CHAPTER 645

INSURERS REHABILITATION AND LIQUIDATION

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Cross-reference: See definitions in ss. 600.03 and 628.02.

SUBCHAPTER I

GENERAL PROVISIONS

645.01 Short title, construction and purpose. **(1)** SHORT TITLE. This chapter may be cited as the "Insurers Rehabilitation and Liquidation Act".

(2) CONSTRUCTION: NO LIMITATION OF POWERS. This chapter shall not be interpreted to limit the powers granted the commissioner by other provisions of the law.

(3) LIBERAL CONSTRUCTION. This chapter shall be liberally construed to effect the purpose stated in sub. (4).

(4) PURPOSE. The purpose of this chapter is the protection of the interests of insureds, creditors, and the public generally, with minimum interference with the normal prerogatives of proprietors, through:

(a) Early detection of any potentially dangerous condition in an insurer, and prompt application of appropriate corrective measures, neither unduly harsh nor subject to the kind of publicity that would needlessly damage or destroy the insurer;

(b) Improved methods for rehabilitating insurers, by enlisting the advice and management expertise of the insurance industry;

(c) Enhanced efficiency and economy of liquidation, through clarification and specification of the law, to minimize legal uncertainty and litigation;

(d) Equitable apportionment of any unavoidable loss;

(e) Lessening the problems of interstate rehabilitation and liquidation by facilitating cooperation between states in the liquidation process, and by extension of the scope of personal jurisdiction over debtors of the insurer outside this state; and

(f) Regulation of the insurance business by the impact of the law relating to delinquency procedures and substantive rules on the entire insurance business.

History: 1979 c. 89, 102, 177.

Although the circuit court had subject matter jurisdiction, because New Jersey had adopted insurance rehabilitation legislation similar to this chapter that sought to satisfy the same policy objectives as this chapter, the principal of comity required the court to yield to the rehabilitation court in New Jersey and dismiss the claim of a Wisconsin resident against the insurer. Isermann v. MBL Life Assurance Corp., 231 Wis. 2d 136, 605 N.W.2d 210 (Ct. App. 1999), 98-2846.

645.02 Persons covered. The proceedings authorized by this chapter may be applied to all of the following:

(1) All insurers who are doing, or have done, an insurance business in this state, and against whom claims arising from that business may exist now or in the future.

(2) All insurers who purport to do an insurance business in this state.

(3) All insurers who have insureds resident in this state.

(4) All other persons organized or in the process of organizing with the intent to do an insurance business in this state.

(5) All service insurance corporations under ch. 613 and all fraternals as defined in s. 614.01.

(6) All licensees under ch. 616.

(7) All health maintenance organizations, limited service

health organizations and preferred provider plans organized under ss. 185.981 to 185.985.

History: 1975 c. 223, 373, 374; 1979 c. 93, 261, 355; 1985 a. 29; 2013 a. 271.

645.03 Definitions. (1) GENERAL DEFINITIONS. For the purposes of this chapter:

(a) "Ancillary state" means any state other than a domiciliary state.

(b) "Delinquency proceeding" means any proceeding commenced against an insurer for the purpose of liquidating, rehabilitating, reorganizing or conserving such insurer, and any summary proceeding under ss. 645.21 to 645.24.

(c) "Domiciliary state" means the state in which an insurer is incorporated or organized or, in the case of an alien insurer, the state in which the insurer has, at the commencement of delinquency proceedings, the largest amount of its assets held in trust and on deposit for the benefit of policyholders and creditors in the United States.

(d) "Fair consideration" is given for property or an obligation:

1. When in exchange for such property or obligation, as a fair equivalent therefor, and in good faith, property is conveyed or services are rendered or obligation is incurred or an antecedent debt is satisfied; or

2. When such property or obligation is received in good faith to secure a present advance or antecedent debt in amount not disproportionately small as compared to the value of the property or obligation obtained.

(e) "General assets" means all property, real, personal or otherwise, not specifically mortgaged, pledged, deposited or otherwise encumbered for the security or benefit of specified persons or limited classes of persons, and as to specifically encumbered property the term includes all such property or its proceeds in excess of the amount necessary to discharge the sums secured thereby. Assets held in trust and on deposit for the security or benefit of all policyholders or all policyholders and creditors, in more than a single state, shall be treated as general assets.

(f) "Insurer" means any person who is doing, has done, purports to do or is licensed to do an insurance business and is or has been subject to the authority of, or to liquidation, rehabilitation, reorganization or conservation by, a commissioner. For purposes of this chapter, all other persons included under s. 645.02 shall be deemed to be insurers.

(g) "Preferred claim" means any claim with respect to which the law accords priority of payment from the general assets of the insurer.

(h) "Receiver" means receiver, liquidator, rehabilitator or conservator, as the context requires.

(i) "Reciprocal state" means any state other than this state in which in substance and effect ss. 645.42 (1), 645.83 (1) and (3), 645.84 and 645.86 to 645.89 are in force, and in which provisions are in force requiring that the commissioner be the receiver of a delinquent insurer, and in which some provision exists for the avoidance of fraudulent conveyances and preferential transfers.

(j) "Secured claim" means any claim secured by mortgage, trust deed, pledge, deposit as security, escrow or otherwise, but not including special deposit claims or claims against general assets. The term also includes claims which have become liens upon specific assets by reason of judicial process, except where they have been invalidated.

(k) "Special deposit claim" means any claim secured by a deposit made pursuant to law for the security or benefit of one or more limited classes of persons, but not including any claim secured by general assets.

(L) "Transfer" includes the sale and every other method, direct or indirect, of disposing of or of parting with property or with an interest therein or with the possession thereof or of fixing a lien upon property or upon an interest therein, absolutely or conditionally, voluntarily or involuntarily, by or without judicial proceedings. The retention of a security title to property delivered to a debtor shall be deemed a transfer suffered by the debtor.

(2) DEFINITIONS APPLICABLE TO PROCEEDINGS INVOLVING SURETY INSURANCE. If the subject of a rehabilitation or liquidation proceeding under this chapter is an insurer engaged in a surety business:

(a) "Beneficiary" as used in this chapter includes an obligee of a bond.

(b) "Insured" as used in this chapter includes both the principal and obligee of a bond.

(c) "Policy" as used in this chapter includes a bond issued by a surety.

(d) "Policyholder" as used in this chapter includes a principal on a bond.

History: 1971 c. 260; 1979 c. 93; 1983 a. 189.

645.035 Bankruptcy petition is prohibited. (1) In this section, "bankruptcy proceeding" means any proceeding under 11 USC 101 to 1330.

(2) No insurer may commence a bankruptcy proceeding in which the insurer is a debtor.

(3) No person, including an insurer, may commence a bankruptcy proceeding against an insurer.

(4) No board of directors, director or officer of an insurer may authorize the commencement of a bankruptcy proceeding in which the insurer is a debtor or the commencement of a bankruptcy proceeding against an insurer. Any act, resolution, filing or other matter that purports to authorize the commencement of a bankruptcy proceeding in which the insurer is a debtor or against an insurer is void and without effect.

(5) This section applies to all insurers, including but not limited to an insurer doing business as a health maintenance organization, as defined in s. 609.01 (2).

History: 1989 a. 23.

645.04 Jurisdiction and venue. (1) ACTIONS BY COMMISSIONER. Except as provided in sub. (2) and s. 645.45 (1), no delinquency proceeding may be commenced under this chapter by anyone other than the commissioner of this state and no court has jurisdiction to entertain, hear or determine any proceeding commenced by any other person.

(2) ACTIONS BY JUDGMENT CREDITORS. (a) The judgment creditors of 3 or more unrelated judgments may commence proceedings under the conditions and in the manner prescribed in this subsection, by serving notice upon the commissioner and the insurer of intention to file a petition for liquidation under s. 645.41 or 645.82. Each of the judgments must:

1. Have been rendered against the insurer by a court in this state having jurisdiction over the subject matter and the insurer;

2. Have been entered more than 60 days before the service of notice;

3. Not have been paid in full;

4. Not be the subject of a valid contract between the insurer and any judgment creditor for payment of the judgment, unless the contract has been breached by the insurer; and

5. Not be a judgment on which an appeal or review is pending.

(b) If any one of the judgments in favor of a petitioning creditor remains unpaid for 30 days after service of the notice, and the commissioner has not then filed a petition for liquidation, the creditor may file in the name of the commissioner a verified petition for liquidation of the insurer under s. 645.41 or 645.82 alleg-

ing the conditions stated in this subsection. The commissioner shall be served and joined in the action.

(3) EXCLUSIVENESS OF PROCEEDINGS; ARBITRATION CLAUSES. No court of this state has jurisdiction to entertain, hear or determine any complaint praying for the dissolution, liquidation, rehabilitation, sequestration, conservation or receivership of any insurer, or praying for an injunction or restraining order or other relief preliminary to, incidental to or relating to such proceedings other than in accordance with this chapter. An arbitration provision of any contract with an insurer that is subject to a delinquency proceeding under subch. III is not enforceable unless the receiver elects to accept arbitration. Only the court that has jurisdiction of the delinquency proceeding may entertain, hear or determine any matter that otherwise would be subject to an arbitration provision.

(4) CHANGE OF VENUE. Venue for proceedings arising under this chapter shall be laid initially as specified in this chapter. All other actions and proceedings initiated by the receiver may be commenced and tried where the delinquency proceedings are then pending, or where venue would be laid by ss. 801.50 to 801.62 or other applicable law. All other actions and proceedings against the receiver shall be commenced and tried in the county where the delinquency proceedings are pending. At any time upon motion of any party, venue may be changed by order of the court or the presiding judge thereof to any other circuit court in this state, as the convenience of the parties and witnesses and the ends of justice may require. This subsection relates only to venue and is not jurisdictional.

(5) PERSONAL JURISDICTION, GROUNDS FOR. In addition to other grounds for jurisdiction provided by the law of this state, a court of this state having jurisdiction of the subject matter has jurisdiction over a person served pursuant to s. 801.11 in an action brought by the receiver of a domestic insurer or an alien insurer domiciled in this state:

(a) If the person served is obligated to the insurer in any way as an incident to any agency or brokerage arrangement that may exist or has existed between the insurer and the agent or broker, in any action on or incident to the obligation;

(b) If the person served is a reinsurer who has at any time written a policy of reinsurance for an insurer against which a rehabilitation or liquidation order is in effect when the action is commenced, or is an agent or broker of or for the reinsurer, in any action on or incident to the reinsurance contract; or

(c) If the person served is or has been an officer, manager, trustee, organizer, promoter or person in a position of comparable authority or influence in an insurer against which a rehabilitation or liquidation order is in effect when the action is commenced, in any action resulting from the relationship with the insurer.

(6) CHANGE OF FORUM. If the court on motion of any party finds that any action commenced under sub. (5) should as a matter of substantial justice be tried in a forum outside this state, the court may enter an order under s. 801.63 to stay further proceedings on the action in this state.

History: Sup. Ct. Order, 67 Wis. 2d 585, 776 (1975); 1979 c. 93; 1979 c. 110; 1981 c. 390; 1989 a. 23.

The exercise of jurisdiction under sub. (5) over a foreign person obligated to a domestic receiver does not violate due process. In re Liquidation of All-Star Insurance Corp., 110 Wis. 2d 72, 327 N.W.2d 648 (1983).

645.05 Injunctions and orders. (1) INJUNCTIONS IN THIS STATE. Any receiver appointed in a proceeding under this chapter may at any time apply for and any court of general jurisdiction in this state may grant, under the relevant sections of ch. 813, such restraining orders, temporary and permanent injunctions, and other orders as are deemed necessary and proper to prevent:

(a) The transaction of further business;

(b) The transfer of property;

(c) Interference with the receiver or with the proceedings;

(d) Waste of the insurer's assets;

(e) Dissipation and transfer of bank accounts;

(f) The institution or further prosecution of any actions or proceedings;

(g) The obtaining of preferences, judgments, attachments, garnishments or liens against the insurer or its assets;

(h) The levying of execution against the insurer or its assets;

(i) The making of any sale or deed for nonpayment of taxes or assessments that would lessen the value of the assets of the insurer;

(j) The withholding from the receiver of books, accounts, documents or other records relating to the business of the insurer; or

(k) Any other threatened or contemplated action that might lessen the value of the insurer's assets or prejudice the rights of policyholders, creditors or shareholders, or the administration of the proceeding.

(2) INJUNCTIONS ELSEWHERE. The receiver may apply to any court outside of this state for the relief described in sub. (1).

(3) INJUNCTIONS AGAINST A FEDERAL HOME LOAN BANK. (a) In this subsection, "insurer-member" means a member of the federal home loan bank in question that is an insurer.

(b) Notwithstanding subs. (1) and (2) and any other provision of this chapter, a federal home loan bank may be stayed, enjoined, or prohibited from exercising or enforcing any right or cause of action regarding collateral pledged under any security agreement, or any pledge, security, collateral, or guarantee agreement, or any other similar arrangement or credit enhancement relating to a federal home loan bank security agreement, for a period not to exceed 10 days after the appointment of a receiver for an insurer-member of the federal home loan bank. If the federal home loan bank fails to comply with the provisions of pars. (c) and (d), the court may, within 10 days following the appointment of the receiver, extend the stay until the federal home loan bank complies with the provisions of pars. (c) and (d).

(c) Not later than 5 days after notification to the federal home loan bank of the appointment of a receiver for an insurer-member, the federal home loan bank shall deliver to the receiver a process and timeline for all of the following:

1. The release of collateral held by the federal home loan bank that exceeds the amount that is required to support the outstanding secured loan obligations and that is remaining after any repayment of loans, as determined under the applicable agreements between the federal home loan bank and the insurer-member.

2. The release of any collateral remaining in the federal home loan bank's possession following repayment of all outstanding secured obligations in full.

3. The payment of fees owed by the insurer-member.

4. The redemption or repurchase of federal home loan bank stock in excess of the minimum amount the insurer-member is required to own.

(d) Upon the request of the receiver and not later than 5 days after notification to the federal home loan bank of the appointment of a receiver for an insurer-member, the federal home loan bank shall provide any available options for the insurer-member to renew or restructure an advance. In determining which options are available, the federal home loan bank may consider market conditions, the terms of the advance outstanding to the insurer-member, the applicable policies of the federal home loan bank, and compliance with the Federal Home Loan Bank Act and corresponding regulations.

(e) A federal home loan bank shall, within 7 days of receipt of a repurchase request made by the insurer-member, repurchase any outstanding capital stock in excess of the amount of stock the insurer-member is required to hold as a minimum investment. The federal home loan bank shall repurchase the excess outstanding capital stock if the repurchase is all of the following:

1. Permissible under federal laws and regulations and the federal home loan bank's capital plan.

2. Consistent with the capital stock practices then applicable to the federal home loan bank's entire membership.

History: Sup. Ct. Order, 67 Wis. 2d 585, 776 (1975); 2017 a. 340.

645.06 Costs and expenses of litigation. In any proceeding or action brought by the commissioner or a receiver under this chapter, the court may award such costs and other expenses of litigation to the commissioner or receiver as justice requires, without regard to the limitations otherwise prescribed by law.

