

2009 DRAFTING REQUEST

Bill

Received: **09/08/2008**

Received By: **pkahler**

Wanted: **As time permits**

Identical to LRB:

For: **David Cullen (608) 267-9836**

By/Representing: **OCI**

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

Drafter: **tdodge**

May Contact: **OCI**

Addl. Drafters: **pkahler**

Subject: **Insurance - miscellaneous**

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Cullen@legis.wisconsin.gov**

Carbon copy (CC:) to: **jim.guidry@wisconsin.gov**

Pre Topic:

No specific pre topic given

Topic:

Various changes to insurance laws.

Instructions:

See Attached

Drafting History:

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/P3			phenry	_____	sbasford		State

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For: **Insurance 4-6239**

By/Representing: **Jim Guidry**

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Drafter: **tdodge**

May Contact:

Addl. Drafters: **pkahler**

Subject: **Insurance - miscellaneous**

Extra Copies: **PJK**

Submit via email: **YES**

Requester's email: **jim.guidry@wisconsin.gov**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

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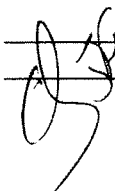
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State of Wisconsin / OFFICE OF THE COMMISSIONER OF INSURANCE

Jim Doyle, Governor
Jorge Gomez, Commissioner

Wisconsin.gov

125 South Webster Street • P.O. Box 7873
Madison, Wisconsin 53707-7873
Phone: (608) 266-3585 • Fax: (608) 266-9935
E-Mail: information@oci.state.wi.us
Web Address: oci.wi.gov

DATE: September 8, 2008
TO: Pam Kahler
Legislative Reference Bureau
FROM: Jim Guidry
Legislative Liaison
SUBJECT: OCI Legislation

The Office of the Commissioner of Insurance (OCI) has prepared a list of proposed statutory language. Following, is a summary of each of the proposals along with suggested statutory language. Please draft statutory language needed to implement the proposals.

1. Group Retirement Board Appointment

Current law requires that the Commissioner or an experienced actuary at OCI to be a member of the Wisconsin Retirement Board. OCI currently does not have position authority for an actuary. This change would restore the Commissioner's discretionary ability to designate another OCI staff member to serve on the Wisconsin Retirement Board. OCI recommends the following statutory changes:

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

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

2. Repeal of Interstate Insurance Receivership Compact

This compact is dissolving. Wisconsin has never been a part of the compact because the legislation enacting it in Wisconsin had a material change from the original. Statutory remedy would be for a repeal of s. 601.59 Wis. Stat.

3. Investment guidelines for Charitable Gift Annuity Segregated Accounts.

Amend Ch. 615.10 (5) to bring Wisconsin in line with other states that have investment regulations for Charitable Gift Annuities Segregated Accounts.

Because charitable segregated accounts are often much smaller than commercial annuity issuers, and because charitable gift annuity issuers typically end up only paying around 50% of the gifts back in annuities, some of the investment regulations applicable to large commercial insurers are over-restrictive and impractical when applied to charitable gift annuity issuers. The 3% limitation on common stock in a single corporation and its affiliates that is appropriate for larger commercial insurers is increased to 10% for charitable gift annuity issuers. The 20% limitation on equity investments is increased to 50%. For purposes of the investment limitations, investments in mutual funds are treated as though held directly by the mutual fund. That is, if a segregated account has a \$100,000 investment in a mutual fund that is 30% invested in equities and 70% invested in bonds, for purposes of investment limitations the investment will be treated as a \$30,000 investment in equities and \$70,000 investment in bonds.

The proposed changes bring our investment regulations applicable to charitable gift annuity issues in line with the strictest standards applied by other states. The current over-restrictive and impractical provisions currently in place has the effect of inhibiting charities from issuing charitable gift annuities in Wisconsin.

OCI recommends the following statutory changes:

615.10 (5) INVESTMENTS. Assets of a segregated account under this section shall be invested in accordance with ch. 620: except that the provisions of s. 620.23(1)(d) and s. 620.23(2)(a) shall not apply. In lieu thereof, investments in common stock shall be limited to 50% of assets, and the common stock of a single corporation and its affiliates shall be limited to 10% of assets. Investments in mutual funds and other investment companies shall be treated for purposes of this section as if the investor owned directly its proportional share of the assets owned by the mutual fund or investment company.

