

State of Wisconsin



2009 Assembly Bill 701

Date of enactment: **May 13, 2010**
Date of publication*: **May 27, 2010**

2009 WISCONSIN ACT 342

AN ACT *to repeal* 14.83, 601.415 (11), 601.59, 611.33 (2) (b) 1., 611.33 (2) (b) 2. and 646.03 (2n); *to renumber* 646.31 (1) (b); *to amend* 609.91 (1) (intro.), 609.91 (2), (3) and (4) (a), (b), (cm) and (d), 611.24 (3) (i), 612.22 (3) (a), (4) and (6), 614.29 (1), 614.42 (1) (a), 628.10 (5) (a), 632.32 (2) (at), 632.32 (2) (e) 2., 632.32 (2) (e) 3., 632.32 (2) (g) (intro.), 632.32 (2) (g) 1., 632.32 (4) (a) (intro.), 632.32 (4r) (a), 632.32 (4r) (c), 645.33 (1), 645.69 (1), 646.13 (2) (d), 646.13 (4), 646.31 (4) (a), 646.31 (12), 646.32 (1), 646.32 (2), 646.325 (1), 646.325 (2) (a) 1., 646.51 (3) (c), 646.51 (5) and 646.51 (6); and *to create* 49.45 (31) (e), 601.31 (1) (Lg), 609.91 (1p), 632.32 (2) (ag), 632.32 (2) (be), 632.32 (4) (d), 632.897 (11), 646.01 (1) (b) 19., 646.31 (1) (b) 2. and 646.325 (4) of the statutes; **relating to:** the Interstate Insurance Receivership Compact, segregated accounts, reciprocity for long-term care insurance policies, voting by fraternal members, the insurance security fund, modifications to motor vehicle insurance policy and umbrella and excess liability policy requirements, appointment of a special deputy commissioner to rehabilitate an insurer, providing an exemption from emergency rule procedures, and granting rule-making authority.

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

SECTION 1. 14.83 of the statutes is repealed.

SECTION 2. 49.45 (31) (e) of the statutes is created to read:

49.45 (31) (e) 1. Notwithstanding par. (b) (intro.), the department, when making a determination under par. (a) 1. or 2. with respect to an individual, shall disregard an amount equal to the insurance benefit payments that are made to or on behalf of the individual under a qualified long-term care insurance policy under 26 USC 7702B (b) that was purchased in a state that had a state plan amendment that provided for a qualified state long-term care partnership, as defined in 42 USC 1396p (b) (1) (C) (iii), at the time of the purchase of the policy.

2. The department shall comply with standards established by the federal department of health and human ser-

vices in accordance with section 6021 (b) of the federal Deficit Reduction Act of 2005.

SECTION 4. 601.31 (1) (Lg) of the statutes is created to read:

601.31 (1) (Lg) For filing an original electronic resident intermediary license application following successful completion of any required preclicensing education or examination under s. 628.04, \$10.

SECTION 5. 601.415 (11) of the statutes is repealed.

SECTION 6. 601.59 of the statutes is repealed.

SECTION 7. 609.91 (1) (intro.) of the statutes is amended to read:

609.91 (1) IMMUNITY OF ENROLLEES AND POLICY-HOLDERS. (intro.) Except as provided in sub. (1m) or (1p), an enrollee or policyholder of a health maintenance organization insurer is not liable for health care costs that are incurred on or after January 1, 1990, and that are covered under a policy or certificate issued by the health

* Section 991.11, WISCONSIN STATUTES 2007-08 : Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

maintenance organization insurer, if any of the following applies:

SECTION 8. 609.91 (1p) of the statutes is created to read:

609.91 (1p) IMMUNITY FOR CERTAIN MEDICARE RECIPIENTS. An enrollee, policyholder, or insured under a policy issued by an insurer under Part C of Medicare under 42 USC 1395w-21 to 1395w-28 or Part D of Medicare under 42 USC 1395w-101 to 1395w-152 to provide prepaid health care, fee-for-service health care, or drug benefits to enrollees of Part C or Part D of Medicare is not liable for health care costs that are covered under the policy.

