



2007 SENATE BILL 386

1 **AN ACT** *to repeal* 646.35 (6) (c) 1. a. and 646.35 (6) (c) 2. a.; *to renumber* 646.33
2 (3), 646.35 (4) (a) and 646.35 (4) (b); *to renumber and amend* 601.465, 605.02,
3 631.61 (1) (c), 646.12 (1) (a) and 646.31 (11); *to consolidate, renumber and*
4 *amend* 646.35 (6) (c) 1. (intro.) and b. and 646.35 (6) (c) 2. (intro.) and b.; *to*
5 *amend* 25.17 (3) (a), 76.68 (2), 76.68 (4), 601.41 (8) (b), 605.21 (4), 611.26 (3) (a),
6 611.26 (4) (a), 611.26 (4) (b), 611.72 (2), 632.745 (18) (b), 646.01 (1) (b) 14., 646.11
7 (4), 646.11 (5), 646.12 (1) (b), 646.12 (2) (a), 646.51 (3) (am) (intro.) and 646.51
8 (4) (a); *to create* 25.14 (1) (a) 19., 600.03 (25) (a) 4., 601.465 (1m) (title), 601.465
9 (2m), 605.02 (2), 631.61 (1) (c) 1., 631.61 (1) (c) 2., 631.61 (1) (c) 3., 632.07, 646.12
10 (1) (a) 2., 646.12 (1) (a) 3., 646.13 (3) (d), 646.31 (11) (a), 646.31 (11) (c) and
11 646.51 (3) (b) of the statutes; and *to affect* 2003 Wisconsin Act 261, section 162
12 (1); **relating to:** the definition of a late enrollee; making group insurance
13 certificates available electronically; prohibiting a lender from requiring
14 property insurance in an amount that exceeds the replacement value of

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1 improvements; premium tax statute of limitations; miscellaneous changes to
2 the insurance security fund; investments of the local government property
3 insurance fund by the State of Wisconsin Investment Board, other
4 miscellaneous insurance-related modifications; and granting rule-making
5 authority.

Analysis by the Legislative Reference Bureau

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

6 **SECTION 1.** 25.14 (1) (a) 19. of the statutes is created to read:

7 25.14 **(1)** (a) 19. The local government property insurance fund.

8 **SECTION 2.** 25.17 (3) (a) of the statutes is amended to read:

9 25.17 **(3)** (a) Invest the core retirement investment trust, state life fund, local
10 government property insurance fund, veterans trust fund, and injured patients and
11 families compensation fund in loans, securities, and any other investments
12 authorized by s. 620.22, and in bonds or other evidences of indebtedness or preferred
13 stock of companies engaged in the finance business whether as direct lenders or as
14 holding companies owning subsidiaries engaged in the finance business.
15 Investments permitted by sub. (4) are permitted investments under this subsection.

16 **SECTION 3.** 76.68 (2) of the statutes is amended to read:

17 76.68 **(2)** No suit may be brought to restrain or enjoin the collection of any
18 license fee or tax imposed or provided for by this subchapter, and the fees required
19 by s. 601.31. Any insurer aggrieved by the payment of any such license or other fee
20 or tax may maintain a suit against the state for the recovery thereof action to recover
21 any license fee or tax imposed or provided for by this subchapter or any fee required

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1 under s. 601.31, shall be brought in the circuit court for Dane County within 6
2 months from the time of the payment. The state may be served in the suit as provided
3 in s. 801.11 (3). This subsection is the exclusive remedy by which to recover any
4 license fee or tax imposed or provided for by this subchapter or any fee required under
5 s. 601.31.

6 **SECTION 4.** 76.68 (4) of the statutes is amended to read:

7 76.68 (4) The attorney general shall institute suit in the circuit court for Dane
8 County to recover any license fees or tax not paid within the time prescribed by this
9 subchapter, and the fees required by s. 601.31. ~~Nothing in this subsection shall be~~
10 ~~construed as amending or modifying in any respect ch. 775.~~

11 **SECTION 5.** 600.03 (25) (a) 4. of the statutes is created to read:

12 600.03 (25) (a) 4. Coverage, including stop-loss coverage, of an employer or
13 plan sponsor relating to claims incurred under the employer's or plan sponsor's
14 self-funded employee welfare benefit plan, as defined in 29 USC 1002 (1).