4. Changes to Commissioner's authority for HIRSP assessment determinations.

Amend statutes to permit the Commissioner to make a determination, after conducting a public hearing, participation or non-participation in the HIRSP program. No statutory recommendation attached.

5. Wisconsin Insurance Security Fund Changes. Statutory recommendation to be forwarded at a future time.

Thank you for your assistance. Please let me know if you have any questions. I can be reached at (608) 264-6239 or by email at jim.quidry@wisconsin.gov.

Kahler, Pam

From: Guidry, Jim R - OCI [Jim.Guidry@wisconsin.gov]
Sent: Monday, September 08, 2008 10:08 AM
To: Kahler, Pam
Cc: Mallow, Eileen K - OCI; Nepple, Fred - OCI
Subject: 2009 Drafting instructions OCI Legislation-3
Attachments: 2009 Drafting instructions OCI Legislation-3.doc

Pam,

Please note the attached drafting memo. This group is for the 2009-2010 legislative session. We are anticipating some changes to the Chapter 646, but have not developed that language to forward to you as yet. Please let me know if you have questions that I can direct you to Fred for answers. Thanks!

Jim Guidry
Legislative Liaison
Office of the Commissioner of Insurance
125 South Webster Street
PO Box 7873
Madison, WI 53707-7873

Work: (608) 264-6239
Cell: (608) 209-6309

Dodge, Tamara

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To: Guidry, Jim R - OCI
Cc: Dodge, Tamara
Subject: RE: 2009 Drafting instructions OCI Legislation-3

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Work: (608) 264-6239
Cell: (608) 209-6309



State of Wisconsin
2009 - 2010 LEGISLATURE

LRB-0172?

TJD&PJK:f.....

nwnt

In: 10/10/08
Due as time permits

Handwritten initials and marks

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

DN

SA ✓
X-refv

Health Insurance
Risk-Sharing Plan

- 1
- 2
- 3
- 4

AN ACT ^{gen.} relating to: service on ^{the} Wisconsin Retirement Board, dissolving the
 Interstate Insurance Receivership Compact, changing investment guidelines
 for charitable gift annuity segregated account, ^s and determining HIRSP
 assessment participation.

Analysis by the Legislative Reference Bureau

This bill makes the following changes to the insurance laws:

- > 1. Under current law, the commissioner of insurance (commissioner) or an experienced actuary in the Office of the Commissioner of Insurance serves on the Wisconsin Retirement Board. The bill allows the commissioner to designate another person to serve on the board instead of an actuary, if the commissioner does not serve on the board.
- > 2. The Interstate Insurance Receivership Compact was created to develop and facilitate uniform insurer receivership laws. Receiverships are established to oversee and distribute assets of insurers that have become insolvent. Although enacted as part of Wisconsin law, the compact never became effective in this state and now is dissolving. The bill repeals the compact.
- > 3. Under current law, an issuer of a charitable gift annuity must keep its assets in a segregated account. Issuers of charitable gift annuities are subject to the same requirements for investing assets in their segregated accounts as are commercial annuity insurers for investing their assets, including being limited to investing no more than 20 percent of the assets in common stock and shares of mutual funds and no more than 3 percent in the common stock of a single corporation and its affiliates.

check spacing

other

The bill increases, for charitable gift annuity segregated accounts, the amount of amount of assets that may be invested in common stock from 20 percent to 50 percent and the amount of assets that may be invested in the common stock of a single corporation and its affiliates from 3 percent to 10 percent. The bill also provides that, if the assets of a charitable gift annuity segregated account are invested in a mutual fund, the investment will be treated as if it consists of the same percentage of common stock or bonds as that held by the mutual fund, as if the segregated account held the mutual fund's investments directly.

4. Under current law, the Health Insurance Risk-Sharing Plan (HIRSP) is funded in part by assessments paid by health insurers. The amount of the assessment paid by each insurer is proportional to the amount of that insurer's health care coverage revenue as compared to all health care coverage revenue for all health insurers. The commissioner may exempt an insurer from paying the assessment if that insurer's assessment would be smaller than the cost of collecting it. The bill allows the commissioner to exempt any insurer from the fee assessment upon the request of the insurer and after holding a public hearing.

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

in the
State

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

1 SECTION 1. 14.83 of the statutes is repealed.

2 SECTION 2. 15.165 (3) (b) 9. of the statutes is amended to read:

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

History: 1973 c. 151, 329; 1977 c. 29, 418; 1979 c. 221; 1981 c. 96; 1983 a. 192 s. 303 (7); 1983 a. 290; 1985 a. 230; 1987 a. 403; 1989 a. 31; 1993 a. 399; 1999 a. 9; 2001 a. 103; 2003 a. 33 ss. 102, 9160; 2005 a. 66; 2007 a. 20 s. 9121 (6) (a).