History: 1989 a. 23.

645.07 Cooperation of officers and employees. (1) DUTY TO COOPERATE. Any officer, manager, trustee or general agent of any insurer, any attorney representing an insurer on any matter, and any other person with executive authority over or in charge of any segment of the insurer's affairs shall cooperate with the commissioner in any proceeding under this chapter or any investigation preliminary or incidental to the proceeding. "To cooperate" includes:

(a) To reply promptly in writing to any inquiry from the commissioner requesting a reply; and

(b) To make available and deliver to the commissioner any books, accounts, documents or other records, or information or property of or pertaining to the insurer and in the person's possession, custody or control.

(2) DUTY NOT TO OBSTRUCT. No person may obstruct or interfere with the commissioner in the conduct of any delinquency proceeding or any investigation preliminary or incidental thereto.

(3) RIGHT TO DEFEND. This section does not make it illegal to resist by legal proceedings the petition for liquidation or other delinquency proceedings, or other orders.

(4) SANCTION. Any person included within sub. (1) who fails to cooperate with the commissioner, or any person who obstructs or interferes with the commissioner in the conduct of any delinquency proceeding or any investigation preliminary or incidental thereto, is subject to s. 601.64.

History: 1979 c. 93; 1979 c. 102 ss. 196, 236 (15); 1979 c. 177.

645.08 Bonds; immunity. (1) BONDS. In any proceeding under this chapter the commissioner and the commissioner's deputies are responsible on their official bonds for the faithful performance of their duties. If the court deems it desirable for the protection of the assets, it may at any time require an additional bond from the commissioner or the commissioner's deputies.

(2) IMMUNITY. No civil cause of action may arise against and no civil liability may be imposed upon the state, commissioner, special deputy commissioner, rehabilitator or liquidator, or their employees or agents, or the insurance security fund under ch. 646 or its agents, employees, directors or contributor insurers, for an act or omission by any of them in the performance of their powers and duties under this chapter or in the performance of their powers and duties relating to regulation of the capital or solvency of an insurer under chs. 600 to 646, including the compulsory or security surplus requirements under ch. 623. This subsection does not apply to a civil cause of action arising from an act or omission that is criminal under ch. 943. Such a cause of action, however, may be barred or limited by common law, sovereign immunity, governmental immunity or otherwise by law.

History: 1979 c. 93; 1979 c. 102 s. 236 (14); 1989 a. 23; 1996 a. 396.

Sub. (2) does not bar a rehabilitation plan from extending immunity to individuals and entities not listed in this section. There is no such limiting language in this section. Nickel v. Wells Fargo Bank, 2013 WI App 129, 351 Wis. 2d 539, 841 N.W.2d 482, 10-1291.

645.09 Commissioner's reports. (1) GENERAL REPORT OF PROCEEDINGS. The commissioner may include in his or her annual report:

(a) *Formal proceedings.* The names of the insurers proceeded against under ss. 645.31, 645.41, 645.45, 645.81, 645.82 and 645.84, and such other facts as indicate in reasonable detail the commissioner's formal proceedings under this chapter; and

(b) *Informal proceedings.* Such facts as generally indicate the utilization and effectiveness of proceedings under ss. 645.21, 645.22 and 645.23.

(2) SPECIAL REPORTS. (a) *Causes of delinquency.* The commissioner may include in his or her annual report, not later than the 2nd annual report following the initiation of any formal proceedings under this chapter, a detailed analysis of the basic causes and the contributing factors making the initiation of formal proceedings necessary, and may make recommendations for remedial legislation. For this purpose the commissioner may appoint a special assistant qualified in insurance, finance, and accounting to conduct the study and prepare the analysis, and may determine the special assistant's compensation, which shall be paid from the appropriation under s. 20.145 (1) (g) 1.

(b) *Final study.* The commissioner may include in his or her annual report, not later than the 2nd annual report following discharge of the receiver, a detailed study of the delinquency proceeding for each insurer subjected to a formal proceeding, with an analysis of the problems faced and their solutions. The commissioner may also suggest alternative solutions, as well as other material of interest, for the purpose of assisting and guiding liquidators or rehabilitators in the future. For this purpose the commissioner may appoint a special assistant qualified to conduct the study and prepare the analysis, and may determine his or her compensation, which shall be paid from the appropriation under s. 20.145 (1) (g) 1.

(3) REPORTS ON INSURERS SUBJECT TO PROCEEDINGS. The commissioner as receiver shall make and file annual reports and any other required reports for the companies proceeded against under ss. 645.31, 645.41, 645.45, 645.81, 645.82 and 645.84 in the manner and form and within the time required by law of insurers authorized to do business in this state, and under the same penalties for failure to do so.

History: 1979 c. 102 ss. 197, 236 (13), (14); 1979 c. 221; 2007 a. 20.

645.10 Continuation of delinquency proceedings. Every proceeding commenced before August 5, 1967 is deemed to have commenced under this chapter for the purpose of conducting the proceeding thereafter, except that in the discretion of the commissioner the proceeding may be continued, in whole or in part, as it would have been continued had this chapter not been enacted.

645.11 Effect of amendments of this chapter. Every proceeding commenced under this chapter before December 9, 1979, is subject to the amendments of this chapter by chapter 93, laws of 1979, except as to rights which have fully vested before December 9, 1979.

History: 1979 c. 93, 109, 154.

SUBCHAPTER II

SUMMARY PROCEEDINGS

645.21 Commissioner's summary orders. (1) SUMMARY ORDER AFTER HEARING. Whenever the commissioner has reasonable cause to believe, and determines, after a hearing held as prescribed in s. 601.62, that any insurer has committed or engaged in, or is committing or engaging in or is about to commit or engage in any act, practice or transaction, or is in or is about to get into a situation that would subject it to formal delinquency proceedings under this chapter, the commissioner may make and serve upon the insurer and any other persons involved, such orders other than seizure orders under ss. 645.22 and 645.23 as are reasonably necessary to correct, eliminate or remedy such conduct, condition or ground.

(2) SUMMARY ORDER BEFORE HEARING. If the conditions of sub. (1) are satisfied, and if it appears to the commissioner that irreparable harm to the property or business of the insurer or to the interests of its policyholders, creditors or the public may occur unless the commissioner issues with immediate effect the orders described in sub. (1), the commissioner may make and serve such orders without notice and before hearing, simultaneously serving upon the insurer notice of hearing under s. 601.62.

(4) JUDICIAL RELIEF. If the commissioner issues a summary order before hearing under sub. (2), the insurer may at any time waive the commissioner's hearing and apply for immediate judicial relief by means of any remedy afforded by law without first exhausting administrative remedies. Subsequent to a hearing the insurer or any person whose interests are substantially affected is entitled to judicial review of any order issued by the commissioner.

History: 1971 c. 42, 260; 1979 c. 93, 102, 177; 1991 a. 316.

645.22 Court's seizure order. (1) ISSUANCE. Upon the filing by the commissioner in any circuit court in this state of a verified petition alleging any ground that would justify a court order for a formal delinquency proceeding against an insurer under this chapter and that the interests of policyholders, creditors or the public will be endangered by delay, and setting out the order considered necessary by the commissioner, the court shall issue forthwith, ex parte and without a hearing, the requested order, which may do any of the following:

(a) Direct the commissioner to take possession and control of all or a part of the property, books, accounts, documents and other records of an insurer and of the premises occupied by it for the transaction of its business.

(b) Until further order of the court, enjoin the insurer and its officers, managers, agents, and employees from disposition of its property and from transaction of its business except with the written consent of the commissioner.

(2) DURATION. The court shall specify in the order what its duration shall be, which shall be such time as the court deems necessary for the commissioner to ascertain the condition of the insurer. On motion of either party or on its own motion, the court may hold such hearings as it deems desirable after such notice as it deems appropriate, and may extend, shorten or modify the terms of the seizure order. The court shall vacate the seizure order if the commissioner fails to commence a formal proceeding under this chapter after having had a reasonable opportunity to do so. The issuance of an order of the court pursuant to a formal proceeding under this chapter vacates the seizure order.

(3) ANTICIPATORY BREACH. Entry of a seizure order under this section does not constitute an anticipatory breach of any contract of the insurer.

History: 1979 c. 93; 1995 a. 225; 1997 a. 35.

645.23 Commissioner's seizure order. (1) ISSUANCE. If it appears to the commissioner that the interests of creditors, policyholders or the public will be endangered by the delay incident to asking for a court seizure order, then on any ground that would justify a court seizure order under s. 645.22, without notice and without applying to the court, the commissioner may issue a seizure order which must contain a verified statement of the grounds for the action. As directed by the seizure order, the commissioner's representatives shall forthwith take possession and control of all or part of the property, books, accounts, documents and other records of the insurer, and of the premises occupied by the insurer for the transaction of its business. The commissioner shall retain possession and control until the order is vacated or is replaced by an order of the court pursuant to a proceeding commenced under sub. (2) or a formal proceeding under this chapter.

(2) JUDICIAL REVIEW. At any time after seizure under sub. (1), the insurer may apply to the circuit court for Dane County or for the county in which the insurer's principal office is located. The court shall thereupon order the commissioner to appear forthwith and shall proceed thereafter as if the order were a court seizure order issued under s. 645.22.

(3) DUTY TO ASSIST COMMISSIONER. Every law enforcement officer shall assist the commissioner in making and enforcing any such seizure, and every sheriff's and police department shall furnish the commissioner with such deputies, patrolmen or officers as are necessary to assist in the seizure.

(4) ANTICIPATORY BREACH. Entry of a seizure order under this section does not constitute an anticipatory breach of any contract of the insurer.

History: 1979 c. 93, 102.

645.24 Conduct of hearings in summary proceedings. (1) CONFIDENTIALITY OF COMMISSIONER'S HEARINGS. The commissioner shall hold all hearings in summary proceedings privately unless the insurer requests a public hearing, in which case the hearing shall be public.

(2) CONFIDENTIALITY OF COURT HEARINGS. The court may hold all hearings in summary proceedings and judicial reviews thereof privately in chambers, and shall do so on request of the insurer proceeded against.

(3) RECORDS. In all summary proceedings and judicial reviews thereof, all records of the company, other documents, and all office of the commissioner of insurance files and court records and papers, so far as they pertain to or are a part of the record of the summary proceedings, shall be and remain confidential except as is necessary to obtain compliance therewith, unless the court, after hearing arguments from the parties in chambers, orders otherwise, or unless the insurer requests that the matter be made public. Until the court order is issued, all papers filed with the clerk of the court shall be held by the clerk in a confidential file.

(4) PARTIES. If at any time it appears to the court that any person whose interest is or will be substantially affected by an order did not appear at the hearing and has not been served, the court may order that notice be given and the proceedings be adjourned to give the person opportunity to appear on just terms.

(5) SANCTIONS. Any person having possession or custody of and refusing to deliver any of the property, books, accounts, documents or other records of an insurer against which a seizure order or a summary order has been issued by the commissioner or by the court, is subject to s. 601.64.

History: 1979 c. 93, 102.

SUBCHAPTER III

FORMAL PROCEEDINGS

645.31 Grounds for rehabilitation. The commissioner may apply by verified petition to the circuit court for Dane County or for the county in which the principal office of the insurer is located for an order directing rehabilitation of a domestic insurer or an alien insurer domiciled in this state on any one or more of the following grounds:

(1) Any ground on which the commissioner may apply for an order of liquidation under s. 645.41, whenever he or she believes that the insurer may be successfully rehabilitated without substantial increase in the risk of loss to creditors of the insurer or to the public.

(2) That the commissioner has reasonable cause to believe that there has been embezzlement from the insurer, wrongful sequestration or diversion of the insurer's assets, forgery or fraud affecting the insurer or other illegal conduct in, by or with respect to the insurer, that if established would endanger assets in an amount threatening the solvency of the insurer.

(3) That information coming into the commissioner's possession has disclosed substantial and not adequately explained discrepancies between the insurer's records and the most recent annual report or other official company reports.

(4) That the insurer has failed to remove any person who in fact has executive authority in the insurer, whether an officer, manager, general agent, employee or other person, if the person has been found by the commissioner after notice and hearing to be dishonest or untrustworthy in a way affecting the insurer's business.

(5) That control of the insurer, whether by stock ownership or otherwise, and whether direct or indirect, is in one or more persons who are dishonest or untrustworthy.

(6) That any person who in fact has executive authority in the insurer, whether an officer, manager, general agent, employee or other person, has refused to be examined under oath by the commissioner concerning its affairs, whether in this state or elsewhere, and after reasonable notice of the fact the insurer has failed promptly and effectively to terminate the employment and status of the person and all his or her influence on management.

(7) That after demand by the commissioner the insurer has failed to submit promptly any of its own property, books, accounts, documents or other records, or those of any subsidiary or other affiliate within the control of the insurer, or those of any person having executive authority in the insurer so far as they pertain to the insurer, to reasonable inspection or examination by the commissioner or the commissioner's authorized representative. If the insurer is unable to submit the property, books, accounts, documents or other records of a person having executive authority in the insurer, it shall be excused from doing so if it promptly and effectively terminates the relationship of the person to the insurer.

(8) That less than 30 days after reporting the proposed action to the commissioner unless it is earlier approved by the commissioner, or after the action has been disapproved by the commissioner, the insurer has transferred, or attempted to transfer, substantially its entire property or business, or has entered into any transaction the effect of which is to merge, consolidate or reinsure substantially its entire property or business in or with the property or business of any other person.

(9) That the insurer or its property has been or is the subject of an application for the appointment of a receiver, trustee, custodian, conservator or sequestrator or similar fiduciary of the insurer or its property otherwise than as authorized under this chapter, and that such appointment has been made or is imminent, and that such appointment might oust the courts of this state of jurisdiction or prejudice orderly delinquency proceedings under this chapter.

(10) That within the previous year the insurer has willfully violated its charter or articles of incorporation or its bylaws or any insurance law or regulation of any state, or of the federal government, or any valid order of the commissioner under s. 645.21, or having become aware within the previous year of an unintentional violation has failed to take all reasonable steps to remedy the situation resulting from the violation and to prevent future violations.

(11) That the directors of the insurer are deadlocked in the management of the insurer's affairs and that the members or shareholders are unable to break the deadlock and that irreparable injury to the insurer, its creditors, its policyholders or the public is threatened by reason thereof.

(12) That the insurer has failed to pay for 60 days after due date any obligation to this state or any political subdivision thereof or any judgment entered in this state, except that such nonpayment shall not be a ground until 60 days after any good faith effort by the insurer to contest the obligation has been terminated, whether it is before the commissioner or in the courts.

(13) That the insurer has failed to file its annual report or other report within the time allowed by law, and after written demand by the commissioner has failed to give an adequate explanation immediately.

(14) That two-thirds of the board of directors, or the holders of a majority of the shares entitled to vote, or a majority of members or policyholders of an insurer subject to control by its members or policyholders, consent to rehabilitation under this chapter.

(15) That the insurer is a health maintenance organization insurer that has violated s. 609.95 or 609.98.

(16) That the insurer has corporate governance deficiencies such that the commissioner determines that the continued operation of the insurer may be hazardous to the insurer's policyholders, creditors, or the general public.

