

State of Wisconsin



2021 Senate Bill 588

Date of enactment: **December 3, 2021**
Date of publication*: **December 4, 2021**

2021 WISCONSIN ACT 114

AN ACT *to repeal* 601.954 (2) (f) 1., 635.05 (7), 635.12 and 646.51 (3) (ar) 1.; *to renumber* 632.66; *to consolidate, renumber and amend* 601.954 (2) (f) (intro.) and 2. and 646.51 (3) (ar) (intro.) and 2.; *to amend* 601.64 (3) (c), 611.40 (1), 611.42 (1), 611.42 (1e) (b) (intro.), 632.62 (1) (b) 1., 632.62 (1) (b) 2., 645.68 (3), 646.13 (2) (g), 646.325 (2) (intro.), 646.325 (2) (a) (intro.), 655.27 (3) (b) 2., 655.27 (3) (bt) and 655.275 (2); and *to create* 551.102 (28) (bm), 601.465 (3) (g), 601.465 (3) (h), 601.48 (1m), 611.42 (1b), 611.42 (1g), 611.426, 617.13, 625.03 (1m) (f), 632.62 (1) (b) 4., 632.66 (2), 646.01 (1) (b) 21., 646.01 (1) (b) 22. and 646.325 (2) (a) 3. of the statutes; **relating to:** various changes to insurance laws, including issuance of funding agreements, granting rule-making authority, and providing a penalty.

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

SECTION 1. 551.102 (28) (bm) of the statutes is created to read:

551.102 (28) (bm) Does not include a funding agreement authorized under s. 632.66.

SECTION 2. 601.465 (3) (g) of the statutes is created to read:

601.465 (3) (g) Any information designated as confidential under s. 632.66 (2) (g), which is subject to the confidentiality provisions in s. 632.66 (2) (g).

SECTION 3. 601.465 (3) (h) of the statutes is created to read:

601.465 (3) (h) Group capital calculation and liquidity stress test filings and any related information provided by an insurer under rules promulgated under s. 617.13 (1), which are not subject to subch. II of ch. 19 and are subject only to the confidentiality provisions of s. 617.13 (2).

SECTION 4. 601.48 (1m) of the statutes is created to read:

601.48 (1m) ACCREDITATION. (a) The office shall maintain accreditation with the National Association of Insurance Commissioners.

(b) Notwithstanding s. 230.14, the commissioner may adopt minimum education and certification requirements for job classification levels that monitor the financial solvency of insurers as necessary to meet accreditation and best practice standards established by the National Association of Insurance Commissioners. Any minimum education and certification requirement adopted under this paragraph shall apply only to employees placed into the classification level after the requirement is adopted and may not apply to employees who were in that classification level prior to the adoption of the requirement.

SECTION 5. 601.64 (3) (c) of the statutes is amended to read:

601.64 (3) (c) *Forfeiture for violation of statute or rule.* Whoever violates an insurance statute or rule or s. 149.13, 2011 stats., intentionally aids a person in violating an insurance statute or rule or s. 149.13, 2011 stats., or knowingly permits a person over whom he or she has

* Section 991.11, WISCONSIN STATUTES: 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."

authority to violate an insurance statute or rule or s. 149.13, 2011 stats., shall forfeit to the state not more than \$1,000 for each violation, except that whoever violates an insurance statute or rule, intentionally aids a person in violating an insurance statute or rule, or knowingly permits a person over whom he or she has authority to violate an insurance statute or rule shall, if the violation specifically involves a consumer who is an adult at risk, as defined in s. 55.01 (1e), or an individual who is at least 60 years of age, forfeit to the state not more than \$5,000 for each violation. If the statute or rule imposes a duty to make a report to the commissioner, each week of delay in complying with the duty is a new violation.

SECTION 6. 601.954 (2) (f) (intro.) and 2. of the statutes, as created by 2021 Wisconsin Act 73, are consolidated, renumbered 601.954 (2) (f) and amended to read:

601.954 (2) (f) *Exceptions for certain entities.* This subsection does not apply to any ~~of the following:~~ 2. An entity that is described in 45 CFR 164.104 (a), if the entity complies with the requirements of 45 CFR part 164.

SECTION 7. 601.954 (2) (f) 1. of the statutes is repealed.

SECTION 8. 611.40 (1) of the statutes is amended to read:

611.40 (1) MEETINGS, NOTICES, QUORUMS AND VOTING. Sections 180.0701 to 180.0703, 180.0705, 180.0709, 180.0721 to 180.0727 and 180.1708 (3) apply to stock corporations. Each director of a stock corporation shall be elected by a plurality of the votes cast by the shares entitled to vote in the election at a meeting at which a quorum is present.