SECTION 9. 609.91 (2), (3) and (4) (a), (b), (cm) and (d) of the statutes are amended to read:

609.91 (2) PROHIBITED RECOVERY ATTEMPTS. No person may bill, charge, collect a deposit from, seek remuneration or compensation from, file or threaten to file with a credit reporting agency or have any recourse against an enrollee, policyholder or insured, or any person acting on their behalf, for health care costs for which the enrollee, policyholder or insured, or person acting on their behalf, is not liable under sub. (1) ~~or~~ (1m), or (1p).

(3) DEDUCTIBLES, COPAYMENTS AND PREMIUMS. Subsections (1) to (2) do not affect the liability of an enrollee, policyholder or insured for any deductibles, copayments or premiums owed under the policy or certificate issued by the health maintenance organization insurer or by the insurer described in sub. (1m) or (1p).

(4) (a) An agreement, other than a notice of election or termination of election in accordance with s. 609.92 or 609.925, entered into by the provider, the health maintenance organization insurer, the insurer described in sub. (1m) or (1p) or any other person, at any time, whether oral or written and whether implied or explicit, including an agreement that purports to hold the enrollee, policyholder or insured liable for health care costs.

(b) A breach of or default on an agreement by the health maintenance organization insurer, the insurer described in sub. (1m) or (1p) or any other person to compensate the provider, directly or indirectly, for health care costs, including health care costs for which the enrollee, policyholder or insured is not liable under sub. (1) ~~or~~ (1m), or (1p).

(cm) The insolvency of the insurer described in sub. (1m) or (1p) or any person contracting with the insurer or provider, or the commencement or the existence of conditions permitting the commencement of insolvency, delinquency or bankruptcy proceedings involving the insurer or other person, including delinquency proceedings, as defined in s. 645.03 (1) (b), under ch. 645, despite whether the insurer or other person has agreed to compensate, directly or indirectly, the provider for health care costs for which the enrollee, policyholder or insured is not liable under sub. (1m) or (1p).

(d) The inability of the provider or other person who is owed compensation for health care costs to obtain compensation from the health maintenance organization insurer, the insurer described in sub. (1m) or (1p), or any other person for health care costs for which the enrollee, policyholder or insured is not liable under sub. (1) ~~or~~ (1m), or (1p).

SECTION 9t. 611.24 (3) (i) of the statutes is amended to read:

611.24 **(3) (i) Expenses, loans, and services.** The general account of the corporation, or any segregated account, may for a fair consideration provide loans or guarantees in connection with, perform services for, or reinsure other accounts, subject to rules promulgated by the commissioner. Generally accepted accounting principles and realistic actuarial tables may be considered to ascertain what is a fair consideration. Notwithstanding s. 645.68, the commissioner may assign a general or segregated account obligation to a segregated account an order of distribution higher in priority than provided for under s. 645.68 (5).

SECTION 10. 611.33 (2) (b) 1. of the statutes is repealed.

SECTION 11. 611.33 (2) (b) 2. of the statutes is repealed.

SECTION 12. 612.22 (3) (a), (4) and (6) of the statutes are amended to read:

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

(4) APPROVAL BY MEMBERS OF THE MUTUALS. After being approved by the commissioner under sub. (3), the plan shall be submitted for approval to the members of the participating town mutual or mutuals ~~for their approval and to the members of the participating domestic mutual if the domestic mutual is assessable~~. The members of each participating mutual who have the right to vote on the merger shall vote separately.

(6) REPORTS TO COMMISSIONER. Each participating mutual, the members of which have the right to vote under sub. (4), shall file with the commissioner a copy of the resolution adopted under sub. (4), stating the number of members entitled to vote, the number of members vot-

ing, and the number of votes cast in favor of the plan, stating separately in each case the mail votes and the votes cast in person.

