

CHAPTER 646

INSURANCE SECURITY FUND

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NOTE: Chapter 109, laws of 1979, which repealed and re-created this chapter, contained notes explaining the revision.

SUBCHAPTER I

GENERAL ORGANIZATION

646.01 Scope and purposes. (1) SCOPE. (a) *General.* This chapter applies to:

1. All kinds and lines of direct insurance, except as provided in par. (b).
2. All insurers authorized to do business in this state except:
 - a. Fraternal
 - b. Assessable mutuals, including town mutuals.
 - c. Mutual municipal insurers under s. 611.11 (4).
 - d. Issuers of gift annuities under ch. 615.
 - e. Service insurance corporations under ch. 613.
 - f. Miscellaneous insurers and motor clubs under ch. 616.
 - g. State insurance funds under chs. 604 to 607.
 - h. Risk retention groups operating under 15 USC 3901 to 3904.
 - j. Health maintenance organizations not organized under ch. 611.

(b) *Exceptions.* This chapter does not apply to any of the following:

1. The nonguaranteed provisions of annuities and life insurance contracts.
2. Title insurance.
3. Surety bonds.
4. Bail bonds.
5. Mortgage guaranty insurance.
6. Ocean marine insurance.
7. Credit insurance.
8. Product liability or completed operations liability insurance, and comprehensive general

liability including either of these coverages, provided to a purchasing group or a member of a purchasing group operating under 15 USC 3901 to 3904.

(2) **PURPOSES.** The purposes of this chapter are:

(a) To maintain public confidence in the promises of insurers by providing a mechanism for protecting insureds from excessive delay and loss in the event of liquidation of insurers and by assessing the cost of such protection among insurers; and

(b) To provide where appropriate for the continuation of protection under policies and supplemental contracts of life insurance, disability insurance and annuities.

History: 1971 c. 260; 1975 c. 373, 374, 422; 1979 c. 102, 109, 355; 1981 c. 20 s. 2202 (26) (c); 1983 a. 120

646.03 Definitions. In this chapter, unless the context indicates otherwise:

(1) "Board" means the board of directors of the insurance security fund created by s. 646.12.

(2) "Fund" means the insurance security fund created by s. 646.11.

(3) "Liquidator" includes receiver or conservator.

History: 1979 c. 109, 110, 355.

646.11 Organization and administration of fund. (1) **ORGANIZATION.** There is created a fund to be known as the "insurance security fund".

All insurers subject to this chapter are contributors to the fund as a result of their authority to transact business in this state. The fund shall consist of all payments made by insurers under s. 646.51, of the earnings resulting from investments under s. 646.21 (2) and of the amounts recovered under s. 645.72 (2).

(2) **ACCOUNTS.** The fund shall be composed of 5 segregated accounts, one for life insurance,

one for annuities, one for disability insurance, one for all other kinds of insurance subject to this chapter and an administrative account.

(3) **EXPENSES OF FUND.** Necessary expenses of administration of the fund incurred in connection with actual liquidations or with continuation of contracts under s. 646.35 shall be charged to the appropriate account of the fund. All other expenses shall be charged to the administrative account.

(4) **LIABILITY.** No contributor to the fund or person acting on its behalf is personally liable for any obligations of the fund. The rights of creditors are solely against the assets of the fund.

(5) **IMMUNITY.** The fund, its contributor insurers, its agents, employees or directors and the commissioner are not liable in tort for any action taken in good faith performance of duties under this chapter.

History: 1979 c. 109, 221; 1983 a. 120.

646.12 Administration of the fund. (1) COMPOSITION OF BOARD. (a) *Members.* The fund shall be administered by a board of directors which shall consist of not fewer than 7 nor more than 11 members. The attorney general, the state treasurer and the commissioner are members with full voting rights. Other members shall be chosen from representatives of insurers subject to this chapter under procedures specified by the commissioner by rule. The rule may provide that, instead of natural persons, specific insurers or associations of insurers may be selected as members of the board and may act through any duly authorized representative.

(b) *Chairperson.* The person to chair the board shall be elected by the members of the board under a rule promulgated by the commissioner.

