw, out of those assets, funds held in conjunction with those policies or contracts, the fund may defer the payment of cash values and policy loans and other rights to withdraw funds for the period of the moratorium or moratorium charge imposed by the court, except for any claims covered by the fund to be paid in accordance with a hardship procedure established by the liquidator and approved by the court.

SECTION 104. 646.31 (10) (b) of the statutes is created to read:

646.31 **(10)** (b) Permanent policy or contract liens in connection with a guarantee, assumption, or reinsurance agreement, if the board finds that the amounts that may be assessed under this chapter are insufficient to ensure full and prompt performance of the fund's duties under this chapter, or that economic or

1 financial conditions, as they affect insurers, are such that imposing such permanent
2 policy or contract liens is in the public interest.

3 **SECTION 105.** 646.31 (11) of the statutes is amended to read:

4 646.31 **(11)** SUBROGATION CLAIMS. The fund is not required to pay any amount
5 due from the insurer to any reinsurer, insurer, insurance pool or underwriting
6 association as subrogation, contribution, or indemnification recoveries or otherwise,
7 except as provided in sub. (2) (a). A reinsurer, insurer, insurance pool or
8 underwriting association that has paid a claim and thereby has become subrogated
9 or otherwise entitled to the amount of that claim may assert that claim against the
10 liquidator of the insurer in liquidation but not against the insured of the insurer in
11 liquidation.

12 **SECTION 106.** 646.31 (13) of the statutes is renumbered 646.31 (13) (intro.) and
13 amended to read:

14 646.31 **(13)** RESIDENCY. (intro.) For purposes of determining residency in this
15 section~~, the~~:

16 (a) The residency of a claimant, insured, or policyholder that is not a natural
17 person is the state in which the claimant's, insured's, or policyholder's principal place
18 of business is located.

19 **SECTION 107.** 646.31 (13) (b) of the statutes is created to read:

20 646.31 **(13)** (b) In the case of a life or disability insurance policy or an annuity
21 contract, residency means residency at the time of the liquidation order. In the case
22 of any other kind of insurance covered by this chapter, residency means residency at
23 the time of the insured event.

24 **SECTION 108.** 646.31 (13) (c) of the statutes is created to read:

25 646.31 **(13)** (c) A person's residency may be in only one state.

1 **SECTION 109.** 646.31 (13) (d) of the statutes is created to read:

2 646.31 **(13)** (d) If a person who is a citizen of the United States is a resident of
3 a foreign country, or of a possession, territory, or protectorate of the United States,
4 that does not have an organization similar to the fund, the person's residency is the
5 domicile of the insurer that issued the policy or contract.

6 **SECTION 110.** 646.32 (1) of the statutes is amended to read:

7 646.32 **(1)** APPEAL. A claimant whose claim is reduced or declared ineligible
8 shall promptly be given notice of the determination and of the right to object under
9 this section. The claimant may appeal to the board within 30 days after the mailing
10 of the notice. The claimant may not pursue the claim in court except as provided in
11 sub. (2).

12 **SECTION 111.** 646.325 (1) of the statutes is amended to read:

13 646.325 **(1)** DEFINITION. In this section, "net worth" means the amount of an
14 insured's total assets less the insured's total liabilities at the end of the insured's
15 fiscal year immediately preceding the date the liquidation order was entered, as
16 shown on the insured's audited financial statement, ~~or, if~~ and includes the
17 consolidated net worth of all of the corporate affiliates, subsidiaries, operating
18 divisions, holding companies, and parent entities that are shown as insureds or
19 additional insureds on the policy issued by the insurer. If the insured is a natural
20 person, "net worth" means the insured's total assets less the insured's total liabilities
21 on December 31 immediately preceding the date the liquidation order was entered.