SECTION 13. 614.29 (1) of the statutes is amended to read:

614.29 (1) **RIGHT TO AMEND ARTICLES.** The articles of a fraternal may provide for amendment by the supreme governing body or by the board of directors, and may provide also for amendment by the members by referendum. If amendment is by referendum, a majority of those members who vote must vote affirmatively. Votes cast within 60 days from the date of mailing of the ~~first ballot~~ ballots by the fraternal shall be counted. The timeliness of a vote is determined by the date of its mailing as proved by its postmark or other suitable evidence.

SECTION 14. 614.42 (1) (a) of the statutes is amended to read:

614.42 (1) (a) *Board of directors.* A board with some directors elected directly by the members or by their representatives in intermediate assemblies under sub. (2), and other directors prescribed in the fraternal's laws. The elected directors shall constitute a majority in number and not less than the number of votes required to amend those articles or bylaws of the fraternal that can be amended without consent of the members. The board shall meet at least quarterly to conduct the business of the fraternal. The elected directors shall be elected on a plan that ensures equal weight to each fraternal member's vote. Voting may be conducted by mail, by electronic means, or by any other method or combination of methods approved by the board and prescribed in the fraternal's bylaws.

SECTION 21. 628.10 (5) (a) of the statutes is amended to read:

628.10 (5) (a) *Reinstatement within 12 months.* An intermediary who is a natural person and whose license is revoked under sub. (2) (a), (am), or (cm) may have his or her license reinstated within 12 months after the date on which the license was revoked without having to satisfy any preclicensing education or examination requirements under s. 628.04. To have his or her license reinstated, the intermediary must satisfy the requirement under sub. (2) (a), (am), or (cm) for which the license was revoked, satisfactorily complete a reinstatement application, and pay ~~the application fee for original licensure~~ twice the amount of the license renewal fee as specified by rule. The reinstatement is effective on the date on which the commissioner actually reinstates the license. If the intermediary is also a resident who is required to complete continuing education, the intermediary must have satisfied all previous continuing education requirements to have his or her license reinstated under this paragraph.

SECTION 22. 632.32 (2) (ag) of the statutes is created to read:

632.32 (2) (ag) "Governmental unit" has the meaning given in s. 50.33 (1r).

SECTION 23. 632.32 (2) (at) of the statutes, as affected by 2009 Wisconsin Act 28, is amended to read:

632.32 (2) (at) "Motor vehicle" means a self-propelled land motor vehicle designed for travel on public roads and subject to motor vehicle registration under ch. 341. ~~It includes trailers and semitrailers. A trailer or semitrailer that is designed for use with such vehicles. It and connected to a motor vehicle shall be considered a single unit with the motor vehicle.~~ "Motor vehicle" does not include farm tractors, well drillers, road machinery, or snowmobiles.

SECTION 24. 632.32 (2) (be) of the statutes is created to read:

632.32 (2) (be) "Owned motor vehicle" means a motor vehicle that is owned by the insured or that is leased by the insured for a term of 6 months or longer.

SECTION 26. 632.32 (2) (e) 2. of the statutes, as created by 2009 Wisconsin Act 28, is amended to read:

632.32 (2) (e) 2. ~~At the time of the accident, a~~ bodily injury liability insurance policy applies to the motor vehicle at the time of the accident or the owner or operator of the motor vehicle has furnished proof of financial responsibility for the future under subch. III of ch. 344 and it is in effect or is a self-insurer under another applicable motor vehicle law.

SECTION 27. 632.32 (2) (e) 3. of the statutes, as created by 2009 Wisconsin Act 28, is amended to read:

632.32 (2) (e) 3. The limits under the bodily injury liability insurance policy or with respect to the proof of financial responsibility or self-insurance are less than the amount needed to fully compensate the insured for his or her damages.