15 **SECTION 6.** 601.41 (8) (b) of the statutes is amended to read:

16 601.41 (8) (b) In consultation with the ~~life and disability advisory council~~
17 ~~established~~ appropriate advisory council or committee designated by the
18 commissioner, the commissioner shall by rule develop a uniform employee
19 application form that a small employer insurer must use when a small employer
20 applies for coverage under a group health benefit plan offered by the small employer
21 insurer. The commissioner shall revise the form at least every 2 years.

22 **SECTION 7.** 601.465 of the statutes is renumbered 601.465 (1m), and 601.465
23 (1m) (c) (intro.) and 6., as renumbered, are amended to read:

24 601.465 (1m) (c) (intro.) Testimony, reports, records, communications, and
25 information that are obtained by the office from, or provided by the office to, any of

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1 the following, under a pledge of confidentiality or for the purpose of assisting or
2 participating in monitoring activities or in the conduct of an inquiry, investigation,
3 or examination:

4 6. An agent or employee of an agency described in ~~par. (e)~~ subd. 5.

5 **SECTION 8.** 601.465 (1m) (title) of the statutes is created to read:

6 601.465 **(1m)** (title) TYPES OF INFORMATION.

7 **SECTION 9.** 601.465 (2m) of the statutes is created to read:

8 601.465 **(2m)** WAIVER AND APPLICABILITY OF THE PRIVILEGE. All of the following
9 apply to the privilege under this section:

10 (a) The privilege may be waived only by the affirmative written and specific
11 consent of the commissioner.

12 (b) The privilege may not be constructively waived.

13 (c) The privilege applies to testimony, reports, records, communications, and
14 information obtained, created, or provided by any official, employee, or agent of the
15 office for the purpose of assisting or participating in monitoring activities or in the
16 conduct of an inquiry, investigation, or examination by, or coordinated through, the
17 National Association of Insurance Commissioners.

18 (d) The privilege applies to testimony, reports, records, communications, and
19 information in existence on or after the effective date of this paragraph [revisor
20 inserts date].

21 **SECTION 10.** 605.02 of the statutes is renumbered 605.02 (1) and amended to
22 read:

23 605.02 **(1)** PROPERTY OF LOCAL GOVERNMENTAL UNITS. Any local governmental
24 unit may insure in the property fund its property or, subject to sub. (2), property for
25 which it may be liable in the event of damage or destruction. Property insured under

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1 this section by a local governmental unit may not also be insured in any other
2 manner unless the manager certifies that additional insurance is necessary, or
3 unless the local governmental unit by resolution, a certified copy of which is filed
4 with the manager, decides to insure specified personal property with insurers
5 authorized to do business in this state.

6 **SECTION 11.** 605.02 (2) of the statutes is created to read:

7 605.02 (2) REQUIREMENTS FOR NONOWNED PROPERTY. The property fund may
8 cover a building or structure specified in sub. (1) that is not owned by a local
9 governmental unit only if all of the following conditions are met:

10 (a) The building or structure is listed and described as a nonowned building or
11 structure in the local governmental unit's statement of values.

12 (b) The local governmental unit is contractually liable in the event that the
13 building or structure is damaged or destroyed.

14 (c) The building or structure is in the local governmental unit's care, custody,
15 or control.

16 (d) The building or structure is used for a legitimate governmental purpose.

17 **SECTION 12.** 605.21 (4) of the statutes is amended to read:

18 605.21 (4) INSURANCE OF PERSONAL PROPERTY. All personal property of the local
19 governing unit is insured and premiums therefor must be paid under this section
20 except to the extent that coverage is excluded by resolution under s. 605.02 (1).

21 **SECTION 13.** 611.26 (3) (a) of the statutes is amended to read:

22 611.26 (3) (a) *Authorization.* An insurance corporation may form or acquire
23 subsidiaries to perform functions or provide services that are ancillary to its
24 insurance operations. It may have up to 10% of its assets invested in such
25 subsidiaries, unless the commissioner by order or rule provides otherwise.

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1 **SECTION 14.** 611.26 (4) (a) of the statutes is amended to read:

2 611.26 **(4)** (a) Invest in ~~a subsidiary~~ one or more subsidiaries more than 10
3 percent of its assets or 50 percent of its capital and surplus, whichever is less.

4 **SECTION 15.** 611.26 (4) (b) of the statutes is amended to read:

5 611.26 **(4)** (b) Invest in ~~a subsidiary~~ one or more subsidiaries to the extent that
6 the insurer's capital and surplus with regard to policyholders will not be reasonable
7 in relation to the insurer's outstanding liabilities or adequate to meet the insurer's
8 financial needs.

9 **SECTION 16.** 611.72 (2) of the statutes is amended to read:

10 611.72 **(2)** APPROVAL REQUIRED. No proposed plan of merger under s. 180.1101
11 or 180.1104 or other plan for acquisition of control ~~may be submitted to the~~
12 ~~shareholders of any domestic stock insurance corporation or its parent insurance~~
13 ~~holding corporation participating in the transaction or~~ may be executed unless it has
14 been approved by the commissioner.

15 **SECTION 17.** 631.61 (1) (c) of the statutes is renumbered 631.61 (1) (c) (intro.)
16 and amended to read:

17 631.61 **(1)** (c) *Method of providing certificates.* (intro.) The certificate shall be
18 provided in a manner reasonably calculated to bring it to the attention of the
19 certificate holder. The insurer may deliver or mail it directly to the certificate holder
20 or may deliver or mail the certificates in bulk to the policyholder to transmit to
21 certificate holders, unless the insurer has reason to believe that the policyholder will
22 not promptly transmit the certificates. An affidavit by the insurer that it has mailed
23 the certificates in the usual course of business creates a rebuttable presumption that
24 it has done so. As an alternative to delivering or mailing the certificate, the insurer
25 may make the certificate available electronically through an online internet or

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1 policyholder network Web site. If the insurer makes the certificate available
2 electronically, the insurer shall do all of the following:

3 **SECTION 18.** 631.61 (1) (c) 1. of the statutes is created to read:

4 631.61 (1) (c) 1. Request the policyholder to post the information, as well as
5 instructions on how to access the certificate, in the policyholder's place of business
6 or to publish the information and access instructions in a house organ that is
7 reasonably calculated to bring the information to the attention of the certificate
8 holders.

9 **SECTION 19.** 631.61 (1) (c) 2. of the statutes is created to read:

10 631.61 (1) (c) 2. Provide notice to the policyholder of any subsequent change
11 in the certificate and request the policyholder to notify the certificate holders of the
12 change in the manner specified in subd. 1.

13 **SECTION 20.** 631.61 (1) (c) 3. of the statutes is created to read:

14 631.61 (1) (c) 3. Provide a paper copy of the certificate to any certificate holder
15 upon request.

16 **SECTION 21.** 632.07 of the statutes is created to read:

17 **632.07 Prohibiting requiring property insurance in excess of**
18 **replacement value.** A lender may not require a borrower, as a condition of
19 receiving or maintaining a loan secured by real property, to insure the property
20 against risks to improvements on the real property in an amount that exceeds the
21 replacement value or market value of the improvements, whichever is greater.

22 **SECTION 22.** 632.745 (18) (b) of the statutes is amended to read:

23 632.745 (18) (b) A special enrollment period under s. 632.746 (6) or (7).

24 **SECTION 23.** 646.01 (1) (b) 14. of the statutes is amended to read:

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1 646.01 (1) (b) 14. A policy issued by an insurer to, or a contract entered into by
2 an insurer with, a care management organization, as defined in s. 46.2805 (1), or the
3 department of health and family services or any other governmental entity under s.
4 ~~49.45 (2) (b) 2.~~ any state law to provide prepaid health care to medical assistance
5 recipients.

6 **SECTION 24.** 646.11 (4) of the statutes is amended to read:

7 646.11 (4) LIABILITY. No contributor to the fund ~~or~~, person acting on its the
8 fund's behalf, insurer representative on the board, or alternate representative
9 designated under s. 646.12 (1) (a) 3. is personally liable for any obligations of the
10 fund. The rights of creditors are solely against the assets of the fund.

11 **SECTION 25.** 646.11 (5) of the statutes is amended to read:

12 646.11 (5) IMMUNITY. No cause of action of any nature may arise against and
13 no liability may be imposed upon the fund or its agents, employees, directors,
14 including alternate representatives designated under s. 646.12 (1) (a) 3., or
15 contributor insurers, or the commissioner or the commissioner's agents, employees,
16 or representatives, for any act or omission by any of them in the performance of their
17 powers and duties under this chapter.

18 **SECTION 26.** 646.12 (1) (a) of the statutes is renumbered 646.12 (1) (a) 1. and
19 amended to read:

20 646.12 (1) (a) 1. The fund shall be administered by a board of directors ~~which~~
21 that shall consist of not fewer than 7 nor more than 14 members. ~~The~~ the attorney
22 general, the state treasurer, and the commissioner ~~are members with, each of whom~~
23 shall have full voting rights. ~~Other members shall be chosen from representatives~~
24 ~~of insurers subject to this chapter under procedures specified by the commissioner~~
25 ~~by rule, provided that one member is a representative of a service insurance~~

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1 corporation. ~~The rule may provide that, instead of natural persons, specific insurers~~
2 ~~or associations of insurers may be selected as members of the board and may act~~
3 ~~through any duly authorized representative, and at least 9 but not more than 11~~
4 ~~insurer representatives of domestic, foreign, and alien insurers subject to this~~
5 ~~chapter.~~

6 **SECTION 27.** 646.12 (1) (a) 2. of the statutes is created to read:

7 646.12 (1) (a) 2. The commissioner shall appoint the insurer representative
8 members for 3-year terms, after considering recommendations of the other board
9 members currently serving terms. In recommending candidates to fill the positions,
10 the board shall consider whether all insurers subject to this chapter are fairly
11 represented, including property and casualty insurers, life and health insurers,
12 health maintenance organizations and service insurance corporations, and domestic
13 and nondomestic insurers.

14 **SECTION 28.** 646.12 (1) (a) 3. of the statutes is created to read:

15 646.12 (1) (a) 3. Each appointed insurer representative may designate an
16 alternate representative to represent the insurer at any meeting of the board. Any
17 person serving as an alternate representative shall, while serving, have all of the
18 powers and responsibilities of the appointed insurer representative.

19 **SECTION 29.** 646.12 (1) (b) of the statutes is amended to read:

20 646.12 (1) (b) *Chairperson.* The person to chair the board shall be elected by
21 the members of the board ~~under a rule promulgated by the commissioner~~ annually
22 at the first meeting after June 1.

23 **SECTION 30.** 646.12 (2) (a) of the statutes is amended to read:

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1 646.12 (2) (a) ~~Subject to the commissioner's power to promulgate rules under~~
2 ~~sub. (1), adopt~~ Adopt rules for the administration of this chapter, including
3 delegation of any part of its powers and its own procedures.

4 **SECTION 31.** 646.13 (3) (d) of the statutes is created to read:

5 646.13 (3) (d) Except for claims under life insurance policies, annuities, or
6 noncancelable or guaranteed renewable disability insurance policies, and except for
7 claims determined to be excused late filings as provided in pars. (a) and (b), if no date
8 for filing is set by the liquidator or court, with a liquidator or court after 18 months
9 after the order of liquidation is entered.

10 **SECTION 32.** 646.31 (11) of the statutes is renumbered 646.31 (11) (b) and
11 amended to read:

12 646.31 (11) (b) ~~The~~ An insurance entity may not assert a claim against the fund
13 ~~is not required to pay for~~ any amount due from the insurer to ~~any reinsurer, insurer,~~
14 ~~insurance pool or underwriting association~~ the insurance entity as subrogation,
15 contribution, or indemnification recoveries or otherwise, except as provided in sub.
16 (2) (a). ~~A reinsurer, insurer, insurance pool or underwriting association~~ An
17 insurance entity that has paid a claim and thereby has become subrogated or
18 otherwise entitled to the amount of that claim may assert that claim against the
19 liquidator of the insurer in liquidation but not against the insured of the insurer in
20 liquidation.

21 **SECTION 33.** 646.31 (11) (a) of the statutes is created to read:

22 646.31 (11) (a) In this subsection:

23 1. "Health care costs" has the meaning given in s. 609.01 (1j).

24 2. "Insurance entity" means a reinsurer, an insurer, an insurance pool, or an
25 underwriting association.

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1 **SECTION 34.** 646.31 (11) (c) of the statutes is created to read:

2 646.31 **(11)** (c) Notwithstanding par. (b), an insurance entity may assert a claim
3 against the fund for health care costs if all of the following conditions are met:

4 1. The insurance entity paid the claim for health care costs under a disability
5 insurance policy issued by the insurance entity.

6 2. The insurance entity is not obligated to pay the health care costs under the
7 express terms of the disability insurance policy because the claim arose out of, or in
8 the course of, the claimant's employment.

9 3. The claim is covered by a worker's compensation insurance policy and would
10 otherwise be an eligible claim under this section.

11 **SECTION 35.** 646.33 (3) of the statutes is renumbered 646.33 (3) (a).

12 **SECTION 36.** 646.35 (4) (a) of the statutes is renumbered 646.35 (4).

13 **SECTION 37.** 646.35 (4) (b) of the statutes is renumbered 646.33 (3) (b).

14 **SECTION 38.** 646.35 (6) (c) 1. (intro.) and b. of the statutes are consolidated,
15 renumbered 646.35 (6) (c) 1. and amended to read:

16 646.35 **(6)** (c) 1. Any benefit payment liability, arising on or after the date of
17 entry of the order of liquidation, to the extent that the rate of interest on which it is
18 based or the interest rate, crediting rate, or similar factor determined by use of an
19 index or other external reference stated in the policy or contract and employed in
20 calculating returns or changes in value exceeds the ~~smaller of the following:~~ ~~b.~~ The
21 rate of interest, which may not be less than zero, determined by subtracting 3
22 percentage points from the monthly corporate bond yield average, as most recently
23 published by Moody's investors service or its successor.

24 **SECTION 39.** 646.35 (6) (c) 1. a. of the statutes is repealed.

SENATE BILL 386**SECTION 40**

1 **SECTION 40.** 646.35 (6) (c) 2. (intro.) and b. of the statutes are consolidated,
2 renumbered 646.35 (6) (c) 2. and amended to read:

3 646.35 **(6)** (c) 2. Any benefit payment liability, arising before the date of entry
4 of the order of liquidation, to the extent that the payment exceeds the ~~smaller of the~~
5 ~~following:~~ b. The rate of interest, which may not be less than zero, determined by
6 subtracting 2 percentage points from the monthly corporate bond yield average, as
7 published by Moody's investors service or its successor, when averaged over the
8 4-year period ending on the date of entry of the order of liquidation or averaged over
9 such lesser period if the contract was issued less than 4 years before that date.

10 **SECTION 41.** 646.35 (6) (c) 2. a. of the statutes is repealed.

11 **SECTION 42.** 646.51 (3) (am) (intro.) of the statutes is amended to read:

12 646.51 **(3)** (am) *General.* (intro.) Except as provided in par. pars. (b) and (c),
13 assessments shall be calculated as follows:

14 **SECTION 43.** 646.51 (3) (b) of the statutes is created to read:

15 646.51 **(3)** (b) *Life and health.* Except as provided in par. (c), with respect to
16 annuity contracts or life or disability insurance policies, including policies issued by
17 health maintenance organizations, assessments shall be calculated as a percentage
18 of average annual premium received in this state by each insurer in the classes
19 protected by the accounts for the 3 most recent years preceding the year of the entry
20 of the order of liquidation.

21 **SECTION 44.** 646.51 (4) (a) of the statutes is amended to read:

22 646.51 **(4)** (a) Subject to pars. (b) and (d), the total of all assessments for an
23 amount authorized by the board under this section with respect to an insurer may
24 not, in one calendar year, exceed ~~2%~~ 2 percent of the insurer's average annual
25 assessable premiums received in this state, ~~during the 3 calendar years preceding~~

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1 the year of entry of the order of liquidation, under sub. (3) (am) or (b) on the types
2 of policies and contracts that are covered by the account.

3 **SECTION 45.** 2003 Wisconsin Act 261, section 162 (1) is amended to read:

4 [2003 Wisconsin Act 261] Section 162 (1) INSURANCE SECURITY FUND.

5 (a) The treatment of sections 609.98 (1) and (4) (a) and (b), 645.58 (1) (intro.),
6 646.01 (1) (a) 2. k. and L. and (b) 1., 9. (intro.), a., b., c., and d., 11., 11m., 15., 16., and
7 17., and 18., 646.03 (1m), (2n), (2p), (4), and (5), 646.12 (2) (d) and (f) 2. and 3. and
8 (4), 646.13 (title), (1) (intro.) and (b), (2) (intro.), (b), (c), (d), and (g), (3) (intro.), (a),
9 (b), and (c) (intro.) and 2., and (4), 646.15 (title) and (1) (a) (intro.), 1., 2., and 4.,
10 646.16, 646.21 (2), 646.31 (1) (d) 10. and 11., (2) (a) 1. and 2., (b) 1., 2. (intro.), a., and
11 b., and 3., (f) (title) and 2., and (g), (3), (5), (6) (a) and (b), (7), (8), (9) (a), (b), (c), (cm),
12 and (d), and (11), 646.32 (1), 646.325 (1) and (2) (intro.), (a) (intro.), and (b), 646.33
13 (2), (2m) (b), and (3), 646.35 (2), (3) (title), (intro.) (except 646.35 (3) (title)), (a), (b),
14 and (c), (5), (6) (a), (b), (bm), and (c) (intro.), 1. (intro.) and b., and 2. (intro.) and b.,
15 (7), (8), (9), and (10), 646.51 (1), (1c), (2), (3) (a) (title), 1., and 2., (am) 2., (b), and (c),
16 (5), (6), (7) (a), (8), and (9) (b) 1. and 2., 646.60 (1) (a), 646.61 (2), and 646.73 of the
17 statutes, the renumbering and amendment of sections 646.11 (1), 646.31 (10) and
18 (13), 646.33 (1), 646.35 (4), and 646.51 (4) of the statutes, and the creation of sections
19 646.11 (1) (d) and (e), 646.31 (10) (b) and (13) (b), (c), and (d), 646.33 (1) (b), (c), and
20 (d), 646.35 (4) (b), and 646.51 (4) (a), (b), and (d) of the statutes first apply to
21 insurance company liquidations commenced or pending on the effective date of this
22 paragraph.

23 (b) The treatment of section 646.01 (1) (b) 18. of the statutes first applies to
24 liquidation proceedings in which a liquidation order is issued on the effective date
25 of this subsection paragraph.

SENATE BILL 386**SECTION 46****1 SECTION 46. Nonstatutory provisions.**

2 (1) BOARD OF DIRECTORS OF INSURANCE SECURITY FUND. Notwithstanding section
3 646.12 (1) (a) of the statutes, as affected by this act, each insurer representative
4 member of the board of directors of the insurance security fund who is serving on the
5 effective date of this subsection shall continue in that capacity until he or she resigns
6 or his or her term expires, whichever occurs first.

7 (2) COVERAGE OF EMPLOYERS AND PLAN SPONSORS. The treatment of section 600.03
8 (25) (a) 4. of the statutes, as created by this act, applies to coverage of employers and
9 plan sponsors issued prior to, on, or after the effective date of this subsection.

10 SECTION 47. Initial applicability.

11 (1) INSURANCE SECURITY FUND. The treatment of sections 646.13 (3) (d), 646.33
12 (3), 646.35 (4) (a) and (b) and (6) (c) 1. (intro.), a., and b. and 2. (intro.), a., and b., and
13 646.51 (3) (am) (intro.) and (b) and (4) (a) of the statutes, the renumbering and
14 amendment of section 646.31 (11) of the statutes, and the creation of section 646.31
15 (11) (a) and (c) of the statutes first apply to insurance company liquidations
16 commenced or pending on the effective date of this subsection.

17 (2) RESTRICTION ON PROPERTY INSURANCE. The treatment of section 632.07 of the
18 statutes first applies to property insurance coverage required by a lender on the
19 effective date of this subsection.

20 (3) ACTION TO RECOVER FEES, TAXES, AND ASSESSMENTS. The treatment of section
21 76.68 (2) and (4) of the statutes first applies to fees, taxes, and assessments that are
22 due and payable on the effective date of this subsection.

23 (END)