SECTION 9. 611.42 (1) of the statutes is amended to read:

611.42 (1) GENERAL. Subject to this section and s. 611.53, ss. 181.0701 (1), (2), and (4) to (6), 181.0702, ~~181.0705 (1) to (4) (1) to (3) and (5)~~, 181.0722 (1) to (3), 181.0723, and 181.0727 apply to mutuals.

SECTION 10. 611.42 (1b) of the statutes is created to read:

611.42 (1b) PLACE OF MEETINGS. (a) A mutual may hold an annual, regular, or special meeting of policyholders in or outside this state at the place stated in or fixed in accordance with the bylaws. If no place is stated in or fixed in accordance with the bylaws, the mutual shall hold the annual meeting at its principal office.

(b) Notwithstanding par. (a), a mutual's bylaws may authorize the board of directors, in its sole discretion, to determine that an annual, regular, or special meeting of policyholders may be held solely by means of remote communication as authorized under s. 611.426.

SECTION 11. 611.42 (1e) (b) (intro.) of the statutes is amended to read:

611.42 (1e) (b) (intro.) The court may fix the time and place of the meeting or determine that the meeting shall be held solely by means of remote communication as pro-

vided under s. 611.426. The court shall require that the meeting be called and conducted in accordance with the mutual's articles of incorporation and bylaws, in so far as possible, except that the court may do all of the following:

SECTION 12. 611.42 (1g) of the statutes is created to read:

611.42 (1g) NOTICE OF MEETINGS. (a) *When required.* A mutual shall give notice of meetings of policyholders as provided in its bylaws or, if the bylaws are silent, in a manner that is fair and reasonable.

(b) *In general.* A notice that conforms to the requirements of par. (c) is fair and reasonable. Except for matters referred to in par. (c) 2., other means of giving notice may also be fair and reasonable when all of the circumstances are considered. Section 181.0141 applies to notices provided under this subsection.

(c) *Notice safe harbor.* Notice is fair and reasonable if all of the following conditions exist:

1. The mutual notifies its policyholders of the date, time, and, if applicable, place of each annual, regular, and special meeting of policyholders not more than 60 days and not less than 10 days, or, if notice is mailed by any type other than first class or registered mail, 30 days, before the meeting date. If the board of directors has authorized participation by means of remote communication under s. 611.426, the notice shall describe the means of remote communication to be used.

2. Notice of an annual or regular meeting includes a description of any matter or matters that must be approved by the policyholders under s. 181.0723 (2), 181.0831, 181.0873 (4), 181.1003, 181.1021, 181.1105, 181.1202, or 181.1401.

3. Notice of a special meeting includes a description of the matter or matters for which the meeting is called.

(d) *Adjourned meetings.* Unless the bylaws require otherwise, if an annual, regular, or special meeting of policyholders is adjourned to a different date, time, or place or will be held by a new means of remote communication, notice need not be given of the new date, time, place, or means of remote communication if the new date, time, place, or means of remote communication is announced at the meeting before adjournment. If a new record date for the adjourned meeting is or must be fixed under s. 181.0707, notice of the adjourned meeting must be given under this subsection to the policyholders of record as of the new record date.

SECTION 13. 611.426 of the statutes is created to read:

611.426 Remote participation in policyholder meetings. (1) If authorized by the board of directors in its sole discretion, and subject to sub. (2) and any guidelines and procedures adopted by the board of directors, policyholders and proxies of policyholders not physically present at a meeting of policyholders may participate in the meeting by means of remote communication.

(2) If policyholders and proxies of policyholders participate in a meeting of policyholders by means of remote communication, the participating policyholders and proxies of policyholders shall be considered to be present in person and permitted to vote at the meeting, whether the meeting is held at a designated place or solely by means of remote communication, if all of the following apply:

(a) The mutual has implemented reasonable measures to verify that each person considered to be present and permitted to vote at the meeting by means of remote communication is a policyholder or proxy of a policyholder.

(b) The mutual has implemented reasonable measures to provide policyholders and proxies of policyholders a reasonable opportunity to participate in the meeting and to vote on matters submitted to the policyholders, including an opportunity to read or hear the proceedings of the meeting concurrently with the proceedings.

(c) The mutual maintains a record of voting and other actions by any policyholder or proxy of a policyholder that votes or takes another action at the meeting by means of remote communication.

SECTION 14. 617.13 of the statutes is created to read:

617.13 Rules requiring group capital calculations and liquidity stress tests. (1) The commissioner shall promulgate rules requiring certain insurers, as determined under the rules, to report their group capital calculations and liquidity stress tests, including the form of the reports and the manner and process for filing the reports.