SECTION 28. 632.32 (2) (g) (intro.) of the statutes, as created by 2009 Wisconsin Act 28, is amended to read:

632.32 (2) (g) (intro.) "Uninsured motor vehicle" means a motor vehicle that is involved in an accident with a person who has uninsured motorist coverage and with respect to which, at the time of the accident, a bodily injury liability insurance policy is not in effect and the owner or operator has not furnished proof of financial responsibility for the future under subch. III of ch. 344 and is not a self-insurer under any other applicable motor vehicle law. "Uninsured motor vehicle" also includes any of the following motor vehicles involved in an accident with a person who has uninsured motorist coverage:

SECTION 29. 632.32 (2) (g) 1. of the statutes, as created by 2009 Wisconsin Act 28, is amended to read:

632.32 (2) (g) 1. An insured motor vehicle, or a motor vehicle with respect to which the owner or operator is a self-insurer under any applicable motor vehicle law, if before or after the accident the liability insurer of the motor vehicle, or the self-insurer, is declared insolvent by a court of competent jurisdiction.

SECTION 30. 632.32 (4) (a) (intro.) of the statutes, as affected by 2009 Wisconsin Act 28, is amended to read:

632.32 (4) (a) (intro.) Every Except as provided in par. (d), every policy of insurance subject to this section that insures with respect to any owned motor vehicle registered or principally garaged in this state against loss resulting from liability imposed by law for bodily injury or death suffered by any person arising out of the ownership, maintenance, or use of a motor vehicle shall contain therein or supplemental thereto provisions for all of the following coverages:

SECTION 31. 632.32 (4) (d) of the statutes is created to read:

632.32 (4) (d) This subsection does not apply to umbrella or excess liability policies, which are subject to sub. (4r).

SECTION 32. 632.32 (4r) (a) of the statutes, as created by 2009 Wisconsin Act 28, is amended to read:

632.32 (4r) (a) An insurer writing umbrella or excess liability policies that insure with respect to ~~a~~ an owned motor vehicle registered or principally garaged in this state against loss resulting from liability imposed by law for bodily injury or death suffered by a person arising out of the ownership, maintenance, or use of a motor vehicle shall provide written offers of uninsured motorist coverage and underinsured motorist coverage, which offers shall include a brief description of the coverage offered. An insurer is required to provide the offers required under this subsection only one time with respect to any policy in the manner provided in par. (b).

SECTION 33. 632.32 (4r) (c) of the statutes, as created by 2009 Wisconsin Act 28, is amended to read:

632.32 (4r) (c) An applicant or ~~a~~ a named insureds insured may reject one or both of the coverages offered, but must do so in writing. If the applicant or named ~~insureds reject~~ insured rejects either of the coverages offered, the insurer is not required to provide the rejected coverage under ~~a~~ the policy that is renewed to the person at renewal by that insurer unless an insured under the policy subsequently requests the rejected coverage in writing. The action of one named insured to reject or request coverage applies to all persons insured under the policy.

SECTION 34. 632.897 (11) of the statutes is created to read:

632.897 (11) (a) Notwithstanding subs. (2) to (10), the commissioner may promulgate rules establishing standards requiring insurers to provide continuation of coverage for any individual covered at any time under a group policy who is a terminated insured or an eligible individual under any federal program that provides for a federal premium subsidy for individuals covered under continuation of coverage under a group policy, including rules governing election or extension of election periods, notice, rates, premiums, premium payment, application of preexisting condition exclusions, election of alterna-

tive coverage, and status as an eligible individual, as defined in s. 149.10 (2t).

(b) The commissioner may promulgate the rules under par. (a) as emergency rules under s. 227.24. Notwithstanding s. 227.24 (1) (c), emergency rules promulgated under this paragraph may remain in effect for one year and may be extended under s. 227.24 (2). Notwithstanding s. 227.24 (1) (a) and (3), the commissioner is not required to provide evidence that promulgating a rule under this paragraph as an emergency rule is necessary for the preservation of the public peace, health, safety, or welfare and is not required to provide a finding of emergency for a rule promulgated under this paragraph.