22 **SECTION 112.** 646.325 (2) (intro.) of the statutes is amended to read:

23 646.325 **(2)** RECOVERY FROM CERTAIN INSUREDS AND AFFILIATES. (intro.) Except
24 as provided in sub. (3), the fund may recover from a person the costs and expenses
25 incurred in defending a claim against the person by a 3rd party and the amount of

any claim paid on behalf of ~~that~~ the person to a 3rd party, if all of the following conditions are satisfied:

SECTION 113. 646.325 (2) (a) (intro.) of the statutes is amended to read:

646.325 **(2)** (a) (intro.) The person on whose behalf the claim was defended or paid is any of the following:

SECTION 114. 646.325 (2) (b) of the statutes is amended to read:

646.325 **(2)** (b) ~~Payment~~ Adjudication of the claim resulted in no liability obligation on the person to pay the claim of the 3rd party or payment of the claim satisfied all or part of the person's liability obligations to 3rd parties.

SECTION 115. 646.33 (1) of the statutes is renumbered 646.33 (1) (a) and amended to read:

646.33 **(1)** (a) Upon payment to any loss claimant the fund is subrogated to the claimant's full right of recovery against the insurer~~,~~ and, to the same extent the insurer would have been subrogated, against any liquidator and any 3rd person. A person receiving benefits under this chapter thereby assigns to the fund the person's rights under, and any causes of action against any person for losses arising under, resulting from, or otherwise relating to, the covered policy or contract to the extent of the benefits received, regardless of whether the benefits are payments of or on account of contractual obligations, continuation of coverage, or the provision of substitute or alternative coverages.

(2m) RECOVERY. (a) On recovery under this section, the fund may retain both the amount it has paid to the claimant and the amount it has expended to obtain the recovery and shall pay any balance to the claimant.

SECTION 116. 646.33 (1) (b), (c) and (d) of the statutes are created to read:

646.33 **(1)** (b) The subrogation rights of the fund under this subsection have the same priority against the assets of the insolvent insurer as the claimant's rights with respect to the insurer.

(c) In addition to the rights specified in pars. (a) and (b), the fund has all of the common law rights of subrogation and any other equitable or legal remedy that would have been available to the insolvent insurer or the claimant with respect to the covered policy or contract including, in the case of a structured settlement annuity, any rights of the owner, beneficiary, or payee of the annuity, to the extent of the benefits received under this chapter, against a person originally or by succession responsible for the losses that arise from the personal injury and that relate to the annuity or its payment.

(d) If any provision of this subsection is invalid or ineffective for any reason with respect to any person or claim, the amount payable by the fund with respect to the related covered obligations shall be reduced by any amount realized by any other person with respect to the person or claim that is attributable to the covered policy or contract.

SECTION 117. 646.33 (2) of the statutes is amended to read:

646.33 **(2)** COOPERATION. The claimant shall cooperate with the ~~board~~ fund in pursuing the fund's rights under sub. (1), including executing any necessary documents. If cooperation is withheld unreasonably, the fund may recover from the claimant any amount it has paid the claimant. The fund may require a claimant to execute a written assignment to it of the claimant's rights and causes of action relating to the covered policy or contract as a condition precedent to the receipt of any right or benefits under this chapter.

SECTION 118. 646.33 (2m) (b) of the statutes is created to read:

646.33 **(2m)** (b) If a claimant to whom the fund has provided benefits under this chapter recovers amounts with respect to which the fund has rights under this section, the claimant shall pay to the fund the portion of the recovery that is attributable to the covered policy or contract.

SECTION 119. 646.33 (3) of the statutes is amended to read:

646.33 **(3)** CLAIMS AGAINST LIQUIDATOR. The ~~board~~ fund shall report periodically and whenever a reasonable request is made to any liquidator against whom subrogation rights exist under sub. (1) the claims paid and rejected together with estimates of unsettled claims made or anticipated against the fund.

SECTION 120. 646.35 (2) of the statutes is repealed.