History: 1971 c. 260; 1979 c. 93; 1979 c. 102 ss. 201, 236 (13), (14); 1989 a. 23; 2015 a. 197 s. 51; 2017 a. 313.

645.32 Rehabilitation orders. (1) APPOINTMENT OF REHABILITATOR. An order to rehabilitate the business of a domestic insurer, or an alien insurer domiciled in this state, shall appoint the commissioner and his or her successors in office rehabilitator and shall direct the rehabilitator to take possession of the assets of the insurer and to administer them under the orders of the court. The recording of the order with any register of deeds in the state imparts the same notice as a deed, bill of sale or other evidence of title recorded with that register of deeds.

(2) ANTICIPATORY BREACH. Entry of an order of rehabilitation does not constitute an anticipatory breach of any contracts of the insurer.

History: 1979 c. 93; 1979 c. 102 s. 236 (13); 1993 a. 301.

In the context of insurance rehabilitations, a circuit court erroneously exercises its discretion when the court exceeds its statutory authority or unreasonably substitutes a rehabilitator's beliefs for the court's own beliefs. The court upholds the determinations made by the rehabilitator unless the rehabilitator abused the rehabilitator's discretion. Nickel v. Wells Fargo Bank, 2013 WI App 129, 351 Wis. 2d 539, 841 N.W.2d 482, 10-1291.

645.33 Powers and duties of the rehabilitator. (1) SPECIAL DEPUTY COMMISSIONER. The rehabilitator 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. Subject to court approval, the rehabilitator shall make such arrangements for compensation as are necessary to obtain a special deputy commis-

sioner of proven ability. The special deputy commissioner shall serve at the pleasure of the rehabilitator.

(2) GENERAL POWER. Subject to court approval, the rehabilitator may take the action he or she deems necessary or expedient to reform and revitalize the insurer. The rehabilitator shall have all the powers of the officers and managers, whose authority shall be suspended, except as they are redelegated by the rehabilitator. The rehabilitator shall have full power to direct and manage, to hire and discharge employees subject to any contract rights they may have, and to deal with the property and business of the insurer.

(3) ADVICE FROM EXPERTS. The rehabilitator may consult with and obtain formal or informal advice and aid of insurance experts.

(4) PURSUIT OF INSURER'S CLAIMS AGAINST INSIDERS. If the rehabilitator finds that there has been criminal or tortious conduct or breach of any contractual or fiduciary obligation detrimental to the insurer by any person, the rehabilitator may pursue all appropriate legal remedies on behalf of the insurer.

(5) REORGANIZATION PLAN. The rehabilitator may prepare a plan for the reorganization, consolidation, conversion, reinsurance, merger or other transformation of the insurer. Upon application of the rehabilitator for approval of the plan, and after such notice and hearing as the court prescribes, the court may either approve or disapprove the plan proposed, or may modify it and approve it as modified. If it is approved, the rehabilitator shall carry out the plan. In the case of a life insurer, the plan proposed may include the imposition of liens upon the equities of policyholders of the company, if all rights of shareholders are first relinquished. A plan for a life insurer may also propose imposition of a moratorium upon loan and cash surrender rights under policies, for such period and to such an extent as are necessary.

(6) FRAUDULENT TRANSFERS. The rehabilitator shall have the power to avoid fraudulent transfers under ss. 645.52 and 645.53.

History: 1979 c. 93, 102; 2009 a. 342.

In the context of insurance rehabilitations, a circuit court erroneously exercises its discretion when the court exceeds its statutory authority or unreasonably substitutes a rehabilitator's beliefs for the court's own beliefs. The court upholds the determinations made by the rehabilitator unless the rehabilitator abused the rehabilitator's discretion. Nickel v. Wells Fargo Bank, 2013 WI App 129, 351 Wis. 2d 539, 841 N.W.2d 482, 10-1291.

The legislature intended for rehabilitation proceedings to be informal and without cumbersome procedures. There is no statutory requirement in this chapter providing that a court must specify the facts upon which it relied in approving a rehabilitation plan. Upon submission of a plan for approval, a court "may either approve or disapprove the plan proposed, or may modify it and approve it as modified." Nothing more is required. Nickel v. Wells Fargo Bank, 2013 WI App 129, 351 Wis. 2d 539, 841 N.W.2d 482, 10-1291.

Wisconsin's rehabilitation statutory scheme does not require that policyholders fare as well in rehabilitation as they would in liquidation. The statutory scheme provides the Commissioner of Insurance with minimal guidance as to how to structure a rehabilitation plan and certainly no requirement that each plan must provide policyholders the liquidation value of their claims or the right to opt out and receive the liquidation value of their claims. Nickel v. Wells Fargo Bank, 2013 WI App 129, 351 Wis. 2d 539, 841 N.W.2d 482, 10-1291.

The rules of civil procedure, including the rules pertaining to discovery, do not apply to rehabilitation proceedings. This chapter prescribes its own rules of procedure in insurer delinquency proceedings. The legislature did not intend to bind the court to the rules of civil procedure when applying these rules would transform an informal management task into a formal and cumbersome legal task. Nickel v. Wells Fargo Bank, 2013 WI App 129, 351 Wis. 2d 539, 841 N.W.2d 482, 10-1291.

Sub. (5) provides in broad and liberal terms that after a rehabilitation plan is filed with the circuit court for approval, the court may approve or disapprove the proposed plan, or modify it and approve it as modified after providing "notice and hearing as the court prescribes." This language permits the court to establish procedures that are tailored to the procedural necessities presented by the circumstances of each rehabilitation proceeding. That means that the rehabilitation court has the discretion to grant or deny a motion to intervene. Nickel v. Wells Fargo Bank, 2013 WI App 129, 351 Wis. 2d 539, 841 N.W.2d 482, 10-1291.

645.34 Actions by and against rehabilitator. (1) STAYS IN PENDING LITIGATION. On request of the rehabilitator, any court in this state before which any action or proceeding by or against an insurer is pending when a rehabilitation order against the insurer is entered shall stay the action or proceeding for such time as is necessary for the rehabilitator to obtain proper representation and prepare for further proceedings. The court that entered the rehabilitation order shall order the rehabilitator to take such action respecting the pending litigation as the court deems necessary in the interests of justice and for the protection of creditors, policyholders and the public. The rehabilitator shall immediately consider all litigation pending outside this state and shall petition the courts having jurisdiction over that litigation for stays whenever necessary to protect the estate of the insurer.

(2) STATUTES OF LIMITATIONS ON CLAIMS BY INSURER. The time between the filing of a petition for rehabilitation against an insurer and denial of the petition or an order of rehabilitation shall not be considered to be a part of the time within which any action may be commenced by the insurer. Any action by the insurer that might have been commenced when the petition was filed may be commenced for at least 60 days after the order of rehabilitation is entered.

(3) STATUTES OF LIMITATIONS ON CLAIMS AGAINST INSURER. The time between the filing of a petition for rehabilitation against an insurer and the denial of the petition or an order of rehabilitation shall not be considered to be a part of the time within which any action may be commenced against the insurer. Any action against the insurer that might have been commenced when the petition was filed may be commenced for at least 60 days after the order of rehabilitation is entered or the petition is denied.

645.35 Termination of rehabilitation. (1) TRANSFORMATION TO LIQUIDATION. Whenever the rehabilitator believes that further attempts to rehabilitate an insurer would substantially increase the risk of loss to creditors, policyholders, or the public, or would be futile, the rehabilitator may petition the court for an order of liquidation. A petition under this subsection shall have the same effect as a petition under s. 645.41. The court shall permit the directors to defend against the petition and shall order payment from the estate of the insurer of such costs and other expenses of defense as justice requires.

(2) ORDER TO RETURN TO COMPANY. The rehabilitator may at any time petition the court for an order terminating rehabilitation of an insurer. If the court finds that rehabilitation has been accomplished and that grounds for rehabilitation under s. 645.31 no longer exist, it shall order that the insurer be restored to possession of its property and the control of its business. The court may also make that finding and issue that order at any time upon its own motion.

History: 1979 c. 102 s. 236 (10).

645.41 Grounds for liquidation. The commissioner may apply by verified petition to the circuit court for Dane County or for the county in which the principal office of the insurer is located for an order directing him or her to liquidate a domestic insurer or an alien insurer domiciled in this state on any one or more of the following grounds:

(1) Any ground on which the commissioner may apply for an order of rehabilitation under s. 645.31, whenever the commissioner believes that attempts to rehabilitate the insurer would substantially increase the risk of loss to its creditors, its policyholders or the public, or would be futile, or that rehabilitation would serve no useful purpose;

(2) That the insurer is or is about to become insolvent;

(3) That the insurer is engaging in a systematic practice of reaching settlements with and obtaining releases from policyholders or 3rd-party claimants and then unreasonably delaying payment of or failing to pay the agreed upon settlements;

(4) That the insurer is in such condition that the further trans-

action of business would be hazardous, financially or otherwise, to its policyholders, its creditors or the public;

(5) That the insurer has not transacted the business of insurance during the previous 12 months or has transacted only a token insurance business during that period, although authorized to do so throughout that period, or that more than 12 months after incorporation it has failed to become authorized to do an insurance business;

(6) That within any part of the previous 12 months the insurer has systematically attempted to compromise with its creditors on the ground that it is financially unable to pay its claims in full;

(7) That the insurer has commenced, or within the previous year has attempted to commence, voluntary liquidation otherwise than under chs. 600 to 646;

(8) That the insurer has concealed records or assets from the commissioner or improperly removed them from the jurisdiction;

(9) That the insurer does not satisfy the requirements that would be applicable if it were seeking initial authorization to do an insurance business in this state, except for:

(a) Requirements that are intended to apply only at the time the initial authorization to do business is obtained, and not thereafter; and

(b) Requirements that are expressly made inapplicable by the laws establishing the requirements;

(10) That the holders of two-thirds of the shares entitled to vote, or two-thirds of the members or policyholders entitled to vote in an insurer controlled by its members or policyholders, have consented to a petition.

History: 1975 c. 373; 1977 c. 339 s. 43; 1979 c. 89, 93; 1979 c. 102 s. 236 (6), (20); 1983 a. 215; 2005 a. 253.

645.42 Liquidation orders. (1) ORDER TO LIQUIDATE. An order to liquidate the business of a domestic insurer shall appoint the commissioner and his or her successors in office liquidator and shall direct the liquidator to take possession of the assets of the insurer and to administer them under the orders of the court. The liquidator is vested by operation of law with the title to all of the property, contracts, rights of action and books and records, wherever located, of the insurer ordered liquidated, and with all of the stock issued by the insurer and any cause of action that has or subsequently accrues to the holder of the stock, as of the date of the filing of the petition for liquidation. The liquidator may recover and reduce the same to possession except that ancillary receivers in reciprocal states shall have, as to assets located in their respective states, the rights and powers which are prescribed in s. 645.84 (3) for ancillary receivers appointed in this state as to assets located in this state. The recording of the order with any register of deeds in this state imparts the same notice as a deed, bill of sale or other evidence of title recorded with that register of deeds.

(2) FIXING OF RIGHTS. Upon issuance of the order, the rights and liabilities of any such insurer and of its creditors, policyholders, shareholders, members and all other persons interested in its estate are fixed as of the date of filing of the petition for liquidation, except as provided in ss. 645.43 and 645.63.

(3) ALIEN INSURER. An order to liquidate the business of an alien insurer domiciled in this state shall be in the same terms and have the same legal effect as an order to liquidate a domestic insurer, except that the assets and the business in the United States shall be the only assets and business included under the order.

(4) DECLARATION OF INSOLVENCY. At the time of petitioning for an order of liquidation, or at any time thereafter, the commissioner may petition the court to declare the insurer insolvent, and after such notice and hearing as it deems proper, the court may make the declaration.

History: 1979 c. 102; 1989 a. 23; 1993 a. 301.

645.43 Continuance of coverage. (1) All insurance policies issued by the insurer shall continue in force:

(a) For a period of 15 days from the date of entry of the liquidation order;

(b) Until the normal expiration of the policy coverage;

(c) Until the insured has replaced the insurance coverage with equivalent insurance in another insurer; or

(d) Until the liquidator has effected a transfer of the policy obligation pursuant to s. 645.46 (8); whichever time is less.

(2) If the coverage continued under this section is replaced by insurance that is not equivalent, the coverage continued under this section shall be excess coverage over the replacement policy to the extent of the deficiency. Claims arising during the continuation of coverage shall be treated as if they arose immediately before the petition for liquidation. Coverage under this subsection shall not satisfy any legal obligation of the insured to carry insurance protection, whether the obligation is created by law or by contract.

645.44 Dissolution of insurer. The commissioner may petition for an order dissolving the corporate existence of a domestic insurer or the U.S. branch of an alien insurer domiciled in this state at the time of the application for a liquidation order. If the court issues a liquidation order, it also shall order dissolution if the commissioner has petitioned for it. The court shall order dissolution of the corporation upon petition by the commissioner at any time after a liquidation order has been granted. If the dissolution has not previously occurred, it shall be effected by operation of law upon the discharge of the liquidator.

History: 1979 c. 102.

645.45 Federal receivership. (1) PETITION FOR FEDERAL RECEIVER. Whenever in the commissioner's opinion, liquidation of a domestic insurer or an alien insurer domiciled in this state would be facilitated by a federal receivership, and when any ground exists upon which the commissioner might petition the court for an order of rehabilitation or liquidation under s. 645.31 or 645.41, or if an order of rehabilitation or liquidation has already been entered, the commissioner may request another commissioner or other willing resident of another state to petition any appropriate federal district court for the appointment of a federal receiver. The commissioner may intervene in any such action to support or oppose the petition, and may accept appointment as the receiver if he or she is so designated. So much of this chapter shall apply to the receivership as can be made applicable and is appropriate. Upon motion of the commissioner, the courts of this state shall relinquish all jurisdiction over the insurer for purposes of rehabilitation or liquidation.

(2) COMPLIANCE WITH FEDERAL REQUIREMENTS. If the commissioner is appointed receiver under this section, the commissioner shall comply with any requirements necessary to give him or her title to and control over the assets and affairs of the insurer.

History: 1979 c. 102 ss. 205, 236 (5).

645.46 Powers of liquidator. The liquidator shall report to the court monthly, or at other intervals specified by the court, on the progress of the liquidation in whatever detail the court orders. Subject to the court's control, the liquidator may:

(1) Appoint a special deputy to act for the liquidator under this chapter, and determine the special deputy's compensation. The special deputy shall have all powers of the liquidator granted by this section. The special deputy shall serve at the pleasure of the liquidator.

(2) Appoint or engage employees and agents, legal counsel, actuaries, accountants, appraisers, consultants and other personnel deemed necessary to assist in the liquidation. Chapter 230 does not apply to such persons.

(3) Fix the compensation of persons under sub. (2), subject to the control of the court.

(4) Defray all expenses of taking possession of, conserving, conducting, liquidating, disposing of, or otherwise dealing with the business and property of the insurer. If the property of the insurer does not contain sufficient cash or liquid assets to defray the costs incurred, the liquidator may advance the costs so incurred out of the appropriation under s. 20.145 (1) (g) 1. Any amounts so paid shall be deemed expense of administration and shall be repaid for the credit of the office of the commissioner of insurance out of the first available moneys of the insurer.

