



2019 SENATE BILL 482

October 9, 2019 - Introduced by Senator CRAIG, cosponsored by Representatives PETERSEN, DUCHOW, DOYLE and TUSLER. Referred to Committee on Insurance, Financial Services, Government Oversight and Courts.

1 **AN ACT to repeal** 618.416 (1) (c); **to amend** 600.03 (23), 610.80 (8), 614.19 (3) (b),
2 616.54 (8), 655.27 (3) (b) 2. and 655.275 (2); and **to create** 601.465 (1m) (c) 10.,
3 614.78 and 614.79 of the statutes; **relating to:** various changes to insurance
4 laws.

Analysis by the Legislative Reference Bureau

This bill makes various changes to insurance laws, including correcting certain grammatical errors.

Fraternal

Under the bill, the commissioner of insurance may issue an order that declares a domestic fraternal that has undergone a certain financial event specified in the bill to be in a hazardous condition. The commissioner may then order the fraternal to remedy the event, and the order may include authorization to negotiate to transfer all of its members, insurance certificates, and other assets and liabilities to another fraternal or insurer. The transfer is considered to be a novation of the insurance certificates effective on the date of transfer. The fraternal must ensure the transfer is concluded within the time specified by the commissioner and subject to approval by the commissioner. Though other law may require notice to or approval by the fraternal's members or supreme governing body, a transfer agreement under the bill is considered to be fully approved by the fraternal upon a majority vote of the fraternal's board of directors. If the fraternal seeks to transfer to an organization that does not have authority to transact insurance business in Wisconsin, the

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commissioner may grant a limited certificate of authority for the organization to service the existing insurance certificates and fulfill obligations to certificate holders following the transfer.

The bill adds the following to current law grounds for rehabilitation or liquidation of an insurer: failure by a domestic fraternal to comply with a commissioner's order related to the financial event and failure by a domestic fraternal to remedy the hazardous condition within the time specified by the commissioner. The bill, however, specifies that unless the commissioner reasonably believes that rehabilitation of the fraternal has a high probability of returning the fraternal to long-term viability or will facilitate transfer to another fraternal or insurer, rehabilitation of the fraternal is presumed to be futile and to serve no useful purpose. After a petition for liquidation of a fraternal is filed, the fraternal may not assess payment of shares of a deficiency, unless the commissioner determines the assessment is for the purpose of satisfying obligations to creditors. Liquidation of domestic fraternal must be conducted consistent with the purposes of the current law purpose of enhancing efficiency and economy of liquidation, through clarification and specification of the law, to minimize legal uncertainty and litigation in a manner designed to conserve assets, limit liquidation expenses, and avoid any assessment of shares of a deficiency.

A liquidator of a fraternal under the bill must attempt to transfer insurance policies or certificates by assignment, assumption, or another means to another qualified fraternal, or if no qualified fraternal will accept the transfer, to an insurer authorized to sell life insurance in Wisconsin. Upon transfer to an insurer, each member of the transferring fraternal and owner of an insurance policy or certificate being transferred is considered to agree that any terms of the policy or certificate that provide for the fraternal's solvency or that subject the policy or certificate to the fraternal's policies are null and void and to agree to any other changes in terms that are determined by the liquidator to be necessary to effectuate the transfer.

Under current law, a fraternal organization that issues insurance policies and that has an impaired financial position may apportion the deficiency among members of the fraternal. This bill specifies that the assessment of the share of the deficiency may not take effect sooner than 90 days after the date the commissioner of insurer is notified of the assessment, unless the commissioner specifies an earlier date. The bill also allows the commissioner to disapprove the assessment if the commissioner finds that the assessment does not conform with the law or is contrary to the interest of the fraternal's members.

Injured patients and families compensation fund

Under current law, the injured patients and families compensation fund pays excess medical malpractice claims and other amounts. Certain health care providers who are covered by the compensation fund must pay an annual assessment to the compensation fund in an amount calculated under formulas in current law. When calculating the fees assessed to physicians, current law requires the commissioner to provide for not more than four payment classifications, based upon the amount of surgery performed and the risk of diagnostic and therapeutic services provided or

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procedures performed. The bill changes the number of payment classifications to no fewer than four classifications.

