

State of Wisconsin



1995 Senate Bill 533

Date of enactment: **June 6, 1996**
Date of publication*: **June 20, 1996**

1995 WISCONSIN ACT 396

AN ACT *to renumber* 623.06 (1); *to renumber and amend* 623.06 (5) and 646.31 (2) (a); *to amend* 601.31 (1) (p), 601.62 (3) (a), 601.64 (3) (d), 601.72 (1) (intro.), 601.72 (2), 601.72 (3), 601.73 (1) (intro.), 601.73 (2) (c), 623.06 (6), 645.08 (2) and 646.51 (6); *to repeal and recreate* 601.72 and 601.73 (1) (intro.); and *to create* 601.63 (3m), 601.715, 623.06 (1c), 623.06 (1m), 623.06 (5) (b), 628.345, 646.01 (1) (a) 2. i. and 646.31 (2) (f) of the statutes; **relating to:** accreditation for certain insurers, immunity for acts related to regulation of insurer solvency, claims under the insurance security fund, service of process on insurers, prohibited practices regarding disciplined agents, insurance hearing procedures and granting rule-making authority.

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

SECTION 1. 601.31 (1) (p) of the statutes, as affected by 1995 Wisconsin Act 27, is amended to read:

601.31 (1) (p) For substituted service of process on the commissioner under s. 601.72 (2), \$10.

SECTION 1c. 601.62 (3) (a) of the statutes is amended to read:

601.62 (3) (a) *Subsequent hearings.* Whenever an order is issued without a hearing, any person aggrieved by the order may demand a hearing within ~~20~~ 30 days after ~~receiving the date on which the~~ notice of the order was mailed. Failure to demand a hearing within the period prescribed therefor is waiver of a hearing. The demand shall be in writing and shall be served on the commissioner by delivering a copy to the commissioner or by leaving it at the commissioner's office. The commissioner shall thereupon hold a hearing not less than 10 nor more than ~~30~~ 60 days after service of the demand.

SECTION 1f. 601.63 (3m) of the statutes is created to read:

601.63 (3m) HEARING REQUEST. If the order was issued without a hearing, any person aggrieved by the order may demand a hearing under s. 601.62 (3) (a). If no demand for a hearing is made within the prescribed time, the order is final.

SECTION 1m. 601.64 (3) (d) of the statutes is amended to read:

601.64 (3) (d) *Procedure.* The commissioner may order any person to pay a forfeiture imposed under this subsection or s. 601.65, which shall be paid into the common school fund. ~~The~~ If the order is issued without a hearing, the affected person may demand a hearing under s. 601.62 (3) (a). If the person fails to request a hearing, the order is conclusive as to the person's liability. The scope of review for forfeitures ordered is that specified under s. 227.57. The commissioner may cause action to be commenced to recover the forfeiture. Before an action is commenced, the commissioner may compromise the forfeiture.

SECTION 2. 601.715 of the statutes is created to read:

601.715 Registered agent for service of process.

(1) Every authorized insurer shall continuously maintain

* Section 991.11, WISCONSIN STATUTES 1993-94: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

in this state a registered agent for service of process, notice or demand on the insurer. The authorized insurer shall file the name and address of the registered agent with the commissioner. The registered agent may be any of the following:

- (a) A natural person who resides in this state.
- (b) A domestic corporation, nonstock corporation or limited liability company incorporated or organized in this state with a business office in this state.
- (c) A foreign corporation or limited liability company authorized to transact business in this state with a business office in this state.

(2) (a) An authorized insurer may change its registered agent by delivering to the commissioner for filing a statement of registered agent change that is signed by an officer of the insurer and that includes all of the following information:

- 1. The name and home office address of the authorized insurer.
- 2. The name of the registered agent, as changed.
- 3. The complete address of the registered agent, as changed.
- 4. Any other information that the commissioner may require.

(b) An authorized insurer may change its registered agent no more than one time per year. Any change of registered agent is effective on January 1 of the year following the delivery of the statement under par. (a).

(3) A registered agent of an authorized insurer may change its registered agent address by doing all of the following:

- (a) Notifying in writing the authorized insurer for which the registered agent is acting.
- (b) Delivering to the commissioner for filing a statement that includes all of the following:
 - 1. The name and home office address of the authorized insurer for which the registered agent is acting.
 - 2. The complete new registered agent address.
 - 3. An attached copy of the notice under par. (a).

(4) (a) A registered agent of an authorized insurer may resign by signing and delivering to the commissioner for filing a statement of resignation that includes all of the following information:

- 1. The name and home office address of the authorized insurer for which the registered agent is acting.
- 2. The name of the registered agent.
- 3. A statement that the registered agent resigns.