SECTION 121. 646.35 (3) (title) of the statutes is amended to read:

646.35 **(3)** (title) ~~NONDOMESTIC INSURER~~ INSURER IN LIQUIDATION.

SECTION 122. 646.35 (3) (intro.) (except 646.35 (3) (title)) of the statutes is renumbered 646.35 (3) (am) (intro.) and amended to read:

646.35 **(3)** (am) (intro.) If ~~a nondomestic~~ an insurer that is subject to this chapter is in liquidation, the ~~board~~ fund shall, subject to ~~the approval of the commissioner and on a determination by the commissioner that the insurer's domiciliary jurisdiction or state of entry does not provide by statute for protection to residents of this state substantially similar to that provided by this section~~ s. 646.31 (2), do either of the following:

SECTION 123. 646.35 (3) (a) of the statutes is renumbered 646.35 (3) (am) 1. and amended to read:

646.35 **(3)** (am) 1. Guarantee, assume, or reinsure, or cause to be guaranteed, assumed, or reinsured, the policies of ~~residents~~ the insolvent insurer within the scope of this section~~;~~.

1 **SECTION 124.** 646.35 (3) (b) of the statutes is renumbered 646.35 (3) (am) 2. and
2 amended to read:
3 646.35 **(3)** (am) 2. Assure performance of the contractual obligations of the
4 insurer on such policies~~; and~~.
5 **SECTION 125.** 646.35 (3) (c) of the statutes is renumbered 646.35 (3) (bm) and
6 amended to read:
7 646.35 **(3)** (bm) ~~Provide the necessary money~~ Whether the fund's duties under
8 par. (am) are discharged by the fund under par. (am) 1. or 2. is at the fund's discretion.
9 The fund shall provide moneys, pledges, loans, notes, guarantees, or other means
10 reasonably necessary to discharge the duties under ~~pars. (a) and (b)~~ par. (am) 1. or
11 2.
12 **SECTION 126.** 646.35 (4) of the statutes is renumbered 646.35 (4) (a) and
13 amended to read:
14 646.35 **(4)** (a) The fund has a claim against the liquidator for reasonable
15 payments made to discharge its duties under this section. If the ~~board~~ fund and the
16 liquidator disagree regarding the reasonableness of such payments, either may
17 apply to the court to determine the question. Such payments shall have the same
18 priority as the class of claims under s. 645.68 (3).
19 **SECTION 127.** 646.35 (4) (b) of the statutes is created to read:
20 646.35 **(4)** (b) As a creditor of the insolvent insurer, the fund shall be entitled
21 to receive disbursements of assets out of marshaled assets, consistent with s. 645.72
22 and any substantially similar laws of other states, as a credit against obligations
23 under this chapter. If, within 120 days after a final determination of an insurer's
24 insolvency by the receivership court, the liquidator has not applied to the court for
25 approval of a proposal for disbursement of assets out of marshaled assets to

insurance guaranty associations having obligations because of the insolvency, the fund may apply to the receivership court, in accordance with the law of the insolvent insurer's domicile, for approval of its own proposal for disbursement of the assets.

SECTION 128. 646.35 (5) of the statutes is amended to read:

646.35 **(5)** RATE INCREASES. The ~~board~~ fund may increase any rates or premiums on policies during continuation of coverage under sub. ~~(2) (b) or~~ (3) ~~(b)~~ (am) 2. to the extent the policies permit the insurer to increase the rates or premiums. If the ~~board~~ fund determines that the rates or premiums on policies ~~which~~ that do not permit an increase or the rates or premiums as increased to the extent permitted by the policies are inadequate under s. 625.11 (3), the ~~board~~ fund may offer the policyholders the option of terminating the coverage or continuing the coverage at adequate rates or premiums as determined by the ~~board~~ fund.

