

1987 Senate Bill 214

Date of enactment: **April 20, 1988**
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1987 Wisconsin Act 325

AN ACT to repeal 646.01 (1) (a) 2. j; to renumber and amend 646.13 (1) (b) and 646.31 (4); to amend 185.983 (1) (intro.), 645.47 (2), 646.01 (1) (a) 2. e, 646.01 (1) (b) 3 and 5, 646.12 (2) (b), 646.31 (1) (intro.) and 646.31 (2) (a) and (e); and to create 645.59, 646.01 (1) (b) 11 to 13, 646.13 (1) (b) 1 and 2, 646.13 (2) (c) and (d), 646.15, 646.31 (1) (d), 646.31 (4) (b), 646.31 (6) (c), 646.31 (9m), 646.31 (11) and (12) and 646.325 of the statutes, relating to the insurance security fund and recovery of premiums owed to an insurer in liquidation.

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

SECTION 1. 185.983 (1) (intro.) of the statutes, as affected by 1987 Wisconsin Act 27, is amended to read:

185.983 (1) (intro.) Every such voluntary nonprofit sickness care plan shall be exempt from chs. 600 to 646, with the exception of ss. 601.04, 601.31, 601.43, 601.44, 601.45, 611.67, 619.04, 632.79, 632.87 (2m) and (3) and 632.895 (5), subch. II of ch. 619 and chs. 609, 630 and 645 and 646, but the sponsoring association shall:

SECTION 2. 645.47 (2) of the statutes is amended to read:

645.47 (2) NOTICE RESPECTING CLAIMS FILING. Notice to potential claimants under sub. (1) shall require claimants to file with the court liquidator their claims together with proper proofs thereof under s. 645.62, on or before a date the liquidator specifies in the notice, which shall be no less than 6 months nor more than one year after entry of the order, except that the liquidator need not require persons claiming unearned premium and persons claiming cash surrender values or other investment values in life insurance and annuities to file a claim. The liquidator may specify different dates for the filing of different kinds of claims.

SECTION 3. 645.59 of the statutes is created to read:

645.59 Uncollected, unearned premiums. An agent or broker who is a resident of this state is not liable to the liquidator of a domestic or foreign insurer for the amount of any uncollected, unearned premium.

SECTION 4. 646.01 (1) (a) 2. e of the statutes is amended to read:

646.01 (1) (a) 2. e. Service insurance corporations under ch. 613, except health maintenance organizations.

SECTION 5. 646.01 (1) (a) 2. j of the statutes is repealed.

SECTION 6. 646.01 (1) (b) 3 and 5 of the statutes are amended to read:

646.01 (1) (b) 3. Surety bonds, fidelity bonds and any other bonding obligations.

5. Mortgage guaranty, financial guaranty and other forms of insurance offering protection against investment risks.

SECTION 7. 646.01 (1) (b) 11 to 13 of the statutes are created to read:

646.01 (1) (b) 11. Insurance of warranties or service contracts.

12. Municipal bond insurance.

13. Any transaction or combination of transactions between a person, including affiliates of such person, and an insurer, including affiliates of such insurer, which involves the transfer of investment or credit risk unaccompanied by transfer of insurance risk.

SECTION 8. 646.12 (2) (b) of the statutes is amended to read:

646.12 (2) (b) Create ~~separate standing management committees for each of the accounts, and other~~ standing or special committees as needed. A minority of the members of any committee may be persons not members of the board.

SECTION 9. 646.13 (1) (b) of the statutes is renumbered 646.13 (1) (b) (intro.) and amended to read:

646.13 (1) (b) (intro.) Stand in the position of the insurer in the investigation, compromise, settlement, denial and payment of claims under s. 646.31 and the defense of 3rd party claims against insureds, subject to the limitations of s. 645.43. The board shall consult and cooperate with the liquidator in carrying out these duties. The board has no duties or liabilities with respect to any claim filed as follows:

SECTION 10. 646.13 (1) (b) 1 and 2 of the statutes are created to read:

646.13 (1) (b) 1. With the liquidator under s. 645.61 after the date for filing specified by the liquidator under s. 645.47 (2), unless the liquidator determines that the claim is timely filed and participates in the same distribution as timely filed claims.