(2) **GENERAL POWERS AND DUTIES.** The board shall:

(a) Subject to the commissioner's power to promulgate rules under sub. (1), adopt rules for the administration of this chapter, including delegation of any part of its powers and its own procedures.

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

(c) Delegate to the committees any of its powers and duties under this chapter, subject to review and reconsideration by the board.

(d) Employ or retain the personnel necessary to carry out its duties and set compensation for the personnel, sue or be sued, make contracts and borrow money necessary to carry out its duties in the most efficient way, including

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money with which to pay claims under s. 646.31 or to continue coverage under s. 646.35. The board may offer as security for such loans its claims against the liquidator or its power to levy assessments under this chapter. Personnel employed under this paragraph are not employees of the state and are not subject to s. 20.922 or ch. 230.

(e) Advise and make recommendations to the commissioner on any matter related to the possible insolvency of an insurer covered by this chapter, and respond to any reasonable questions presented by the commissioner. Information, recommendations and advice under this subsection are not open to public inspection under s. 601.46 (4).

(f) Negotiate and contract with any liquidator to achieve the purposes of this chapter.

(g) Perform other acts necessary to achieve the purposes of this chapter.

(3) **COMPENSATION.** Members of the board and other committee members shall receive no compensation for services but may receive reimbursement for all reasonable and necessary expenses incurred in the performance of their respective duties as directors or as committee members.

History: 1979 c. 109, 355

646.13 Special duties and powers of the board related to loss claims. (1) DUTIES. The board shall:

(a) Establish procedures and acceptable forms of proof for eligible claims, which shall correspond as closely as practicable with the corresponding rules under ch. 645.

(b) Stand in the position of the insurer in the investigation, compromise, settlement, denial and payment of claims under s. 646.31 and the defense of 3rd party claims against insureds, subject to the limitations of s. 645.43. The board shall consult and cooperate with the liquidator in carrying out these duties.

(2) **POWERS.** The board may:

(a) Review settlements, releases and judgments to which the insurer or its insureds were parties to determine the extent to which they may be properly contested.

(b) Exercise with respect to loss claims the powers that the liquidator has with respect to other claims under s. 645.46 (18).

History: 1979 c. 109.

646.21 Custody and investment of assets. (1)

CUSTODY. Except as provided in sub. (2), the board controls the assets of the fund. The board shall select regulated financial institutions in this state which receive deposits in which to establish and maintain accounts for

assets needed on a current basis. If practicable, the accounts shall earn interest.

(2) **INVESTMENT OF ASSETS.** The board may request that assets of the fund not needed currently be invested by the investment board under s. 25.17. If so requested, the investment board shall invest those assets in investments with maturities and liquidity appropriate to the probable needs of the fund for money to perform its duties. All income attributable to the investments shall be credited to the fund, and both income and principal shall be transferred to the board of the fund on request of the board. Assets held by the board of the fund shall be invested in a similar manner.

History: 1979 c. 109; 1983 a. 120.

SUBCHAPTER II

CLAIMS PROCEDURES

646.31 Eligible claims. (1) CONDITIONS OF ELIGIBILITY. A claim is not eligible for payment from the fund unless it is a claim for a loss insured under the policy or annuity and:

(a) *Issued by authorized insurer.* Arises out of an insurance policy or annuity issued by an insurer which is in liquidation and which was authorized to do business in this state either at the time the policy or annuity was issued or when the insured event occurred;

(b) *Assessability of insurer.* Arises out of business not exempt from assessment under s. 646.01 (1); and

(c) *Contact with state.* Is a member of one of the classes of claims under sub. (2).

(2) **CLASSES OF CLAIMS TO BE PAID.** No claim may be paid under this chapter unless the claim is in one of the following classes:

(a) *Residents.* The claim of a policyholder, including a ceding domestic insurer which is not subject to this chapter, or an insured under a policy or annuity who at the time of the insured event or of the liquidation order was a resident of this state; or

(b) *Certain nonresidents.* The claim is made under a life or disability insurance policy or annuity contract subject to this section and issued by a domestic insurer, whether or not the claimant is a resident of this state.