(b) After filing the statement, the commissioner shall mail a copy to the authorized insurer under par. (a) 1.

(c) The resignation is effective on the earlier of the following:

- 1. Sixty days after the commissioner receives the statement of resignation for filing.
- 2. The date on which the appointment of a successor registered agent is effective.

(4m) Service on an insurer under this section shall be made by personally serving the process, notice or demand on the registered agent of the insurer. In lieu of delivery to the registered agent, the process, notice or demand may be left at the office of the registered agent with the person who is apparently in charge of the office.

(5) If an authorized insurer has no registered agent for service of process in this state or if the registered agent cannot with reasonable diligence be served, substituted service may be made on the commissioner under ss. 601.72 and 601.73. If substituted service is made on the commissioner, an affidavit attesting that the authorized insurer has no registered agent or that the registered agent could not with reasonable diligence be served shall be attached to the process, notice or demand that is served.

(6) Except as provided in sub. (5), this section does not limit or affect the right to serve summons, notice, orders, pleadings, demands or other process upon an authorized insurer in any other manner provided by law.

SECTION 3. 601.72 of the statutes, as affected by 1995 Wisconsin Act 27, is repealed and recreated to read:

601.72 Service of process through state officer. (1)

GENERAL. Under procedures specified in s. 601.73, the commissioner is by law constituted attorney, except in cases in which the proceeding is to be brought by the state against an insurer or intermediary other than a risk retention group or risk purchasing group, in which event the secretary of state is by law constituted attorney, to receive service of summons, notices, orders, pleadings and all other legal process relating to any court or administrative agency in this state for all of the following:

(a) *Authorized insurers.* All insurers authorized to do business in this state, while authorized to do business in this state, and thereafter in any proceeding arising from or related to any transaction having any connection with this state, provided the requirements under s. 601.715 (5) are satisfied.

(b) *Surplus lines insurers.* All insurers as to any proceeding arising out of any contract that is permitted by s. 618.41, or out of any certificate, cover note or other confirmation of such insurance.

(c) *Unauthorized insurers.* All insurers or other persons doing an unauthorized insurance business in this state, including but not limited to risk purchasing groups, as to any proceeding arising out of the unauthorized transaction.

(d) *Risk purchasing groups and nonresident intermediaries.* All risk purchasing groups or nonresident intermediaries as to any proceeding arising out of insurance activities within this state or out of insurance activities related to policies on risks within this state.

(2) **APPOINTMENT OF ATTORNEY.** Except as provided in sub. (2m), every licensed insurer by applying for and receiving a certificate of authority, every surplus lines insurer by entering into a contract subject to the surplus

lines law, and every unauthorized insurer by doing an insurance business in this state, is deemed to have irrevocably appointed the commissioner and secretary of state as the insurer's attorneys in accordance with sub. (1).

(2m) RISK RETENTION GROUPS AND RISK PURCHASING GROUPS. A risk retention group or risk purchasing group may not do an insurance business or engage in any insurance activity in this state until it registers with the commissioner and designates the commissioner as its agent for the purposes described in sub. (1). The commissioner may prescribe the form of registration under this subsection. If a risk retention group or risk purchasing group fails to designate the commissioner as required by this subsection, the commissioner is appointed agent for the risk retention group or risk purchasing group as provided in sub. (2).

(3) OTHERS AFFECTED. The commissioner and secretary of state shall also be attorneys for the executors, administrators or personal representatives, receivers, trustees or other successors in interest of the persons specified in sub. (1).

(4) FEES. Litigants serving process on the commissioner under this section shall pay the fees specified in s. 601.31 (1) (p).

(5) ORDINARY MEANS OF SERVICE. The right to substituted service under this section does not limit the right to serve summons, notice, orders, pleadings, demands or other process upon any person in any manner provided by law.

SECTION 4. 601.72 (1) (intro.) of the statutes, as affected by 1995 Wisconsin Act (this act), is amended to read:

601.72 (1) **GENERAL.** (intro.) Under procedures specified in s. 601.73, the commissioner is by law constituted attorney, except in cases in which the proceeding is to be brought by the state against an insurer or intermediary other than a risk retention group or risk purchasing group, in which event the ~~secretary of state~~ department of financial institutions is by law constituted attorney, to receive service of summons, notices, orders, pleadings and all other legal process relating to any court or administrative agency in this state for all of the following:

SECTION 5. 601.72 (2) of the statutes, as affected by 1995 Wisconsin Act (this act), is amended to read:

601.72 (2) **APPOINTMENT OF ATTORNEY.** Except as provided in sub. (2m), every licensed insurer by applying for and receiving a certificate of authority, every surplus lines insurer by entering into a contract subject to the surplus lines law, and every unauthorized insurer by doing an insurance business in this state, is deemed to have irrevocably appointed the commissioner and ~~secretary of state~~ department of financial institutions as the insurer's attorneys in accordance with sub. (1).