2. With a liquidator or court under the laws of any other state after the date for filing specified by the liquidator or court, unless the liquidator or court determines that the claim is timely filed and participates in the same distribution as timely filed claims.

SECTION 11. 646.13 (2) (c) and (d) of the statutes are created to read:

646.13 (2) (c) With respect to any action against an insurer which is in liquidation, exercise the powers of the liquidator under s. 645.49 (1).

(d) Have standing to appear in any liquidation proceedings in this state involving an insurer in liquidation.

SECTION 12. 646.15 of the statutes is created to read:

646.15 Proceedings involving nondomestic insurers.

(1) INJUNCTIONS AND ORDERS. (a) If a nondomestic insurer is in liquidation, the board may apply to the circuit court for Dane county for, and the court may grant, restraining orders, temporary and permanent injunctions, and other orders considered necessary and proper to prevent any of the following:

1. Interference with the board or with its administrative proceedings.
2. The institution or further prosecution of any action or proceeding involving the insurer.
3. The obtaining of a preference, judgment, garnishment or lien against the insurer or its assets.
4. Any other threatened or contemplated action that might prejudice the rights of policyholders or the administration of the liquidation or board proceedings.

(b) Upon granting an application under par. (a), the court may retain jurisdiction of any further proceeding or relief, as the court considers necessary and proper, involving the insurer.

(2) EXCLUSIVE PROCEEDINGS. A court of this state does not have jurisdiction to entertain, hear or determine a proceeding or to grant relief if the proceeding or relief involves or is related to a nondomestic insurer which is in liquidation unless the court is so authorized under this chapter or ch. 645.

SECTION 13. 646.31 (1) (intro.) of the statutes is amended to read:

646.31 (1) CONDITIONS OF ELIGIBILITY. (intro.) A claim is not eligible for payment from the fund unless it is a an unpaid claim for a loss insured under the policy or annuity and all of the following conditions are met:

SECTION 14. 646.31 (1) (d) of the statutes is created to read:

646.31 (1) (d) *Exceptions.* The claim is not any of the following:

1. Based solely on a judgment.
2. Made for interest on any claim.
3. Made under s. 645.63 (2).
4. Subordinated under s. 645.90.
5. An indemnification recovered as a voidable preference under s. 645.54 (1) (c).
6. Made by an affiliate of an insurer in liquidation.
7. A retrospective premium rate adjustment.

SECTION 15. 646.31 (2) (a) and (e) of the statutes are amended to read:

646.31 (2) (a) *Residents.* The claim of a policyholder, including a ceding assessable domestic insurer which is ~~not subject to this chapter~~ organized under ch. 612 and a domestic insurer which is a bona fide policyholder of the insurer in liquidation, or an insured under a policy or annuity who at the time of the insured event or of the liquidation order was a resident of this state; or

(e) *Assignees.* The claim of a direct or indirect resident assignee, other than an insurer, of a person who except for the assignment could have claimed under par. (a), (b), (c) or (d).

SECTION 16. 646.31 (4) of the statutes is renumbered 646.31 (4) (a) and amended to read:

646.31 (4) (a) ~~The aggregate~~ 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.

SECTION 17. 646.31 (4) (b) of the statutes is created to read:

646.31 (4) (b) The fund is not obligated to pay a claimant an amount in excess of the loss obligation of the insurer in liquidation under the policy or coverage from which the claim arises.

SECTION 18. 646.31 (6) (c) of the statutes is created to read:

646.31 (6) (c) Any person having an eligible claim which also constitutes a claim or legal right of recovery under any governmental insurance or guaranty program shall first exhaust all rights under that program, and any amount payable on an eligible claim under this chapter shall be reduced by the amount of recovery under that program.

SECTION 19. 646.31 (9m) of the statutes is created to read:

646.31 (9m) RECOVERY REDUCTION. Any recovery under this chapter shall be reduced by the amount of recovery from any other security fund.

SECTION 20. 646.31 (11) and (12) of the statutes are created to read:

646.31 (11) SUBROGATION CLAIMS. The fund is not required to pay any amount due from the insurer to any reinsurer, insurer, insurance pool or underwriting association as subrogation recoveries or otherwise, except as provided in sub. (2) (a). A reinsurer, insurer, insurance pool or underwriting association that has paid a claim and thereby has become subrogated to the amount of that claim may assert that claim against the liquidator of the insurer in liquidation but not against the insured of the insurer in liquidation.