6 SECTION 3. 149.13 (1) of the statutes is amended to read:

7 149.13 (1) Every insurer shall participate in the cost of administering the plan,
8 except the commissioner may by rule exempt as a class those insurers whose share
9 as determined under sub. (2) would be so minimal as to not exceed the estimated cost
10 of levying the assessment, at the request of an insurer and after holding a public
11 hearing, exempt an insurer from participating in the cost of administering the plan.

1 The commissioner shall advise the authority of the insurers participating in the cost
2 of administering the plan.

History: 1979 c. 313; 1981 c. 83; 1981 c. 314 s. 146; 1985 a. 29; 1989 a. 187 s. 29; 1991 a. 39, 269; 1997 a. 27 ss. 4834 to 4838; Stats. 1997 s. 149.13; 2001 a. 16; 2005 a. 74; 2007 a. 20.

3 SECTION 4. 601.415 (3) of the statutes is amended to read:

4 601.415 (3) WISCONSIN RETIREMENT BOARD. The commissioner or an experienced
5 actuary in the office designated by the commissioner his or her designee shall serve
6 as a member of the Wisconsin retirement board under s. 15.165 (3) (b).

History: 1979 c. 102; 1981 c. 96, 314; 1983 a. 358 s. 14; 1985 a. 256; 1987 a. 27, 47, 247; 1989 a. 31; 1989 a. 187 s. 29; 1991 a. 243; 1995 a. 27, 462; 1997 a. 27; 2005 a. 74, 316; 2007 a. 20 ss. 3652m, 9121 (6) (a).

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

8 SECTION 6. 601.59 of the statutes is repealed.

9 SECTION 7. 615.03 (5) of the statutes is amended to read:

10 615.03 (5) APPLICATION OF CHAPTERS 600 TO 646. The commissioner may by rule
11 or order impose on licensees under this chapter any other provisions of chs. 600 to
12 646 applicable to ch. 611 corporations, if necessary to protect the interests of
13 annuitants or the public. The commissioner may not impose the provisions of s.

14 620.23 (1) (d), (2) (a) and (5) on a licensee under this chapter.

History: 1975 c. 374; 1979 c. 89; 1981 c. 314 s. 146; 1997 a. 188; 1999 a. 32, 162; 2001 a. 38.

15 SECTION 8. 615.10 (5) (intro.) of the statutes is created to read:

16 615.10 (5) (intro.) All of the following apply to the investment of the assets of
17 a segregated account under this section:

History: 1975 c. 374, 421.

18 SECTION 9. 615.10 (5) of the statutes is renumbered 615.10 (5) (a) and amended
19 to read:

20 615.10 (5) (a) Assets of a segregated account under this section shall be
21 invested in accordance with ch. 620, except for s. 620.23 (1) (d), (2) (a) and (5).

History: 1975 c. 374, 421.

22 SECTION 10. 615.10 (5) (b) of the statutes is created to read:

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

LRB-01720dn

TJD: j....

nwn+ kjf

Date

✓
To Jim Guidry:

Please review the attached draft, which is in preliminary form because I want to confirm it is consistent with your intent. As drafted, a charitable gift annuity insurer would not be limited to the amount of shares invested in a mutual fund as long as the total proportion of common stock did not exceed 50 percent. This now differs significantly from the investment guidelines for commercial annuity insurers, which limits investments to 20 percent of assets in shares of a mutual fund regardless of what proportion of that mutual fund's holdings are in common stock. Is this okay?

- limit x
- > Also, I believe Pam Kahler sent you an email with a question on the HIRSP assessment determinations. For now, I have drafted this provision to allow the commissioner to exempt any insurer from the HIRSP assessment after the insurer requests an exemption and after a public hearing. This eliminated the commissioner's ability to exempt a class of insurers whose proportional share of coverage revenues is so low that it would cost more to collect the fee than the fee would be. As the provision is drafted, the commissioner would need to have a hearing on each insurer but would not be limited to exempting insurers based on their proportion of coverage revenues. Please
- > let me know if you would like me to change this. Also, please let me know if you would like to incorporate a basis by which the commissioner would exempt an insurer.