(5) Hold hearings, subpoena witnesses and compel their attendance, administer oaths, examine any person under oath and compel any person to subscribe to his or her testimony after it has been correctly reduced to writing, and in connection therewith require the production of any books, papers, records or other documents which the liquidator deems relevant to the inquiry.

(6) Collect all debts and moneys due and claims belonging to the insurer, wherever located, and for this purpose institute timely action in other jurisdictions, in order to forestall garnishment and attachment proceedings against such debts; perform any other acts necessary or expedient to collect, conserve or protect its assets or property, including sell, compound, compromise or assign for purposes of collection, upon such terms and conditions as he or she deems best, any bad or doubtful debts; and pursue any creditor's remedies available to enforce his or her claims.

(7) Conduct public and private sales of the property of the insurer in a manner prescribed by the court.

(8) Cooperate with the fund created under ch. 646 in using assets of the estate to transfer policy obligations to a solid assuming insurer, if the transfer can be arranged without prejudice to applicable priorities under s. 645.68.

(9) Acquire, hypothecate, encumber, lease, improve, sell, transfer, abandon or otherwise dispose of or deal with any property of the insurer at its market value or upon fair and reasonable terms and conditions, except that no transaction involving property the market value of which exceeds $10,000 shall be concluded without express permission of the court. The liquidator also may execute, acknowledge and deliver any deeds, assignments, releases and other instruments necessary or proper to effectuate any sale of property or other transaction in connection with the liquidation. In cases where real property sold by the liquidator is located other than in the county where the liquidation is pending, the liquidator shall cause to be recorded with the register of deeds for the county in which the property is located the order of appointment.

(10) Borrow money on the security of the insurer's assets or without security and execute and deliver all documents necessary to that transaction for the purpose of facilitating the liquidation.

(11) (a) Subject to par. (b), enter into such contracts as are necessary to carry out the order to liquidate, and affirm or disavow any contracts to which the insurer is a party.

(b) Notwithstanding any other provision of this chapter, no liquidator has the power to disavow any federal home loan bank security agreement, or any pledge, security, collateral, or guarantee agreement, or any other similar arrangement or credit enhancement relating to a federal home loan bank security agreement.

(12) Continue to prosecute and institute in the name of the insurer or in his or her own name any suits and other legal proceedings, in this state or elsewhere, and abandon the prosecution of claims he or she deems unprofitable to pursue further. If the insurer is dissolved under s. 645.44, the liquidator may apply to any court in this state or elsewhere for leave to substitute himself or herself for the insurer as plaintiff.

(13) Prosecute any action which may exist in behalf of the creditors, members, policyholders or shareholders of the insurer against any officer of the insurer, or any other person.

(14) Remove any records and property of the insurer to the offices of the commissioner or to such other place as is convenient for the purposes of efficient and orderly execution of the liquidation.

(15) Deposit in one or more banks in this state such sums as are required for meeting current administration expenses and dividend distributions.

(16) Deposit with the investment board for investment under s. 25.14 all sums not currently needed, unless the court orders otherwise.

(17) File or record any necessary documents for record in the office of any register of deeds or record office in this state or elsewhere where property of the insurer is located.

(18) Assert all defenses available to the insurer as against 3rd persons, including statutes of limitations, statutes of frauds and the defense of usury. A waiver of any defense by the insurer after a petition for liquidation has been filed does not bind the liquidator.

(19) Exercise and enforce all the rights, remedies and powers of any creditor, shareholder, policyholder or member, including any power to avoid any transfer or lien that may be given by law and that is not included within ss. 645.52 to 645.54.

(20) Intervene in any proceeding wherever instituted that might lead to the appointment of a receiver or trustee, and act as the receiver or trustee whenever the appointment is offered.

(21) Enter into agreements with any receiver or commissioner of any other state relating to the rehabilitation, liquidation, conservation or dissolution of an insurer doing business in both states.

(22) Exercise all powers now held or hereafter conferred upon receivers by the laws of this state not inconsistent with this chapter.

(23) The enumeration in this section of the powers and authority of the liquidator is not a limitation upon the liquidator, and does not exclude the right to do other acts not herein specifically enumerated or otherwise provided for which are necessary or expedient for the accomplishment of or in aid of the purpose of liquidation.

History: 1971 c. 164 s. 90; 1977 c. 196 s. 131; 1977 c. 273. 1979 c. 93; 1979 c. 102 ss. 206, 236 (11); 1979 c. 109; 1993 a. 301; 2007 a. 20; 2017 a. 340.

645.47 Notice to creditors and others. (1) NOTICE REQUIRED. (a) *General requirements.* The liquidator shall give notice of the liquidation order as soon as possible by first class mail and either by telegram or telephone to the insurance commissioner of each jurisdiction in which the insurer is licensed to do business, by first class mail and by telephone to the department of workforce development of this state if the insurer is or has been an insurer of worker's compensation, by first class mail to all insurance agents having a duty under s. 645.48, by first class mail to the director of state courts under s. 601.53 (1) if the insurer does a surety business and by first class mail at the last-known address to all persons known or reasonably expected from the insurer's records to have claims against the insurer, including all policyholders. The liquidator also shall publish a class 3 notice, under ch. 985, in a newspaper of general circulation in the county in which the liquidation is pending or in Dane County, the last pub-

lication to be not less than 3 months before the earliest deadline specified in the notice under sub. (2).

(b) *Special requirements.* Notice to agents shall inform them of their duties under s. 645.48 and inform them of what information they must communicate to insureds. Notice to policyholders shall include notice of impairment and termination of coverage under s. 645.43. When it is applicable, notice to policyholders shall include all of the following:

1. Notice of withdrawal of the insurer from the defense of any case in which the insured is interested.

2. Notice of the right to file a claim under s. 645.64 (2).

3. Information about the existence of a security fund under ch. 646.

(c) *Reports and further notice.* Within 15 days of the date of entry of the order, the liquidator shall report to the court what notice has been given. The court may order such additional notice as it deems appropriate.

(2) NOTICE RESPECTING CLAIMS FILING. Notice to potential claimants under sub. (1) shall require claimants to file with the 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.

(3) NOTICE CONCLUSIVE. If notice is given in accordance with this section, the distribution of the assets of the insurer under this chapter shall be conclusive with respect to all claimants, whether or not they received notice.

History: 1971 c. 164 s. 85; 1975 c. 147 s. 54; 1975 c. 199; 1975 c. 375 s. 44; 1979 c. 93, 109; 1987 a. 325; 1991 a. 144; 1995 a. 27 s. 9130 (4); 1995 a. 225; 1997 a. 3.

645.48 Duties of agents. (1) WRITTEN NOTICE. Every person who receives notice in the form prescribed in s. 645.47 that an insurer which the person represents as an independent agent is the subject of a liquidation order shall as soon as practicable give notice of the liquidation order. The notice shall be sent by first class mail to the last address contained in the agent's records to each policyholder or other person named in any policy issued through the agent by the company, if the agent has a record of the address of the policyholder or other person. A policy shall be deemed issued through an agent if the agent has a property interest in the expiration of the policy; or if the agent has had in his or her possession a copy of the declarations of the policy at any time during the life of the policy, except where the ownership of the expiration of the policy has been transferred to another. The written notice shall include the name and address of the insurer, the name and address of the agent, identification of the policy impaired and the nature of the impairment under s. 645.43. Notice by a general agent satisfies the notice requirement for any agents under contract to the general agent.

(2) ORAL NOTICE. So far as practicable, every insurance agent subject to sub. (1) shall give immediate oral notice, by telephone or otherwise, of the liquidation order to the same persons to whom the agent is obligated to give written notice. The oral notice shall include substantially the same information as the written notice.

History: 1975 c. 371, 421; 1979 c. 102.

645.49 Actions by and against liquidator. (1) TERMINATION OF ACTIONS AGAINST INSURER BY ORDER APPOINTING LIQUIDATOR. Upon issuance of any order appointing the commissioner liquidator of a domestic insurer or of an alien insurer domiciled in this state, all actions and all proceedings against the insurer whether in this state or elsewhere shall be abated and the liquidator shall not intervene in them, except as provided in this subsection. Whenever in the liquidator's judgment an action in this state has proceeded to a point where fairness or convenience would be served by its continuation to judgment, the liquidator may apply to the court for leave to defend or to be substituted for the insurer, and if the court grants the application, the action shall not be abated. Whenever in the liquidator's judgment, protection of the estate of the insurer necessitates intervention in an action against the insurer that is pending outside this state, with approval of the court the liquidator may intervene in the action. The liquidator may defend at the expense of the estate of the insurer any action in which he or she intervenes under this section at the expense of the estate of the insurer.

(2) STATUTES OF LIMITATIONS ON CLAIMS BY INSURER. The liquidator may, within 2 years subsequent to the entry of an order for liquidation or within such further time as applicable law permits, institute an action or proceeding on behalf of the estate of the insurer upon any cause of action against which the period of limitation fixed by applicable law has not expired at the time of the filing of the petition upon which such order is entered. Where, by any agreement, a period of limitation is fixed for instituting a suit or proceeding upon any claim or for filing any claim, proof of claim, proof of loss, demand, notice or the like, or where in any proceeding, judicial or otherwise, a period of limitation is fixed, either in the proceeding or by applicable law, for taking any action, filing any claim or pleading or doing any act, and where in any such case the period had not expired at the date of the filing of the petition, the liquidator may, for the benefit of the estate, take any such action or do any such act, required of or permitted to the insurer, within a period of 60 days subsequent to the entry of an order for liquidation, or within such further period as is permitted by the agreement, or in the proceeding or by applicable law, or within such further period as is shown to the satisfaction of the court not to be unfairly prejudicial to the other party.

(3) STATUTES OF LIMITATIONS ON CLAIMS AGAINST INSURER. The time between the filing of a petition for liquidation against an insurer and the denial of the petition shall not be considered to be a part of the time within which any action may be commenced against the insurer. Any action against the insurer that might have been commenced when the petition was filed may be commenced for at least 60 days after the petition is denied.

History: 1979 c. 102.

645.51 Collection and list of assets. (1) LIST OF ASSETS REQUIRED. As soon as practicable after the liquidation order, the liquidator shall prepare in duplicate a list of the insurer's assets. The list shall be amended or supplemented as the court requires. One copy shall be filed in the office of the clerk of the court having jurisdiction over the liquidation proceedings and one copy shall be retained for the liquidator's files. All amendments and supplements shall be similarly filed.

(2) LIQUIDATION OF ASSETS. The liquidator shall reduce the assets to a degree of liquidity that is consistent with the effective execution of the liquidation as rapidly and economically as he or she can.

History: 1979 c. 102 s. 236 (5).

645.52 Fraudulent transfers prior to petition. (1) DEFINITION AND EFFECT. Every transfer made or suffered and every obligation incurred by an insurer within one year prior to the filing of a successful petition for rehabilitation or liquidation under this chapter is fraudulent as to then existing and future creditors if made or incurred without fair consideration, or with actual intent to hinder, delay or defraud either existing or future creditors. A transfer made or an obligation incurred by an insurer ordered to be rehabilitated or liquidated under this chapter, which is fraudu-

lent under this section, may be avoided by the receiver, except as to a person who in good faith is a purchaser, lienor or obligee for a present fair equivalent value; and except that any purchaser, lienor or obligee, who in good faith has given a consideration less than fair for such transfer, lien or obligation, may retain the property, lien or obligation as security for repayment. The court may, on due notice, order any such transfer or obligation to be preserved for the benefit of the estate, and in that event the receiver shall succeed to and may enforce the rights of the purchaser, lienor or obligee.

(2) PERFECTION OF TRANSFERS. (a) *Personal property.* A transfer of property other than real property shall be deemed to be made or suffered when it becomes so far perfected that no subsequent lien obtainable by legal or equitable proceedings on a simple contract could become superior to the rights of the transferee under s. 645.54 (3).

(b) *Real property.* A transfer of real property shall be deemed to be made or suffered when it becomes so far perfected that no subsequent bona fide purchaser from the insurer could obtain rights superior to the rights of the transferee.

(c) *Equitable liens.* A transfer which creates an equitable lien shall not be deemed to be perfected if there are available means by which a legal lien could be created.

(d) *Transfer not perfected prior to petition.* Any transfer not perfected prior to the filing of a petition for liquidation shall be deemed to be made immediately before the filing of the successful petition.

(e) *Actual creditors unnecessary.* This subsection applies whether or not there are or were creditors who might have obtained any liens or persons who might have become bona fide purchasers.

(3) FRAUDULENT REINSURANCE TRANSACTIONS. Any transaction of the insurer with a reinsurer shall be deemed fraudulent and may be avoided by the receiver under sub. (1) if:

(a) The transaction consists of the termination, adjustment or settlement of a reinsurance contract in which the reinsurer is released from any part of its duty to pay the originally specified share of losses that had occurred prior to the time of the transaction, unless the reinsurer gives a present fair equivalent value for the release; and

(b) Any part of the transaction took place within one year prior to the date of filing of the petition through which the receivership was commenced.

645.53 Fraudulent transfers after petition. (1) EFFECT OF PETITION: REAL PROPERTY. After a petition for rehabilitation or liquidation, a transfer of any of the real property of the insurer made to a person acting in good faith shall be valid against the receiver if made for a present fair equivalent value or, if not made for a present fair equivalent value, then to the extent of the present consideration actually paid therefor, for which amount the transferee shall have a lien on the property so transferred. The recording of a copy of the petition for or order of rehabilitation or liquidation with the register of deeds in the county where any real property in question is located is constructive notice of the commencement of a proceeding in rehabilitation or liquidation. The exercise by a court of the United States or any state of jurisdiction to authorize or effect a judicial sale of real property of the insurer within any county in any state shall not be impaired by the pendency of such a proceeding unless the copy is recorded in the county prior to the consummation of the judicial sale.

(2) EFFECT OF PETITION: PERSONAL PROPERTY. After a petition for rehabilitation or liquidation and before either the receiver takes possession of the property of the insurer or an order of rehabilitation or liquidation is granted:

(a) A transfer of any of the property of the insurer, other than real property, made to a person acting in good faith shall be valid against the receiver if made for a present fair equivalent value or, if not made for a present fair equivalent value, then to the extent of the present consideration actually paid therefor, for which amount the transferee shall have a lien on the property so transferred.

(b) A person indebted to the insurer or holding property of the insurer may, if acting in good faith, pay the indebtedness or deliver the property or any part thereof to the insurer or upon his or her order, with the same effect as if the petition were not pending.

(c) A person having actual knowledge of the pending rehabilitation or liquidation shall be deemed not to act in good faith unless he or she has reasonable cause to believe that the petition is not well founded.

(d) A person asserting the validity of a transfer under this section shall have the burden of proof. Except as elsewhere provided in this section, no transfer by or in behalf of the insurer after the date of the petition for liquidation by any person other than the liquidator shall be valid against the liquidator.

(3) NEGOTIABILITY. Nothing in this chapter shall impair the negotiability of currency or negotiable instruments.

History: 1979 c. 102 s. 236 (5), (13).