(c) *Owners of property interests.* The claim of a person having an insurable interest in or related to property which was situated in this state at the time of the insured event.

(d) *Third party claimants.* A claim under a liability or workers' compensation insurance policy, if:

1. Either the insured or the 3rd party claimant was a resident of this state at the time of the insured event;

2. The claim is for bodily or other personal injuries suffered in this state or by a person who suffered the injuries while a resident of this state; or

3. The claim is for damage to property situated in this state at the time the damage occurred.

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

(3) **DEDUCTIBLE.** (a) Payment under this chapter is limited to the amount by which the claim exceeds \$200. Claims may not be aggregated by assignment or otherwise for application of this deductible.

(b) The board may waive the application of par. (a) to claims under contracts subject to s. 646.35 (2) or (3), to the extent that the board determines that application of par. (a) would be impracticable.

(4) **MAXIMUM CLAIM.** The aggregate obligation of the fund on a single risk, loss or life may not exceed \$300,000.

(5) **PUNITIVE DAMAGES.** No punitive damages may be paid out of the fund.

(6) **COLLECTION FROM COLLATERAL SOURCES.** (a) The portion of a loss claim for which indemnification is provided by other benefits or advantages, which may not be included in the class of claims defined by s. 645.68 (3), may not be claimed from the fund under this chapter.

(b) The board may waive the application of par. (a) to claims under contracts subject to s. 646.35 (2) or (3), to the extent that the board determines that application of par. (a) would be impracticable.

(7) **SETOFFS AND COUNTERCLAIMS.** Section 645.56 applies to the settlement of loss claims. The board shall give the liquidator a reasonable opportunity to inform the board of possible setoffs and counterclaims before paying loss claims.

(8) **NOTICE TO CLAIMANTS.** The board shall provide notice under s. 645.47 (2) to those potential loss claimants to whom the fund is liable under the section, if the liquidator has not done so.

(9) **COLLECTION FROM OTHER FUNDS.** A claim recoverable from more than one security fund shall be paid in the following order:

(a) By any security fund with an obligation to pay all loss claims of the insurer;

(b) If it is a first party claim for damage to property with a permanent location, by the fund of the location of the property;

(c) If it is a workers' compensation claim, by the fund of the residence of the claimant;

(d) In any other case, by the fund of the residence of the insured; and

(e) Any other funds liable to pay.

History: 1979 c. 109; 1983 a. 120 ss 6 to 11, 19.

646.32 Appeal and review. (1) APPEAL. A claimant whose claim is reduced or declared ineligible shall promptly be given notice of the determination and of the right to object under this section. The claimant may appeal to the board within 30 days after the mailing of the notice.

(2) REVIEW. Decisions of the board under sub. (1) are subject to judicial review.

History: 1979 c. 109.

646.33 Subrogation and cooperation. (1) SUBROGATION. Upon payment to any loss claimant the fund is subrogated to the claimant's full right of recovery against the insurer, and to the same extent the insurer would have been subrogated, against any liquidator and any 3rd person. On recovery under this section, the fund may retain both the amount it has paid to the claimant and the amount it has expended to obtain the recovery and shall pay any balance to the claimant.

(2) COOPERATION. The claimant shall cooperate with the board in pursuing the fund's rights under sub. (1), including executing any necessary documents. If cooperation is withheld unreasonably, the fund may recover from the claimant any amount it has paid the claimant.

(3) CLAIMS AGAINST LIQUIDATOR. The board shall report periodically and whenever a reasonable request is made to any liquidator against whom subrogation rights exist under sub. (1) the claims paid and rejected together with estimates of unsettled claims made or anticipated against the fund.

History: 1979 c. 109.

646.35 Continuation of coverage. (1) SCOPE. This section applies to the following contracts when subject to this chapter:

- (a) Annuities.
- (b) Life insurance.
- (c) Disability insurance.

(2) DOMESTIC INSURER IN LIQUIDATION. If a domestic insurer is in liquidation, the board shall, subject to the approval of the commissioner:

(a) Guarantee, assume or reinsure or cause to be guaranteed, assumed or reinsured all policies of the insurer within the scope of this section;

(b) Assure performance of the contractual obligations of the insurer on such policies; and

(c) Provide the necessary money or other means necessary to discharge the duties under pars. (a) and (b).