Should you have any additional questions or comments on the draft, please contact me.

Tamara J. Dodge
Legislative Attorney
Phone: (608) 267-7380
E-mail: tamara.dodge@legis.wisconsin.gov

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

LRB-0172/P1dn
TJD:nwn&kjf:jf

October 27, 2008

To Jim Guidry:

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Tamara J. Dodge
Legislative Attorney
Phone: (608) 267-7380
E-mail: tamara.dodge@legis.wisconsin.gov

Dodge, Tamara

From: Kahler, Pam
Sent: Tuesday, October 14, 2008 12:12 PM
To: Guidry, Jim R - OCI
Cc: Dodge, Tamara
Subject: RE: 2009 Drafting instructions OCI Legislation-3

Jim:

I'm pretty sure the draft is in editing now, with that provision included, but it can always be changed later if necessary.

Pam

From: Guidry, Jim R - OCI [mailto:Jim.Guidry@wisconsin.gov]
Sent: Tuesday, October 14, 2008 11:52 AM
To: Kahler, Pam
Subject: RE: 2009 Drafting instructions OCI Legislation-3

Pam,

We are going to talk with HIRSP a little more about this. Please continue drafting without this provision and we'll revisit later.

Thanks.

Jim Guidry
Legislative Liaison
Office of the Commissioner of Insurance
125 South Webster Street
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Madison, WI 53707-7873

Work: (608) 264-6239
Cell: (608) 209-6309

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See Jim's response.

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Sent: Tuesday, October 14, 2008 12:15 PM
To: Kahler, Pam
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Ok. Sounds good to me. Sorry it took so long to get back to you.

From: Kahler, Pam
To: Guidry, Jim R - OCI
Cc: Dodge, Tamara
Sent: Tue Oct 14 12:12:09 2008
Subject: RE: 2009 Drafting instructions OCI Legislation-3

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10/16/2008

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Dodge, Tamara

From: Kahler, Pam
Sent: Tuesday, March 24, 2009 12:02 PM
To: Dodge, Tamara
Subject: FW: 2009-10 WISF Amendments (00016212-2) (2)
Attachments: 2009-10 WISF Amendments (00016212-2) (2).DOC

Tami:

This is the OCI omnibus. Jim apparently had some problems finding you. Wonder why????

Pam

From: Guidry, Jim R - OCI [mailto:Jim.Guidry@wisconsin.gov]
Sent: Tuesday, March 24, 2009 11:38 AM
To: Kahler, Pam
Subject: 2009-10 WISF Amendments (00016212-2) (2)

Pam,

I couldn't find Tamara Dodge in the global or legislature address books. Did she leave?

I've attached the Wisconsin Insurance Security Fund Proposed changes to be included in the OCI draft.

Additionally, we need to remove section two from LRB 0172, the changes to 15.165 (3) (b) 9. We're going to leave that statute unchanged for now.

We may have one more piece to add, depending on what the powers that be decide to do.

Thanks. Hope you're not too swamped.

Jim Guidry
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3/24/2009

**PROPOSED REVISIONS TO
WIS. STAT. CH. 646
FOR 2009-10 LEGISLATIVE SESSION**

SECTION 1. 646.01(1)(b)19 is created to read:

646.01(1)(b)19. A policy issued by an insurer to an enrollee under Title XVIII or Title XIX of the United States Code, 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 United States Code, to provide health care or prescription drug benefits to persons enrolled in Title XVIII or Title XIX programs.

Fix references
to Medicare
and Medicaid

SECTION 2. 646.03(2n) is repealed. also 646.13(2)(d)

SECTION 3. 646.13(4) is amended to read:

646.13(4) Any obligation of the fund to defend an insured ceases upon the fund's payment, by settlement 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.

Deleted: releasing the insured

SECTION 4. 646.31(1)(b) is amended to read:

646.31(1)(b) *Assessability of insurer.* 1. The claim arises out of business not exempt from assessment under s. 646.01(1).

SECTION 5. 646.31(1)(b)2. 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 6. 646.31(4)(a) 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 7. 646.31(12) is amended to read:

646.31(12) 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 \$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.

Deleted: 10,000,000

SECTION 8. 646.32(1) is amended to read:

646.32(1) 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 9. 646.32(2) is amended to read:

646.32(2) Decisions of the board or its appointed hearing examiner under sub. (1) are subject to judicial review in the Dane County Circuit Court. A petition for judicial review shall be filed within 60 days of the board's decision.