645.54 Voidable preferences and liens. (1) PREFERENCES. (a) *Preference defined.* A preference is a transfer of any of the property of an insurer to or for the benefit of a creditor, for or on account of an antecedent debt, made or suffered by the insurer within one year before the filing of a successful petition for liquidation under this chapter the effect of which transfer may be to enable the creditor to obtain a greater percentage of his or her debt than another creditor of the same class would receive. If a liquidation order is entered while the insurer is already subject to a rehabilitation order, transfers otherwise qualifying shall be deemed preferences if made or suffered within one year before the filing of the successful petition for rehabilitation or within 2 years before the filing of the successful petition for liquidation, whichever time is shorter.

(b) *Invalidation of preferences.* 1. Any preference may be avoided by the liquidator, if any of the following conditions is met:

a. The insurer was insolvent at the time of the transfer.

b. The transfer was made within 4 months before the filing of the petition.

c. The creditor receiving the preference or to be benefited thereby or his or her agent acting with reference thereto had reasonable cause to believe at the time when the transfer was made that the insurer was insolvent or was about to become insolvent.

d. The creditor receiving the preference was an officer, employee, attorney or other person who was in fact in a position of comparable influence in the insurer to an officer whether or not he or she held such position, or any shareholder holding directly or indirectly more than 5 percent of any class of any equity security issued by the insurer, or any other person with whom the insurer did not deal at arm's length.

2. If a preference is voidable, the liquidator may recover the property or, if the property has been converted, the liquidator may recover its value from any person who has received or converted the property, except a bona fide purchaser from or lienor of the debtor's transferee for a present fair equivalent value. If the bona fide purchaser or lienor has given less than fair equivalent value, he or she shall have a lien upon the property to the extent of the consideration actually given by him or her. If a preference by way of lien or security title is voidable, the court may on due

notice order the lien or title to be preserved for the benefit of the estate, in which event the lien or title shall pass to the liquidator.

3. Notwithstanding any other provision of this chapter, no liquidator may avoid any transfer of, or any obligation to transfer, money or any other property arising under or in connection with any federal home loan bank security agreement, or any pledge, security, collateral, or guarantee agreement, or any other similar arrangement or credit enhancement relating to a federal home loan bank security agreement. However, a transfer may be avoided under this paragraph if it was made with actual intent to hinder, delay, or defraud either existing or future creditors.

(c) *Indemnifications.* Any payment to which s. 611.62 (2) applies is a preference and is voidable under par. (b) if made within the time period specified in par. (a). Payments made by insurers under s. 611.62 (3) are not preferences.

(2) PERFECTION OF TRANSFERS. (a) *Personal property.* A transfer of property other than real property is deemed to be made or suffered when it becomes so far perfected that no subsequent lien obtainable by legal or equitable proceedings on a simple contract could become superior to the rights of the transferee.

(b) *Real property.* A transfer of real property is deemed to be made or suffered when it becomes so far perfected that no subsequent bona fide purchaser from the insurer could obtain rights superior to the rights of the transferee.

(c) *Equitable liens.* A transfer which creates an equitable lien is not deemed to be perfected if there are available means by which a legal lien could be created.

(d) *Transfers not perfected prior to petition.* A transfer not perfected prior to the filing of a petition for liquidation shall be deemed to be made immediately before the filing of the successful petition.

(e) *Actual creditors unnecessary.* This subsection applies whether or not there are or were creditors who might have obtained liens or persons who might have become bona fide purchasers.

(3) LIENS BY LEGAL OR EQUITABLE PROCEEDINGS. (a) *Definition.* A lien obtainable by legal or equitable proceedings upon a simple contract is one arising in the ordinary course of a legal or equitable proceeding upon the filing of a decree or entry of a judgment or decree in the judgment and lien docket, or upon attachment, garnishment, execution or like process, whether before, upon or after judgment or decree and whether before or upon levy. It does not include liens which under applicable law are given a special priority over other liens which are prior in time.

(b) *When liens are superior.* A lien obtainable by legal or equitable proceedings could become superior to the rights of a transferee, or a purchaser could obtain rights superior to the rights of a transferee within the meaning of sub. (2), if such consequences would follow only from the lien or purchase itself, or from the lien or purchase followed by any step wholly within the control of the respective lienholder or purchaser, with or without the aid of ministerial action by public officials. Such a lien could not, however, become superior and such a purchase could not create superior rights for the purpose of sub. (2) through any acts subsequent to the obtaining of such a lien or subsequent to such a purchase which require the agreement or concurrence of any 3rd party or which require any further judicial action, or ruling.

(4) TWENTY-ONE DAY RULE. A transfer of property for or on account of a new and contemporaneous consideration which is deemed under sub. (2) to be made or suffered after the transfer because of delay in perfecting it does not thereby become a transfer for or on account of an antecedent debt if any acts required by the applicable law to be performed in order to perfect the transfer as against liens or bona fide purchasers' rights are performed within 21 days or any period expressly allowed by the law, whichever is less. A transfer to secure a future loan, if such a loan is actually made, or a transfer which becomes security for a future loan shall have the same effect as a transfer for or on account of a new and contemporaneous consideration.

(5) INDEMNIFYING TRANSFERS ALSO VOIDABLE. If any lien deemed voidable under sub. (1) (b) has been dissolved by the furnishing of a bond or other obligation, the surety on which has been indemnified directly or indirectly by the transfer of or the creation of a lien upon any property of an insurer before the filing of a petition under this chapter which results in a liquidation order, the indemnifying transfer or lien shall also be deemed voidable.

(6) AVOIDANCE OF LIEN. The property affected by any lien deemed voidable under subs. (1) (b) and (5) is discharged from the lien, and that property and any of the indemnifying property transferred to or for the benefit of a surety shall pass to the liquidator, except that the court may on due notice order the lien to be preserved for the benefit of the estate and the court may direct that a conveyance be executed which is adequate to evidence the title of the liquidator.

(7) HEARINGS TO DETERMINE RIGHTS. The court shall have summary jurisdiction of any proceeding by the liquidator to hear and determine the rights of any parties under this section. Reasonable notice of any hearing in the proceeding shall be given to all parties in interest, including the obligee of a releasing bond or other like obligation. Where an order is entered for the recovery of indemnifying property in kind or for the avoidance of an indemnifying lien, the court, upon application of any party in interest, shall in the same proceeding ascertain the value of the property or lien, and if the value is less than the amount for which the property is indemnity or than the amount of the lien, the transferee or lienholder may elect to retain the property or lien upon payment of its value, as ascertained by the court, to the liquidator within such reasonable times as the court fixes.

(8) SURETY'S LIABILITY DISCHARGED. The liability of a surety under a releasing bond or other like obligation shall be discharged to the extent of the value of the indemnifying property recovered or the indemnifying lien nullified and avoided or, where the property is retained under sub. (7) to the extent of the amount paid to the liquidator.

(9) SETOFF OF NEW ADVANCES. If a creditor has been preferred and afterward in good faith gives the insurer further credit without security of any kind, for property which becomes a part of the insurer's estate, the amount of the new credit remaining unpaid at the time of the petition may be set off against the preference which would otherwise be recoverable from him or her.

(10) REEXAMINATION OF ATTORNEY FEES. If an insurer, directly or indirectly, within 4 months before the filing of a successful petition for liquidation under this chapter or at any time in contemplation of a proceeding to liquidate it, pays money or transfers property to an attorney at law for services rendered or to be rendered, the transaction may be examined by the court on its own motion or shall be examined by the court on petition of the liquidator and shall be held valid only to the extent of a reasonable amount to be determined by the court, and the excess may be recovered by the liquidator for the benefit of the estate.

(11) PERSONAL LIABILITY. (a) Every officer, manager, employee, shareholder, member, subscriber, attorney or any other person acting on behalf of the insurer who knowingly participates in giving any preference when he or she has reasonable cause to believe the insurer to be or about to become insolvent at the time of the preference shall be personally liable to the liquidator for the amount of the preference. It is permissible to infer that there is reasonable cause to so believe if the transfer was made within 4

months before the date of filing of the successful petition for liquidation.

(b) Every person receiving any property from the insurer or the benefit thereof as a preference voidable under sub. (1) (b) is personally liable therefor and is bound to account to the liquidator.

(c) Nothing in this subsection prejudices any other claim by the liquidator against any person.

History: 1971 c. 260; 1979 c. 93; 1979 c. 102 ss. 209, 236 (5), (13), (20); 1993 a. 490; 1995 a. 224, 225; 2005 a. 253; 2017 a. 340.

645.55 Claims of holders of void or voidable rights. **(1)** DISALLOWANCE FOR FAILURE TO SURRENDER PROPERTY. No claims of a creditor who has received or acquired a preference, lien, conveyance, transfer, assignment or encumbrance, voidable under this chapter, may be allowed unless the creditor surrenders the preference, lien, conveyance, transfer, assignment or encumbrance. If the avoidance is effected by a proceeding in which a final judgment has been entered, the claim shall not be allowed unless the money is paid or the property is delivered to the liquidator within 30 days from the date of the entering of the final judgment, except that the court having jurisdiction over the liquidation may allow further time if there is an appeal or other continuation of the proceeding.

(2) TIME FOR FILING. A claim allowable under sub. (1) by reason of the avoidance, whether voluntary or involuntary, of a preference, lien, conveyance, transfer, assignment or encumbrance may be filed as an excused late filing under s. 645.61 if filed within 30 days from the date of the avoidance or within the further time allowed by the court under sub. (1).

History: 1979 c. 93, 102.

645.56 Setoffs and counterclaims. **(1)** SETOFFS ALLOWED IN GENERAL. Mutual debts or mutual credits between the insurer and another person in connection with any action or proceeding under this chapter shall be set off and the balance only shall be allowed or paid, except as provided in sub. (2).

(2) EXCEPTIONS. No setoff or counterclaim may be allowed in favor of any person where:

(a) The obligation of the insurer to the person would not at the date of the filing of a petition for liquidation entitle the person to share as a claimant in the assets of the insurer;

(b) The obligation of the insurer to the person was purchased by or transferred to the person with a view to its being used as a setoff;

(c) The obligation of the person is to pay an assessment levied against the members or subscribers of the insurer, or is to pay a balance upon a subscription to the capital stock of the insurer, or is in any other way in the nature of a capital contribution; or

(d) The obligation of the person is to pay premiums, whether earned or unearned, to the insurer.

History: 1979 c. 93, 102.

645.57 Assessments. **(1)** REPORT TO COURT. As soon as practicable but not more than 2 years from the date of an order of liquidation under s. 645.42 of an insurer issuing assessable policies, including an insurer organized under ch. 612, the liquidator shall make a report to the court setting forth:

(a) The reasonable value of the assets of the insurer;

(b) The insurer's probable total liabilities; and

(c) The probable aggregate amount of the assessment necessary to pay all claims of creditors and expenses in full, including expenses of administration and costs of collecting the assessment.

(2) LEVY OF ASSESSMENT. (a) Upon the basis of the report provided in sub. (1), including any supplements and amendments thereto, the court may levy ex parte one or more assessments against all members of the insurer who are subject to assessment.

(b) Subject to any applicable legal limits on assessability, the aggregate assessment shall be for the amount that the sum of the probable liabilities, the expenses of administration and the estimated cost of collection of the assessment exceeds the value of existing assets, with due regard being given to assessments that cannot be collected economically.

(3) ORDER TO SHOW CAUSE. After levy of assessment under sub. (2), the court shall issue an order directing each member who has not paid the assessment pursuant to the order to show cause why the liquidator shall not have a judgment therefor. If a member of the insurer also appears to be indebted to the insurer apart from the assessment, the court, upon application of the liquidator, may also direct the member to show cause why the member should not pay the other indebtedness. Liability for such indebtedness shall be determined in the same manner and at the same time as the liability to pay the assessment.

(4) NOTICE. The liquidator shall give notice of the order to show cause by publication if so directed by the court and by first class mail to each member liable thereunder mailed at least 20 days before the return day of the order to show cause to the member's last-known address as it appears on the records of the insurer.

(5) ORDERS AND HEARINGS. (a) If a member does not appear and serve duly verified objections upon the liquidator upon the return day of the order to show cause under sub. (3), the court shall make an order adjudging the member liable to the liquidator for the amount of the assessment against the member and other indebtedness, under sub. (3), together with costs.

(b) If on such return day, the member appears and serves duly verified objections upon the liquidator, the court may hear and determine the matter or may appoint a referee to hear it and make such order as the facts warrant. Any order made by a referee under this paragraph shall have the same force and effect as if it were a judgment of the court, subject to review by the court upon application within 30 days.

(6) COLLECTION. The liquidator may enforce any order or collect any judgment under sub. (5) by any lawful means.

History: 1973 c. 22 s. 12; 1979 c. 102; 1991 a. 316.

645.58 Reinsurer's liability; arbitration clauses. **(1)** LIABILITY. Except as provided in this subsection and in s. 646.35 (8) (e), the amount recoverable by the liquidator from a reinsurer shall not be reduced as a result of delinquency proceedings, regardless of any provision in the reinsurance contract or other agreement. Payment made directly to an insured or other creditor shall not diminish the reinsurer's obligation to the insurer's estate except when any of the following applies:

(a) The reinsurance contract or other agreement specifically provides for another payee of the reinsurance in the event of delinquency proceedings, payment is made to the other payee, and the payment operates to extinguish the liability of the ceding insurer to the extent of the payment made by the reinsurer.

(b) The reinsurer has assumed policy obligations of the ceding insurer as direct obligations of the reinsurer, payment is made to the payees under the policies, and the assumption operates to extinguish the liability of the ceding insurer to the extent assumed.

(2) ARBITRATION. After December 31, 1989, a domestic insurer may not enter into a reinsurance contract that contains an arbitration provision permitting its reinsurer to require arbitration of an action on or related to the contract when the domestic insurer is subject to a delinquency proceeding under this subchapter.

History: 1989 a. 23; 2003 a. 44, 261.

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.

History: 1987 a. 325.

645.60 Applicability of claims settlement provisions to loss claims. Sections 645.46 (18), 645.61 (2) and (3), 645.63 (1), (3), (4) and (6), 645.64 (3), 645.65, 645.71, 645.86 and 645.87 (2) do not apply to those loss claims that are subject to ch. 646 or to corresponding laws of other states that conform to s. 646.60 (1). In addition, ss. 645.61 (1), 645.62 (1), 645.63 (2), 645.64 (1), (2) and (4), 645.83 (3) and 645.87 (1) do not apply to those loss claims under contracts subject to s. 646.35 or to corresponding laws of other states that conform to ss. 646.35 and 646.60 (1).

History: 1979 c. 109; 1985 a. 216.

645.61 Filing of claims. (1) DEADLINE FOR FILING. Proof of all claims must be filed with the liquidator in the form required by s. 645.62 on or before the last day for filing specified in the notice required under s. 645.47, except that proof of claims under s. 645.68 (9) to (11) need not be filed at all, and proof of claims for unearned premiums and claims for cash surrender values or other investment values in life insurance and annuities need not be filed unless the liquidator expressly so requires.

