CHAPTER 646

INSURANCE SECURITY FUND

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

NOTE: Chapter 109, laws of 1979, which repealed and recreated this chapter, contained notes explaining the revision.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. Fraternals that are not health maintenance organization insurers.

b. Assessable mutuals, including town mutuals.

c. Mutual municipal insurers under s. 611.11 (4).

d. Issuers of gift annuities under ch. 615.

e. Limited service health organization insurers.

f. Miscellaneous insurers and motor clubs under ch. 616.

g. State insurance funds under chs. 604 to 607.

h. Risk retention groups.

i. Service insurance corporations that offer only dental or vision care.

j. 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.

(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, fidelity bonds and any other bonding obligations.

4. Bail bonds.

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

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 risk purchasing group or a member of a risk purchasing group.

9. Any self−funded or partially or wholly uninsured plan of an employer or other person to provide life insurance, annuity or disability benefits to its employees or members to the extent that the plan is self−funded or uninsured, including benefits payable by an employer or other person under any of the following:

a. A multiple employer welfare arrangement as defined in 29 USC 1002.

b. A minimum premium group insurance plan.

c. A stop−loss group insurance plan.

d. A contract for administrative services only.

10. Any liability for dividends or experience rating credits payable after the date of entry of the order of liquidation under an insurance or annuity contract, and any fees or allowances due any person, including the policyholder, in connection with service to or administration of the contract.

11. Insurance of warranties or service contracts.

12. Municipal bond insurance.

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

14. A policy issued by an insurer to the department of health and family services under s. 49.45 (2) (b) 2. to provide prepaid health care to medical assistance recipients.

(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; 1985 a. 216; 1987 a. 247, 325; 1989 a. 23; 1995 a. 27 s. 9130 (4); 1995 a. 236, 396; 1997 a. 35.

The purpose of this chapter is to protect insureds against losses caused by insolvent insurers. Insureds of insolvent insurers are protected against subrogation claims to the extent of their policy limits. Fireman's Fund v. Pitco Frialator, 145 Wis. 2d 526, 427 N.W.2d 417 (Ct. App. 1988).

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.

(2m) "Health maintenance organization" has the meaning given under s. 609.01 (2).

(2r) "Limited service health organization" has the meaning given in s. 609.01 (3).

(3) "Liquidator" includes receiver or conservator.

History: 1979 c. 109, 110, 355; 1985 a. 29; 1995 a. 236.

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 6 segregated accounts, one for life insurance, one for annuities, one for disability insurance other than policies issued or coverage provided by a health maintenance organization insurer, one for health maintenance organization insurers, 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. No cause of action of any nature may arise against and no liability may be imposed upon the fund or its agents, employees, directors or contributor insurers, or the commissioner or the commissioner's agents, employees or representatives, for any act or omission by any of them in the performance of their powers and duties under this chapter.

History: 1979 c. 109, 221; 1983 a. 120; 1985 a. 216, 332; 1989 a. 23.

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 14 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, provided that one member is a representative of a service insurance corporation. 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 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 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 privileged and confidential and are not open to public inspection under s. 19.35 (1).

(f) 1. Keep records of all meetings of the fund and of its subcommittees that involve discussions of the activities of the fund in carrying out its powers and duties under this chapter.

2. Keep confidential the records under subd. 1. pertaining to specific liquidation proceedings involving an insurer until the termination of the liquidation proceedings or until sooner ordered to make the records public by a court.

3. Keep confidential the records under subd. 1. pertaining to specific rehabilitation proceedings involving an insurer unless ordered to make the records public by a court.

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

(h) 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.

(4) OTHER POWERS. The board may join an organization consisting of one or more entities of other states performing comparable functions, in order to assist the board in carrying out its powers and duties under this chapter and otherwise further the purposes of this chapter.

History: 1979 c. 109, 355; 1985 a. 216; 1987 a. 325; 1989 a. 332; 1995 a. 236.
Cross Reference: See also ch. Ins 11, Wis. adm. code.

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 ch. 645.