SECTION 10. 646.325(1) is amended to read:

646.325(1) 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 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, parent entities, and, if the insured is privately owned, natural persons who have an ownership interest that are 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.

Deleted: , and

Deleted: and

SECTION 11. 646.325(2)(a)1. is amended to read:

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

Deleted: 10,000,000

SECTION 12. 646.325(4) is created to read:

646.325(4) COSTS AND FEES. In addition to recovery under subs. (2), the fund may recover reasonable attorney fees, disbursements and all other actual costs expended to enforce this section, plus interest 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 13. 646.51(5) is amended to read:

646.51(5) 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.

Deleted: Assessments shall be collected by the same procedures as premium taxes or license fees under ch. 76.¶

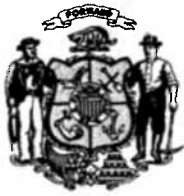
SECTION 14. 646.51(6) is amended to read:

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646.51(6) 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 on the appeal is subject to judicial review in the Dane County circuit Court. A petition for judicial review shall be filed within 60 days of the board's decision.

#

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State of Wisconsin
2009 - 2010 LEGISLATURE

LRB-0172/P1
TJD&PJK:nwn&kjfjf

P2

In: 4/28/09

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

Rmnr

SA ✓
X-ref ✓

and the insurance security fund

Regen.

1 AN ACT to repeal 14.83, 601.415 (11) and 601.59; to renumber and amend
2 615.10 (5); to amend 15.165 (3) (b) 9., 149.13 (1), 601.415 (3) and 615.03 (5); and
3 to create 615.10 (5) (intro.), 615.10 (5) (b), 615.10 (5) (c) and 615.10 (5) (d) of
4 the statutes; relating to: service on the Wisconsin Retirement Board,
5 dissolving the Interstate Insurance Receivership Compact, changing
6 investment guidelines for charitable gift annuity segregated accounts, and
7 determining Health Insurance Risk-Sharing Plan assessment participation.

Analysis by the Legislative Reference Bureau

This bill makes the following changes to the insurance laws:

1. Under current law, the commissioner of insurance (commissioner) or an experienced actuary in the Office of the Commissioner of Insurance serves on the Wisconsin Retirement Board. The bill allows the commissioner to designate another person to serve on the board instead of an actuary, if the commissioner does not serve on the board.
2. The Interstate Insurance Receivership Compact was created to develop and facilitate uniform insurer receivership laws. Receiverships are established to oversee and distribute assets of insurers that have become insolvent. Although enacted as part of Wisconsin law, the compact never became effective in this state and now is dissolving. The bill repeals the compact.

2. e ③ Under current law, an issuer of a charitable gift annuity must keep its assets in a segregated account. Issuers of charitable gift annuities are subject to the same requirements for investing assets in their segregated accounts as are other annuity insurers for investing their assets, including being limited to investing no more than 20 percent of the assets in common stock and shares of mutual funds and no more than 3 percent in the common stock of a single corporation and its affiliates. The bill increases, for charitable gift annuity segregated accounts, the amount of amount of assets that may be invested in common stock from 20 percent to 50 percent and the assets that may be invested in the common stock of a single corporation and its affiliates from 3 percent to 10 percent. The bill also provides that, if the assets of a charitable gift annuity segregated account are invested in a mutual fund, the investment will be treated as if it consists of the same percentage of common stock or bonds as that held by the mutual fund.

3. e ④ Under current law, the Health Insurance Risk-Sharing Plan is funded in part by assessments paid by health insurers. The amount of the assessment paid by each insurer is proportional to the amount of that insurer's health care coverage revenue as compared to all health care coverage revenue for all health insurers in this state. The commissioner may exempt an insurer from paying the assessment if that insurer's assessment would be smaller than the cost of collecting it. The bill allows the commissioner to exempt any insurer from the fee assessment upon the request of the insurer and after holding a public hearing.

Irs A → 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. 14.83 of the statutes is repealed. ✓

2 SECTION 2. 15.165 (3) (b) 9. of the statutes is amended to read:

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

6 SECTION 3. 149.13 (1) of the statutes is amended to read:

7 149.13 (1) Every insurer shall participate in the cost of administering the plan,
 8 except the commissioner may by rule exempt as a class those insurers whose share
 9 as determined under sub. (2) would be so minimal as to not exceed the estimated cost
 10 of levying the assessment, at the request of an insurer and after holding a public

1 hearing, exempt an insurer from participating in the cost of administering the plan.
2 The commissioner shall advise the authority of the insurers participating in the cost
3 of administering the plan.