(2) EXCUSED LATE FILINGS. For a good cause shown, the liquidator shall recommend and the court shall permit a claimant making a late filing to share in dividends, whether past or future, as if the claim were not late, to the extent that any such payment will not prejudice the orderly administration of the liquidation. Good cause includes but is not limited to the following:

(a) That existence of a claim was not known to the claimant and which the claimant filed within 30 days after learning of it;

(b) That a claim for unearned premiums or for cash surrender values or other investment values in life insurance or annuities which was not required to be filed was omitted from the liquidator's recommendations to the court under s. 645.71, and that it was filed within 30 days after the claimant learned of the omission;

(c) That a transfer to a creditor was avoided under ss. 645.52 to 645.54 or was voluntarily surrendered under s. 645.55, and that the filing satisfies the conditions of s. 645.55;

(d) That valuation under s. 645.67 of security held by a secured creditor shows a deficiency, which is filed within 30 days after the valuation; and

(e) That a claim was contingent and became absolute, and was filed within 30 days after it became absolute.

(3) UNEXCUSED LATE FILINGS. The liquidator may consider any claim filed late which is not covered by sub. (2), and permit it to receive dividends, other than the first dividend, which are subsequently declared on any claims of the same or lower priority if the payment does not prejudice the orderly administration of the liquidation. The late-filing claimant shall receive, at each distribution, the same percentage of the amount allowed on the late claim as is then being paid to other claimants of the same priority plus the same percentage of the amount allowed on the late claim as is then being paid to claimants of any lower priority. This shall continue until the late claim has been paid in full.

(4) FILING OF CLAIMS BY FUNDS. Claims by funds under s. 646.33 and corresponding provisions of funds of other jurisdictions that satisfy s. 646.60 (1) (b) shall be filed periodically by the funds pursuant to rules promulgated by the commissioner.

History: 1971 c. 260; 1979 c. 93, 102, 109.

645.62 Proof of claim. (1) CONTENTS OF PROOF OF CLAIM. (a) Unless otherwise prescribed by the liquidator, a proof of claim shall consist of a verified statement that includes all of the following that are applicable:

1. The particulars of the claim, including the consideration given for it.

2. The identity and amount of the security on the claim.

3. The payments made on the debt, if any.

4. That the sum claimed is justly owing and that there is no setoff, counterclaim or defense to the claim.

5. Any right of priority of payment or other specific right asserted by the claimant.

6. A copy of any written instrument which is the foundation of the claim.

7. In the case of any 3rd-party claim based on a liability policy issued by the insurer, a conditional release of the insured pursuant to s. 645.64 (1).

8. The name and address of the claimant and the attorney, if any, who represents the claimant.

(b) No claim need be considered or allowed if it does not contain all the information under par. (a) which may be applicable. The liquidator may require that a prescribed form be used and may require that other information and documents be included.

(2) SUPPLEMENTARY INFORMATION. At any time the liquidator may request the claimant to present information or evidence supplementary to that required under sub. (1), and may take testimony under oath, require production of affidavits or depositions or otherwise obtain additional information or evidence.

(3) CONCLUSIVENESS OF JUDGMENTS. No judgment or order against an insured or the insurer entered after the filing of a successful petition for liquidation and no judgment or order against an insured or the insurer entered at any time by default or by collusion need be considered as evidence of liability or of the amount of damages. No judgment or order against an insured or the insurer entered within 4 months before the filing of the petition need be considered as evidence of liability or of the amount of damages.

History: 1979 c. 102, 110; 1989 a. 23; 2005 a. 253.

645.63 Special claims. (1) CLAIMS CONTINGENT ON JUDGMENTS. The claim of a 3rd party which is contingent only on the party's first obtaining a judgment against the insured shall be considered and allowed as if there were no such contingency.

(2) CLAIMS UNDER TERMINATED POLICIES. Any claim that would have become absolute if there had been no termination of coverage under s. 645.43, and which was not covered by insurance acquired to replace the terminated coverage, shall be allowed as if the coverage had remained in effect, unless at least 10 days before the insured event occurred either the claimant had actual notice of the termination or notice was mailed to the claimant as prescribed by s. 645.47 (1) or 645.48 (1). If allowed the claim shall share in distributions under s. 645.68 (8).

(3) OTHER CONTINGENT CLAIMS. A claim may be allowed even if contingent, if it is filed in accordance with s. 645.61 (2). It may be allowed and may participate in all dividends declared after it is filed, to the extent that it does not prejudice the orderly administration of the liquidation.

(4) IMMATURE CLAIMS. Claims that are due except for the passage of time shall be treated as absolute claims are treated, except that where justice requires the court may order them discounted at the legal rate of interest.

(5) CLAIMS UNDER SECURITY FUND. The board of the insurance security fund shall file a claim with the liquidator for all claims to which the fund has been subrogated under s. 646.33 (1).

(6) CLAIMS UNDER EMPLOYMENT CONTRACTS WITH DIREC-

TORS AND OTHERS. Claims made under employment contracts by directors, principal officers or persons in fact performing similar functions or having similar powers are limited to payment for services rendered prior to the issuance of any order of rehabilitation or liquidation under s. 645.32 or 645.42.

History: 1971 c. 260; 1979 c. 102 ss. 215, 236 (24); 1979 c. 109.

Sub. (1) governs technically contingent claims of third parties, sub. (2) governs truly contingent claims, and sub. (3) governs other contingent claims, including technically contingent claims of those who are not third parties. Bell Captain North Central, Inc. v. Anderson, 112 Wis. 2d 396, 332 N.W.2d 860 (Ct. App. 1983).

645.64 Special provisions for 3rd-party claims. (1) THIRD PARTY'S CLAIM. Whenever any 3rd party asserts a cause of action against an insured of an insurer in liquidation, the 3rd party may file a claim with the liquidator. The filing of the claim shall release the insured's liability to the 3rd party on that cause of action in the amount of the applicable policy limit, but the liquidator shall also insert in any form used for the filing of 3rd-party claims appropriate language to constitute such a release. The release shall be void if the insurance coverage is avoided by the liquidator.

(2) INSURED'S CLAIM. Whether or not the 3rd party files a claim, the insured may file a claim on his or her own behalf in the liquidation. If the insured fails to file a claim by the date for filing claims specified in the order of liquidation or within 60 days after mailing of the notice required by s. 645.47 (1) (b), whichever is later, the insured is an unexcused late filer.

(3) PROCEDURE FOR INSURED'S CLAIM. (a) The liquidator shall make recommendations to the court under s. 645.71 for the allowance of an insured's claim under sub. (2) after consideration of the probable outcome of any pending action against the insured on which the claim is based, the probable damages recoverable in the action and the probable costs and expenses of defense. After allowance by the court, the liquidator shall withhold any dividends payable on the claim, pending the outcome of litigation and negotiation with the insured. Whenever it seems appropriate, the liquidator shall reconsider the claim on the basis of additional information and amend the recommendations to the court. The insured shall be afforded the same notice and opportunity to be heard on all changes in the recommendation as in its initial determination. The court may amend its allowance as it thinks appropriate.

(b) As claims against the insured are settled or barred, the insured shall be paid from the amount withheld the same percentage dividend as was paid on other claims of like priority, based on the lesser of the following:

1. The amount actually recovered from the insured by action or paid by agreement plus the reasonable costs and expenses of defense.

2. The amount allowed on the claims by the court.

(c) After all claims are settled or barred, any sum remaining from the amount withheld shall revert to the undistributed assets of the insurer. Delay in final payment under this subsection shall not be a reason for unreasonable delay of final distribution and discharge of the liquidator.

(4) MULTIPLE CLAIMS. If several claims founded upon one policy are filed, whether by 3rd parties or as claims by the insured under this section, and the aggregate allowed amount of the claims to which the same limit of liability in the policy is applicable exceeds that limit, each claim as allowed shall be reduced in the same proportion so that the total equals the policy limit. Claims by the insured shall be evaluated as in sub. (3). If any insured's claim is subsequently reduced under sub. (3), the amount thus freed shall be apportioned ratably among the claims that have been reduced under this subsection.

History: 1979 c. 102; 1995 a. 225; 2005 a. 253.

Third parties and insureds are not required to file their claims with the liquidator. Riley v. Heil Co., 624 F. Supp. 695 (1985).

645.65 Disputed claims. (1) NOTICE OF REJECTION AND REQUEST FOR HEARING. When a claim is denied in whole or in part by the liquidator, written notice of the determination and of the right to object shall be given promptly to the claimant and the claimant's attorney by first class mail at the address shown in the proof of claim. Within 60 days from the mailing of the notice, the claimant may file objections with the court. If objections are not filed within that period, the claimant may not further object to the determination.

(2) NOTICE OF HEARING. Whenever objections are filed with the court, the liquidator shall ask the court for a hearing as soon as practicable and give notice of the hearing by first class mail to the claimant or the claimant's attorney and to any other persons directly affected, not less than 10 nor more than 20 days before the date of the hearing. The matter may be heard by the court or by a court-appointed referee.

History: 1979 c. 93, 102; 1991 a. 316.

645.66 Claims of surety. Whenever a creditor whose claim against an insurer is secured in whole or in part by the undertaking of another person fails to prove and file that claim, the other person may do so in the creditor's name, and is subrogated to the rights of the creditor, whether the claim has been filed by the creditor or by the other person in the creditor's name, to the extent that the other person discharges the undertaking. In the absence of an agreement with the creditor to the contrary, the other person shall not be entitled to any dividend until the amount paid to the creditor on the undertaking plus the dividends paid on the claim from the insurer's estate to the creditor equals the amount of the entire claim of the creditor. Any excess received by the creditor shall be held in trust for such other person.

History: 1979 c. 93, 102, 177.

645.67 Secured creditors' claims. (1) The value of any security held by a secured creditor shall be determined in one of the following ways, as the court directs:

(a) By converting the same into money according to the terms of the agreement pursuant to which the security was delivered to such creditor;

(b) By agreement, arbitration, compromise or litigation between the creditor and the liquidator.

(2) The determination shall be under the supervision and control of the court. The amount so determined shall be credited upon the secured claim, and any deficiency shall be treated as an unsecured claim. If the claimant surrenders his or her security to the liquidator, the entire claim shall be allowed as if unsecured.

History: 1979 c. 102 s. 236 (13).

645.675 Qualified financial contracts. (1) In this section:

(a) "Actual direct compensatory damages" includes normal and reasonable costs of cover or other reasonable measures of damages used in the derivatives, securities, or other markets for the contract and agreement claims. "Actual direct compensatory damages" does not include punitive or exemplary damages, damages for lost profit or lost opportunity, or damages for pain and suffering.

(b) "Business day" means any day other than a Saturday, a Sunday, or a day on which the New York Stock Exchange, or the Federal Reserve Bank of New York is closed.

(c) "Commodity contract" means any of the following:

1. A contract for the purchase or sale of a commodity for future delivery on, or subject to the rules of, a board of trade or con-

tract market under the federal Commodity Exchange Act, 7 USC 1, et seq., or a board of trade outside the United States.

2. An agreement that is subject to regulation under the federal Commodity Exchange Act, 7 USC 23, and that is commonly known to the commodities trade as a margin account, margin contract, leverage account, or leverage contract.

3. An agreement or transaction that is subject to regulation under the federal Commodity Exchange Act, 7 USC 6c, and that is commonly known to the commodities trade as a commodity option.

4. Any combination of agreements or transactions specified in subds. 1. to 3.

5. Any option to enter into an agreement or transaction specified in subds. 1. to 3.

(d) "Contractual right" includes any right established in a rule or bylaw, or in a resolution, of the governing board of a derivatives clearing organization or board of trade as defined in the federal Commodity Exchange Act, 7 USC 1, et seq.; a multilateral clearing organization, as defined in the federal Deposit Insurance Corporation Improvement Act of 1991, 12 USC 4402; a national securities exchange, a national securities association, a securities clearing agency, or a control market designated under the federal Commodity Exchange Act, 7 USC 1, et seq.; or a derivatives transaction execution facility registered under the federal Commodity Exchange Act, 7 USC 1, et seq., or any right, regardless whether it is in writing, arising under statutory or common law, or under the uniform commercial code, or by reason of normal business practice.

(e) "Counterparty" means a person who enters into a qualified financial contract with an insurer.

(f) "Credit insurance" means insurance against loss arising from failure of debtors to meet financial obligations to creditors, except mortgage guaranty insurance.

(g) "Credit life insurance" means insurance on the lives of borrowers or purchasers of goods in connection with specific loans or credit transactions when all or a portion of the insurance is payable to the creditor to reduce or extinguish the debt.

(h) "Disability insurance" means insurance covering injury or death of persons caused by accident or insurance covering the health of persons.

(i) "Financial guaranty insurance" means a surety bond, insurance policy, indemnity contract, or any similar guarantee issued by an insurer under which a loss is payable upon proof of occurrence of financial loss to an insured claimant. "Financial guaranty insurance" does not include credit insurance, credit life insurance, disability insurance, mortgage guaranty insurance, or long-term care insurance.

(j) "First-method provision" means a contract provision in which the nondefaulting party is not required to pay if a net or settlement amount is owed to the defaulting party.

(k) "Forward contract" has the meaning given in 12 USC 1821 (e) (8) (D).

(L) "Mortgage guaranty insurance" means insurance against loss arising from any of the following:

1. Debtors to meet financial obligations to creditors under evidences of indebtedness that are secured by any of the following:

a. A first lien or charge on residential real estate designed for occupancy by not more than 4 families.

b. A first lien of charge on residential real estate designed for occupancy by 5 or more families.

c. A first lien or charge on real estate designed for industrial or commercial purposes.

d. A junior lien or charge on residential real estate.

2. Lessees to make payment on rentals under leases of real estate in which the lease extends for 3 years or longer.

(m) "Netting agreement" means any of the following:

1. A contract or agreement, or terms and conditions in a contract or agreement, including a master agreement together with all schedules, confirmations, definitions, and addenda, that documents one or more transactions between the parties to the agreement for, or involving, one or more qualified financial contracts and that provides for either the netting, liquidation, setoff, termination, acceleration, or close-out under, or in connection with, one or more qualified financial contracts or present or future payment or delivery obligations or entitlements, including related liquidation or close-out values, among the parties to the netting agreement.

2. Any master agreement or bridge agreement for one or more master agreements described in subd. 1.

3. Any security agreement or arrangement or other credit enhancement or guarantee or reimbursement obligation related to any contract or agreement described in subd. 1. or 2.

(n) "Qualified financial contract" means a commodity contract, forward contract, repurchase agreement, securities contract, swap agreement, or any similar agreement that the commissioner determines by rule or order to be a qualified financial contract.

(o) "Repurchase agreement" has the meaning given in 12 USC 1821 (e) (8) (D).

(p) "Second-method provision" means a contract provision requiring a nondefaulting party to pay if a net or settlement amount is owed to the defaulting party.

(q) "Securities contract" has the meaning given in 12 USC 1821 (e) (8) (D).

(r) "Swap agreement" has the meaning given in 12 USC 1821 (e) (8) (D).

(s) "Two-way payment provision" means a contract provision under which both parties to the contract may have payment obligations to each other.