SECTION 129. 646.35 (6) (a) of the statutes is amended to read:

646.35 **(6)** (a) In the case of an annuity contract, the ~~board~~ fund may limit its performance to payment of the then current value of the loss claim under s. 645.68 (3) as of the date of the order of liquidation, with interest to the date of payment, in lieu of the requirements of sub. ~~(2) or~~ (3).

SECTION 130. 646.35 (6) (b) of the statutes is amended to read:

646.35 **(6)** (b) In the case of a disability insurance policy ~~which~~ that is neither guaranteed renewable nor noncancelable, the ~~board~~ fund is not obligated to continue the policy in force beyond the time required under s. 645.43 or the date established in the liquidation order of another state, but may continue the coverage under any disability insurance policy for up to 180 days after the date of the liquidation order. ~~The commissioner may adopt rules defining "guaranteed renewable" and "noncancelable" for the purposes of this paragraph.~~

1 **SECTION 131.** 646.35 (6) (bm) of the statutes is amended to read:

2 646.35 **(6)** (bm) For coverages continued pursuant to par. (b), the ~~board~~ fund
3 may substitute a comprehensive health insurance policy approved by the
4 commissioner for a health maintenance organization policy that is subject to sub. ~~(2)~~
5 ~~or~~ (3), and increase rates or premiums for the substituted coverage as provided in
6 sub. (5).

7 **SECTION 132.** 646.35 (6) (c) (intro.) of the statutes is amended to read:

8 646.35 **(6)** (c) (intro.) In the case of a life insurance or annuity contract, the
9 ~~board~~ fund is not obligated to perform the responsibilities set forth in sub. ~~(2) or~~ (3)
10 with respect to either of the following:

11 **SECTION 133.** 646.35 (6) (c) 1. (intro.) of the statutes is amended to read:

12 646.35 **(6)** (c) 1. (intro.) Any benefit payment liability, arising on or after the
13 date of entry of the order of liquidation, to the extent that the ~~payment is based upon~~
14 ~~a rate of interest that~~ rate of interest on which it is based or the interest rate,
15 crediting rate, or similar factor determined by use of an index or other external
16 reference stated in the policy or contract and employed in calculating returns or
17 changes in value exceeds the ~~larger~~ smaller of the following:

18 **SECTION 134.** 646.35 (6) (c) 1. b. of the statutes is amended to read:

19 646.35 **(6)** (c) 1. b. The rate of interest, which may not be less than zero,
20 determined by subtracting 3 percentage points from the monthly corporate bond
21 yield average, as most recently published by Moody's investors service or its
22 successor ~~and as adjusted on a monthly basis~~.

23 **SECTION 135.** 646.35 (6) (c) 2. (intro.) of the statutes is amended to read:

646.35 **(6)** (c) 2. (intro.) Any benefit payment liability, arising before the date of entry of the order of liquidation, to the extent that the payment ~~is based upon a rate of interest that~~ exceeds the ~~larger~~ smaller of the following:

SECTION 136. 646.35 (6) (c) 2. b. of the statutes is amended to read:

646.35 **(6)** (c) 2. b. The rate of interest, which may not be less than zero, determined by subtracting 2 percentage points from the monthly corporate bond yield average, as published by Moody's investors service or its successor, when averaged ~~for~~ over the 4–year period ending on the date ~~the fund becomes obligated with respect to the contract~~ of entry of the order of liquidation or averaged ~~for~~ over such lesser period if the contract was issued less than 4 years before that date.

SECTION 137. 646.35 (7) of the statutes is created to read:

646.35 **(7)** EXCLUSION FOR COVERAGE UNDER ANOTHER FUND. (a) Notwithstanding s. 646.31 (9), the fund shall not provide coverage under this section to any person who, directly or indirectly, has coverage under any other state's security fund statutes.

(b) In determining whether par. (a) applies in a situation in which a person could potentially be covered by security funds of more than one state, par. (a) shall be construed in conjunction with other states' laws in such a manner as to result in coverage for the person by only one security fund.