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(3) NONDOMESTIC INSURER IN LIQUIDATION. If a nondomestic insurer is in liquidation, the board shall, subject to the approval of the commissioner and on a determination by the commissioner that the insurer's domiciliary jurisdiction or state of entry does not provide by statute for protection to residents of this state substantially similar to that provided by this section:

(a) Guarantee, assume or reinsure or cause to be guaranteed, assumed or reinsured the policies of residents within the scope of this section;

(b) Assure performance of the contractual obligations of the insurer on such policies; and

(c) Provide the necessary money or other means necessary to discharge the duties under pars. (a) and (b).

(4) CLAIMS AGAINST LIQUIDATOR. The fund has a claim against the liquidator for reasonable payments made to discharge its duties under this section. If the board and the liquidator disagree regarding the reasonableness of such payments, either may apply to the court to determine the question. Such payments shall have the same priority as the class of claims under s. 645.68 (3).

(5) RATE INCREASES. The board may increase any rates or premiums on policies during continuation of coverage under sub. (2) (b) or (3) (b) to the extent the policies permit the insurer to increase the rates or premiums. If the board determines that the rates or premiums on policies which do not permit an increase or the rates or premiums as increased to the extent permitted by the policies are inadequate under s. 625.11 (3), the board may offer the policyholders the option of terminating the coverage or continuing the coverage at adequate rates or premiums as determined by the board.

(6) LIMITATIONS. In performing its duties under this section:

(a) In the case of an annuity contract, the board may limit its performance to payment of the then current value of the loss claim under s. 645.68 (3) as of the date of the order of liquidation, with interest to the date of payment, in lieu of the requirements of sub. (2) or (3).

(b) In the case of a disability insurance policy which is neither guaranteed renewable nor noncancelable, the board is not obligated to continue the policy in force beyond the time required under s. 645.43 or the date established in the liquidation order of another state, but may continue the coverage under any disability insurance policy for up to 180 days after the date of the liquidation order. The commissioner may adopt rules defining "guaranteed renewable" and "noncancelable" for the purposes of this paragraph.

History: 1979 c. 109; 1983 a. 120

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646.41 Tax exemption. The fund is exempt from payment of all fees and taxes levied by this state or any of its subdivisions or instrumentalities, except for fees and taxes levied by virtue of employment under s. 646.12 (2) (d).

History: 1979 c 109

646.51 Assessments. (1) DUTY TO ASSESS. As soon as practicable after a liquidation order has been issued, the board shall estimate separately for each of the accounts of s. 646.11 (2), the amounts necessary to make the payments provided by this chapter and shall order assessments separately for each account.

(2) EXEMPTIONS FROM ASSESSMENTS. If the commissioner finds that a nondomestic insurer is subject to another security fund law providing substantially the same protection to claimants as would be provided by s. 646.31 or 646.35 and that under the law of the other jurisdiction would have a prior obligation to pay those claims or assume those obligations, the commissioner shall exempt the insurer from the assessments on the classes of business to which the other law applies.

(3) CALCULATION. (a) *General.* Except as provided in pars. (b) and (c), assessments shall be calculated as a percentage of premiums written in this state in the classes protected by the account, as reported in the annual statement of each insurer for the year preceding the year of the liquidation order. Premiums for the purpose of this section means gross premiums and other considerations received for direct insurance and annuities less return premiums and other considerations and dividends paid or credited to policyholders on the direct business.

(b) *Continuation of coverage.* Assessments to provide protection under s. 646.35 (2) shall for each account be made separately for each state in which the domestic insurer in liquidation was authorized to transact business at any time. The assessment attributable to each state shall be in the proportion that the premiums the insurer received on business in that state on policies covered by the account, as reported in its annual statement for the year preceding the year of the liquidation order, bears to the premiums it received in all such states. Assessments against insurers shall be in the proportion that those premiums received on business in each such state by each assessed insurer on policies covered by each account bears to such premiums received on business in each state by all assessed insurers.