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

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

(e) Pursue salvage and subrogation with respect to paid covered claim obligations and retain any amounts recovered.

(f) Appoint and direct legal counsel for the defense of covered claims under insurance policies.

(3) NO DUTY OR LIABILITY. The board has no duty or liability with respect to any claim filed as follows:

(a) With the liquidator under s. 645.61 after the date for filing specified by the liquidator under s. 645.47 (2), unless the liquidator determines that the claim is considered to have been timely filed under s. 645.61 (2) and the claim participates fully in every distribution to the same extent as other timely filed claims in the same class.

(b) With a liquidator or court under the laws of any other state after the date for filing specified by the liquidator or court, unless the liquidator or court determines that the claim is considered to have been timely filed under a law substantially similar to s. 645.61 (2) and the claim participates fully in every distribution to the same extent as other timely filed claims in the same class.

(c) Except for claims under life insurance policies, annuities and noncancelable or guaranteed renewable disability insurance policies and except for claims determined to be excused late fil-

ings as provided in pars. (a) and (b), with a liquidator or court after the earlier of the following:

1. Eighteen months after the order of liquidation is entered.

2. The final date for filing specified by the liquidator or court.

(4) WHEN DUTY TO DEFEND TERMINATES. Any obligation of the board to defend an insured ceases upon the board's payment, by settlement releasing the insured or on a judgment, of an amount equal to the lesser of the board's covered claim obligation limit or the applicable policy limit, subject to any express policy terms regarding tender of limits.

History: 1979 c. 109; 1985 a. 216; 1987 a. 325; 1999 a. 30.

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

1. Interference with the board or with its administrative proceedings.

2. The institution or further prosecution of any action or proceeding involving the insurer or in which the board is obligated to defend a party.

3. The obtaining of a preference, judgment, garnishment or lien against the insurer or its assets.

4. Any other threatened or contemplated action that might prejudice the rights of policyholders or the administration of the liquidation or board proceedings.

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

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

History: 1987 a. 325; 1999 a. 30.

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 an unpaid claim for a loss insured under the policy or annuity and all of the following conditions are met:

(a) *Issued by authorized insurer.* The claim arises out of an insurance policy or annuity issued by an insurer 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, and against which an order of liquidation, which is not stayed, has been entered by a court of competent jurisdiction in the insurer's domiciliary state.

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

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

(cm) *Termination of coverage.* Except for claims under life insurance policies, annuities or noncancelable or guaranteed renewable disability insurance policies, the claim arises within 30 days after the order of liquidation is entered or before any of the following occur:

1. The policy expires, if the expiration date is less than 30 days after the order of liquidation is entered.

2. The insured replaces or cancels the policy, if either action is taken within 30 days after the order of liquidation is entered.

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

1. Based solely on a judgment.

2. Made for interest on any claim.

3. Made under s. 645.63 (2).

4. Subordinated under s. 645.90.

5. An indemnification recovered as a voidable preference under s. 645.54 (1) (c).

6. Made by an affiliate of an insurer in liquidation.

7. A retrospective premium rate adjustment.

8. Made 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 insurer is not liable under ss. 609.91 to 609.935.

9. Made 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.

(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.* 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, 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.

(b) *Certain nonresidents.* 1. Except with regard to claims under contracts that are held by residents of a state that does not provide substantially equivalent coverage with regard to contracts of residents of this state, 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.

2. The claim is made under a life or disability insurance policy or annuity contract subject to this section and issued by a domestic insurer if all of the following conditions are met:

a. The claimant is a resident of another state that provides coverage similar to the coverage provided under this chapter but does not provide coverage for the claimant.

b. The insurer never held a license or certificate of authority in the state in which the claimant resides.

3. The claim is made before January 1, 1990, under a life or disability insurance policy or annuity contract subject to this section and issued by a domestic insurer if all of the following conditions are met:

a. The claimant was a resident of this state when the policy or contract was issued.

b. The claimant is a resident of a state which does not provide coverage similar to the coverage provided under this chapter.

(c) *Owners of property interests.* The first−party claim of a person having an insurable interest in or related to property with a permanent location 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 either the insured or the 3rd party claimant was a resident of this state at the time of the insured event.