SECTION 34p. 645.33 (1) of the statutes is amended to read:

645.33 (1) **SPECIAL DEPUTY COMMISSIONER.** The rehabilitator ~~shall make every reasonable effort to employ an active or retired senior executive from a successful insurer to serve as~~ may appoint a special deputy commissioner to rehabilitate the insurer. The special deputy commissioner shall have all of the powers of the rehabilitator granted under this section. ~~To obtain a suitable special deputy, the commissioner may consult with and obtain the assistance and advice of executives of insurers doing business in this state.~~ Subject to court approval, the rehabilitator shall make such arrangements for compensation as are necessary to obtain a special deputy commissioner of proven ability. The special deputy commissioner shall serve at the pleasure of the rehabilitator.

SECTION 35. 645.69 (1) of the statutes is amended to read:

645.69 (1) A claim against a health maintenance organization insurer or an insurer described in s. 609.91 (1m) ~~or (1p)~~ for health care costs, as defined in s. 609.01 (1j), for which an enrollee, as defined in s. 609.01 (1d), policyholder or insured of the health maintenance organization insurer or other insurer is not liable under ss. 609.91 to 609.935.

SECTION 36. 646.01 (1) (b) 19. of the statutes is created to read:

646.01 (1) (b) 19. A policy issued by an insurer to an enrollee under Title XVIII of the federal social security act, 42 USC 1395 to 1395ccc, or Title XIX of the federal social security act, 42 USC 1396 to 1396v, or a contract entered into by an insurer with the federal government or an agency of the federal government under Title XVIII or Title XIX of the federal social security act, to provide health care or prescription drug benefits to persons enrolled in Title XVIII or Title XIX programs.

SECTION 37. 646.03 (2n) of the statutes is repealed.

SECTION 38. 646.13 (2) (d) of the statutes is amended to read:

646.13 (2) (d) Have standing to appear in any liquidation proceedings in this state involving an insurer in liquidation, and have authority to appear or intervene before a court or agency of any other state having jurisdiction

over an ~~impaired or~~ insolvent insurer, in accordance with the laws of that state, with respect to which the fund is or may become obligated or that has jurisdiction over any person or property against which the fund may have subrogation or other rights. Standing shall extend to all matters germane to the powers and duties of the fund, including proposals for reinsuring, modifying, or guaranteeing the policies or contracts of the ~~impaired or~~ insolvent insurer and the determination of the policies or contracts and contractual obligations.

SECTION 39. 646.13 (4) of the statutes is amended to read:

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

SECTION 40. 646.31 (1) (b) of the statutes is renumbered 646.31 (1) (b) 1.

SECTION 41. 646.31 (1) (b) 2. of the statutes is created to read:

646.31 (1) (b) 2. The claim does not arise out of business against which assessments are prohibited under any federal or state law.

SECTION 42. 646.31 (4) (a) of the statutes is amended to read:

646.31 (4) (a) Except in regard to worker's compensation insurance and except as provided in par. (b), the obligation of the fund on a single risk, loss or life may not exceed \$300,000, regardless of the number of policies or contracts.

SECTION 43. 646.31 (12) of the statutes is amended to read:

646.31 (12) **NET WORTH OF INSURED.** Except for claims under s. 646.35, payment of a first-party claim under this chapter to an insured whose net worth, as defined in s. 646.325 (1), exceeds \$~~10,000,000~~ \$25,000,000 is limited to the amount by which the aggregate of the insured's claims that satisfy subs. (1) to (7), (9) and (9m) plus the amount, if any, recovered from the insured under s. 646.325 exceeds 10% of the insured's net worth.

SECTION 44. 646.32 (1) of the statutes is amended to read:

646.32 (1) **APPEAL.** A claimant whose claim is reduced or declared ineligible shall promptly be given notice of the determination and of the right to object under this section. The claimant may appeal to the board within 30 days after the mailing of the notice. The board may appoint a committee of the board or a hearing examiner to decide any such appeal. The claimant may not pursue the claim in court except as provided in sub. (2).