(2) Sections 19.31 to 19.37 do not apply to the filings made under sub. (1) or to any information submitted to the commissioner in connection with the filings. The filings made under sub. (1) are not subject to subpoena or discovery and may not be admissible in evidence in any private civil action. The commissioner shall only share a filing made under sub. (1), and any information requested in connection with the filing, with the insurance regulatory authorities of states having statutes or regulations substantially similar to this section and who have agreed in writing not to disclose the information.

SECTION 15. 625.03 (1m) (f) of the statutes is created to read:

625.03 (1m) (f) Funding agreements authorized under s. 632.66.

SECTION 16. 632.62 (1) (b) 1. of the statutes is amended to read:

632.62 (1) (b) 1. Paid-up, temporary, pure endowment insurance and annuity settlements provided in exchange for lapsed, surrendered or matured policies;

SECTION 17. 632.62 (1) (b) 2. of the statutes is amended to read:

632.62 (1) (b) 2. Annuities beginning within one year of the making of the contract; ~~and.~~

SECTION 18. 632.62 (1) (b) 4. of the statutes is created to read:

632.62 (1) (b) 4. Funding agreements authorized under s. 632.66.

SECTION 19. 632.66 of the statutes is renumbered 632.66 (1).

SECTION 20. 632.66 (2) of the statutes is created to read:

632.66 (2) (a) In this subsection, “funding agreement” means an annuity without life contingencies that is an agreement for an insurer to accept and accumulate funds and to make one or more payments at future dates in fixed or variable amounts, or both, that are not based on mortality or morbidity contingencies.

(b) A domestic insurer that holds a valid certificate of authority to transact the business of life insurance and annuities in this state may issue a funding agreement if all of the following conditions are met:

1. The domestic insurer’s board of directors, or an authorized committee of the board, approves the domestic insurer’s plan relating to funding agreements.

2. The commissioner determines that the issuance of funding agreements by the domestic insurer is not adverse to the interests of the policyholders of the domestic insurer, except that no determination from the commissioner is required if the domestic insurer has more than \$200 billion in admitted assets. In making a determination under this subdivision, the commissioner shall consider the domestic insurer’s specific policy objective and strategies, investment and risk management guidelines, and aggregate maximum limits on the funding agreement business.

3. No amounts may be guaranteed or credited under the funding agreement except upon reasonable assumptions as to investment income and expenses and on a basis equitable to all holders of a given class of the funding agreement.

4. The domestic insurer complies with the form filing requirements under s. 631.20 with respect to the funding agreement.

(c) The issuance or delivery of a funding agreement by an insurer in this state shall constitute doing an insurance business herein.

(d) A domestic insurer may offer funding agreements directly through the domestic insurer and is not required to use licensed intermediaries when marketing funding agreements.

(e) Amounts paid to the domestic insurer, and proceeds applied under optional modes of settlement, under funding agreements may be allocated to one or more separate accounts pursuant to s. 611.24.

(f) Notwithstanding ch. 551, the commissioner has sole authority to regulate the issuance and sale of funding agreements, including the persons selling funding agreements on behalf of insurers.

(g) Notwithstanding s. 601.465 (1m) and subch. II of ch. 19, any materials submitted to the commissioner pursuant to an approval under par. (b) 2. or pursuant to a

request from the commissioner related to a funding agreement shall be held confidential pursuant to s. 601.465 (1n).

(h) The commissioner may promulgate rules as necessary for the implementation of this subsection.

SECTION 21. 635.05 (7) of the statutes is repealed.

SECTION 22. 635.12 of the statutes is repealed.

SECTION 23. 645.68 (3) of the statutes is amended to read:

645.68 (3) **LOSS CLAIMS.** All claims under policies for losses incurred, including 3rd-party claims and federal, state, and local government claims, except the first \$200 of losses otherwise payable to any claimant under this subsection other than the federal government. All claims under life insurance and annuity policies, whether for death proceeds, annuity proceeds, or investment values, shall be treated as loss claims. All amounts payable under funding agreements, as defined in s. 632.66 (2) (a), whether for principal or interest, shall be treated as loss claims. Claims may not be cumulated by assignment to avoid application of the \$200 deductible provision.

SECTION 24. 646.01 (1) (b) 21. of the statutes is created to read:

646.01 (1) (b) 21. A policy issued by an insurer to the federal government or an agency of the federal government for the purpose of providing health insurance coverage to enrollees under the federal employee health benefit plan program under 5 USC 8901 et seq.