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

(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.

(3) DEDUCTIBLE. (a) In this subsection, "health insurance policy" does not include a policy providing income continuation coverage or benefits for loss of time.

(am) Except as provided in pars. (b) and (c), 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) With regard to contracts subject to s. 646.35 (2) or (3) other than health insurance policies, in lieu of the deductible under par. (am), the board may impose a deductible not to exceed the lesser of 10% or $200 on any claim or other benefit payment if the board deems the imposition of this deductible more equitable or practical than that under par. (am).

(c) A claim or other benefit payment under this chapter that is made under a health insurance policy may not be subject to the deductible under par. (am) or (b).

(4) MAXIMUM CLAIM. (a) Except in regard to worker's compensation insurance and except as provided in par. (b), the obligation of the fund on a single risk, loss or life may not exceed $300,000.

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

(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 classes of claims specified in s. 645.68 (intro.), 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.

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

(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.

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

(10) TEMPORARY MORATORIUMS. Before being obligated to make payments under this chapter to holders of life insurance or annuity contracts the fund may impose, with court approval, temporary moratoriums of not more than 90 days on payments of cash values and policy loans in addition to any deferrals of cash or policy loan value by contractual provision. A temporary moratorium may be renewed for successive periods of not more than 90 days with court approval.

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

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

(13) RESIDENCY. For purposes of determining residency in this section, the residency of a claimant, insured or policyholder that is not a natural person is the state in which the claimant's, insured's or policyholder's principal place of business is located.

History: 1979 c. 109; 1983 a. 120 ss. 6 to 11, 19; 1985 a. 216; 1987 a. 325; 1989 a. 23, 31; 1995 a. 396; 1997 a. 237; 1999 a. 30.

An offset under sub. (6) (a) must include amounts available to the claimant and not just amounts settled for. An offset of the policy limits of an applicable policy rather than the amount settled for was correct. Belongia v. Wisconsin Insurance Security Fund, 195 Wis. 2d 835, 537 N.W.2d 51 (Ct. App. 1995).

When a claim against the insured of an insolvent insurer was not filed until after the effective date of sub. (12), each of the insured's claims were subject to the sub. (12) net worth limitation. A. O. Smith Corp. v. Wisconsin Insurance Security Fund, 217 Wis. 2d 252, 580 N.W.2d 348 (Ct. App. 1998).

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.

646.325 Recovery of amounts paid to 3rd parties. (1) DEFINITION. In this section, "net worth" means the amount of an insured's total assets less the insured's total liabilities at the end of the insured's fiscal year immediately preceding the date the liquidation order was entered, as shown on the insured's audited financial statement, or, if the insured is a natural person, the insured's total assets less the insured's total liabilities on December 31 immediately preceding the date the liquidation order was entered.

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

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

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

2. An affiliate of the insurer in liquidation.

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

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

History: 1987 a. 325.

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 except contracts that are held by residents of a state that does not provide substantially equivalent coverage with regard to contracts of residents of this state other than policies and contracts under s. 646.31 (2) (b) 3.;

(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).

(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.

(bm) For coverages continued pursuant to par. (b), the board may substitute a comprehensive health insurance policy approved by the commissioner for a health maintenance organization policy that is subject to sub. (2) or (3), and increase rates or premiums for the substituted coverage as provided in sub. (5).

(c) In the case of a life insurance or annuity contract, the board is not obligated to perform the responsibilities set forth in sub. (2) or (3) with respect to either of the following:

1. Any benefit payment liability, arising on or after the date of entry of the order of liquidation, to the extent that the payment is based upon a rate of interest that exceeds the larger of the following:

a. The minimum guaranteed rate specified in the contract.

b. The rate of interest determined by subtracting 3 percentage points from the monthly corporate bond yield average, as published by Moody's investors service or its successor and as adjusted on a monthly basis.