Currently, the Injured Patients and Families Compensation Fund Peer Review Council reviews claims made and determines any future changes to fees assessed against the health care provider. The board of governors of the plan of health care liability coverage for health care providers appoints members to the peer review council and designates the chairperson and other officers of the council. The bill dictates that the chairperson of the peer review council must be a physician. Current law requires the peer review council to consist of five persons, not more than three of whom are physicians who are actively engaged in the practice of medicine in Wisconsin. The bill specifies that those physicians must be licensed and in good standing to practice medicine instead of actively practicing. Current law requires the chairperson of the peer review council to serve as an ex officio nonvoting member of the Medical Examining Board. The bill allows the chairperson to designate another peer review council member to be the ex officio member of the Medical Examining Board and specifies that the chairperson or peer review council member may attend meetings of the Medical Examining Board as appropriate.

Corporate governance annual disclosure initial filing deadline

This bill delays the date on which the first governance annual disclosure is due to the first June 1 that occurs after the date the final rules implementing the disclosure requirements are promulgated. 2017 Wisconsin Act 313 requires an insurer or an insurance holding company system of which an insurer is a member to annually submit to the commissioner a corporate governance annual disclosure containing certain information.

Confidentiality of information

Under current law, the Office of the Commissioner of Insurance may refuse to disclose and may prevent disclosure of testimony, reports, records, communications, and information that are obtained from various entities under a pledge of confidentiality or for the purpose of assisting or participating in the entity's monitoring activities or in conducting an inquiry, investigation, or examination. This bill adds to the list of entities whose information may not be disclosed a fund or other entity in another state, or an association acting on behalf of the fund or other entity, that is organized for the same purpose as the security fund created under Wisconsin law.

Placement of surplus lines insurance

This bill eliminates the requirement that, for an intermediary to place surplus lines insurance with an unauthorized insurer domiciled in the United States, the unauthorized insurer must provide to the commissioner, no more than six months after the close of the period reported on, a certified copy of its current annual statement that is filed and approved by the regulatory authority in the unauthorized insurer's domicile and certified by an accounting or auditing firm licensed in the jurisdiction of the unauthorized insurer's domicile. The bill maintains the requirements for placement of surplus lines insurance that the unauthorized insurer that is domiciled in the United States is authorized to write the type of insurance to

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be placed with the insurer in its place of domicile and has capital and surplus in an amount specified under current law.

Financial statements of property service contract providers

This bill changes the deadline for submission of financial statements by providers of property service contracts that use a deposit or irrevocable letter of credit from the end of the fifth month following the end of the provider's fiscal year to March 31 of each year.

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

1 **SECTION 1.** 600.03 (23) of the statutes is amended to read:

2 600.03 (23) A "group insurance policy" is a policy covering a group of persons,
3 and issued to a policyholder ~~in~~ on behalf of the group for the benefit of group members
4 who are selected under procedures defined in the policy or agreements collateral
5 thereto, with or without members of their families or dependents.

6 **SECTION 2.** 601.465 (1m) (c) 10. of the statutes is created to read:

7 601.465 (1m) (c) 10. A fund or other entity in another state, or an association
8 acting on behalf of the fund or other entity, that is organized for the same purpose
9 as the security fund created under ch. 646.

10 **SECTION 3.** 610.80 (8) of the statutes is amended to read:

11 610.80 (8) INITIAL FILING DEADLINE. ~~Notwithstanding the June 1 deadline under~~
12 ~~sub. (2) (a), an An insurer, or the insurance holding company system of which the~~
13 ~~insurer is a member, that is required to file a corporate governance annual disclosure~~
14 ~~under this section shall file its first corporate governance annual disclosure no later~~
15 ~~than 60 days the first June 1 that occurs after the date the final rules implementing~~
16 ~~this section are promulgated.~~

17 **SECTION 4.** 614.19 (3) (b) of the statutes is amended to read:

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1 614.19 (3) (b) Except as provided in s. 614.24 (1m), every fraternal shall contain
2 in its laws and in each certificate of insurance it issues, a provision, to which every
3 certificate of insurance issued by the fraternal shall be subject, that if the financial
4 position of the fraternal becomes impaired, the board of directors or the supreme
5 governing body may, on an equitable basis, apportion the deficiency among the
6 members of the fraternal, the insured employees or the owners, or any combination
7 thereof. A member, insured employee or owner may then either pay the member's,
8 insured employee's or owner's share of the deficiency, or accept the imposition of a
9 lien on the certificate of insurance, to bear interest at the rate charged on policy loans
10 under the certificate, compounded annually until paid, or may accept a proportionate
11 reduction in benefits under the certificate. The fraternal may specify the manner of
12 the election and which alternative is to be presumed if no election is made. No
13 assessment of shares of a deficiency under this paragraph may take effect until 90
14 days after the date the commissioner is notified of the assessment, unless the
15 commissioner approves an earlier effective date. The commissioner may disapprove
16 the assessment of shares of a deficiency under this paragraph if the commissioner
17 finds that the assessment is not adopted in conformity with this chapter or is
18 contrary to the interests of the members of the domestic fraternal.

19 **SECTION 5.** 614.78 of the statutes is created to read:

20 **614.78 Maintenance of solvency. (1) ORDER DECLARING HAZARDOUS**
21 **CONDITION.** When a domestic fraternal has an authorized control level event, as
22 defined by the commissioner by rule, under circumstances the commissioner
23 determines will not be promptly remedied, the commissioner, in addition to taking
24 any other action required or allowed by law, may issue an order declaring the
25 domestic fraternal to be in a hazardous condition and may order the fraternal to

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1 remedy the authorized control level event. This order may include authorization to
2 the fraternal to negotiate an agreement to transfer, subject to sub. (2), all members,
3 certificates, and other assets and liabilities of the fraternal to another fraternal or
4 other insurer through merger, consolidation, assumption, or other means.

5 **(2) SPECIFICATIONS REGARDING TRANSFER.** (a) Any transfer under sub. (1) shall
6 constitute a novation of the transferring fraternal's certificates that is effective on
7 the date of transfer. The fraternal shall ensure the transfer is concluded within the
8 time agreed to by the commissioner and subject to the approval by the commissioner.
9 The transfer agreement under this paragraph is considered to be fully approved by
10 the domestic fraternal upon a majority vote of the fraternal's board of directors,
11 notwithstanding s. 614.73 and any other law or regulation that requires notice to or
12 approval by the fraternal's members or supreme governing body. Any law of a
13 fraternal requiring notice to or approval by the fraternal's members or supreme
14 governing body shall be suspended by this section. The transferring fraternal shall
15 provide notice to its members of the transfer by mail or in the manner provided by
16 s. 614.41 (1) no later than 30 days after the transfer is approved by the commissioner.

17 (b) If the fraternal seeks to make a transfer under sub. (1) to an organization
18 that does not have a certificate of authority in this state, the commissioner may grant
19 the organization a limited certificate of authority to service the existing certificates
20 and fulfill all obligations owed to certificate holders following the transfer but not to
21 otherwise transact insurance business in this state.

22 (c) By order of the commissioner and notwithstanding any law or rules to the
23 contrary and any laws of the fraternal, the board of directors of the fraternal may
24 suspend or modify the qualifications for membership in the fraternal as necessary
25 to facilitate a transfer under sub. (1).

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1 (d) Upon the effective date of a transfer to an organization that is not a fraternal
2 and in consideration for the transfer, each member of the fraternal is considered to
3 agree that any terms of a certificate subjecting the certificate to the laws of the
4 fraternal or providing for the maintenance of the fraternal's solvency, except to the
5 extent of any outstanding lien not released by the terms of the transfer, shall be null
6 and void and the assuming organization shall endorse the certificate accordingly.

7 **SECTION 6.** 614.79 of the statutes is created to read:

8 **614.79 Rehabilitation and liquidation. (1) GROUNDS FOR REHABILITATION**
9 **OR LIQUIDATION.** In addition to the grounds for rehabilitation under s. 645.31 and the
10 grounds for liquidation under s. 645.41, any of the following is grounds for
11 rehabilitation under s. 645.31 or liquidation under s. 645.41:

12 (a) Failure by a domestic fraternal to comply with an order of the commissioner
13 under s. 614.78.

14 (b) Failure by a domestic fraternal to remedy within the time specified by the
15 commissioner a hazardous condition as determined by the commissioner under s.
16 614.78.