SECTION 6. 601.72 (3) of the statutes, as affected by 1995 Wisconsin Act (this act), is amended to read:

601.72 (3) **OTHERS AFFECTED.** The commissioner and ~~secretary of state~~ department of financial institutions shall also be attorneys for the executors, administrators or personal representatives, receivers, trustees or other successors in interest of the persons specified in sub. (1).

SECTION 7. 601.73 (1) (intro.) of the statutes, as affected by 1995 Wisconsin Act 27, section 7011, is amended to read:

601.73 (1) **REQUIREMENTS FOR EFFECTIVE SERVICE.** (intro.) Service upon the commissioner or secretary of state under s. 601.72 (2) is service on the principal, if:

SECTION 8. 601.73 (1) (intro.) of the statutes, as affected by 1995 Wisconsin Acts 27, section 7012b, and ... (this act), is repealed and recreated to read:

601.73 (1) **REQUIREMENTS FOR EFFECTIVE SERVICE.** (intro.) Service upon the commissioner or department of financial institutions under s. 601.72 is service on the principal, if:

SECTION 9. 601.73 (2) (c) of the statutes, as affected by 1995 Wisconsin Act 27, is amended to read:

601.73 (2) (c) *Default judgment.* No plaintiff or complainant is entitled to a judgment by default in any proceeding in which process is served under this section and s. 601.72 (2) until the expiration of 20 days from the date of mailing of the process under par. (b).

SECTION 10. 623.06 (1) of the statutes is renumbered 623.06 (1f).

SECTION 11. 623.06 (1c) of the statutes is created to read:

623.06 (1c) In this section, "qualified actuary" means a member in good standing of the American academy of actuaries who meets any other requirements that the commissioner may by rule specify.

SECTION 12. 623.06 (1m) of the statutes is created to read:

623.06 (1m) (a) 1. For each year ending on or after December 31, 1996, every life insurance company doing business in this state shall submit to the commissioner, with its annual statement due by March 1 of the following year, an opinion by a qualified actuary as to whether the reserves and related actuarial items held in support of the policies and contracts specified by the commissioner by rule satisfy all of the following:

- a. They are computed appropriately.
- b. They are based on assumptions that satisfy contractual provisions.
- c. They are consistent with prior reported amounts.
- d. They comply with the applicable laws of this state.

2. The commissioner shall by rule specify in detail the nature of the information required in the opinion under subd. 1. and may by rule require any additional information that the commissioner determines is necessary to the scope of the opinion.

(b) 1. Every life insurance company not exempted by rule shall include with the opinion required under par. (a) the opinion of the qualified actuary as to whether the

reserves and related actuarial items held in support of the policies and contracts specified by the commissioner by rule, when considered in light of the assets held by the company with respect to the reserves and related actuarial items, including but not limited to the investment earnings on the assets and the considerations anticipated to be received and retained under the policies and contracts, make adequate provision for the company's obligations under the policies and contracts, including but not limited to the benefits under and expenses associated with the policies and contracts. The commissioner may by rule provide for a transition period for an insurance company to establish any higher reserves that the qualified actuary determines are necessary to make adequate provision for the company's obligations under the policies and contracts.

2. An insurance company that is required to submit an opinion under subd. 1. shall have prepared by the qualified actuary who renders the opinion a memorandum in support of the opinion under subd. 1. The commissioner shall specify by rule the form and content of the memorandum. The insurance company shall provide the memorandum to the commissioner, at the commissioner's request, for his or her examination. After examination, the commissioner shall return the memorandum to the insurance company. The memorandum shall not be considered a record of the commissioner's office.

3. If an insurance company fails to provide a supporting memorandum to the commissioner upon request within the period specified by rule, or if the commissioner determines that the supporting memorandum provided by an insurance company fails to meet the standards prescribed by rule or is otherwise unacceptable, the commissioner may retain a qualified actuary at the expense of the insurance company to review the opinion required under subd. 1. and the basis for the opinion and to prepare such supporting memorandum as the commissioner requires.