SECTION 138. 646.35 (8) of the statutes is created to read:

646.35 **(8)** REINSURANCE. (a) In this subsection, "coverage date" means the date on which the fund becomes responsible for the obligations of an insolvent insurer.

(b) At any time within one year after the coverage date, the fund may elect to succeed to the insolvent insurer's rights and obligations that accrue on or after the coverage date and that relate to contracts covered, in whole or in part, by the fund

1 under one or more indemnity reinsurance agreements entered into by the insolvent
2 insurer as a ceding insurer and selected by the fund. The election shall be effected
3 by a notice to the liquidator and to any affected reinsurer. The fund may not exercise
4 an election under this paragraph with respect to a reinsurance agreement that the
5 liquidator has expressly disaffirmed.

6 (c) With respect to each indemnity reinsurance agreement for which the fund
7 makes an election under par. (b):

8 1. The fund shall be responsible for all unpaid premiums under the agreement,
9 for periods both before and after the coverage date, and for the performance of all
10 other obligations to be performed under the agreement after the coverage date, that
11 relate in each case to contracts covered, in whole or in part, by the fund. The fund
12 may charge contracts covered in part by the fund, through reasonable allocation
13 methods, for the costs of reinsurance in excess of the obligations of the fund.

14 2. The fund is entitled to any amounts payable by the reinsurer under the
15 agreement with respect to losses or events that occur in periods after the coverage
16 date and that relate to contracts or contractual obligations covered, in whole or in
17 part, by the fund. Upon receipt of any such amounts, the fund must pay to the
18 beneficiary under the policy or contract on account of which the amounts were paid,
19 the amount by which the benefits paid by the fund on account of the policy or contract
20 less the retention of the insolvent insurer applicable to the loss or event is exceeded
21 by the amount received by the fund.

22 3. Within 30 days after the election, the fund and the indemnity reinsurer must
23 calculate the net balance due to or from the fund under the agreement as of the date
24 of the election, giving full credit to all items paid by the insolvent insurer, the
25 insurer's liquidator, and the indemnity reinsurer between the coverage date and the

date of the election. The fund or the indemnity reinsurer shall pay the net balance due to the other within 5 days after the calculation is completed. The liquidator shall remit to the fund as promptly as practicable any amounts received by the liquidator that are due the fund under subd. 2.

4. If, within 60 days of the election, the fund pays all premiums due for periods both before and after the coverage date that relate to contracts covered, in whole or in part, by the fund, the reinsurer may not terminate the agreement insofar as it relates to contracts covered, in whole or in part, by the fund and may not set off against amounts due the fund any unpaid premium due for periods before the coverage date.

(d) If the fund transfers its obligations to another insurer and the fund and other insurer agree, unless the the fund has previously expressly determined in writing that it will not exercise an election under par. (b), the other insurer succeeds to the rights and obligations of the fund under pars. (b) and (c), regardless of whether the fund has exercised an election under par. (b). If the other insurer succeeds to the fund's rights and obligations under pars. (b) and (c):

1. The indemnity reinsurance agreements automatically terminate for new reinsurance, unless the indemnity reinsurer and the other insurer agree to the contrary.

2. On and after the date on which an indemnity reinsurance agreement is transferred to the other insurer, the fund is no longer obligated to pay beneficiaries the amounts specified in par. (c) 2. with respect to that agreement.

(e) This subsection supersedes s. 645.58 (1), any applicable rules of the commissioner, and the provisions of any affected reinsurance agreement that provide for or require payment of reinsurance proceeds to the liquidator of the

1 insolvent insurer on account of losses or events that occur after the coverage date.
2 The liquidator remains entitled to any amounts payable by the reinsurer under the
3 reinsurance agreement with respect to losses or events that occur before the coverage
4 date, subject to any applicable setoff provisions.

5 (f) Nothing in this subsection, except as expressly provided in this subsection:

6 1. Alters or modifies the terms or conditions of the indemnity reinsurance
7 agreements of the insolvent insurer.