(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 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 21. 646.325 of the statutes is created to read:

646.325 Recovery of amounts paid to 3rd parties. (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, or, if the insured is a natural person, the insured's total assets less the insured's total liabilities on December 31 immediately preceding the date the liquidation order was entered.

(2) **RECOVERY FROM CERTAIN INSUREDS AND AFFILIATES.** Except as provided in sub. (3), the fund may recover from a person the amount of any claim paid on behalf of that person to a 3rd party, if all of the following conditions are satisfied:

(a) The person on whose behalf the claim was paid is any of the following:

1. An insured whose net worth exceeds \$10,000,000.

2. An affiliate of the insurer in liquidation.

(b) Payment of the claim satisfied all or part of the person's liability obligations to 3rd parties.

(3) **LIMITATION.** The total amount recovered from an insured described in sub. (2) (a) 1 plus the amount of the insured's claims that satisfy s. 646.31 (1) to (7), (9) and (9m) but are not eligible for payment under s. 646.31 (12) may not exceed 10% of the insured's net worth.

SECTION 22. Nonstatutory provisions. (1) **ADVISORY COMMITTEE.** The commissioner of insurance is requested to exercise its authority under section 15.04 (1) (c) of the statutes to create a committee to advise the office of the commissioner of insurance on issues connected with conducting the study and preparing the recommendations required under subsection (2).

(2) **STUDY BY THE OFFICE OF THE COMMISSIONER OF INSURANCE.** The office of the commissioner of insurance shall study and make recommendations regarding matters related to the inclusion, under section 646.01 (1) (a) of the statutes, as affected by this act, of all health maintenance organizations, as defined by section 609.01 (2) of the statutes, in the insurance security fund created under section 646.11 of the statutes. The recommendations shall evaluate whether the laws governing the insurance security fund and health maintenance organizations need to be revised to accommodate including in the security fund not only health maintenance organizations established under

chapter 611 of the statutes, which are already under the security fund, but also health maintenance organizations established under chapter 185, 613 or 614 of the statutes or issued a certificate of authority under chapter 618 of the statutes. The office of the commissioner of insurance shall examine, among others, the laws regulating the financial and reserve requirements and operations of health maintenance organizations. If the office of the commissioner of insurance determines that changes in the laws are necessary, the recommendations shall include proposed legislation reflecting those changes. The office of the commissioner of insurance shall submit the recommendations to the chief clerk of each house of the legislature by March 1, 1989, for distribution to the appropriate standing committees.

SECTION 23. Initial applicability. (1) **NEW LIQUIDATION PROCEEDINGS.** The treatment of sections 645.47 (2), 645.59, 646.01 (1) (b) 3 and 5 and 11 to 13, 646.13 (2) (c) and (d) and 646.31 (1) (d) 1 and 3 to 7 and (2) (a) and (e) of the statutes and the renumbering and amendment of section 646.31 (4) of the statutes first apply to liquidation proceedings in which a liquidation order is issued on the effective date of this subsection.

(2) **PENDING LIQUIDATION PROCEEDINGS.** The treatment of sections 646.12 (2) (b), 646.13 (1) (b) 1 and 2, 646.15 and 646.31 (1) (intro.) and (d) 2, (4) (b), (6) (c), (9m) and (11) of the statutes and the renumbering and amendment of section 646.13 (1) (b) of the statutes first apply to liquidation proceedings pending on the effective date of this subsection.

(3) **NET WORTH AND RIGHT OF RECOVERY.** The treatment of sections 646.31 (12) and 646.325 of the statutes first applies to liquidation claims for which information is filed on the effective date of this subsection that at a minimum specifically identifies the insured event on which the claim is based.

(4) **HEALTH MAINTENANCE ORGANIZATIONS.** The treatment of sections 185.983 (1) (intro.) and 646.01 (1) (a) 2. e and j of the statutes first applies to health maintenance organizations established under chapter 185, 613 or 614 of the statutes or issued a certificate of authority under chapter 618 of the statutes for which a liquidation order is issued on July 1, 1989.

SECTION 24. Effective dates. This act takes effect on the day after publication, except as follows:

(1) The treatment of sections 185.983 (1) (intro.) and 646.01 (1) (a) 2. e and j of the statutes takes effect on July 1, 1989.