(t) "Walkaway clause" means a provision in a netting agreement or a qualified financial contract that, after calculation of a value of a party's position or an amount due to or from one of the parties in accordance with its terms upon termination, liquidation, or acceleration of the netting agreement or qualified financial contract, either does not create a payment obligation of a party or extinguishes a payment obligation of a party, in whole or in part, solely because of the party's status as a nondefaulting party.

(2) (a) Notwithstanding any other provision of this chapter, including any other provision permitting the modification of contracts, no person may be stayed or prohibited from exercising any of the following rights:

1. A contractual right to cause the termination, liquidation, acceleration, or close-out of obligations under, or in connection with, any netting agreement or qualified financial contract with an insurer on account of any of the following:

a. The insolvency, financial condition, or default of the insurer at any time, if the right is enforceable under applicable law other than this chapter.

b. The commencement of a formal delinquency proceeding under this chapter.

2. Any right under a pledge, security, collateral, reimbursement, or guarantee agreement or arrangement, or any other similar security agreement or arrangement or other credit enhancement, relating to one or more netting agreements or qualified financial contracts.

3. Subject to s. 645.56 (2), any right to set-off or net-out any termination value, payment amount, or other transfer obligation

arising under, or in connection with, one or more qualified financial contracts in which the counterparty or its guarantor is organized under the laws of the United States or a state or foreign jurisdiction approved by the National Association of Insurance Commissioners office responsible for securities validation as eligible for netting.

(b) If a counterparty to a master netting agreement or a qualified financial contract with an insurer subject to a proceeding under this chapter terminates, liquidates, closes-out, or accelerates the agreement or contract, damages will be measured as of the date of the termination, liquidation, close-out, or acceleration. The amount of a claim for damages is the actual direct compensatory damages calculated in accordance with sub. (6).

(3) Upon termination of a netting agreement or qualified financial contract, notwithstanding any walkaway clause in the netting agreement or qualified financial contract, the net or settlement amount, if any, owed by a nondefaulting party to an insurer against which an application or petition has been filed under this chapter shall be transferred to the receiver of the insurer or as directed by the receiver of the insurer, even if the insurer is the defaulting party. Any limited 2-way payment provision or first-method provision in a netting agreement or qualified financial contract with an insurer that has defaulted shall be considered to be a full 2-way payment provision or 2nd-method provision as against the defaulting insurer. Any such property or amount is a general asset of the insurer, except to the extent that it is subject to one or more secondary liens or encumbrances or rights of netting or setoff.

(4) (a) With respect to transferring a netting agreement or qualified financial contract of an insurer that is the subject of a proceeding under this chapter, the receiver of the insurer shall do one of the following:

1. Transfer to one party, other than an insurer subject to a proceeding under this chapter, all netting agreements and qualified financial contracts between the counterparty and the insurer that is subject to a proceeding under this chapter, including all of the following:

a. All rights and obligations of each party under each netting agreement and qualified financial contract.

b. All property, including any guarantee or other credit enhancement, securing any claims of each party under each netting agreement and qualified financial contract.

2. Transfer none of the netting agreements, qualified financial contracts, rights, obligations, or property referred to in subd. 1. with respect to the counterparty.

(b) If a receiver of an insurer transfers a netting agreement or qualified financial contract, the receiver shall use its best efforts to notify any person who is a party to the netting agreement or qualified financial contract of the transfer by noon, central time, on the business day following the transfer.

(5) Notwithstanding s. 645.52 or 645.54, a receiver may not avoid a transfer of money or other property arising under or in connection with a netting agreement or qualified financial contract, or any pledge, security, collateral, or guarantee agreement or any other similar security arrangement or credit support document relating to a netting agreement or qualified financial contract, that is made before the commencement of a formal delinquency proceeding under this chapter.

(6) (a) In exercising the rights of disaffirmance or repudiation with respect to a netting agreement or qualified financial contract between a counterparty and an insurer that is the subject of a proceeding under this chapter, the receiver of the insurer shall do one of the following:

1. Disaffirm or repudiate all netting agreements and qualified financial contracts between the counterparty and the insurer.

2. Disaffirm or repudiate none of the netting agreements or qualified financial contracts between the counterparty and the insurer.

(b) Notwithstanding any provision of this section to the contrary, any claim of a counterparty against the estate arising from the receiver's disaffirmance or repudiation of a netting agreement or qualified financial contract that has not been previously affirmed in the liquidation or immediately preceding conservation or rehabilitation case shall be determined and shall be allowed or disallowed as if the claim had arisen before the date on which the petition for liquidation was filed or, if a conservation or rehabilitation proceeding is converted to a liquidation proceeding, as if the claim had arisen before the date on which the petition for conservation or rehabilitation was filed. The amount of the claim is the actual direct compensatory damages determined as of the date of the disaffirmance or repudiation of the netting agreement or qualified financial contract.

(7) All rights of counterparties under this chapter that apply to netting agreements and qualified financial contracts entered into on behalf of a general account are available only to counterparties of netting agreements and qualified financial contracts entered into on behalf of that general account. All rights of counterparties under this chapter that apply to netting agreements and qualified financial contracts entered into on behalf of a separate account are available only to counterparties of netting agreements and qualified financial contracts entered into on behalf of that separate account.

(8) (a) This section does not apply to persons who are affiliates of an insurer subject to a proceeding under this chapter.

(b) This section does not apply to qualified financial contracts entered into with an insurer authorized to write financial guaranty insurance.

History: 2015 a. 90, 326.

645.68 Order of distribution. The order of distribution of claims from the insurer's estate shall be as stated in this section. The first $50 of the amount allowed on each claim in the classes under subs. (3) to (6), except for claims of the federal government under subs. (3) and (3c), shall be deducted from the claim and included in the class under sub. (8). Claims may not be cumulated by assignment to avoid application of the $50 deductible provision. Subject to the $50 deductible provision, every claim in each class shall be paid in full or adequate funds retained for the payment before the members of the next class receive any payment. No subclasses shall be established within any class. That portion of any loss for which indemnification is provided by other benefits or advantages recovered or recoverable by the claimant shall not be included in the classes under subs. (3) and (3m), other than benefits or advantages recovered or recoverable in discharge of familial obligations of support or by way of succession at death or as proceeds of life insurance, or as gratuities. No payment made by an employer to an employee shall be treated as a gratuity. The claims described in s. 645.69 are among the claims not subject to subs. (3) and (3m).

(1) ADMINISTRATION COSTS. The costs and expenses of administration, including but not limited to the following: the actual and necessary costs of preserving or recovering the assets of the insurer; compensation for all services rendered in the liquidation; any necessary filing fees; the fees and mileage payable to witnesses; and reasonable attorney fees.

(3) LOSS CLAIMS. All claims under policies for losses incurred, including 3rd-party claims and federal, state, and local government claims, except the first $200 of losses otherwise payable to any claimant under this subsection other than the federal government. All claims under life insurance and annuity policies, whether for death proceeds, annuity proceeds, or invest-

ment values, shall be treated as loss claims. All amounts payable under funding agreements, as defined in s. 632.66 (2) (a), whether for principal or interest, shall be treated as loss claims. Claims may not be cumulated by assignment to avoid application of the $200 deductible provision.

(3c) FEDERAL GOVERNMENT CLAIMS AND INTEREST. Claims of the federal government not included under sub. (3), and interest at the legal rate compounded annually on all claims in the class under this subsection, and on all claims of the federal government in the class under sub. (3), from the date of the petition for liquidation or the date on which the claim becomes due, whichever is later, until the date on which the dividend is declared.

(3m) CERTAIN INJURY CLAIMS. Claims against the insurer that are not under policies and that are for liability for bodily injury or for injury to or destruction of tangible property.

(3r) WAGES. (a) Debts due to employees for services performed, not to exceed $1,000 to each employee which have been earned within one year before the filing of the petition for liquidation. Officers shall not be entitled to the benefit of this priority.

(b) Such priority shall be in lieu of any other similar priority authorized by law as to wages or compensation of employees.

(c) Notwithstanding pars. (a) and (b) and subs. (3), (3c) and (3m), if there are no claims of the federal government, the claims in the class under this subsection shall have priority over all claims in the classes under subs. (3) to (11).

(4) UNEARNED PREMIUMS AND SMALL LOSS CLAIMS. Claims under nonassessable policies for unearned premiums or other premium refunds and the first $200 of loss excepted by the deductible provision in sub. (3).

(5) RESIDUAL CLASSIFICATION. All other claims, including claims of any state or local government, not falling within other classes under this section and claims described in s. 645.69. Claims, including those of any state or local governmental body, for a penalty or forfeiture, shall be allowed in this class only to the extent of the pecuniary loss sustained from the act, transaction or proceeding out of which the penalty or forfeiture arose, with reasonable and actual costs occasioned thereby. The remainder of such claims shall be postponed to the class of claims under sub. (8).

(6) JUDGMENTS. Claims based solely on judgments. If a claimant files a claim and bases it both on the judgment and on the underlying facts, the claim shall be considered by the liquidator who shall give the judgment such weight as he or she deems appropriate. The claim as allowed shall receive the priority it would receive in the absence of the judgment. If the judgment is larger than the allowance on the underlying claim, the remaining portion of the judgment shall be treated as if it were a claim based solely on a judgment.

(7) INTEREST ON CLAIMS ALREADY PAID. Interest at the legal rate compounded annually on all claims in the classes under subs. (1) to (6), except for claims of the federal government in the classes under subs. (3) and (3c), from the date of the petition for liquidation or the date on which the claim becomes due, whichever is later, until the date on which the dividend is declared. The liquidator, with the approval of the court, may make reasonable classifications of claims for purposes of computing interest, may make approximate computations and may ignore certain classifications and time periods that are trifling.

(8) MISCELLANEOUS SUBORDINATED CLAIMS. The remaining claims or portions of claims not already paid, with interest as in sub. (7):

(a) Except for claims of the federal government under subs. (3) and (3c), the first $50 of each claim in the classes under subs. (3) to (6) subordinated under this section.

(b) Claims under s. 645.63 (2).

(c) Claims subordinated by s. 645.90.

(d) Claims filed late.

(e) Portions of claims subordinated under sub. (5).

(f) Claims or portions of claims payment of which is provided by other benefits or advantages recovered or recoverable by the claimant.

(g) Any indemnification recovered as a voidable preference under s. 645.54 (1) (c).

(9) BONDS. The claims of the holders of bonds, under s. 611.33 (2) (a), 613.33 (1) or 614.33, including interest thereon.

(10) CONTRIBUTION NOTES. The claims of the holders of contribution notes under ss. 611.33 (2) (b), 613.33 (2) and 614.33, including interest thereon.

(11) PROPRIETARY CLAIMS. The claims of shareholders or other owners, including policyholders of a mutual insurance corporation within the limits of s. 645.72 (2).

History: 1971 c. 260; 1979 c. 93; 1979 c. 102 s. 236 (5); 1979 c. 110; 1989 a. 23, 359; 1993 a. 490; 1999 a. 30; 2005 a. 253; 2021 a. 114.

The priority system set forth in this section provides inflexible and cumbersome rules concerning the order of distribution of claims, and, therefore, requiring its application to insurer rehabilitation would be contrary to the stated purpose of rehabilitation proceedings. Applying well-established principles of statutory construction, this section cannot be reasonably interpreted to apply to insurer rehabilitation proceedings. Nickel v. Wells Fargo Bank, 2013 WI App 129, 351 Wis. 2d 539, 841 N.W.2d 482, 10-1291.

645.69 Claims for certain health care costs. Unless a lower class is applicable, a claim is included among the claims that are subject to the classification under s. 645.68 (5) if the claim is any of the following:

(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.

(2) A claim for health care costs, as defined in s. 609.01 (1j), for which an enrollee, as defined in s. 609.01 (1d), or policyholder of a health maintenance organization is not liable for any reason.

History: 1989 a. 23; 1997 a. 237; 2009 a. 342.

645.71 Liquidator's recommendations to the court. **(1)** RECOMMENDED CLAIMS. The liquidator shall review all claims duly filed in the liquidation and shall make all further investigation deemed necessary by the liquidator. The liquidator may compound, compromise or in any other manner negotiate the amount for which claims will be recommended to the court. Unresolved disputes shall be determined under s. 645.65. As often as practicable, the liquidator shall present to the court reports of claims against the insurer with his or her recommendations. The liquidator shall notify claimants of the liquidator's recommendations. The reports shall include the name and address of each claimant, the particulars of the claim and the amount of the claim finally recommended, if any. As soon as reasonably possible after the last day for filing claims, the liquidator shall present a list of all claims not already reported. If the insurer has issued annuities or life insurance policies, the liquidator shall report the persons to whom, according to the records of the insurer, amounts are owed as cash surrender values or other investment values and the amounts owed. If the insurer has issued policies on the advance premium plan, the liquidator shall report the persons to whom, according to the records of the insurer, unearned premiums are owed and the amounts owed.

(2) ALLOWANCE OF CLAIMS. The court may approve, disapprove or modify any report on claims by the liquidator, except that the liquidator's agreements with other parties shall be final

and binding on the court on claims of any size settled for $500 or less. No claim under a policy of insurance may be allowed for an amount in excess of the applicable policy limits.

History: 1979 c. 93, 102.

645.72 Distribution of assets. (1) PAYMENTS TO CREDITORS. Subject to ch. 646 and under the direction of the court, the liquidator shall pay dividends as promptly as possible to security funds under sub. (2) and to other creditors in a manner that will assure the proper recognition of priorities and a reasonable balance between the expeditious completion of the liquidation and the protection of unliquidated and undetermined claims, including 3rd-party claims. Distribution of assets in kind may be made at valuations set by agreement between the liquidator and the creditor and approved by the court.

(2) PAYMENT OF DIVIDENDS TO SECURITY FUNDS. The liquidator shall pay dividends to security funds under sub. (1) to satisfy their subrogation claims under s. 646.33 or similar laws of other states, if the claims have been filed pursuant to rules established under s. 645.61 (4). The total dividends to security funds paid under this subsection may not exceed the total of the claims properly made by the funds under s. 645.61 (4). The liquidator shall pay dividends as frequently as practicable and in sums as large as possible without sacrificing of asset values by untimely disposition or inequitable allocation of available assets among the subrogated funds. The liquidator may protect against inequitable allocations by making payments to funds subject to binding agreements by the funds to repay any portions of the dividends found later to be in excess of an equitable allocation. If assets are available, the liquidator may also lend to security funds, subject to court approval.

(3) REPORTS TO THE COURT. The liquidator shall report to the court within 120 days after the issuance of the liquidation order under s. 645.42, and every 3 months thereafter, on the status of the assets and the payment of dividends and loans under sub. (2). The court may order the liquidator to pay dividends to security funds under sub. (2) more expeditiously to minimize the need for assessments under s. 646.51.

(4) EXCESS ASSETS. (a) Upon liquidation of a domestic mutual insurance company, any assets held in excess of its liabilities and the amounts which may be paid to its members as provided under sub. (4) (b) shall be paid into the state treasury to the credit of the common school fund.

(b) The maximum amount payable upon liquidation to any member for and on account of his or her membership in a domestic mutual insurance company, in addition to the insurance benefits promised in the policy, shall be the total of all premium payments made by the member with interest at the legal rate compounded annually.