8 2. Abrogates or limits any rights of any reinsurer to rescind a reinsurance
9 agreement.

10 3. Gives a policy owner or beneficiary an independent cause of action against
11 an indemnity reinsurer that is not otherwise set forth in the indemnity reinsurance
12 agreement.

13 **SECTION 139.** 646.35 (9) of the statutes is created to read:

14 646.35 **(9)** COVERAGE OBLIGATIONS. Notwithstanding sub. (3), in performing its
15 obligations to provide coverage under this section, the fund is not required to
16 guarantee, assume, reinsure, or perform, or cause to be guaranteed, assumed,
17 reinsured, or performed, the contractual obligations of an insolvent insurer under a
18 covered policy or contract that do not materially affect the economic values or
19 economic benefits of the covered policy or contract.

20 **SECTION 140.** 646.35 (10) of the statutes is created to read:

21 646.35 **(10)** BOARD DETERMINATIONS. The board shall have discretion to
22 determine the means by which the fund may economically and efficiently provide
23 benefits under this section. If the board has arranged or offered to provide benefits
24 to a person under a plan or arrangement that fulfills the fund's obligations under this

section, the person is not entitled to any benefits from the fund in addition to or other than those provided under the plan or arrangement.

SECTION 141. 646.51 (1) of the statutes is renumbered 646.51 (1m) and amended to read:

646.51 **(1m)** DUTY TO ASSESS. As soon as practicable after a liquidation order has been issued, the board shall estimate separately for each of the accounts of s. 646.11 (2), the amounts necessary to make the payments provided by this chapter and shall ~~order~~ authorize assessments separately for each account.

SECTION 142. 646.51 (1c) of the statutes is created to read:

646.51 **(1c)** DEFINITIONS. In this section:

(a) "Authorize" means, with respect to assessments, to approve, by the adoption of a resolution by the board, that an assessment from insurers in a specified amount be called immediately or in the future. An assessment is authorized when the resolution is adopted by the board.

(b) "Call" means, with respect to assessments, to require payment, by the mailing of a notice to insurers by the fund, of an authorized assessment within the time set forth in the notice. An assessment is called when notice is mailed to insurers by the fund.

SECTION 143. 646.51 (2) of the statutes is repealed.

SECTION 144. 646.51 (3) (a) (title) of the statutes is renumbered 646.51 (3) (am) (title).

SECTION 145. 646.51 (3) (a) 1. of the statutes is renumbered 646.51 (1c) (c) and amended to read:

646.51 **(1c)** (c) ~~In this section, "premiums"~~ "Premiums" means gross premiums and other considerations received for direct insurance and annuities, including

1 considerations for a plan established under ss. 185.981 to 185.985, less return
2 premiums and other considerations, dividends, and experience credits paid or
3 credited to policyholders on ~~the direct~~ such business. The term "premiums" does not
4 include ~~any amounts received for any contracts or for the portions of any contracts~~
5 ~~for which coverage is excluded under s. 646.01 (1) (b)~~ premiums or other
6 considerations received for policies or contracts, or for portions of policies or
7 contracts, for which coverage is not provided under this chapter, except that the
8 amount of assessable premiums or other considerations shall not be reduced on
9 account of limitations with respect to a single risk, loss, or life under s. 646.31 (4) or
10 on account of interest limitations under s. 646.35 (6) (c).

11 **SECTION 146.** 646.51 (3) (a) 2. of the statutes is renumbered 646.51 (3) (am)
12 (intro.) and amended to read:

13 646.51 **(3)** (am) (intro.) Except as provided in ~~pars. (b) and~~ par. (c), assessments
14 shall be calculated as follows:

15 1. For assessments authorized by the board before the effective date of this
16 subdivision .... [revisor inserts date], as a percentage of ~~premiums~~ premium written
17 in this state by each insurer in the classes protected by the ~~account,~~ accounts for the
18 year preceding the year of entry of the order of liquidation.