(c) *Administrative assessments.* The board may make assessments on a nonprorated basis to meet administrative costs and other expenses

not related to the liquidation or rehabilitation of a particular insurer. These assessments may not exceed \$150 per insurer in any year.

(4) LIMITS. The maximum assessment under this section in any calendar year is 2% of the premiums of the previous year. If the maximum assessment does not enable the fund to meet its obligations, an additional assessment shall be made in each succeeding year until the amounts available enable the fund to meet its obligations. No assessment may be levied if the assets held in the appropriate account of the fund are sufficient to cover all estimated payments for liquidations in progress.

(5) COLLECTION. After the rate of assessment has been fixed, the board shall send to each insurer a statement of the amount it is to pay. The board shall designate whether the assessments shall be made payable in one sum or in instalments. Assessments shall be collected by the same procedures as premium taxes or license fees under ch. 76.

(6) APPEAL AND REVIEW. Within 10 days after receipt of the statement under sub. (5), an insurer may appeal the assessment to the board or a committee thereof. The decision of the board on the appeal is subject to judicial review, after payment has been made under protest.

(7) RECOUPMENT OR TAX CREDIT. An insurer's premium rates are not excessive because they contain an amount reasonably calculated to recoup assessments made under this chapter. If the premium rates on a class of business are fixed, so that it is not possible for the insurer to recoup its assessments by increasing premium rates on the class of business, the insurer may offset 20% of the amount of the assessment against its tax liabilities to this state, other than real property taxes, in each of the 5 calendar years following the year in which the assessment was paid. If the insurer ceases doing business in this state, all assessments not yet offset may be offset against its tax liabilities to this state for the year it ceases doing business. If the offset exceeds the tax liabilities, no refund will be made and there will be no carry-forward of the deficit to later years. Any amount available for credit against future tax liabilities under this subsection may be regarded as an asset of the insurer under rules promulgated by the commissioner.

(8) ABATEMENT AND DEFERRAL. The board may abate or defer the assessment of an insurer in whole or part if payment of the assessment would endanger the ability of the insurer to fulfill its contractual obligations. The amount by which an assessment is abated or deferred

may be assessed under this section against other insurers.

History: 1979 c. 109; 1983 a. 120.

Sub. (7) is applicable to franchise taxes, income taxes and fire department dues. Only Wisconsin's assessments are used for offsets against Wisconsin taxes. Section 76.66 applies. If assessments are reimbursed, tax credit should be recaptured. 72 Atty. Gen. 17.

646.60 Claims by security funds. (1) RECOGNITION. (a) *Settlements by the fund.* The liquidator is bound by settlements of covered loss claims made by the board under this chapter.

(b) *Settlements by comparable funds.* The liquidator is bound by settlements of covered loss claims by funds or organizations of other states that are comparable to the fund under this chapter provided:

1. That the laws of the other states give equivalent recognition to the settlements of loss claims by the fund; and

2. That if the same claim is reported as paid by 2 or more funds, payment shall be to the fund with a prior obligation under s. 646.31 (7).

(2) PRIORITIES. The subrogation claims of funds under sub. (1) for settlements of claims, including expenses in settling them, have the priority the claims would have under s. 645.68.

History: 1979 c. 109

646.61 Disposal and transfer of assets. (1)

After termination of all liquidations under any account of s. 646.11 (2), remaining assets in that account shall be redistributed among those who paid assessments under rules promulgated to ensure treatment that is as equitable to the contributing insurers as is practicable. Partial distributions may be made to insurers who were assessed after all claims against the fund arising from such liquidations have been paid.

(2) To meet the needs of the fund the board may temporarily transfer assets from one account to another.

History: 1979 c. 109; 1983 a. 120.

646.73 Liquidations to which the chapter is applicable. This chapter applies in full to all liquidations commenced after February 16, 1980. For each liquidation in process on February 16, 1980 the board shall apply to the court which issued the liquidation order for an order specifying the extent to which this chapter, 1979 stats., applies to that liquidation. The court shall apply this chapter, 1979 stats., to the maximum extent possible without affecting vested rights or creating serious administrative difficulties.

History: 1979 c. 109