

Senate Bill 320... 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 into a town mutual; the insurance security fund; other miscellaneous changes to the insurance provisions; and granting rule-making authority.

BILL SPONSORS

Introduced by Senator **Schultz**;
 Cosponsored by Representative **Ladwig**,
 And by request of the Office of the Commissioner of Insurance.

BILL HISTORY

Senate Bill 320 was introduced on 11/19/03 and referred to committee on Agriculture, Financial Institutions and Insurance.

A public hearing and executive session were held on 12/02/03.

The committee recommended SB 320 for passage on a vote. 5-0

LRB ANALYSIS

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

	<p>\$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.</p>
FISCAL EFFECT	None required
SUPPORT	<p>The following person/people appeared in favor of this bill: (1) Sec. Jorge Gomez, Commissioner of Insurance.</p> <p>The following person/people registered in favor of this bill: (1) Steve Radke, Northwestern Mutual Insurance, Milwaukee. (2) Ron Kuehn, Independent Ins, Agents and WI Insurance & Financial advisers. (3) Eric Englund, WI Insurance Alliance. (4) Lee Fanshaw, American Family Insurance. (5) Brian Casey, Thrivent Financial for Lutherans.</p> <p>No one registered support for the bill with the State Ethics Board, who did not testify or register at the public hearing.</p> <p>The following organization(s) registered their intention to lobby on SB 320 but did not take a position on the bill: (1) Sentry Insurance Group.</p>
OPPOSITION	<p>No one appeared in opposition to this bill.</p> <p>No one registered in opposition to this bill.</p> <p>No one registered their opposition for the bill with the State Ethics Board.</p>
CONTACT	John O'Brien, Committee Clerk, 26 6-0703
DATE	December 4, 2003

Vote Record

Committee on Agriculture, Financial Institutions and Insurance

Date: 12-02-03

Moved by: _____ Seconded by: _____

AB 283, 459 SB 320, 322 Clearinghouse Rule _____
AJR 52 SJR _____ Appointment _____
AR _____ SR _____ Other _____

A/S Amdt _____

A/S Amdt _____ to A/S Amdt _____

A/S Sub Amdt _____

A/S Amdt _____ to A/S Sub Amdt _____

A/S Amdt _____ to A/S Amdt _____ to A/S Sub Amdt _____

Be recommended for:

- Passage
- Adoption
- Confirmation
- Concurrence
- Indefinite Postponement
- Introduction
- Rejection
- Tabling
- Nonconcurrence

<u>Committee Member</u>	<u>Aye</u>	<u>No</u>	<u>Absent</u>	<u>Not Voting</u>
Senator Dale Schultz	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Ronald Brown	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Neal Kedzie	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator David Hansen	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Julie Lassa	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Totals: _____

Vote Record

Committee on Agriculture, Financial Institutions and Insurance

Date: 12-02-03

Moved by: _____ Seconded by: _____

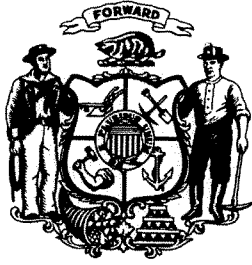
AB _____ SB 320 _____ Clearinghouse Rule _____
AJR _____ SJR _____ Appointment _____
AR _____ SR _____ Other _____

A/S Amdt _____
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- Be recommended for:
[X] Passage [] Adoption [] Confirmation [] Concurrence [] Indefinite Postponement
[] Introduction [] Rejection [] Tabling [] Nonconcurrence

Table with 5 columns: Committee Member, Aye, No, Absent, Not Voting. Rows include Senator Dale Schultz, Senator Ronald Brown, Senator Neal Kedzie, Senator David Hansen, Senator Julie Lassa.

Totals: _____



**Senate Committee on Agriculture, Financial Institutions
and Insurance**

Room 18 South State Capitol, PO Box 7882, Madison WI 53707-7882
(608) 266-0703

Senator Dale W. Schultz, Chairman
Committee Clerk. John O'Brien

Senate Bill 320

VOTE ON CONCURRENCE

	AYE	NAY	ABSENT
SENATOR SCHULTZ	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
SENATOR BROWN	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
SENATOR KEDZIE	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
SENATOR HANSEN	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
SENATOR LASSA	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

12-02-03

Vote Record

Committee on Agriculture, Financial Institutions and Insurance

Date: 12-2-03

Moved by: Hansen

Seconded by: Kuehse

AB 320

SB SB 320

Clearinghouse Rule

AJR

SJR

Appointment

AR

SR

Other

A/S Amdt

A/S Amdt to A/S Amdt

A/S Sub Amdt

A/S Amdt to A/S Sub Amdt

A/S Amdt to A/S Amdt to A/S Sub Amdt

Be recommended for:

- Passage Adoption Confirmation Concurrence Indefinite Postponement
Introduction Rejection Tabling Nonconcurrence

Committee Member

Senator Dale Schultz

Senator Ronald Brown

Senator Neal Kedzie

Senator David Hansen

Senator Julie Lassa

Table with 4 columns: Ave, No, Absent, Not Voting. Rows for each senator with checkboxes.

Totals: