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State of Wisconsin
2005 - 2006 LEGISLATURE

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LRB-3368/5
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2005 BILL

D-vote

in 3-6-07

LPS:PLSPWF

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✓

1 AN ACT *to repeal* 600.01 (1) (b) 9., 601.31 (1) (Lm), 601.31 (1) (u), 601.31 (1) (v),
2 646.35 (6) (c) 1. a. and 646.35 (6) (c) 2. a.; *to renumber* 646.33 (3), 646.35 (4)
3 (a) and 646.35 (4) (b); *to renumber and amend* 611.23 (3), 631.61 (1) (c),
4 646.12 (1) (a) and 646.31 (11); *to consolidate, renumber and amend* 646.35
5 (6) (c) 1. (intro.) and b. and 646.35 (6) (c) 2. (intro.) and b.; *to amend* 15.165 (3)
6 (b) 9., 601.415 (3), 611.26 (3) (a), 611.26 (4) (a), 611.26 (4) (b), 611.72 (2), 628.10
7 (2) (a), 628.10 (2) (am), 628.10 (2) (cm), 628.10 (3), 628.11 (title), 646.11 (4),
8 646.11 (5), 646.12 (1) (b), 646.12 (2) (a), 646.51 (3) (am) (intro.), 646.51 (4) (a)
9 and 655.24 (2) (a) 3.; *to repeal and recreate* 628.10 (4) (title); *to create* 601.41
10 (4) (a) 3., 611.23 (3) (b), 628.04 (1c), 628.10 (2) (e), 628.10 (5), 631.61 (1) (c) 1.,
11 631.61 (1) (c) 2., 631.61 (1) (c) 3., 632.07, 632.745 (18) (am), 646.12 (1) (a) 2.,
12 646.12 (1) (a) 3., 646.13 (3) (d), 646.31 (11) (a), 646.31 (11) (c), 646.51 (3) (b) and
13 655.24 (2) (a) 4. of the statutes; and *to affect* 2003 Wisconsin Act 261, section
14 162 (1); *relating to: insurance agent license requirements, revocations, and*

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of limitations;*

1 ~~reinstatement~~s; requirements that apply to municipal insurance mutuals; the
 2 definition of a late enrollee; making group insurance certificates available
 3 electronically; prohibiting a lender from requiring property insurance in an
 4 amount that exceeds the replacement value of improvements; miscellaneous
 5 changes to the insurance security fund; other miscellaneous insurance-related
 6 modifications; and granting rule-making authority.

Analysis by the Legislative Reference Bureau***Insurance agent licensing***

Under current law, a person may be licensed to act as an insurance intermediary if he or she: 1) pays the applicable fee; 2) shows to the satisfaction of the commissioner of insurance (commissioner) that he or she has the intent in good faith to do business as an intermediary and is competent and trustworthy; and 3) agrees to be subject to the jurisdiction of the commissioner and the courts of the state on any matter related to the person's insurance activities in the state. In addition, the person must satisfy certain prelicensing education standards and pass an examination; after being licensed, the person must comply with certain continuing education standards. This bill authorizes the commissioner to promulgate a rule that would require applicants for licensure as insurance intermediaries who are state residents and natural persons to provide fingerprints as a condition for licensure. The fingerprints, if required, may be used for conducting state and national criminal history background investigations of the applicants.

Under current law, the license of an insurance intermediary who fails to provide evidence of compliance with continuing education standards, or who fails to pay a fee when due, is suspended, and the suspended license is revoked if the intermediary does not provide evidence of compliance, or pay the fee, within 60 days after the license is suspended. Also under current law, the license of an insurance intermediary is revoked if the Department of Revenue certifies that the intermediary is liable for delinquent taxes. Any intermediary whose license is revoked must satisfy all requirements for initial licensure to be relicensed.

This bill provides that the license of an insurance intermediary who fails to provide evidence of compliance with continuing education standards, or who fails to pay a fee when due, is automatically revoked rather than suspended for 60 days before revocation. Before the automatic revocation occurs, however, the commissioner must notify the intermediary, by first class mail, of the date that the evidence must be provided or the fee must be paid and that the intermediary's license will be revoked if the evidence is not provided or the fee is not paid by that date. The bill provides that, if an intermediary's license is revoked for failure to provide evidence of compliance with continuing education standards, for failure to pay a fee

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when due, or for being delinquent in the payment of taxes, the intermediary may have his or her license reinstated within 12 months after the revocation without having to satisfy any prelicensing education or examination requirements. If the intermediary's license is not reinstated within 12 months, however, the intermediary may be relicensed only by satisfying all of the requirements that apply to initial licensure.

The bill also provides that the license of an insurance intermediary who changes residency from one state to another is revoked 60 days after the residency change. The intermediary may be relicensed only by satisfying all of the requirements that apply to initial licensure.

Insurance security fund

The bill makes various changes to the insurance security fund provisions of the statutes. 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 made against insolvent insurers.

Under current law, the board of directors of the fund (board) includes between 7 and 14 members, consisting of the state attorney general, the state treasurer, the commissioner, and representatives of insurers who are chosen under procedures specified by the commissioner by administrative rule. The chairperson of the board is elected by members of the board under a rule promulgated by the commissioner. Under the bill, the board consists of the state attorney general, the state treasurer, the commissioner, and between 9 and 11 representatives of insurers who are appointed by the commissioner; a member who is an insurer representative may designate an alternate representative, who has all of the powers and responsibilities of the designating representative, to represent the insurer at any meeting of the board; and the chairperson of the board is elected annually by the members at the first meeting after June 1.

Under current law, generally, the fund has no liability for payment of a claim that is not filed by the date set by the liquidator or court. The bill provides that the fund is not liable for any claim that is filed after 18 months after the order of liquidation is entered if no date for filing is set by the liquidator or court. The bill also specifies the circumstances under which an insurer, reinsurer, insurance pool, or underwriting association that has paid a claim for health care costs and is subrogated to an insurer in liquidation may assert a claim for reimbursement against the fund.

Under current law, the fund is not responsible for ^{paying} benefits under a life or disability insurance policy or an annuity contract to the extent that the rate of interest on which the benefits are based, or the interest rate, crediting rate, or similar factor determined by use of an index, exceeds the smaller of the minimum guaranteed rate specified in the contract or a rate of interest determined in relation to Moody's corporate bond yield average. The bill changes this so that the fund's responsibility for payment is based only on whether the interest rate on which the benefits are based exceeds the applicable Moody's corporate bond yield average.

Under current law, assessments paid by insurers to support the fund are based on premium written in this state for the year preceding either the year the

for three-year terms

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liquidation order was entered or the year in which the assessment is authorized by the board, depending on when the assessment is authorized. This bill retains that provision for all types of insurance except life or disability insurance policies and annuity contracts. For those types of insurance, assessments are based on average annual premium received in this state for the three most recent years preceding the year the liquidation order was entered. In addition, the bill changes the maximum amount that an insurer may be assessed in any calendar year ~~from~~ 2 percent of average annual premium received in this state during the three calendar years preceding the year in which the liquidation order is entered, to 2 percent of the insurer's assessable premiums under the statutory provision that specifies the premiums on which an insurer's assessment is based. ✓

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Miscellaneous insurance provisions

The bill makes various other insurance-related changes. The bill:

1. Prohibits a lender with a security interest in real property from requiring the borrower to insure the real property against risks to improvements in an amount that exceeds the lesser of the replacement value or market value of the improvements.

2. Clarifies, by specifically providing, that a municipal mutual that provides worker's compensation insurance for its members is required to participate in a worker's compensation pool along with other worker's compensation insurers. The bill also makes the provisions of the statutes regulating intercorporate transactions among affiliates apply to municipal mutuals. Under current law, these provisions specifically do not apply to municipal mutuals.

3. Makes the insurance statutes apply to an association and its publication and clearinghouse activities, which function to match subscribers with financial, physical, or medical needs with subscribers who desire to financially assist the subscribers with those needs. Under current law, such an association and its publication and clearinghouse activities are specifically exempt from the insurance statutes.

34. Authorizes an insurer that provides group or blanket insurance to make the certificates available to certificate holders electronically as an alternative to delivering or mailing the certificates to the policyholder. However, any certificate holder may receive a paper copy of the certificate upon request.

44. Makes the definition of a late enrollee, for purposes of group health benefit plan requirements, consistent with the federal Health Insurance Portability and Accountability Act of 1996. The definition of a late enrollee affects the length of time that may be required for an affiliation period and for a preexisting condition exclusion.

6. Requires an insurer providing health care liability (medical malpractice) insurance to pay its proportional share of interest and taxable costs on an amount recovered against an insured covered by the insurer.

7. Provides that the commissioner or his or her designee must serve as a member of the Wisconsin Retirement Board. Under current law, the commissioner or an experienced actuary in the Office of the Commissioner of Insurance must serve as a member.

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8. Eliminates fees for issuing a duplicate agent's license and for preparing and furnishing an agent's letter of certification or clearance.

9. In order to clarify that the remedial measures or restitution that current law specifies may be included in an order of the commissioner are not all-inclusive, provides that an order of the commissioner requiring remedial measures or restitution may include, in addition to what is in current law, any other remedial measures or restitution that the commissioner determines is necessary or advisable.

5-10. Clarifies that the level of investment allowed in an insurance corporation subsidiary applies to all subsidiaries of the insurance corporation in the aggregate, not to each separate subsidiary.

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

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

1 **SECTION 1.** 15.165 (3) (b) 9. of the statutes is amended to read:

2 15.165 (3) (b) 9. The commissioner of insurance or an experienced actuary in
3 the office of the commissioner designated by the commissioner his or her designee
4 under s. 601.415 (3).

5 ~~**SECTION 2.** 600.01 (1) (b) 9. of the statutes is repealed.~~

6 ~~**SECTION 3.** 601.31 (1) (Lm) of the statutes is repealed.~~

7 ~~**SECTION 4.** 601.31 (1) (u) of the statutes is repealed.~~

8 ~~**SECTION 5.** 601.31 (1) (v) of the statutes is repealed.~~

9 **SECTION 6.** 601.41 (4) (a) 3. of the statutes is created to read:

10 601.41 (4) (a) 3. Any other remedial measures or restitution that the
11 commissioner determines is necessary or advisable.

12 **SECTION 7.** 601.415 (3) of the statutes is amended to read:

13 601.415 (3) WISCONSIN RETIREMENT BOARD. The commissioner or an experienced
14 actuary in the office designated by the commissioner his or her designee shall serve
15 as a member of the Wisconsin retirement board under s. 15.165 (3) (b).

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1 **SECTION 8.** 611.23 (3) of the statutes is renumbered 611.23 (3) (a) and amended
2 to read:

3 611.23 (3) (a) Chapters Except as provided in par. (b), chs. 604 to 607, 612 to
4 616, 618, 619, 625, and 646 do not apply to such mutuals. The commissioner may by
5 order, after a hearing, exempt such a mutual from any other provisions on a finding
6 that they are unnecessary for the protection of the interests of the municipalities and
7 their citizens.

8 **SECTION 9.** 611.23 (3) (b) of the statutes is created to read:

9 611.23 (3) (b) A requirement to participate in a worker's compensation
10 insurance pool established under s. 619.01 (1) (a) applies to a municipal insurance
11 mutual that provides worker's compensation insurance for its members.

12 **SECTION 10.** 611.26 (3) (a) of the statutes is amended to read:

13 611.26 (3) (a) *Authorization.* An insurance corporation may form or acquire
14 subsidiaries to perform functions or provide services that are ancillary to its
15 insurance operations. It may have up to 10% of its assets invested in such
16 subsidiaries, unless the commissioner by order or rule provides otherwise.

17 **SECTION 11.** 611.26 (4) (a) of the statutes is amended to read:

18 611.26 (4) (a) Invest in a subsidiary one or more subsidiaries more than 10
19 percent of its assets or 50 percent of its capital and surplus, whichever is less.

20 **SECTION 12.** 611.26 (4) (b) of the statutes is amended to read:

21 611.26 (4) (b) Invest in a subsidiary one or more subsidiaries to the extent that
22 the insurer's capital and surplus with regard to policyholders will not be reasonable
23 in relation to the insurer's outstanding liabilities or adequate to meet the insurer's
24 financial needs.

25 **SECTION 13.** 611.72 (2) of the statutes is amended to read:

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1 611.72 (2) APPROVAL REQUIRED. No proposed plan of merger under s. 180.1101
2 or 180.1104 or other plan for acquisition of control ~~may be submitted to the~~
3 shareholders[✓] of any domestic stock insurance corporation or its parent insurance
4 holding corporation participating in the transaction ~~or~~ [✓] may be [✓] executed unless it has
5 been approved by the commissioner.

6 **SECTION 14.** 628.04 (1c) of the statutes is created to read:

7 628.04 (1c) FINGERPRINTS. The commissioner may by rule require an applicant
8 under sub. (1) who is a resident and a natural person to provide fingerprints as an
9 additional condition for the granting of a license to act as an agent. The
10 commissioner may use the fingerprints, if required, to conduct a state criminal
11 history background investigation of the applicant and a national criminal history
12 background investigation of the applicant with the federal bureau of investigation.

13 **SECTION 15.** 628.10 (2) (a) of the statutes is amended to read:

14 628.10 (2) (a) *For failure to comply with continuing education requirements.*

15 The license of any intermediary who fails to produce evidence of compliance with
16 continuing education standards set by the commissioner is ~~suspended~~ revoked,
17 effective on the day date on which the evidence of compliance is due. ~~If an~~
18 ~~intermediary whose license has been suspended under this paragraph produces~~
19 ~~evidence of compliance within 60 days after the date on which the license is~~
20 ~~suspended, the commissioner shall reinstate the license effective on the date of~~
21 ~~suspension. If such an intermediary does not produce evidence of compliance within~~
22 ~~60 days, the license is revoked and the intermediary may be relicensed only after~~
23 satisfying all requirements under s. 628.04. Before that date, the commissioner shall
24 send by 1st class mail to the intermediary's address that is on file with the
25 commissioner notice of the date by which the evidence of compliance is due and that

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1 the intermediary's license will be revoked if the evidence is not received by that date.
2 An intermediary whose license is revoked under this paragraph may have his or her
3 license reinstated, or may be relicensed, as provided in sub. (5).

4 **SECTION 16.** 628.10 (2) (am) of the statutes is amended to read:

5 628.10 (2) (am) *Nonpayment of fees.* The license of an intermediary who fails
6 to pay a fee when due is ~~suspended on and after~~ revoked, effective on the date when
7 on which the fee is due, ~~if.~~ Before that date, the commissioner gave the intermediary
8 reasonable shall send by 1st class mail to the intermediary's address that is on file
9 with the commissioner notice that of the date by which the fee was is due and that
10 the intermediary's license would will be suspended revoked if timely payment was
11 is not made. If the intermediary pays the fee within 60 days after the date it is due,
12 the license is reinstated effective on the date of suspension. If payment is not made
13 within 60 days, the license is revoked and the intermediary may be relicensed only
14 after satisfying all requirements under s. 628.04. An intermediary whose license is
15 revoked under this paragraph may have his or her license reinstated, or may be
16 relicensed, as provided in sub. (5).

17 **SECTION 17.** 628.10 (2) (cm) of the statutes is amended to read:

18 628.10 (2) (cm) *For liability for delinquent taxes.* The commissioner shall
19 revoke the license of an intermediary, including a temporary license under s. 628.09,
20 if the department of revenue certifies under s. 73.0301 that the intermediary is liable
21 for delinquent taxes. An intermediary whose license is revoked under this
22 paragraph may have his or her license reinstated, or may be relicensed, as provided
23 in sub. (5).

24 **SECTION 18.** 628.10 (2) (e) of the statutes is created to read:

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1 628.10 (2) (e) *For changing state of residence.* The license of an intermediary
2 who changes residence from one state to another is revoked 60 days after the change
3 of residence. The intermediary may be relicensed only after satisfying all of the
4 requirements of s. 628.04.

5 **SECTION 19.** 628.10 (3) of the statutes is amended to read:

6 628.10 (3) **DELAY FOR NEW APPLICATION.** An order revoking an intermediary's
7 license under sub. (2) (b) or (cr) may specify a time not to exceed 5 years within which
8 the former intermediary may not apply for a new license. If no time is specified, the
9 intermediary may not apply for 5 years. ~~An intermediary whose license is revoked~~
10 ~~under sub. (2) (am) may immediately reapply.~~

11 **SECTION 20.** 628.10 (4) (title) of the statutes is repealed and recreated to read:

12 628.10 (4) (title) **PAYMENT OF FEES PAYABLE.**

13 **SECTION 21.** 628.10 (5) of the statutes is created to read:

14 628.10 (5) **REINSTATEMENT OR RELICENSING AFTER CERTAIN REVOCATIONS.** (a)
15 *Reinstatement within 12 months.* An intermediary who is a natural person and
16 whose license is revoked under sub. (2) (a), (am), or (cm) may have his or her license
17 reinstated within 12 months after the date on which the license was revoked without
18 having to satisfy any prelicensing education or examination requirements under s.
19 628.04. If the intermediary is also a resident who is required to complete continuing
20 education, the intermediary must have satisfied all previous continuing education
21 requirements to have his or her license reinstated under this subsection.

22 (b) *Relicensing required after 12 months.* An intermediary specified in par. (a)
23 whose license has been revoked for more than 12 months is not eligible to have his
24 or her license reinstated under par. (a) but may apply for relicensing at any time after

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1 12 months have elapsed from the date of revocation. To be relicensed, the
2 intermediary must satisfy all of the requirements of s. 628.04.

3 (c) *Penalty for certain revocations.* In addition to the payment of any fees under
4 sub. (4), to have his or her license reinstated under par. (a) an intermediary whose
5 license was revoked under sub. (2) (a) or (am) shall pay a penalty of twice the amount
6 of any unpaid fees that were payable before his or her license was revoked.

7 (d) *Applicability.* This subsection applies to all of the following:

8 1. Intermediaries whose licenses were revoked under sub. (2) (a), (am), or (cm)
9 before the effective date of this subdivision [revisor inserts date], regardless of
10 whether an order under sub. (3) applies to the intermediary.

11 2. Intermediaries whose licenses are revoked under sub. (2) (a), (am), or (cm)
12 on or after the effective date of this subdivision [revisor inserts date].

13 **SECTION 22.** 628.11 (title) of the statutes is amended to read:

14 **628.11 (title) Listing Appointment of insurance agents.**

15 **SECTION 23.** 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 24.** 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 25.** 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 26.** 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 27.** 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 less. ✓

22 **SECTION 28.** 632.745 (18) (am) of the statutes is created to read:

23 632.745 (18) (am) The time specified under s. 632.746 (6). ✓

24 **SECTION 29.** 646.11 (4) of the statutes is amended to read:

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

5 **SECTION 30.** 646.11 (5) of the statutes is amended to read:

6 646.11 (5) IMMUNITY. No cause of action of any nature may arise against and
7 no liability may be imposed upon the fund or its agents, employees, directors,
8 including alternate representatives designated under s. 646.12 (1) (a) 3., or
9 contributor insurers, or the commissioner or the commissioner's agents, employees,
10 or representatives, for any act or omission by any of them in the performance of their
11 powers and duties under this chapter.

12 **SECTION 31.** 646.12 (1) (a) of the statutes is renumbered 646.12 (1) (a) 1. and
13 amended to read:

14 646.12 (1) (a) 1. The fund shall be administered by a board of directors which
15 that shall consist of not fewer than 7 nor more than 14 members. The the attorney
16 general, the state treasurer, and the commissioner are members with, each of whom
17 shall have full voting rights. Other members shall be chosen from representatives
18 of insurers subject to this chapter under procedures specified by the commissioner
19 by rule, provided that one member is a representative of a service insurance
20 corporation. The rule may provide that, instead of natural persons, specific insurers
21 or associations of insurers may be selected as members of the board and may act
22 through any duly authorized representative, and at least 9 but not more than 11
23 insurer representatives of domestic, foreign, and alien insurers subject to this
24 chapter.

25 **SECTION 32.** 646.12 (1) (a) 2. of the statutes is created to read:

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

8 **SECTION 33.** 646.12 (1) (a) 3. of the statutes is created to read:

9 646.12 (1) (a) 3. Each appointed insurer representative may designate an
10 alternate representative to represent the insurer at any meeting of the board. Any
11 person serving as an alternate representative shall, while serving, have all of the
12 powers and responsibilities of the appointed insurer representative. ✓

13 **SECTION 34.** 646.12 (1) (b) of the statutes is amended to read:

14 646.12 (1) (b) *Chairperson.* The person to chair the board shall be elected by
15 the members of the board ~~under a rule promulgated by the commissioner annually~~
16 at the first meeting after June 1. ✓

17 **SECTION 35.** 646.12 (2) (a) of the statutes is amended to read:

18 646.12 (2) (a) ~~Subject to the commissioner's power to promulgate rules under~~
19 ~~sub. (1), adopt~~ Adopt rules for the administration of this chapter, including
20 delegation of any part of its powers and its own procedures.

21 **SECTION 36.** 646.13 (3) (d) of the statutes is created to read:

22 646.13 (3) (d) Except for claims under life insurance policies, annuities, or
23 noncancelable or guaranteed renewable disability insurance policies, and except for
24 claims determined to be excused late filings as provided in pars. (a) and (b), ✓ if no date

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1 for filing is set by the liquidator or court, with a liquidator or court after 18 months
2 after the order of liquidation is entered. ✓

3 **SECTION 37.** 646.31 (11) of the statutes is renumbered 646.31 (11) (b) and
4 amended to read:

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

13 **SECTION 38.** 646.31 (11) (a) of the statutes is created to read:

14 646.31 (11) (a) In this subsection:

- 15 1. "Health care costs" has the meaning given in s. 609.01 (1j). ✓
16 2. "Insurance entity" means a reinsurer, an insurer, an insurance pool, or an
17 underwriting association. ✓

18 **SECTION 39.** 646.31 (11) (c) of the statutes is created to read:

19 646.31 (11) (c) Notwithstanding par. (b), an insurance entity may assert a claim
20 against the fund for health care costs if all of the following conditions are met:

- 21 1. The insurance entity paid the claim for health care costs under a disability
22 insurance policy issued by the insurance entity. ✓
23 2. The insurance entity is not obligated to pay the health care costs under the
24 express terms of the disability insurance policy because the claim arose out of, or in
25 the course of, the claimant's employment. ✓

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

3 **SECTION 40.** 646.33 (3) of the statutes is renumbered 646.33 (3) (a). ✓

4 **SECTION 41.** 646.35 (4) (a) of the statutes is renumbered 646.35 (4). ✓

5 **SECTION 42.** 646.35 (4) (b) of the statutes is renumbered 646.33 (3) (b). ✓

6 **SECTION 43.** 646.35 (6) (c) 1. (intro.) and b. of the statutes are consolidated,
7 renumbered 646.35 (6) (c) 1. and amended to read:

8 646.35 (6) (c) 1. Any benefit payment liability, arising on or after the date of
9 entry of the order of liquidation, to the extent that the rate of interest on which it is
10 based or the interest rate, crediting rate, or similar factor determined by use of an
11 index or other external reference stated in the policy or contract and employed in
12 calculating returns or changes in value exceeds the smaller of the following: b. The
13 rate of interest, which may not be less than zero, determined by subtracting 3
14 percentage points from the monthly corporate bond yield average, as most recently
15 published by Moody's investors service or its successor. ✓

16 **SECTION 44.** 646.35 (6) (c) 1. a. of the statutes is repealed. ✓

17 **SECTION 45.** 646.35 (6) (c) 2. (intro.) and b. of the statutes are consolidated,
18 renumbered 646.35 (6) (c) 2. and amended to read: ✓

19 646.35 (6) (c) 2. Any benefit payment liability, arising before the date of entry
20 of the order of liquidation, to the extent that the payment exceeds the smaller of the
21 following: b. The rate of interest, which may not be less than zero, determined by
22 subtracting 2 percentage points from the monthly corporate bond yield average, as
23 published by Moody's investors service or its successor, when averaged over the
24 4-year period ending on the date of entry of the order of liquidation or averaged over
25 such lesser period if the contract was issued less than 4 years before that date.

BILL

1 SECTION 46. 646.35 (6) (c) 2. a. of the statutes is repealed. ✓

2 SECTION 47. 646.51 (3) (am) (intro.) of the statutes is amended to read:

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

5 SECTION 48. 646.51 (3) (b) of the statutes is created to read:

6 646.51 (3) (b) *Life and health.* Except as provided in par. (c), with respect to
7 annuity contracts or life or disability insurance policies, including policies issued by
8 health maintenance organizations, assessments shall be calculated as a percentage
9 of average annual premium received in this state by each insurer in the classes
10 protected by the accounts for the 3 most recent years preceding the year of the entry
11 of the order of liquidation. ✓

12 SECTION 49. 646.51 (4) (a) of the statutes is amended to read:

13 646.51 (4) (a) Subject to pars. (b) and (d), the total of all assessments for an
14 amount authorized by the board under this section with respect to an insurer may
15 not, in one calendar year, exceed ~~2%~~ 2 percent of the insurer's average annual
16 assessable premiums received in this state, during the ~~3~~ calendar years preceding
17 ~~the year of entry of the order of liquidation,~~ under sub. (3) (am) or (b) on the types
18 of policies and contracts that are covered by the account.

19 SECTION 50. 655.24 (2) (a) 3. of the statutes is amended to read:

20 655.24 (2) (a) 3. ~~Any portion or all~~ The insurer's proportional share of the
21 interest, ~~as determined by the board of governors,~~ on an amount recovered against
22 the insured under this chapter for which the insured is liable under s. 807.01 (4),
23 814.04 (4) or 815.05 (8).

24 SECTION 51. 655.24 (2) (a) 4. of the statutes is created to read:

BILL

1 655.24 (2) (a) 4. The insurer's proportional share of taxable costs on an amount
2 recovered against the insured under this chapter for which the insured is liable
3 under s. 807.01 (3).

4 **SECTION 52.** 2003 Wisconsin Act 261, section 162 (1) is amended to read:

5 [2003 Wisconsin Act 261] Section 162 (1) INSURANCE SECURITY FUND.

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

BILL

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

SECTION 53. Nonstatutory provisions.

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

SECTION 54. Initial applicability.

11 (1) ELIMINATION OF FEES.

12 (a) The treatment of section 601.31 (1) (Lm) of the statutes first applies to
13 requests for duplicate licenses that are received on the effective date of this
14 paragraph.

15 (b) The treatment of section 601.31 (1) (u) of the statutes first applies to
16 requests for letters of certification that are received on the effective date of this
17 paragraph.

18 (c) The treatment of section 601.31 (1) (v) of the statutes first applies to requests
19 for letters of clearance that are received on the effective date of this paragraph.

20 (2) INSURANCE SECURITY FUND. The treatment of sections 646.13 (3) (d), 646.33
21 (3), 646.35 (4) (a) and (b) and (6) (c) 1. (intro.), a., and b. and 2. (intro.), a., and b., and
22 646.51 (3) (am) (intro.) and (b) and (4) (a) of the statutes, the renumbering and
23 amendment of section 646.31 (11) of the statutes, and the creation of section 646.31
24 (11) (a) and (c) of the statutes first apply to insurance company liquidations
25 commenced or pending on the effective date of this subsection. ✓

BILL

1 (2) ~~(3)~~ RESTRICTION ON PROPERTY INSURANCE. The treatment of section 632.07 of the
2 statutes first applies to property insurance coverage required by a lender on the
3 effective date of this subsection.

4 (4) AGENT LICENSE REVOCATION FOR CHANGING RESIDENCE. The treatment of
5 section 628.10 (2) (e) of the statutes first applies to intermediaries that change
6 residence from one state to another state on the effective date of this subsection.

7 (5) DELAY IN APPLICATION AFTER REVOCATION. The treatment of section 628.10 (3)
8 of the statutes first applies to revocations that occur on the effective date of this
9 subsection.

10 **SECTION 55. Effective dates.** This act takes effect on the day after publication,
11 except as follows:

12 (1) AGENT LICENSE REVOCATIONS. The treatment of section 628.10 (2) (a), (am),
13 and (cm), (3), and (5) of the statutes and SECTION (54) (5) of this act take effect on July
14 1, 2006.

15 (END)

INSERT
19-14

D-note

**2007-2008 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-0842/ins
PJK:.....

INSERT A-4A

- . Under current law, the maximum assessment amount is
(END OF INSERT A-4A)

INSERT A-4B

- . The bill changes the maximum assessment amount
(END OF INSERT A-4B)

Insert A-5JK

6. Provides that the only remedy for recovering a license fee or assessment paid by an insurer is to commence an action in the circuit court for Dane County. ✓

Insert 6-1

1 SECTION ~~1.~~ 76.68 (2) of the statutes is amended to read:

2 76.68 (2) No suit may be brought to restrain or enjoin the collection of any
3 license fee or tax imposed or provided for by this subchapter, and the fees required
4 by s. 601.31. Any insurer aggrieved by the payment of any such license or other fee
5 or tax may maintain a suit against the state for the recovery thereof action to recover
6 any license fee or tax imposed or provided for by this subchapter or any fee required
7 under s. 601.31, shall be brought in the circuit court for Dane County within 6
8 months from the time of the payment. The state may be served in the suit as provided
9 in s. 801.11 (3). This subsection is the exclusive remedy by which to recover any
10 license fee or tax imposed or provided for by this subchapter or any fee required under
11 s. 601.31. ✓

History: 1971 c. 40 s. 93; 1971 c. 260; Sup. Ct. Order, 67 Wis. 2d 585, 773 (1975); 1977 c. 339; 1979 c. 32 s. 92 (5); 1979 c. 89 s. 543; 1979 c. 102 ss. 26, 237; 1979 c. 177; Stats. 1979 s. 76.68.

12 SECTION ~~2.~~ 76.68 (4) of the statutes is amended to read:

13 76.68 (4) The attorney general shall institute suit in the circuit court for Dane
14 County to recover any license fees or tax not paid within the time prescribed by this
15 subchapter, and the fees required by s. 601.31. ~~Nothing in this subsection shall be~~
16 ~~construed as amending or modifying in any respect ch. 775.~~

History: 1971 c. 40 s. 93; 1971 c. 260; Sup. Ct. Order, 67 Wis. 2d 585, 773 (1975); 1977 c. 339; 1979 c. 32 s. 92 (5); 1979 c. 89 s. 543; 1979 c. 102 ss. 26, 237; 1979 c. 177; Stats. 1979 s. 76.68.

Insert 19-14

17 (3) ACTION TO RECOVER FEES, TAXES, AND ASSESSMENTS. The treatment of section
18 76.68 (2) and (4) of the statutes first applies to fees, taxes, and assessments that are
19 due and payable on the effective date of this subsection. ✓

**2007-2008 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-0842/?ins
PJK:.....

INSERT 11-23

- 1 **SECTION 1.** 632.745 (18) (b) of the statutes is amended to read:
- 2 632.745 (18) (b) A special enrollment period under s. 632.746 (6) or (7). ✓

History: 1995 a. 289, 453; 1997 a. 27; 1999 a. 9; 2001 a. 38.

(END OF INSERT 11-23)

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0842/dn

PJK:.....

mk

(date)

This is Group 3 - Financial and Market Conduct Package. Besides the new premium tax statute of limitations, it includes most, but not all, of the provisions of 2005 LBR-3368/5 that have not already been included in the other two packages. For your information, the treatment of the following statutory sections in 05-3368/5 have not been included in any of the three drafts this session: ss. 15.165 (3) (b) 9., 600.01 (1) (b) 9., 601.41 (4) (a) 3., 601.415 (3), 628.11 (title), and 655.24 (2) (a) 3. and 4. Let me know if any of these should be included in this or another draft.

In this draft:

- 1) I have changed "service corporations" in proposed s. 646.12 (1) (a) 2. to "service insurance corporations"
- 2) See current law s. 646.51 (3) (am) 1. Can this provision be repealed? It is not included in the draft, but the analysis makes reference to it.

Pamela J. Kahler
Senior Legislative Attorney
Phone: (608) 266-2682
E-mail: pam.kahler@legis.wisconsin.gov

3) Note s. 632.745(18)(b), which is different from what was in 05-3368/5. I went back to your original suggestion, which I think is better.

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

LRB-0842/1dn
PJK:lmk:rs

March 13, 2007

This is Group 3 - Financial and Market Conduct Package. Besides the new premium tax statute of limitations, it includes most, but not all, of the provisions of 2005 LRB-3368/5 that have not already been included in the other two packages. For your information, the treatment of the following statutory sections in 05-3368/5 have not been included in any of the three drafts this session: ss. 15.165 (3) (b) 9., 600.01 (1) (b) 9., 601.41 (4) (a) 3., 601.415 (3), 628.11 (title), and 655.24 (2) (a) 3. and 4. Let me know if any of these should be included in this or another draft.

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- 1) I have changed "service corporations" in proposed s. 646.12 (1) (a) 2. to "service *insurance* corporations".
- 2) See current law s. 646.51 (3) (am) 1. Can this provision be repealed? It is not included in the draft, but the analysis makes reference to it.
- 3) Note s. 632.745 (18) (b), which is different from what was in 05-3368/5. I went back to your original suggestion, which I think is better.

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

From: Nepple, Fred - OCI
Sent: Monday, September 17, 2007 1:39 PM
To: Kahler, Pam; Kahler, Pam
Subject: LRB 842 OCI revisions 2.doc
Attachments: LRB 842 OCI revisions 2.doc

Pam

Please find attached requested drafting revisions for the above draft. Please contact me if you have any questions: 266-7726. Thanks

09/17/2007



State of Wisconsin / OFFICE OF THE COMMISSIONER OF INSURANCE

Jim Doyle, Governor
Sean Dilweg, Commissioner

Wisconsin.gov

Legal Unit
125 South Webster Street • P.O. Box 7873
Madison, Wisconsin 53707-7873
Phone: (608) 267-9586 • Fax: (608) 264-6228
Web Address: oci.wi.gov

Date: September 17, 2007
To: Pam Kahler, Legislative Attorney
From: Fred Nepple, General Counsel
Subject: LRB-0842/1

OCI requests a second draft. We have reviewed your drafting note and concur with the drafting decisions you describe. As to paragraph 2) please do not repeal s. 646.51 (3) (am) 1., Stats.

Please add the following:

1) **Amendment to s. 601.465, Stats., reflected below.**

The Office believes that current law reflected in s. 601.465, Stats, already establishes that the Office's privilege under that statute is not constructively waived due to another state insurance department's or the NAIC's voluntary or court compelled production of material subject to OCI's privilege. Similarly the privilege is not constructively waived due to OCI bringing an action against a third party as receiver of an insurance company. Finally the term "investigation" includes monitoring of the financial condition of insurers conducted by or through NAIC interaction with the state of domicile insurance department. This amendment is added to foreclose any contention to the contrary, hence is a clarification rather than a change in existing law. Any dispute regarding these topics will have a chilling effect on sensitive but vital multi-state communications regarding financial condition of insurers coordinated through the NAIC. Hence the amendment is intended to foreclose any contention to the contrary so as to maintain confidence in the confidentiality of these communications.

601.465 Nondisclosure of information. The office may refuse to disclose and may prevent any other person from disclosing any of the following:

(1) Testimony, reports, records and information that are obtained, produced or created in the course of an inquiry under s. 601.42.

(2) Except as provided in s. 601.44 (6) to (10), testimony, reports, records and information that are obtained, produced or created in the course of an examination under s. 601.43.

(3) Testimony, reports, records, communications, and 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 or participating in monitoring activities or in the conduct of an inquiry, investigation or examination:

- (a) The National Association of Insurance Commissioners.
- (b) An agent or employee of the National Association of Insurance Commissioners.
- (c) The insurance commissioner of another state.
- (d) An agent or employee of the insurance commissioner of another state.
- (e) An international, federal, state or local regulatory or law enforcement agency.
- (f) An agent or employee of an agency described in par. (e).

(4) The privilege provided under this section may be waived only by affirmative written and specific consent of the commissioner. The privilege is not subject to constructive waiver. The privilege includes testimony, reports, records, communications, and information created, obtained or provided by, an office official, employee or agent for the purpose of purpose of assisting or participating in monitoring activities or in the conduct of an inquiry, investigation or examination by, or coordinated through, the National Association of Insurance Commissioners.

Non-Statutory:

The amendment to s. 601.465, Stats., applies to testimony, reports, records, communications, and information created, obtained or provided prior to, on or after the effective date of the treatment of s. 601.465, Stats.

- 2) **Amend s. 601.41 (8) (b), Stats., to delete reference to a life and disability advisory council to reflect the commissioner's authority to restructure OCI advisory bodies.**

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

- 3) **Amend s. 605.02, Stats., to specify the conditions for coverage of non-owned buildings or structures.**

605.02 Kinds of property insured. Any local governmental unit may insure in the property fund its property or property for which it may be liable in the event of damage or destruction. Property insured under this section by a local governmental unit may not also be insured in any other manner unless the manager certifies that the additional insurance is necessary, or unless the local governmental unit by resolution, a certified copy of which is filed with the manager, decides to insure specified personal

property with insurers authorized to do business in this state. The property fund may cover a non-owned building or structure only if all of the following conditions are met:

- (a) The building or structure is listed and described as a non-owned building or structure in the local governmental unit's statement of values.
- (b) The local governmental unit is contractually liable in the event of damage or destruction of the building or structure.
- (c) The building or structure is in the local governmental unit's care, custody or control.
- (d) The building or structure is used for a legitimate governmental purpose.



State of Wisconsin
2007 - 2008 LEGISLATURE

LRB-0842/1
PJK&JK:fmk:rs
52
C. L. K. &
v m i s n u n j d

2007 BILL

D-vote
(in 9-26)

SA ✓
X-REP ✓

regenerate
↓

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* 611.23 (3),
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* 76.68 (2), 76.68 (4), 611.26 (3) (a), 611.26 (4) (a), 611.26 (4) (b), 611.72
6 (2), 632.745 (18) (b), 646.11 (4), 646.11 (5), 646.12 (1) (b), 646.12 (2) (a), 646.51
7 (3) (am) (intro.) and 646.51 (4) (a); *to create* 611.23 (3) (b), 631.61 (1) (c) 1.,
8 631.61 (1) (c) 2., 631.61 (1) (c) 3., 632.07, 646.12 (1) (a) 2., 646.12 (1) (a) 3., 646.13
9 (3) (d), 646.31 (11) (a), 646.31 (11) (c) and 646.51 (3) (b) of the statutes; and *to*
10 *affect* 2003 Wisconsin Act 261, section 162 (1); **relating to:** requirements that
11 apply to municipal insurance mutuals; the definition of a late enrollee; making
12 group insurance certificates available electronically; prohibiting a lender from
13 requiring property insurance in an amount that exceeds the replacement value
14 of improvements; premium tax statute of limitations; miscellaneous changes to

BILL

1 the insurance security fund; other miscellaneous insurance-related
2 modifications; and granting rule-making authority.

Analysis by the Legislative Reference Bureau

Insurance security fund

The bill makes various changes to the insurance security fund provisions of the statutes. 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 made against insolvent insurers.

Under current law, the board of directors of the fund (board) includes between 7 and 14 members, consisting of the state attorney general, the state treasurer, the commissioner, and representatives of insurers who are chosen under procedures specified by the commissioner by administrative rule. The chairperson of the board is elected by members of the board under a rule promulgated by the commissioner. Under the bill, the board consists of the state attorney general, the state treasurer, the commissioner, and between 9 and 11 representatives of insurers who are appointed by the commissioner for three-year terms; a member who is an insurer representative may designate an alternate representative, who has all of the powers and responsibilities of the designating representative, to represent the insurer at any meeting of the board; and the chairperson of the board is elected annually by the members at the first meeting after June 1.

Under current law, generally, the fund has no liability for payment of a claim that is not filed by the date set by the liquidator or court. The bill provides that the fund is not liable for any claim that is filed after 18 months after the order of liquidation is entered if no date for filing is set by the liquidator or court. The bill also specifies the circumstances under which an insurer, reinsurer, insurance pool, or underwriting association that has paid a claim for health care costs and is subrogated to an insurer in liquidation may assert a claim for reimbursement against the fund.

Under current law, the fund is not responsible for paying benefits under a life or disability insurance policy or an annuity contract to the extent that the rate of interest on which the benefits are based, or the interest rate, crediting rate, or similar factor determined by use of an index, exceeds the smaller of the minimum guaranteed rate specified in the contract or a rate of interest determined in relation to Moody's corporate bond yield average. The bill changes this so that the fund's responsibility for payment is based only on whether the interest rate on which the benefits are based exceeds the applicable Moody's corporate bond yield average.

Under current law, assessments paid by insurers to support the fund are based on premium written in this state for the year preceding either the year the liquidation order was entered or the year in which the assessment is authorized by the board, depending on when the assessment is authorized. This bill retains that provision for all types of insurance except life or disability insurance policies and annuity contracts. For those types of insurance, assessments are based on average

BILL

annual premium received in this state for the three most recent years preceding the year the liquidation order was entered. In addition, the bill changes the maximum amount that an insurer may be assessed in any calendar year. Under current law, the maximum assessment amount is 2 percent of average annual premium received in this state during the three calendar years preceding the year in which the liquidation order is entered. The bill changes the maximum assessment amount to 2 percent of the insurer's assessable premiums on which an insurer's assessment is based.

Miscellaneous insurance provisions

The bill makes various other insurance-related changes. The bill:

1. Prohibits a lender with a security interest in real property from requiring the borrower to insure the real property against risks to improvements in an amount that exceeds the lesser of the replacement value or market value of the improvements.

2. Clarifies, by specifically providing, that a municipal mutual that provides worker's compensation insurance for its members is required to participate in a worker's compensation pool along with other worker's compensation insurers. The bill also makes the provisions of the statutes regulating intercorporate transactions among affiliates apply to municipal mutuals. Under current law, these provisions specifically do not apply to municipal mutuals.

3. Authorizes an insurer that provides group or blanket insurance to make the certificates available to certificate holders electronically as an alternative to delivering or mailing the certificates to the policyholder. However, any certificate holder may receive a paper copy of the certificate upon request.

4. Makes the definition of a late enrollee, for purposes of group health benefit plan requirements, consistent with the federal Health Insurance Portability and Accountability Act of 1996. The definition of a late enrollee affects the length of time that may be required for an affiliation period and for a preexisting condition exclusion.

5. Clarifies that the level of investment allowed in an insurance corporation subsidiary applies to all subsidiaries of the insurance corporation in the aggregate, not to each separate subsidiary.

6. Provides that the only remedy for recovering a license fee or assessment paid by an insurer is to commence an action in the circuit court for Dane County.

Insert A

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

- 1 **SECTION 1.** 76.68 (2) of the statutes is amended to read:
- 2 76.68 (2) No suit may be brought to restrain or enjoin the collection of any
- 3 license fee or tax imposed or provided for by this subchapter, and the fees required
- 4 by s. 601.31. Any insurer aggrieved by the payment of any such license or other fee

BILL

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

8 **SECTION 2.** 76.68 (4) of the statutes is amended to read:

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

13 **SECTION 3.** 611.23 (3) of the statutes is renumbered 611.23 (3) (a) and amended
14 to read:

15 611.23 (3) (a) ~~Chapters~~ Except as provided in par. (b), chs. 604 to 607, 612 to
16 616, 618, 619, 625, and 646 do not apply to such mutuals. The commissioner may by
17 order, after a hearing, exempt such a mutual from any other provisions on a finding
18 that they are unnecessary for the protection of the interests of the municipalities and
19 their citizens.

20 **SECTION 4.** 611.23 (3) (b) of the statutes is created to read:

21 611.23 (3) (b) A requirement to participate in a worker's compensation
22 insurance pool established under s. 619.01 (1) (a) applies to a municipal insurance
23 mutual that provides worker's compensation insurance for its members.

24 **SECTION 5.** 611.26 (3) (a) of the statutes is amended to read:

Insert 4-12 ✓

BILL

1 611.26 (3) (a) *Authorization.* An insurance corporation may form or acquire
2 subsidiaries to perform functions or provide services that are ancillary to its
3 insurance operations. It may have up to 10% of its assets invested in such
4 subsidiaries, unless the commissioner by order or rule provides otherwise.

5 **SECTION 6.** 611.26 (4) (a) of the statutes is amended to read:

6 611.26 (4) (a) Invest in a subsidiary one or more subsidiaries more than 10
7 percent of its assets or 50 percent of its capital and surplus, whichever is less.

8 **SECTION 7.** 611.26 (4) (b) of the statutes is amended to read:

9 611.26 (4) (b) Invest in a subsidiary one or more subsidiaries to the extent that
10 the insurer's capital and surplus with regard to policyholders will not be reasonable
11 in relation to the insurer's outstanding liabilities or adequate to meet the insurer's
12 financial needs.

13 **SECTION 8.** 611.72 (2) of the statutes is amended to read:

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

19 **SECTION 9.** 631.61 (1) (c) of the statutes is renumbered 631.61 (1) (c) (intro.) and
20 amended to read:

21 631.61 (1) (c) *Method of providing certificates.* (intro.) The certificate shall be
22 provided in a manner reasonably calculated to bring it to the attention of the
23 certificate holder. The insurer may deliver or mail it directly to the certificate holder
24 or may deliver or mail the certificates in bulk to the policyholder to transmit to
25 certificate holders, unless the insurer has reason to believe that the policyholder will

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1 not promptly transmit the certificates. An affidavit by the insurer that it has mailed
2 the certificates in the usual course of business creates a rebuttable presumption that
3 it has done so. As an alternative to delivering or mailing the certificate, the insurer
4 may make the certificate available electronically through an online internet or
5 policyholder network Web site. If the insurer makes the certificate available
6 electronically, the insurer shall do all of the following:

7 **SECTION 10.** 631.61 (1) (c) 1. of the statutes is created to read:

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

13 **SECTION 11.** 631.61 (1) (c) 2. of the statutes is created to read:

14 631.61 (1) (c) 2. Provide notice to the policyholder of any subsequent change
15 in the certificate and request the policyholder to notify the certificate holders of the
16 change in the manner specified in subd. 1.

17 **SECTION 12.** 631.61 (1) (c) 3. of the statutes is created to read:

18 631.61 (1) (c) 3. Provide a paper copy of the certificate to any certificate holder
19 upon request.

20 **SECTION 13.** 632.07 of the statutes is created to read:

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

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1 **SECTION 14.** 632.745 (18) (b) of the statutes is amended to read:

2 632.745 (18) (b) A special enrollment period under s. 632.746 (6) or (7).

3 **SECTION 15.** 646.11 (4) of the statutes is amended to read:

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

8 **SECTION 16.** 646.11 (5) of the statutes is amended to read:

9 646.11 (5) **IMMUNITY.** No cause of action of any nature may arise against and
10 no liability may be imposed upon the fund or its agents, employees, directors,
11 including alternate representatives designated under s. 646.12 (1) (a) 3., or
12 contributor insurers, or the commissioner or the commissioner's agents, employees,
13 or representatives, for any act or omission by any of them in the performance of their
14 powers and duties under this chapter.

15 **SECTION 17.** 646.12 (1) (a) of the statutes is renumbered 646.12 (1) (a) 1. and
16 amended to read:

17 646.12 (1) (a) 1. The fund shall be administered by a board of directors which
18 that shall consist of not fewer than 7 nor more than 14 members. The the attorney
19 general, the state treasurer, and the commissioner are members with, each of whom
20 shall have full voting rights. Other members shall be chosen from representatives
21 of insurers subject to this chapter under procedures specified by the commissioner
22 by rule, provided that one member is a representative of a service insurance
23 corporation. The rule may provide that, instead of natural persons, specific insurers
24 or associations of insurers may be selected as members of the board and may act
25 through any duly authorized representative, and at least 9 but not more than 11

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1 insurer representatives of domestic, foreign, and alien insurers subject to this
2 chapter.

3 **SECTION 18.** 646.12 (1) (a) 2. of the statutes is created to read:

4 646.12 (1) (a) 2. The commissioner shall appoint the insurer representative
5 members for 3-year terms, after considering recommendations of the other board
6 members currently serving terms. In recommending candidates to fill the positions,
7 the board shall consider whether all insurers subject to this chapter are fairly
8 represented, including property and casualty insurers, life and health insurers,
9 health maintenance organizations and service insurance corporations, and domestic
10 and nondomestic insurers.

11 **SECTION 19.** 646.12 (1) (a) 3. of the statutes is created to read:

12 646.12 (1) (a) 3. Each appointed insurer representative may designate an
13 alternate representative to represent the insurer at any meeting of the board. Any
14 person serving as an alternate representative shall, while serving, have all of the
15 powers and responsibilities of the appointed insurer representative.

16 **SECTION 20.** 646.12 (1) (b) of the statutes is amended to read:

17 646.12 (1) (b) *Chairperson.* The person to chair the board shall be elected by
18 the members of the board ~~under a rule promulgated by the commissioner~~ annually
19 at the first meeting after June 1.

20 **SECTION 21.** 646.12 (2) (a) of the statutes is amended to read:

21 646.12 (2) (a) ~~Subject to the commissioner's power to promulgate rules under~~
22 ~~sub. (1), adopt~~ Adopt rules for the administration of this chapter, including
23 delegation of any part of its powers and its own procedures.

24 **SECTION 22.** 646.13 (3) (d) of the statutes is created to read:

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1 646.13 (3) (d) Except for claims under life insurance policies, annuities, or
2 noncancelable or guaranteed renewable disability insurance policies, and except for
3 claims determined to be excused late filings as provided in pars. (a) and (b), if no date
4 for filing is set by the liquidator or court, with a liquidator or court after 18 months
5 after the order of liquidation is entered.

6 **SECTION 23.** 646.31 (11) of the statutes is renumbered 646.31 (11) (b) and
7 amended to read:

8 646.31 (11) (b) The An insurance entity may not assert a claim against the fund
9 is not required to pay for any amount due from the insurer to any reinsurer, insurer,
10 insurance pool or underwriting association the insurance entity as subrogation,
11 contribution, or indemnification recoveries or otherwise, except as provided in sub.
12 (2) (a). ~~A reinsurer, insurer, insurance pool or underwriting association~~ An insurance
13 entity that has paid a claim and thereby has become subrogated or otherwise entitled
14 to the amount of that claim may assert that claim against the liquidator of the
15 insurer in liquidation but not against the insured of the insurer in liquidation.

16 **SECTION 24.** 646.31 (11) (a) of the statutes is created to read:

17 646.31 (11) (a) In this subsection:

- 18 1. "Health care costs" has the meaning given in s. 609.01 (1j).
19 2. "Insurance entity" means a reinsurer, an insurer, an insurance pool, or an
20 underwriting association.

21 **SECTION 25.** 646.31 (11) (c) of the statutes is created to read:

22 646.31 (11) (c) Notwithstanding par. (b), an insurance entity may assert a claim
23 against the fund for health care costs if all of the following conditions are met:

- 24 1. The insurance entity paid the claim for health care costs under a disability
25 insurance policy issued by the insurance entity.

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

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

6 **SECTION 26.** 646.33 (3) of the statutes is renumbered 646.33 (3) (a).

7 **SECTION 27.** 646.35 (4) (a) of the statutes is renumbered 646.35 (4).

8 **SECTION 28.** 646.35 (4) (b) of the statutes is renumbered 646.33 (3) (b).

9 **SECTION 29.** 646.35 (6) (c) 1. (intro.) and b. of the statutes are consolidated,
10 renumbered 646.35 (6) (c) 1. and amended to read:

11 646.35 (6) (c) 1. Any benefit payment liability, arising on or after the date of
12 entry of the order of liquidation, to the extent that the rate of interest on which it is
13 based or the interest rate, crediting rate, or similar factor determined by use of an
14 index or other external reference stated in the policy or contract and employed in
15 calculating returns or changes in value exceeds the ~~smaller of the following:~~ b. The
16 rate of interest, which may not be less than zero, determined by subtracting 3
17 percentage points from the monthly corporate bond yield average, as most recently
18 published by Moody's investors service or its successor.

19 **SECTION 30.** 646.35 (6) (c) 1. a. of the statutes is repealed.

20 **SECTION 31.** 646.35 (6) (c) 2. (intro.) and b. of the statutes are consolidated,
21 renumbered 646.35 (6) (c) 2. and amended to read:

22 646.35 (6) (c) 2. Any benefit payment liability, arising before the date of entry
23 of the order of liquidation, to the extent that the payment exceeds the ~~smaller of the~~
24 ~~following:~~ b. The rate of interest, which may not be less than zero, determined by
25 subtracting 2 percentage points from the monthly corporate bond yield average, as

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1 published by Moody's investors service or its successor, when averaged over the
2 4-year period ending on the date of entry of the order of liquidation or averaged over
3 such lesser period if the contract was issued less than 4 years before that date.

4 **SECTION 32.** 646.35 (6) (c) 2. a. of the statutes is repealed.

5 **SECTION 33.** 646.51 (3) (am) (intro.) of the statutes is amended to read:

6 646.51 (3) (am) *General.* (intro.) Except as provided in ~~par.~~ pars. (b) and (c),
7 assessments shall be calculated as follows:

8 **SECTION 34.** 646.51 (3) (b) of the statutes is created to read:

9 646.51 (3) (b) *Life and health.* Except as provided in par. (c), with respect to
10 annuity contracts or life or disability insurance policies, including policies issued by
11 health maintenance organizations, assessments shall be calculated as a percentage
12 of average annual premium received in this state by each insurer in the classes
13 protected by the accounts for the 3 most recent years preceding the year of the entry
14 of the order of liquidation.

15 **SECTION 35.** 646.51 (4) (a) of the statutes is amended to read:

16 646.51 (4) (a) Subject to pars. (b) and (d), the total of all assessments for an
17 amount authorized by the board under this section with respect to an insurer may
18 not, in one calendar year, exceed ~~2%~~ 2 percent of the insurer's average annual
19 assessable premiums received in this state, ~~during the 3 calendar years preceding~~
20 ~~the year of entry of the order of liquidation,~~ under sub. (3) (am) or (b) on the types
21 of policies and contracts that are covered by the account.

22 **SECTION 36.** 2003 Wisconsin Act 261, section 162 (1) is amended to read:

23 [2003 Wisconsin Act 261] Section 162 (1) INSURANCE SECURITY FUND.

24 (a) The treatment of sections 609.98 (1) and (4) (a) and (b), 645.58 (1) (intro.),
25 646.01 (1) (a) 2. k. and L. and (b) 1., 9. (intro.), a., b., c., and d., 11., 11m., 15., 16., and

BILL

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

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

SECTION 37. Nonstatutory provisions.

20
21 (1) BOARD OF DIRECTORS OF INSURANCE SECURITY FUND. Notwithstanding section
22 646.12 (1) (a) of the statutes, as affected by this act, each insurer representative
23 member of the board of directors of the insurance security fund who is serving on the
24 effective date of this subsection shall continue in that capacity until he or she resigns
25 or his or her term expires, whichever occurs first.

LPS -
run spellcheck
please

2007-2008 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0842/2ins
PJK:.....

INSERT A

7. Specifies requirements for property that may be covered under the local government property insurance fund that is not actually owned by a local governmental unit.

8. Provides that the Commissioner of Insurance (commissioner) must consult with the appropriate advisory council or committee designated by the commissioner, rather than the life and disability advisory council, when developing a uniform employee application form for use by small employer insurers.

9. Provides some clarifications with respect to investigation and examination information that the Office of the Commissioner of Insurance has a privilege to refuse to disclose.

(END OF INSERT A)

INSERT 4-12

183

1 SECTION 1. 601.41 (8) (b) of the statutes is amended to read:

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

History: 1977 c. 339 s. 43; 1979 c. 89, 102, 177; 1983 a. 358 s. 14; 1985 a. 29; 1985 a. 182 s. 57; 1987 a. 247; 1989 a. 187 s. 29; 1989 a. 201, 336; 1991 a. 39; 1993 a. 16; 1995 a. 201; 1997 a. 27, 51, 252; 1999 a. 150 s. 672; 2001 a. 6, 65, 109; 2003 a. 261, 302; 2005 a. 74, 249.

8 SECTION 2. 601.465 of the statutes is renumbered 601.465 (1m), and 601.465

9 (1m) (c) (intro.) and 6. as renumbered, are amended to read:

10 601.465 (1m) (c) (intro.) Testimony, reports, records, communications, and
11 information that are obtained by the office from, or provided by the office to, any of
12 the following, under a pledge of confidentiality or for the purpose of assisting or
13 participating in monitoring activities or in the conduct of an inquiry, investigation,
14 or examination:

History: 1991 a. 269; 1999 a. 30; 2003 a. 261.

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

History: 1991 a. 269; 1999 a. 30; 2003 a. 261.



Ins. 4-12 contd 2003

1 **SECTION 3.** 601.465 (1m) (title) of the statutes is created to read:

2 601.465 **(1m)** (title) TYPES OF INFORMATION. ✓

3 **SECTION 4.** 601.465 (2m) of the statutes is created to read:

4 601.465 **(2m)** WAIVER AND APPLICABILITY OF THE PRIVILEGE. ✓ All of the following
5 apply to the privilege under this section: ✓

6 (a) The privilege may be waived only by the affirmative written and specific
7 consent of the commissioner. ✓

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

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

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

17 **SECTION 5.** 605.02 ✓ of the statutes is renumbered 605.02 (1) and amended to
18 read:

19 605.02 **(1)** PROPERTY OF LOCAL GOVERNMENTAL UNITS. ✓ Any local governmental
20 unit may insure in the property fund its property or, subject to sub. (2), ✓ property for
21 which it may be liable in the event of damage or destruction. Property insured under
22 this section by a local governmental unit may not also be insured in any other
23 manner unless the manager certifies that additional insurance is necessary, or
24 unless the local governmental unit by resolution, a certified copy of which is filed



Ins 4-12 cont'd 303

1 with the manager, decides to insure specified personal property with insurers
2 authorized to do business in this state.

History: 1973 c. 117; 1979 c. 221.

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

4 **605.02 (2) REQUIREMENTS FOR NONOWNED PROPERTY.** The property fund may
5 cover a building or structure specified in sub. (1) that is not owned by a local
6 governmental unit only if all of the following conditions are met:

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

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

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

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

14 **SECTION 7.** 605.21 (4) of the statutes is amended to read:

15 **605.21 (4) INSURANCE OF PERSONAL PROPERTY.** All personal property of the local
16 governing unit is insured and premiums therefor must be paid under this section
17 except to the extent that coverage is excluded by resolution under s. 605.02 (1).

History: 1973 c. 117, 333; 1979 c. 102, 221.

(END OF INSERT 4-12)

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

LRB-0842/2dn

PJK:.....

date

Jld

Is there any need to have an initial applicability for the non-owned property that may be covered under the local government property insurance fund, or have the requirements in the bill always applied?

Pamela J. Kahler
Senior Legislative Attorney
Phone: (608) 266-2682
E-mail: pam.kahler@legis.wisconsin.gov

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0842/2dn
PJK:jld:jf

September 26, 2007

Is there any need to have an initial applicability for the nonowned property that may be covered under the local government property insurance fund, or have the requirements in the bill always applied?

Pamela J. Kahler
Senior Legislative Attorney
Phone: (608) 266-2682
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State of Wisconsin / OFFICE OF THE COMMISSIONER OF INSURANCE

Jim Doyle, Governor
Sean Dilweg, Commissioner

Wisconsin.gov

Legal Unit
125 South Webster Street • P.O. Box 7873
Madison, Wisconsin 53707-7873
Phone: (608) 267-9586 • Fax: (608) 264-6228
Web Address: oci.wi.gov

Date: November 13, 2007
To: Pam Kahler, Legislative Attorney
From: Fred Nepple
Subject: LRB-0842/2

With respect to the above draft:

1) Please add the following:

A) Local Government Property Fund investment authority

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

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

This language comes from LRB 3236/1. This authority will allow the Investment Board to invest the property fund's assets in longer term investments than are available in the SIF.

3122/1

✓ B) Stop loss insurance

600.03 (25) (a) 4. Coverage, including stop loss coverage, relating to claims incurred by an employer or plan sponsor under a self-funded employee welfare benefit plan as defined by 29 U.S.C. 1002. (11)

Applicability: The creation of s. 600.03 (25) (a) 4. applies to coverage issued prior to, on or after the effective date of this Act.

case
no.

07-2165

brief dated
aug. 15, 2007

This provision reflects existing law. An Amicus brief filed by DOJ/OCI in the Edstrom Industries v. Companion Life case pending in the 7th Circuit is attached. As the brief reflects stop loss coverage is insurance, not "reinsurance." This is reflected in legislative comments and long standing practice of this agency and the industry. This specific statement is added to foreclose any future contention to the contrary. Since it is an accurate reflection of current law we ask for a corresponding applicability provision reflecting that it simply restates current law.

2c) WISF exclusion of coverage of certain DHFS program.

646.01 (1) (b) 14. A policy issued by an insurer to, or a contract entered into by an insurer with, the department of health and family services or any other governmental entity under ss. 46.284(2) or 49.45(2)(b)2. or any other state law to provide prepaid health care to medical assistance recipients.

Def in s. 46.2805(1)

DAK - cite?

This provision makes it clear that the WISF does not cover certain "specialty" Medicaid programs.

is not really the cite for providing the health care

2) With respect to issues with LRB-0842/2:

- A) In response to your drafting note, OCI believes the local government property fund provisions is either currently reflected in in-force policies or adequately applied as an administrative practice. Accordingly no initial applicability provision is necessary or if added should be applicable to in-force policies.
- B) With respect to s. 601.465 (2m) (d) as created in Section 8, we understand this provision states that the amendments to s. 601.465, Stats., apply retrospectively (as is appropriate since they are a statement of current law) to communications made or information created or exchanged prior to the effective date. This provision follows the LRB standard language to address this issue.

insurer → CMO

Kahler, Pam

From: Nepple, Fred - OCI [Fred.Nepple@oci.state.wi.us]
Sent: Wednesday, November 14, 2007 11:28 AM
To: Kahler, Pam
Subject: RE: LRB 0842 draft 111307.doc

I sent this inadvertently before I completed the text: Here is a revision to address your concern. There is certainly no intent to define a single employer self funded plan as insurance. In fact the intent is the reverse, to terminate the flawed argument that the employer is in effect an insurer that is "reinsuring," not "insuring" the risk.

From: Nepple, Fred - OCI
Sent: Wednesday, November 14, 2007 11:11 AM
To: Kahler, Pam - LEGIS
Subject: RE: LRB 0842 draft 111307.doc

600.03 (25) (a) 4. Coverage, including stop loss coverage, of an employer or plan sponsor relating to claims incurred under the employer's or plan sponsor's self-funded employee welfare benefit plan as defined by 29 U.S.C. 1002.

Fred Nepple, General Counsel

Fred.Nepple@oci.state.wi.us

Ph: (608)266-7726 FAX: (608)264-6228

Wisconsin Office of the Commissioner of Ins <http://oci.wi.gov>

PO Box 7873 Madison WI 53707-7873

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This is a communication intended to be transmitted to or from the OCI legal unit and may contain information which is privileged, confidential and protected by the attorney-client, attorney work product or s. 601.465, Wis. Stat., privileges. If you are not the intended recipient note that any disclosure, copying, distribution, or use of this message is prohibited. If you have received this message in error, please destroy it and notify us immediately at 608-266-7726.

From: Kahler, Pam [mailto:Pam.Kahler@legis.wisconsin.gov]
Sent: Wednesday, November 14, 2007 11:05 AM
To: Nepple, Fred - OCI
Subject: RE: LRB 0842 draft 111307.doc

Fred:

Looking at B of the redraft instructions (s. 600.03 (25) (a) 4.) - could that be construed to mean that payment of claims by the self-insured employer is also insurance under the definition? Wouldn't that create an ERISA problem?

From: Nepple, Fred - OCI [mailto:Fred.Nepple@oci.state.wi.us]
Sent: Tuesday, November 13, 2007 5:40 PM
To: Kahler, Pam; Kahler, Pam
Cc: Guidry, Jim R - OCI

11/14/2007