4 SECTION 4. 601.415 (3) of the statutes is amended to read:
5 601.415 (3) WISCONSIN RETIREMENT BOARD. The commissioner or ~~an experienced~~
6 ~~actuary in the office designated by the commissioner~~ his or her designee shall serve
7 as a member of the Wisconsin retirement board under s. 15.165 (3) (b).^x

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

9 SECTION 6. 601.59 of the statutes is repealed.

10 SECTION 7. 615.03 (5) of the statutes is amended to read:

11 615.03 (5) APPLICATION OF CHAPTERS 600 TO 646. The commissioner may by rule
12 or order impose on licensees under this chapter any other provisions of chs. 600 to
13 646 applicable to ch. 611 corporations, if necessary to protect the interests of
14 annuitants or the public. The commissioner may not impose the provisions of s.

15 620.23 (1) (d), (2) (a), and (5) on a licensee under this chapter. plain

16 SECTION 8. 615.10 (5) (intro.) of the statutes is created to read:

17 615.10 (5) (intro.) All of the following apply to the investment of the assets of
18 a segregated account under this section:

19 SECTION 9. 615.10 (5) of the statutes is renumbered 615.10 (5) (a) and amended
20 to read:

21 615.10 (5) (a) ~~Assets of a segregated account under this section~~ shall be
22 invested in accordance with ch. 620, except for s. 620.23 (1) (d), (2) (a), and (5).

23 SECTION 10. 615.10 (5) (b) of the statutes is created to read:

24 615.10 (5) (b) No more than 50 percent of the assets may be invested in common
25 stock.

except that the

1

INSERT A

~~4. The bill makes various changes to the insurance security fund (fund).~~

which protects insureds in the event of a liquidation of an insurer

Under current law, insurers, state insurance funds, and certain other entities must participate in the insurance security fund (fund). This bill explicitly exempts from participation in the insurance security fund policies issued to enrollees under Medicare or Medicaid, and exempts contracts between the federal government and an insurer, to provide health care or prescription drug benefits.

Under current law, the fund has standing to appear in any court having jurisdiction over an impaired or insolvent insurer. An impaired insurer, under current law, is an insurer that is subject to the requirements of the insurance security fund that is placed under an order of rehabilitation or conservation by a court of competent jurisdiction but without a finding of insolvency. This bill eliminates the classification of impaired insurer.

Under current law, for an insured with a net worth of over \$10,000,000, with some exceptions the fund need only pay claims in the amount of the aggregate of claims that exceed 10% of the insured's net worth. This bill increases the minimum net worth to \$25,000,000 for which the fund can limit payment of claims to 10% of the insured's net worth.

Under current law, a person with a claim against the fund whose claim is reduced or declared ineligible may appeal that determination to the board of directors of the fund (board). The person may not pursue a claim in court unless appeal is first made to and decided by the board. This bill allows the board to appoint a committee of the board or a hearing examiner to hear appeals. This bill requires that a person seeking review of the board's, committee's, or hearing examiner's decision in circuit court must petition the Dane County Circuit Court within 60 days of the decision.

Under current law, under certain circumstances the fund may recover the costs of defending an insured if the insured has a net worth of more than \$10,000,000 or is an affiliate of an insurer in liquidation. This bill does not allow the fund to recover costs unless the insured's net worth is more than \$25,000,000. The bill also allows the fund to recover reasonable attorney's fees and costs plus interest.

Under current law, an insurer is assessed by the fund, and the insurer may appeal the assessment to the board and then to the circuit court. This bill requires that petitions for review by the circuit court be filed in the Dane County Circuit Court within 60 days of the decision by the board.

2

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3

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

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

7 **SECTION 2.** ~~646.03~~ (2n) of the statutes is repealed.✕

8 **SECTION 3.** ~~646.13~~ (2) (d) of the statutes is amended to read:

9 646.13 (2) (d) Have standing to appear in any liquidation proceedings in this
 10 state involving an insurer in liquidation, and have authority to appear or intervene
 11 before a court or agency of any other state having jurisdiction over an ~~impaired or~~
 12 insolvent insurer, in accordance with the laws of that state, with respect to which the
 13 fund is or may become obligated or that has jurisdiction over any person or property
 14 against which the fund may have subrogation or other rights. Standing shall extend
 15 to all matters germane to the powers and duties of the fund, including proposals for
 16 reinsuring, modifying, or guaranteeing the policies or contracts of the ~~impaired or~~
 17 insolvent insurer and the determination of the policies or contracts and contractual
 18 obligations.✕

History: 1979 c. 109; 1985 a. 216; 1987 a. 325; 1999 a. 30; 2003 a. 261; 2005 a. 253; 2007 a. 170.