SECTION 45. 646.32 (2) of the statutes is amended to read:

646.32 (2) **REVIEW.** Decisions of the board or its appointed committee or hearing examiner under sub. (1) are subject to judicial review in the circuit court for Dane County. A petition for judicial review shall be filed within 60 days of the decision.

SECTION 46. 646.325 (1) of the statutes is amended to read:

646.325 (1) **DEFINITION.** In this section, "net worth" means the amount of an insured's total assets less the insured's total liabilities at the end of the insured's fiscal year immediately preceding the date the liquidation order was entered, as shown on the insured's audited financial statement, ~~and~~ or other substantiated financial information acceptable to the fund in its sole discretion. "Net worth" includes the consolidated net worth of all of the corporate affiliates, subsidiaries, operating divisions, holding companies, ~~and parent entities that are,~~ and, if the insured is privately owned, natural persons who have an ownership interest, shown as insureds or additional insureds on the policy issued by the insurer. If the insured is a natural person, "net worth" means the insured's total assets less the insured's total liabilities on December 31 immediately preceding the date the liquidation order was entered.

SECTION 47. 646.325 (2) (a) 1. of the statutes is amended to read:

646.325 (2) (a) 1. An insured whose net worth exceeds \$~~10,000,000~~ \$25,000,000.

SECTION 48. 646.325 (4) of the statutes is created to read:

646.325 (4) **COSTS AND FEES.** In addition to recovery under sub. (2), the fund may recover reasonable attorney fees, disbursements, and all other actual costs expended in pursuing recovery under sub. (2), plus interest calculated at the legal rate under s. 138.04, which shall begin to accrue on all amounts not paid within 30 days after the date of the fund's written notification to the insured of the amount due.

SECTION 49. 646.51 (3) (c) of the statutes is amended to read:

646.51 (3) (c) *Administrative assessments.* The board may authorize assessments on a prorated or non-prorated basis to meet administrative costs and other expenses whether or not related to the liquidation or rehabilitation of a particular insurer. Nonprorated assessments may not exceed \$~~200~~ \$500 per insurer in any year.

SECTION 50. 646.51 (5) of the statutes is amended to read:

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

~~the same procedures as premium taxes or license fees under ch. 76.~~

SECTION 51. 646.51 (6) of the statutes is amended to read:

646.51 (6) APPEAL AND REVIEW. Within 30 days after the fund sends the statement under sub. (5), an insurer, after paying the assessment under protest, may appeal the assessment to the board or a committee thereof. The decision of the board or committee on the appeal is subject to judicial review in the circuit court for Dane County. A petition for judicial review shall be filed within 60 days of the board's or committee's decision.

SECTION 52. Initial applicability.

(1) The treatment of sections 646.32 (2) and 646.51 (6) of the statutes first applies to decisions of the board of directors of the insurance security fund or its appointed

committee or hearing examiner that are issued on the effective date of this subsection.

(2) The treatment of sections 646.31 (12) and 646.325 (2) (a) 1. of the statutes first applies to liquidations for which an order of liquidation is issued on the effective date of this subsection.

(3) If a motor vehicle insurance policy or an umbrella or excess liability policy that is in effect on the effective date of this subsection contains a provision that is inconsistent with the treatment of section 632.32 (2) (ag), (at), (be), (e) 2. or 3., (g) (intro.) or 1., (4) (a) (intro.) or (d), or (4r) (a) or (c) of the statutes, the treatment of section 632.32 (2) (ag), (at), (be), (e) 2. or 3., (g) (intro.) or 1., (4) (a) (intro.) or (d), or (4r) (a) or (c) of the statutes, whichever is applicable, first applies to that motor vehicle insurance policy or umbrella or excess liability policy on the date on which it is renewed.