(c) The following provisions apply to an opinion required under par. (a) or (b):

1. The opinion shall apply to all business in force, including individual and group health insurance plans, in form and substance acceptable to the commissioner as specified by rule.

2. The opinion shall be based on standards adopted from time to time by the actuarial standards board established by the American academy of actuaries and on such additional standards as the commissioner may by rule prescribe.

3. In the case of an opinion required to be submitted by a foreign or alien company, the commissioner may accept the opinion filed by that company with the insurance supervisory official of another state if the commissioner determines that the opinion reasonably meets the requirements applicable to a company domiciled in this state.

(d) Except for fraud or wilful misconduct, a qualified actuary may not be held liable for damages to any person other than the insurance company or the commissioner for any act, error, omission, decision or conduct with respect to an opinion required under this subsection.

(e) The commissioner shall specify by rule any disciplinary action that the commissioner may take against an insurance company or a qualified actuary related to any of the requirements under this subsection.

(f) 1. The commissioner shall keep confidential any memorandum in support of, and any other material provided by an insurance company to the commissioner in connection with, an opinion required under this subsection. Any such memorandum or other material may not be made public and may not be subject to subpoena except for the purpose of defending an action seeking damages from any person on account of an act required under this subsection or required by a rule authorized or required under this subsection.

2. The commissioner may release any such memorandum or other material with the written consent of the insurance company, or to the American academy of actuaries upon its request if the memorandum or other material is required for professional disciplinary proceedings and if the request sets forth procedures that are satisfactory to the commissioner for preserving the confidentiality of the memorandum or other material.

3. A memorandum loses its confidentiality if the insurance company cites any portion of the memorandum for marketing purposes or before any governmental agency other than a state insurance department or if the insurance company releases any portion of the memorandum to the news media.

SECTION 13. 623.06 (5) of the statutes is renumbered 623.06 (5) (a) and amended to read:

623.06 (5) (a) In no event shall may a company's aggregate reserves for all life insurance policies, excluding disability and accidental death benefits, issued on or after the effective date of this section, be less than the aggregate reserves calculated in accordance with the method set forth in subs. (3) to (4m) and (7) and the mortality table or tables and rate or rates of interest used in calculating nonforfeiture benefits for such policies.

SECTION 14. 623.06 (5) (b) of the statutes is created to read:

623.06 (5) (b) In no event may a company's aggregate reserves for all policies, contracts and benefits be less than the aggregate reserves determined by a qualified actuary in an opinion under sub. (1m) (b) 1. to be necessary to make adequate provision for the company's obligations under the policies and contracts.

SECTION 15. 623.06 (6) of the statutes is amended to read:

623.06 (6) Reserves for all policies and contracts issued prior to the effective date of this ~~section~~ subsection may be calculated, at the option of the company, accord-

ing to any standards which that produce greater aggregate reserves for all such policies and contracts than the minimum reserves required by the laws in effect immediately prior to such date. Reserves for any category of policies, contracts or benefits as established by the commissioner, issued on or after the effective date of this section subsection, may be calculated, at the option of the company, according to any standards which that produce greater aggregate reserves for such category than those calculated according to the minimum standard herein provided, but the rate or rates of interest used for policies and contracts, other than annuity and pure endowment contracts, shall not be higher than the corresponding rate or rates of interest used in calculating any nonforfeiture benefits provided for therein. Any such company which that at any time has adopted any standard of valuation producing greater aggregate reserves than those calculated according to the minimum standard herein provided may, with the approval of the commissioner, adopt any lower standard of valuation, but not lower than the minimum herein provided. For the purposes of this subsection, holding any additional reserves that a qualified actuary, in an opinion under sub. (1m) (b) 1., determined to be necessary to make adequate provision for the company's obligations under the policies and contracts shall not be considered the adoption of a higher standard of valuation.

SECTION 15m. 628.345 of the statutes is created to read:

628.345 Prohibited practices during license revocation or surrender. (1) In this section:

(a) "Disciplinary period" means the period of time beginning on the effective date of the termination of the license of an intermediary under par. (b) 1. and ending on the date on which a new license is issued to the intermediary. The "disciplinary period" of a person under par. (b) 2., 3. or 4. is the disciplinary period of the intermediary under par. (b) 1. through which the person attains the status of "disciplined person".

(b) "Disciplined person" means any of the following:

1. An intermediary whose license is revoked under s. 628.10 (2) (b) or surrendered under a stipulation.
2. An affiliate of an intermediary under subd. 1.
3. A person in which an intermediary under subd. 1. has, directly or indirectly, more than a 10% ownership interest.
4. An agent or employe of a person described in subd. 1., 2. or 3.