****NOTE: Since the definition of "impaired insurer" was deleted, I deleted the reference to "impaired" in this paragraph. Is that okay?✕

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

20 646.13 (4) **WHEN DUTY TO DEFEND TERMINATES.** Any obligation of the fund to
 21 defend an insured ceases upon the fund's payment, by settlement releasing the
 22 insured or on a judgment, of an amount equal to the lesser of the fund's covered claim

1 obligation limit or the applicable policy limit, subject to any express policy terms
2 regarding tender of limits.

3 History: 1979 c. 109; 1985 a. 216; 1987 a. 325; 1999 a. 30; 2003 a. 261; 2005 a. 253; 2007 a. 170.

3 SECTION 5. 646.31 (1) (b) of the statutes is renumbered 646.31 (1) (b) 1.

4 SECTION 6. 646.31 (1) (b) 2. of the statutes is created to read:

5 646.31 (1) (b) 2. The claim does not arise out of business against which
6 assessments are prohibited under any federal or state law.

7 SECTION 7. 646.31 (4) (a) of the statutes is amended to read:

8 646.31 (4) (a) Except in regard to worker's compensation insurance and except
9 as provided in par. (b), the obligation of the fund on a single risk, loss or life may not
10 exceed \$300,000, regardless of the number of policies or contracts.

11 History: 1979 c. 109; 1983 a. 120 ss. 6 to 11; 1985 a. 216; 1987 a. 325; 1989 a. 23, 31; 1995 a. 396; 1997 a. 237; 1999 a. 30; 2003 a. 261; 2005 a. 253; 2007 a. 170.

11 SECTION 8. 646.31 (12) of the statutes is amended to read:

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

18 History: 1979 c. 109; 1983 a. 120 ss. 6 to 11; 1985 a. 216; 1987 a. 325; 1989 a. 23, 31; 1995 a. 396; 1997 a. 237; 1999 a. 30; 2003 a. 261; 2005 a. 253; 2007 a. 170.

18 SECTION 9. 646.32 (1) of the statutes is amended to read:

19 646.32 (1) APPEAL. A claimant whose claim is reduced or declared ineligible
20 shall promptly be given notice of the determination and of the right to object under
21 this section. The claimant may appeal to the board within 30 days after the mailing
22 of the notice. The board may appoint a committee of the board or a hearing examiner

1 to decide any such appeal. The claimant may not pursue the claim in court except as
2 provided in sub. (2).^X

3 History: 1979 c. 109; 2003 a. 261.

^X
SECTION 10. 646.32 (2) of the statutes is amended to read:

4 646.32 (2) REVIEW. Decisions of the board or its appointed committee or hearing
5 examiner under sub. (1) are subject to judicial review in the circuit court for Dane
6 County. A petition for judicial review shall be filed within 60 days of the board's
7 decision.^X

> History: 1979 c. 109; 2003 a. 261.

****NOTE: Since the previous section allows the board to appoint a committee, I have^e
included the committee in this section as well. Is that okay?[✓]

8 ^X
SECTION 11. 646.325 (1) of the statutes is amended to read:

9 646.325 (1) DEFINITION. In this section, "net worth" means the amount of an
10 insured's total assets less the insured's total liabilities at the end of the insured's
11 fiscal year immediately preceding the date the liquidation order was entered, as
12 shown on the insured's audited financial statement, ~~and~~ or other substantiated
13 financial information acceptable to the fund in its sole discretion. "Net worth"
14 includes the consolidated net worth of all of the corporate affiliates, subsidiaries,
15 operating divisions, holding companies, and parent entities ~~that are,~~ and, if the
16 insured is privately owned, natural persons who have an ownership interest, shown
17 as insureds or additional insureds on the policy issued by the insurer. If the insured
18 is a natural person, "net worth" means the insured's total assets less the insured's
19 total liabilities on December 31 immediately preceding the date the liquidation order
20 was entered.[✓]

History: 1987 a. 325; 2003 a. 261.