17 **(2) CRITERIA FOR REHABILITATION.** For purposes of a proceeding commenced
18 under this section, rehabilitation under s. 645.31 is presumed to be futile and to serve
19 no useful purpose, unless the commissioner reasonably believes that rehabilitation
20 has a high probability of returning the fraternal to long-term viability or will
21 facilitate a transfer to another fraternal or insurer.

22 **(3) ASSESSMENTS UNDER LIQUIDATION.** Notwithstanding ss. 614.19 (3) and
23 645.68, after a petition for liquidation of a fraternal is filed, the fraternal may not
24 assess payment of shares of a deficiency under s. 614.19. (3) (b), unless the
25 commissioner determines that the assessment is for the purpose of satisfying the

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1 obligations of the fraternal to creditors described in s. 645.68 (1) and (3). The
2 fraternal may not make an assessment for the purpose of any deficiency related to
3 other claims including those described in s. 645.68 (3c), (3m), (3r), (4), (5), (6), (7), (8),
4 (9), (10), or (11).

5 (4) CONDUCT OF LIQUIDATION PROCEEDINGS. Liquidation proceedings under this
6 section for a fraternal shall be conducted consistent with the purposes of s. 645.01
7 (4) (c) in a manner designed to conserve assets, limit liquidation expenses, and avoid
8 any assessment of shares of a deficiency.

9 (5) TRANSFER BY LIQUIDATOR. The liquidator of a fraternal under this section
10 shall attempt to transfer policies or certificates of the liquidating fraternal under s.
11 645.46 (8) by way of assignment, assumption, or other means to a qualified fraternal,
12 either domestic or foreign, or, if no qualified fraternal will accept the transfer, to an
13 insurer authorized to transact life insurance business in this state. In determining
14 whether a fraternal or insurer is qualified to accept a transfer under this subsection,
15 the liquidator shall consider the solvency of the fraternal or other insurer among
16 other things. No fraternal shall be obligated to accept a transfer under this
17 subsection. Upon the effective date of a transfer under this subsection to an insurer
18 that is not a fraternal and in consideration for the transfer, each member of the
19 fraternal and owner of a policy or certificate being transferred is considered to agree
20 that any terms of the insurance policy or certificate that provide for the maintenance
21 of the fraternal's solvency or that subject the policy or certificate to the policies of the
22 fraternal shall be null and void and to agree to any other changes to terms of the
23 policy or certificate that are determined by the liquidator to be necessary to
24 effectuate the transfer. The insurer accepting transfer shall endorse the policy or

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1 certificate accordingly. Any transfer under this subsection is a novation of the policy
2 or certificate that is effective on the date of transfer.

3 **SECTION 7.** 616.54 (8) of the statutes is amended to read:

4 616.54 (8) FINANCIAL STATEMENTS. A provider using a deposit or irrevocable
5 letter of credit as specified in sub. (7) to satisfy sub. (5) shall, ~~by the end of the 5th~~
6 ~~month following the end of each fiscal year of the provider~~ each March 31, submit
7 financial statements for the most recent fiscal year to the commissioner that are
8 prepared on an accrual basis in accordance with generally accepted accounting
9 principles and that are audited by an independent certified public accountant.

10 **SECTION 8.** 618.416 (1) (c) of the statutes is repealed.

11 **SECTION 9.** 655.27 (3) (b) 2. of the statutes is amended to read:

12 655.27 (3) (b) 2. With respect to fees paid by physicians, the commissioner shall
13 provide for ~~not more~~ no fewer than 4 payment classifications, based upon the amount
14 of surgery performed and the risk of diagnostic and therapeutic services provided or
15 procedures performed.

16 **SECTION 10.** 655.275 (2) of the statutes is amended to read:

17 655.275 (2) APPOINTMENT. The board of governors shall appoint the members
18 of the council. Section 15.09, except s. 15.09 (4) and (8), does not apply to the council.
19 The board of governors shall designate the chairperson who shall be a physician, vice
20 chairperson and secretary of the council and the terms to be served by council
21 members. The council shall consist of 5 persons, not more than 3 of whom are
22 physicians who are ~~actively engaged in the practice of~~ licensed and in good standing
23 to practice medicine in this state. The chairperson ~~shall be a physician and or~~
24 another peer review council member designated by the chairperson shall serve as an

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SECTION 10

1 ex officio nonvoting member of the medical examining board and may attend
2 meetings of the medical examining board, as appropriate.

3 (END)