(2) During the disciplinary period of a disciplined person, the disciplined person may not be employed by, act as agent for, or be affiliated with, a person engaged in the business of an insurance intermediary.

(3) No person may do any of the following with respect to activities performed in this state:

(a) Pay consideration to, or expenses of, a disciplined person that directly or indirectly relate to services per-

formed as an intermediary by the disciplined person during the disciplinary period of the disciplined person.

(b) Pay consideration to, or expenses of, a disciplined person that directly or indirectly relate to services performed as an intermediary by the person making the payment, or by an agent, employe or affiliate of that person, during the disciplinary period of the disciplined person.

(c) Pay consideration to, or expenses of, a disciplined person for information directly or indirectly provided by the disciplined person during the disciplinary period of the disciplined person for the purpose of assisting in the sale of insurance.

(d) Seek to obtain information from, or use information directly or indirectly provided by, a disciplined person during the disciplinary period of the disciplined person for the purpose of assisting in the sale of insurance.

(e) During the disciplinary period of a disciplined person, permit the disciplined person to be present during solicitation of the sale of insurance, or knowingly solicit the sale of insurance with the assistance of the disciplined person, regardless of whether the disciplined person acts as an intermediary.

(f) During the disciplinary period of a disciplined person, use or refer to an endorsement or referral by the disciplined person for the purpose of soliciting the sale of insurance.

(4) (a) Except as provided in par. (b), this section applies to all of the following:

1. A disciplined person for whom the disciplinary period is in effect on or after the effective date of this subdivision [revisor inserts date].

2. That portion of a disciplinary period in effect on or after the effective date of this subdivision [revisor inserts date], that occurs on and after the effective date of this subdivision ... [revisor inserts date].

(b) This section does not apply to an obligation incurred before the effective date of this paragraph [revisor inserts date], for the payment of consideration to, or expenses of, a disciplined person related to services performed or information provided during the disciplinary period of the disciplined person but before the effective date of this paragraph [revisor inserts date].

SECTION 16. 645.08 (2) of the statutes is amended to read:

645.08 (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 employes or agents, or the insurance security fund under ch. 646 or its agents, employes, 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, if the Such a cause of action is ~~not, however, may be~~ barred or limited by common law, sovereign immunity, governmental immunity or otherwise by law.

SECTION 17. 646.01 (1) (a) 2. i. of the statutes is created to read:

646.01 (1) (a) 2. i. Nondomestic insurers that have not obtained a certificate of authority to do business in this state and that are doing business under s. 618.41 or 618.42.

SECTION 18. 646.31 (2) (a) of the statutes is renumbered 646.31 (2) (a) 1. and amended to read:

646.31 (2) (a) 1. The claim of a policyholder, including a ceding assessable domestic insurer which is organized under ch. 612 and a domestic insurer which is a bona fide policyholder of the insurer in liquidation, ~~or who at the time of the insured event or of the liquidation order was a resident of this state.~~

2. Except for a claim of a beneficiary, assignee or payee under a life or disability insurance policy or annuity contract, the claim of an insured, including a certificate holder, under a policy or annuity who at the time of the insured event or of the liquidation order was a resident of this state;~~or~~

SECTION 19. 646.31 (2) (f) of the statutes is created to read:

646.31 (2) (f) *Beneficiaries, assignees and payees.* Except for a claim of a nonresident certificate holder under a group policy or contract, a claim made under a life or disability insurance policy or annuity contract by a resident or nonresident beneficiary, assignee or payee of a person who fulfills all of the following criteria:

1. The person is a policyholder of, or a certificate holder under, the life or disability insurance policy or annuity contract.

2. The person is a resident of this state or could have made a claim under par. (b) 2.

SECTION 20. 646.51 (6) of the statutes is amended to read:

646.51 (6) APPEAL AND REVIEW. Within ~~40~~ 30 days after ~~receipt of the board sends~~ the statement under sub. (5), an insurer, after paying the assessment under protest, may appeal the assessment to the board or a committee thereof. The decision of the board on the appeal is subject to judicial review.

SECTION 21. Effective dates. This act takes effect on the day after publication, except as follows:

(1) The amendment of sections 601.72 (1) (intro.), (2) and (3) and 601.73 (2) (c) of the statutes and the repeal and recreation of section 601.73 (1) (intro.) of the statutes takes effect on July 1, 1996.

(2) The treatment of section 628.345 of the statutes takes effect on the first day of the 7th month beginning after publication.