^X
SECTION 12. 646.325 (2) (a) 1. of the statutes is amended to read:

21

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

3 History: 1987 a. 325; 2003 a. 261.

3 ^{X^}
SECTION 13. 646.325 (4) of the statutes is created to read:

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

 ****NOTE: What do you mean by "enforce this section?"[✓] Are you referring just to
 pursuing recovery under sub. (2)? Also, in the "amount due" are you including attorney
 fees and costs or just the recovery under sub. (2)?[✓]

9 ^X
SECTION 14. 646.51 (5) of the statutes is amended to read:

10 646.51 (5) COLLECTION. After the rate of assessment has been fixed, the fund
11 shall send to each insurer a statement of the amount it is to pay. The fund shall
12 designate whether the assessments shall be made payable in one sum or in
13 installments. ~~Assessments shall be collected by the same procedures as premium~~
14 ~~taxes or license fees under ch. 76.~~[✓]

15 History: 1979 c. 109; 1983 a. 120; 1985 a. 216;^X 1989 a. 23, 31; 1995 a. 396; 1999 a. 30; 2003 a. 261; 2007 a. 170.

15 **SECTION 15.** 646.51 (6) of the statutes is amended to read:

16 646.51 (6) APPEAL AND REVIEW. Within 30 days after the fund sends the
17 statement under sub. (5), an insurer, after paying the assessment under protest, may
18 appeal the assessment to the board or a committee thereof. The decision of the board
19 or committee on the appeal is subject to judicial review in the circuit court for Dane
20 County. ^gA petition for judicial review shall be filed within 60 days of the board's or
21 committee's decision.[✓]

History: 1979 c. 109; 1983 a. 120; 1985 a. 216; 1989 a. 23, 31; 1995 a. 396; 1999 a. 30; 2003 a. 261; 2007 a. 170.



State of Wisconsin / OFFICE OF THE COMMISSIONER OF INSURANCE

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Jorge Gomez, Commissioner

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DATE: August 12, 2009
TO: Pam Kahler
Legislative Reference Bureau
FROM: Jim Guidry
Legislative Liaison
SUBJECT: OCI Draft Legislation LRB 09-0172P2

The Office of the Commissioner of Insurance (OCI) has additional changes that are to be incorporated into the legislative draft LRB 09-0172P2.

Additionally, we have prepared responses to drafting questions inserted in the latest draft

Please make the following changes to draft legislation:

- Create section 49.45 (31) (e) to read:

49.45 (31) (e) Notwithstanding par. (b) (intro.), the department has elected to provide reciprocal disregards for Medicaid applicants who have purchased a qualified Partnership policy in another Partnership State, and be subject to the reciprocity standards established by the Department of Health and Human Services in accordance with section 6021(b) of the Deficit Reduction Act of 2005.

- Amend 614.42 (a) to read:

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 director 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 other method or combination of methods approved by the board of directors and prescribed in the fraternal's bylaws.

- Amend 614.29 (1) to read:

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 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.

- Amend 646.51(3) (c) to increase the maximum allowable non-prorated administrative assessment that may be authorized by the insurance security fund board of directors from \$200 to \$500.

With regard to the questions imbedded in the legislation draft:

1. Note after line 14, page 5: Yes, deletion of "impaired" in sec. 646.13(2) (d) is OK.
2. Note at the top of page 7: Yes, it's OK to include board appointed committee in 646.32(2).
- 3. Note at the bottom of page 7: "Enforce this section" means more than pursuing recovery under sub. (2). It also includes attempting to obtain financial information under sub. (1), since the Fund occasionally runs into insureds that are very reluctant to give any financial information that would permit the Fund to make a net worth determination. If the Fund then must hire counsel to obtain the information in order to make a net worth determination, we would like to recover for that as well. We would include attorney fees and costs in the "amount due" language in line 22.

Other comments related to the LFB analysis:

1. First paragraph in ¶ 4 on page 2: It isn't quite accurate to state that "state insurance funds and certain other entities must participate in the insurance security fund. . ." In fact, ch. 646 currently has specific exceptions for most of these types of entities/products. It did not have a specific exclusion for the Medicare Parts C and D programs, however, and these programs did not fit neatly into any one of the other categories, hence the new language.

2. Fourth paragraph in ¶ 4 on page 2: It is suggested to use “clarifies that” rather an “allows.” The Fund’s rules currently permit the Board to delegate to a hearing examiner or a committee of the board. This amendment just puts that in the statutes so that everyone is aware of it.