2. Any benefit payment liability, arising before the date of entry of the order of liquidation, to the extent that the payment is based upon a rate of interest that exceeds the larger of the following:

a. The minimum guaranteed rate specified in the contract.

b. The rate of interest determined by subtracting 2 percentage points from the monthly corporate bond yield average, as published by Moody's investors service or its successor, when averaged for the 4−year period ending on the date the fund becomes obligated with respect to the contract or averaged for such lesser period if the contract was issued less than 4 years before that date.

History: 1979 c. 109; 1983 a. 120; 1985 a. 216; 1989 a. 23; 1995 a. 236.

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.* 1. In this section, "premiums" means gross premiums and other considerations received for direct insurance and annuities, including considerations for a plan established under ss. 185.981 to 185.985, less return premiums and other considerations, dividends and experience credits paid or credited to policyholders on the direct business. The term "premiums" does not include any amounts received for any contracts or for the portions of any contracts for which coverage is excluded under s. 646.01 (1) (b).

2. Except as provided in pars. (b) and (c), assessments shall be calculated as a percentage of premiums written in this state by each insurer in the classes protected by the account, for the year preceding the year of entry of the order of liquidation.

(b) *Continuation of coverage.* 1. 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, excluding every state that does not provide substantially equivalent coverage with regard to contracts of residents of this state. The assessment attributable to each state shall be in the proportion that the average annual premiums the insurer received on business in that state on policies covered by the account for 3 years preceding the year of the liquidation order, bears to the average annual premiums it received in all such states in that period. Assessments against insurers shall be in the proportion that those premiums received on business in each such state by each assessed insurer on contracts covered by each account bears to such premiums received on business in each state by all assessed insurers.

2. Assessments to provide protection under s. 646.35 (3) shall be calculated as a percentage of average annual premiums received in this state by each insurer in the classes protected by the account for the 3 years preceding the year of entry of the order of liquidation.

(c) *Administrative assessments.* The board may make assessments on a prorated or nonprorated basis to meet administrative costs and other expenses whether or not related to the liquidation or rehabilitation of a particular insurer. Nonprorated assessments may not exceed $200 per insurer in any year.

(4) LIMITS. The maximum assessment under this section in any calendar year is 2% of the assessable premiums under sub. (3). 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 installments. Assessments shall be collected by the same procedures as premium taxes or license fees under ch. 76.

(6) APPEAL AND REVIEW. Within 30 days after 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.

(7) RECOUPMENT OR TAX CREDIT. (a) An insurer's premium rates are not excessive because they contain an amount reasonably calculated to recoup assessments made under this chapter.

(b) If the premium rates on a class of business are fixed, so that it is not possible for an insurer to recoup its assessments by increasing premium rates on the class of business, the insurer may offset 20% of the amount of the Wisconsin portion 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.

(c) If an 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.

(d) 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.

(9) OBLIGATION TO CONTRIBUTE CEASES. (a) Except as provided in par. (b), if an insurer's license or certificate of authority to do business in this state terminates or expires, the insurer's obligation to pay assessments under this section ceases beginning on the day after the insurer's license or certificate of authority terminates or expires.

(b) An insurer whose license or certificate of authority to do business in this state terminates or expires remains liable after the termination or expiration to pay all of the following:

1. Assessments made or called before the insurer's license or certificate of authority terminated or expired.

2. Assessments made or called after the insurer's license or certificate of authority terminated or expired that relate to a liquidation order entered before the insurer's license or certificate of authority terminated or expired.

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

Sub. (7) is applicable to franchise taxes, income taxes, and fire department dues. Only Wisconsin assessments are used for offsets against Wisconsin taxes. Section 76.66 applies. If assessments are reimbursed, tax credits 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 determinations and settlements of covered loss claims, and by payments of claims, made by the board under this chapter.

(b) *Settlements by comparable funds.* The liquidator is bound by determinations and settlements of covered loss claims, and by payments of claims, made by funds or organizations of other states that are comparable to the fund under this chapter if all of the following apply:

1. The laws of the other states give equivalent recognition to the determinations and settlements of loss claims, and to payments of claims, made by the fund.

2. 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 (9).

(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; 1999 a. 30.

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.