History: 1979 c. 102 s. 236 (13); 1979 c. 109 ss. 9 to 11, 16; 2005 a. 253.

645.73 Unclaimed and withheld funds. (1) UNCLAIMED FUNDS. The liquidator, as provided in ch. 177, shall report and deliver to the secretary of revenue all unclaimed funds subject to distribution remaining in the liquidator's hands when he or she is ready to apply to the court for discharge, including the amount distributable to any creditor, shareholder, member or other person who is unknown or cannot be found or who is under disability with no person legally competent to receive a distributive share.

(2) WITHHELD FUNDS. All funds withheld under s. 645.64 and not distributed shall upon discharge of the liquidator be deposited with the secretary of revenue and paid by the secretary in accordance with s. 645.64. Any sums remaining which under s. 645.64 would revert to the undistributed assets of the insurer shall be transferred to the secretary of revenue and become the property of the state under sub. (1), unless the commissioner petitions the court to reopen the liquidation under s. 645.75.

History: 1979 c. 102 ss. 220, 236 (23); 1983 a. 408; 2013 a. 20.

645.74 Termination of proceedings. (1) LIQUIDATOR'S APPLICATION. When all assets justifying the expense of collection and distribution have been collected and distributed under this chapter, the liquidator shall apply to the court for discharge. The court may grant the discharge and make any other orders deemed appropriate, including an order to transfer to the state treasury for the common school fund any remaining funds that are uneconomic to distribute.

(2) APPLICATION BY OTHERS. Any other person may apply to the court at any time for an order under sub. (1). If the application is denied, the applicant shall pay the costs and expenses of the liquidator in resisting the application, including a reasonable attorney's fee.

645.75 Reopening liquidation. After the liquidation proceeding has been terminated and the liquidator discharged, the commissioner or other interested party may at any time petition the court to reopen the proceedings for good cause, including the discovery of additional assets. If the court is satisfied that there is justification for reopening, it shall so order.

645.76 Disposition of records during and after termination of liquidation. Records of any insurer in the process of liquidation or completely liquidated under this chapter shall be disposed of by the public records board in the same manner as state records under s. 16.61.

History: 1979 c. 93; 1981 c. 350 s. 13; 1985 a. 180 s. 30m; 1987 a. 147 s. 25; 1995 a. 27.

Legislative Council Note, 1979: This section makes disposition of the records of insurers subject to liquidation under this chapter subject to the procedures established in s. 16.61, a system which did not exist at the time the former s. 645.76 was created. [Bill 20-S]

645.77 External audit of receiver's books. The court in which the proceeding is pending may, as it deems desirable, cause audits to be made of the books of the commissioner relating to any receivership established under this chapter, and a report of each audit shall be filed with the commissioner and with the court. The books, records and other documents of the receivership shall be made available to the auditor at any time without notice. The expense of each audit shall be considered a cost of administration of the receivership.

SUBCHAPTER IV

INTERSTATE RELATIONS

645.81 Conservation of property of foreign or alien insurers found in this state. (1) GROUNDS FOR PETITION. If a domiciliary liquidator has not been appointed, the commissioner may apply to the circuit court for Dane County by verified petition for an order directing him or her to conserve the property of an alien insurer not domiciled in this state or a foreign insurer on any one or more of the following grounds:

(a) Any of the grounds in s. 645.31;

(b) Any of the grounds in s. 645.41;

(c) That any of its property has been sequestered by official action in its domiciliary state, or in any other state;

(d) That enough of its property has been sequestered in a foreign country to give reasonable cause to fear that the insurer is or may become insolvent;

(e) That its certificate of authority to do business in this state has been revoked or that none was ever issued, and that there are

residents of this state with outstanding claims or outstanding policies.

(2) TERMS OF ORDER. The court may issue the order in whatever terms it considers appropriate. The recording of the order with any register of deeds in this state imparts the same notice as a deed, bill of sale or other evidence of title recorded with that register of deeds.

(3) TRANSFORMATION TO LIQUIDATION OR ANCILLARY RECEIVERSHIP. The conservator may at any time petition for and the court may grant an order under s. 645.82 to liquidate the assets of a foreign or alien insurer under conservation or, if appropriate, for an order under s. 645.84 to be appointed ancillary receiver.

(4) ORDER TO RETURN TO COMPANY. The conservator may at any time petition the court for an order terminating conservation of an insurer. If the court finds that the conservation is no longer necessary, it shall order that the insurer be restored to possession of its property and the control of its business. The court may also make such finding and issue such order at any time upon its own motion.

History: 1979 c. 102 s. 236 (20); 1993 a. 301; 1995 a. 225.

645.82 Liquidation of property of foreign or alien insurers found in this state. (1) GROUNDS FOR PETITION. If no domiciliary receiver has been appointed, the commissioner may apply to the circuit court for Dane County by verified petition for an order directing the commissioner to liquidate the assets found in this state of a foreign insurer or an alien insurer not domiciled in this state, on any of the following grounds:

(a) Any of the grounds in s. 645.31.

(b) Any of the grounds in s. 645.41.

(c) Any of the grounds in s. 645.81.

(2) TERMS OF ORDER. If it appears to the court that the best interests of creditors, policyholders and the public so require, the court may issue an order to liquidate in whatever terms it considers appropriate. The recording of the order with any register of deeds in this state imparts the same notice as a deed, bill of sale or other evidence of title filed or recorded with that register of deeds.

(3) CONVERSION TO ANCILLARY PROCEEDING. If a domiciliary liquidator is appointed in a reciprocal state while a liquidation is proceeding under this section, the liquidator under this section shall thereafter act as ancillary receiver under s. 645.84. If a domiciliary liquidator is appointed in a nonreciprocal state while a liquidation is proceeding under this section, the liquidator under this section may petition the court for permission to act as ancillary receiver under s. 645.84.

(4) FEDERAL RECEIVERSHIP. On the same grounds as are specified in sub. (1), the commissioner may petition any appropriate federal district court to be appointed receiver to liquidate that portion of the insurer's assets and business over which the court will exercise jurisdiction, or any lesser part thereof that the commissioner deems desirable for the protection of the policyholders and creditors in this state. The commissioner may accept appointment as federal receiver if another person files a petition.

History: 1979 c. 102 s. 236 (21); 1993 a. 301.

645.83 Foreign domiciliary receivers in other states. (1) PROPERTY RIGHTS AND TITLE: RECIPROCAL STATE. The domiciliary liquidator of an insurer domiciled in a reciprocal state shall be vested by operation of law with the title to all of the property, contracts and rights of action, and all of the books, accounts and other records of the insurer located in this state. The date of vesting shall be the date of the filing of the petition, if that date is specified by the domiciliary law for the vesting of property in the domiciliary state; otherwise, the date of vesting shall be the date of entry of the order directing possession to be taken. The domiciliary liquidator shall have the immediate right to recover balances due from agents and to obtain possession of the books, accounts and other records of the insurer located in this state. The domiciliary liquidator may also recover the other assets of the insurer located in this state, subject to s. 645.84 (2).

(2) PROPERTY RIGHTS AND TITLE: STATE NOT A RECIPROCAL STATE. If a domiciliary liquidator is appointed for an insurer not domiciled in a reciprocal state, the commissioner of this state shall be vested by operation of law with the title to all of the property, contracts and rights of action, and all of the books, accounts and other records of the insurer located in this state, at the same time that the domiciliary liquidator is vested with title in the domicile. The commissioner of this state may petition for a conservation or liquidation order under s. 645.81 or 645.82, or for an ancillary receivership under s. 645.84, or after approval by the circuit court for Dane County may transfer title to the domiciliary liquidator, as the interests of justice and the equitable distribution of the assets require.

(3) FILING CLAIMS. Claimants residing in this state may file claims with the liquidator or ancillary receiver, if any, in this state or with the domiciliary liquidator, if the domiciliary law permits. The claims must be filed on or before the last date fixed for the filing of claims in the domiciliary liquidation proceedings.

History: 1979 c. 102.

645.84 Ancillary formal proceedings. (1) APPOINTMENT OF ANCILLARY RECEIVER IN THIS STATE. If a domiciliary liquidator has been appointed for an insurer not domiciled in this state, the commissioner shall file a petition with the circuit court for Dane County requesting appointment as ancillary receiver in this state:

(a) If the commissioner finds that there are sufficient assets of the insurer located in this state to justify the appointment of an ancillary receiver;

(b) If 10 or more persons resident in this state having claims against the insurer file a petition with the commissioner requesting appointment of an ancillary receiver; or

(c) If the protection of creditors or policyholders in this state so requires.

(2) TERMS OF ORDER. The court may issue an order appointing an ancillary receiver in whatever terms it considers appropriate. The recording of the order with any register of deeds in this state imparts the same notice as a deed, bill of sale or other evidence of title filed or recorded with that register of deeds.

(3) PROPERTY RIGHTS AND TITLE: ANCILLARY RECEIVERS IN THIS STATE. When a domiciliary liquidator has been appointed in a reciprocal state, the ancillary receiver appointed in this state under sub. (1) shall have the sole right to recover all the assets of the insurer in this state not already recovered by the domiciliary liquidator, except that the domiciliary liquidator shall be entitled to and have the sole right to recover balances due from agents and the books, accounts and other records of the insurer. The ancillary receiver shall have the right to recover balances due from agents and books, accounts and other records of the insurer, if such action is necessary to protect the assets because of inaction by the domiciliary liquidator. The ancillary receiver shall, as soon as practicable, liquidate from their respective securities those special deposit claims and secured claims which are proved and allowed in the ancillary proceedings in this state, and shall pay the necessary expenses of the proceedings. The ancillary receiver shall promptly transfer all remaining assets to the domiciliary liquidator. Subject to this section, the ancillary receiver and the ancillary receiver's deputies shall have the same powers and be subject to the same duties with respect to the administration of assets as a liquidator of an insurer domiciled in this state.

(4) PROPERTY RIGHTS AND TITLE: FOREIGN ANCILLARY RECEIVERS. When a domiciliary liquidator has been appointed in this state, ancillary receivers appointed in reciprocal states shall have, as to assets and books, accounts and other records located in their respective states, corresponding rights and powers to those prescribed in sub. (3) for ancillary receivers appointed in this state.

History: 1979 c. 102 ss. 222, 236 (6); 1993 a. 301.

645.85 Ancillary summary proceedings. The commissioner in his or her sole discretion may institute proceedings under ss. 645.21 to 645.23 at the request of the commissioner or other appropriate official of the domiciliary state of any nondomestic insurer having property located in this state.

History: 1979 c. 102.

645.86 Claims of nonresidents against insurers domiciled in this state. (1) FILING CLAIMS. In a liquidation proceeding begun in this state against an insurer domiciled in this state, claimants residing in foreign countries or in states not reciprocal states must file claims in this state, and claimants residing in reciprocal states may file claims either with the ancillary receivers, if any, in their respective states, or with the domiciliary liquidator. Claims must be filed on or before the last dates fixed for the filing of claims in the domiciliary liquidation proceeding.

(2) PROVING CLAIMS. Claims belonging to claimants residing in reciprocal states may be proved either in the liquidation proceeding in this state as provided in this chapter, or in ancillary proceedings, if any, in the reciprocal states. If notice of the claim and opportunity to appear and be heard is afforded the domiciliary liquidator of this state as provided in s. 645.87 with respect to ancillary proceedings in this state, the final allowance of claims by the courts in ancillary proceedings in reciprocal states shall be conclusive as to amount and as to priority against special deposits or other security located in the ancillary states, but shall not be conclusive with respect to priorities against general assets under s. 645.68.

645.87 Claims of residents against insurers domiciled in reciprocal states. (1) FILING CLAIMS. In a liquidation proceeding in a reciprocal state against an insurer domiciled in that state, claimants against the insurer who reside within this state may file claims either with the ancillary receiver, if any, in this state, or with the domiciliary liquidator. Claims must be filed on or before the last dates fixed for the filing of claims in the domiciliary liquidation proceeding.

(2) PROVING CLAIMS. Claims belonging to claimants residing in this state may be proved either in the domiciliary state under the law of that state or in ancillary proceedings, if any, in this state. If a claimant elects to prove his or her claim in this state, the claimant shall file the claim with the court in the manner provided in ss. 645.61 and 645.62. The ancillary receiver shall make his or her recommendation to the court as under s. 645.71. The ancillary receiver also shall arrange a date for hearing if necessary under s. 645.65 and shall give notice to the liquidator in the domiciliary state, either by registered mail or by personal service at least 40 days prior to the date set for hearing. If the domiciliary liquidator, within 30 days after the giving of such notice, gives notice in writing to the ancillary receiver and to the claimant, either by registered mail or by personal service, of his or her intention to contest the claim, the domiciliary liquidator shall be entitled to appear or to be represented in any proceeding in this state involving the adjudication of the claim. The final allowance of the claim by the courts of this state shall be accepted as conclusive as to amount and as to priority against special deposits or other security located in this state.

History: 1979 c. 102.

645.88 Attachment, garnishment and levy of execution. During the pendency in this or any other state of a liquidation proceeding, whether called by that name or not, no action or proceeding that is in the nature of an attachment, garnishment or levy of execution or that would interfere with proceedings under this chapter or ch. 646 shall be commenced or maintained in this state or elsewhere against the delinquent insurer or its assets.

History: 1985 a. 216.

645.89 Interstate priorities. (1) PRIORITIES. In a liquidation proceeding in this state involving one or more reciprocal states, the order of distribution of the domiciliary state shall control as to all claims of residents of this and reciprocal states. All claims of residents of reciprocal states shall be given equal priority of payment from general assets regardless of where such assets are located.

(2) PRIORITY OF SPECIAL DEPOSIT CLAIMS. The owners of special deposit claims against an insurer for which a liquidator is appointed in this or any other state shall be given priority against the special deposits in accordance with the statutes governing the creation and maintenance of the deposits. If there is a deficiency in any deposit so that the claims secured by it are not fully discharged from it, the claimants may claim against a security fund or share in the general assets, but the sharing shall be deferred until general creditors having the same priority, and also claimants against other special deposits having the same priority who have received smaller percentages from their respective special deposits, have been paid percentages of their claims equal to the percentage paid from the special deposit.

(3) PRIORITY OF SECURED CLAIMS. The owner of a secured claim against an insurer for which a liquidator has been appointed in this or any other state may surrender the security for the claim and file the claim as a general creditor, or the claim may be discharged by resort to the security in accordance with s. 645.67, in which case the deficiency, if any, shall be treated as a claim against the general assets of the insurer or the appropriate security fund on the same basis as claims of unsecured creditors having the same priority.

History: 1979 c. 102, 109.

645.90 Subordination of claims for noncooperation. If an ancillary receiver in another state or foreign country, whether called by that name or not, fails to transfer to the domiciliary liquidator in this state any assets within his or her control other than special deposits, diminished only by the expenses of the ancillary receivership, if any, the claims filed in the ancillary receivership or with a security fund in that jurisdiction, other than special deposit claims or secured claims, shall be placed in the class of claims under s. 645.68 (8).

History: 1979 c. 102 s. 236 (13); 1979 c. 109.