19 **SECTION 147.** 646.51 (3) (am) 2. of the statutes is created to read:

20 646.51 **(3)** (am) 2. For assessments authorized by the board on or after the
21 effective date of this subdivision .... [revisor inserts date], as a percentage of premium
22 written in this state by each insurer in the classes protected by the accounts for the
23 year preceding the year in which the assessment is authorized by the board.

24 **SECTION 148.** 646.51 (3) (b) of the statutes is repealed.

25 **SECTION 149.** 646.51 (3) (c) of the statutes is amended to read:

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

SECTION 150. 646.51 (4) of the statutes is renumbered 646.51 (4) (c) and amended to read:

646.51 **(4)** (c) ~~The maximum assessment under this section in any calendar year is 2% of the assessable premiums under sub. (3). If the maximum assessment does not enable the fund to meet its obligations, an additional assessment shall be made in each succeeding year until the amounts available enable the fund to meet its obligations. No~~ Assessments to meet the obligations of the fund with respect to an insurer in liquidation may not be authorized or called unless the board makes a finding that it is necessary for implementing the purposes of this chapter. Recognizing that exact determinations may not always be possible, the board shall endeavor to classify and calculate assessments with a reasonable degree of accuracy. No authorized assessment may be ~~levied~~ called if the assets held in the appropriate account of the fund are sufficient to cover all estimated payments for liquidations in progress.

SECTION 151. 646.51 (4) (a), (b) and (d) of the statutes are created to read:

646.51 **(4)** (a) Subject to pars. (b) and (d), the total of all assessments for an amount authorized by the board under this section with respect to an insurer may not, in one calendar year, exceed 2% of the insurer's average annual premiums received in this state, during the 3 calendar years preceding the year of entry of the

order of liquidation, on the types of policies and contracts that are covered by the account.

(b) If the maximum assessment under par. (a), together with the other assets of the fund in an account, does not provide in one year in the account an amount that is sufficient for the fund to meet its obligations, the board shall assess additional amounts in each succeeding year until the amounts available enable the fund to meet its obligations.

(d) If 2 or more assessments are authorized in one calendar year with respect to insurers placed in liquidation in different calendar years, the average annual premiums for purposes of the limitation in par. (a) shall be equal and limited to the higher of the 3–year annual premium average for the applicable account.

SECTION 152. 646.51 (5) of the statutes is amended to read:

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

SECTION 153. 646.51 (6) of the statutes is amended to read:

646.51 **(6)** APPEAL AND REVIEW. Within 30 days after the ~~board~~ fund sends the statement under sub. (5), an insurer, after paying the assessment under protest, may appeal the assessment to the board or a committee thereof. The decision of the board on the appeal is subject to judicial review.

SECTION 154. 646.51 (7) (a) of the statutes is amended to read:

646.51 **(7)** (a) An insurer's premium rates are not excessive because they contain an amount reasonably calculated to recoup assessments ~~made~~ called under this chapter.

SECTION 155. 646.51 (8) of the statutes is amended to read:

646.51 **(8)** ABATEMENT AND DEFERRAL. The board may abate or defer the assessment of an insurer in whole or part if payment of the assessment would endanger the ability of the insurer to fulfill its contractual obligations. The amount by which an assessment is abated or deferred may be assessed under this section against other insurers. When the conditions that prompted the board to defer assessment of an insurer no longer exist, the insurer shall pay all assessments that were deferred in accordance with a repayment plan approved by the board.

SECTION 156. 646.51 (9) (b) 1. of the statutes is amended to read:

646.51 **(9)** (b) 1. Assessments ~~made~~ authorized or called before the insurer's license or certificate of authority terminated or expired.