SECTION 25. 646.01 (1) (b) 22. of the statutes is created to read:

646.01 (1) (b) 22. Funding agreements authorized under s. 632.66.

SECTION 26. 646.13 (2) (g) of the statutes is amended to read:

646.13 (2) (g) Sue and be sued, make contracts, including a contract with an insured for administration and payment of claims for which the insured is responsible, and borrow money necessary to carry out its duties, including money with which to pay claims under s. 646.31 or to continue coverage under s. 646.35. The fund may offer as security for such loans its claims against the liquidator or its power to levy assessments under this chapter.

SECTION 27. 646.325 (2) (intro.) of the statutes is amended to read:

646.325 (2) **RECOVERY FROM CERTAIN INSURED AND AFFILIATES.** (intro.) Except as provided in sub. (3), the fund may recover from a person the costs and expenses incurred in administering or defending a claim against the person by a 3rd party and the amount of any claim paid on behalf of the person to a 3rd party, if all of the following conditions are satisfied:

SECTION 28. 646.325 (2) (a) (intro.) of the statutes is amended to read:

646.325 (2) (a) (intro.) The person on whose behalf the claim was administered, defended, or paid is any of the following:

SECTION 29. 646.325 (2) (a) 3. of the statutes is created to read:

646.325 (2) (a) 3. A person excluded under s. 646.01 (1) (b) 18.

SECTION 30. 646.51 (3) (ar) (intro.) and 2. of the statutes are consolidated, renumbered 646.51 (3) (ar) and amended to read:

646.51 (3) (ar) *Disability.* Except as provided in par. (c), with respect to disability insurance policies, including policies issued by health maintenance organization insurers, assessments shall be calculated ~~as follows: 2. For assessments authorized by the board on or after November 13, 2015,~~ as a percentage of premium written in this state by each insurer in the classes protected by the accounts for the year preceding the year in which the assessment is authorized by the board. If the assessment data for the year immediately preceding the year in which the assessment is authorized by the board is not available when the assessment is called, the fund may use the assessment data for the most recent year for which data is available.

SECTION 31. 646.51 (3) (ar) 1. of the statutes is repealed.

SECTION 32. 655.27 (3) (b) 2. of the statutes is amended to read:

655.27 (3) (b) 2. With respect to fees paid by physicians, the commissioner shall provide for no fewer than 4 payment classifications, based upon the amount of surgery performed and the risk of diagnostic and therapeutic services provided or procedures performed, by reference to the applicable Insurance Services Office, Inc., codes for specialties and types of practice that are similar in the degree of exposure to loss.

SECTION 33. 655.27 (3) (bt) of the statutes is amended to read:

655.27 (3) (bt) *Report to joint committee on finance.* Annually, no later than April 1, the commissioner shall send to the cochairpersons of the joint committee on finance a report detailing the proposed fees and payment classifications set for the next fiscal year under par. (b) and under s. 655.61 (1). If, within 14 working days after the date that the commissioner submits the report, the cochairpersons of the committee notify the commissioner that the committee has scheduled a meeting for the purpose of reviewing the proposed fees and payment classifications, the commissioner may not impose the fees or payment classifications until the committee approves the report. If the cochairpersons of the committee do not notify the commissioner, the commissioner may impose the proposed fees and payment classifications. In addition to any other method prescribed by rule

for advising health care providers of the amount of the fees and payment classifications, the commissioner shall post the fees and payment classifications set under par. (b) for the next fiscal year on the office's Internet site and the director of state courts shall post the fees set under s. 655.61 (1) for the next fiscal year on the mediation fund's Internet site.

SECTION 34. 655.275 (2) of the statutes is amended to read:

655.275 (2) APPOINTMENT. The board of governors shall appoint the members of the council. Section 15.09, except s. 15.09 (4) and (8), does not apply to the council. The board of governors shall designate the chairperson, who shall be a physician, the vice chairperson, and the secretary of the council and the terms to be served by council members. The council shall consist of 5 or 7 per-

sons, not more than 3 of whom are physicians who are licensed and in good standing to practice medicine in this state and one of whom is a nurse anesthetist who is licensed and in good standing to practice nursing in this state. The chairperson or another peer review council member designated by the chairperson shall serve as an ex officio nonvoting member of the medical examining board and may attend meetings of the medical examining board, as appropriate.

SECTION 35. Effective dates. This act takes effect on the day after publication, except as follows:

(1) NOTICE OF CYBERSECURITY EVENT. The treatment of s. 601.954 (2) (f) (intro.), 1., and 2. takes effect on November 1, 2021, or the day after publication, whichever is later.