SECTION 157. 646.51 (9) (b) 2. of the statutes is amended to read:

646.51 **(9)** (b) 2. Assessments ~~made~~ authorized or called after the insurer's license or certificate of authority terminated or expired that relate to a liquidation order entered before the insurer's license or certificate of authority terminated or expired.

SECTION 158. 646.60 (1) (a) of the statutes is amended to read:

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

SECTION 159. 646.61 (2) of the statutes is amended to read:

646.61 **(2)** To meet the needs of the fund the ~~board~~ fund may temporarily transfer assets from one account to another.

SECTION 160. 646.73 of the statutes is repealed.

SECTION 161. Nonstatutory provisions.

(1) ANNUITY MINIMUM NONFORFEITURE AMOUNT. Notwithstanding SECTION 162 (3) of this act, an insurer may elect to comply with section 632.435 (1) (intro.), (a), and (b), (4), and (5) of the statutes, as affected by this act, on a contract form–by–contract form basis, for annuity contracts newly issued on any date after the effective date of this subsection.

SECTION 162. Initial applicability.

(1) INSURANCE SECURITY FUND. The treatment of sections 609.98 (1) and (4) (a) and (b), 645.58 (1) (intro.), 646.01 (1) (a) 2. k. and L. and (b) 1., 9. (intro.), a., b., c., and d., 11., 11m., 15., 16., 17., and 18., 646.03 (1m), (2n), (2p), (4), and (5), 646.12 (2) (d) and (f) 2. and 3. and (4), 646.13 (title), (1) (intro.) and (b), (2) (intro.), (b), (c), (d), and (g), (3) (intro.), (a), (b), and (c) (intro.) and 2., and (4), 646.15 (title) and (1) (a) (intro.), 1., 2., and 4., 646.16, 646.21 (2), 646.31 (1) (d) 10. and 11., (2) (a) 1. and 2., (b) 1., 2. (intro.), a., and b., and 3., (f) (title) and 2., and (g), (3), (5), (6) (a) and (b), (7), (8), (9) (a), (b), (c), (cm), and (d), and (11), 646.32 (1), 646.325 (1) and (2) (intro.), (a) (intro.), and (b), 646.33 (2), (2m) (b), and (3), 646.35 (2), (3) (title), (intro.) (except 646.35 (3) (title)), (a), (b), and (c), (5), (6) (a), (b), (bm), and (c) (intro.), 1. (intro.) and b., and 2. (intro.) and b., (7), (8), (9), and (10), 646.51 (1), (1c), (2), (3) (a) (title), 1., and 2., (am) 2., (b), and (c), (5), (6), (7) (a), (8), and (9) (b) 1. and 2., 646.60 (1) (a), 646.61 (2), and 646.73 of the statutes, the renumbering and amendment of sections 646.11 (1), 646.31 (10) and (13), 646.33 (1), 646.35 (4), and 646.51 (4) of the statutes, and the creation of sections 646.11 (1) (d) and (e), 646.31 (10) (b) and (13) (b), (c), and (d),

646.33 (1) (b), (c), and (d), 646.35 (4) (b), and 646.51 (4) (a), (b), and (d) of the statutes first apply to liquidation proceedings in which a liquidation order is issued on the effective date of this subsection.

(2) SUITABILITY OF ANNUITY RECOMMENDATIONS. The treatment of section 628.347 of the statutes first applies to recommendations for the purchase or exchange of annuities that are made on the effective date of this subsection.

(3) ANNUITY MINIMUM NONFORFEITURE AMOUNT. The treatment of section 632.435 (1) (intro.), (a), and (b), (4), (5), and (12) of the statutes first applies to annuity contracts issued on the 2nd anniversary of the day after publication.

SECTION 163. Effective dates. This act takes effect on the day after publication, except as follows:

(1) SUITABILITY OF ANNUITY RECOMMENDATIONS. The treatment of section 628.347 of the statutes and SECTION 162 (2) of this act take effect on the first day of the 7th month beginning after publication.

(END)