

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Banking and Insurance

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BILL: CS/SB 600

INTRODUCER: Banking and Insurance Committee and Senator Richter

SUBJECT: Insurance Guaranty Associations

DATE: February 17, 2015      REVISED: \_\_\_\_\_

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	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Johnson	Knudson	BI	Fav/CS
2.			CM	
3.			FP	

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Technical Changes

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**I. Summary:**

CS/SB 600 clarifies the statutory accounting treatment of assessments levied by the Florida Insurance Guaranty Association (FIGA) and codifies the Office of Insurance Regulation's interpretation. The bill provides that such assessments under certain conditions are admissible assets in determining the financial condition of an insurer. FIGA provides a mechanism for payment of covered claims of an insolvent property and casualty insurer. After an insurer enters insolvency, the FIGA may levy regular assessments and emergency assessments.

The bill also clarifies the responsibilities of the Florida Life and Health Insurance Guaranty Association (FLAHIGA) by providing that FLAHIGA has the statutory duty to review policies, contracts, and claims of insolvent life and health insurers following either domestic or foreign liquidations or rehabilitations. Under current law, the statute is silent as to FLAHIGA's obligations to pay after a rehabilitation or liquidation of a foreign insurer.

**II. Present Situation:**

**Florida Insurance Guaranty Association**

Part II of chapter 631, Florida Statutes, governs the operations of the Florida Insurance Guaranty Association (FIGA), a nonprofit corporation, which provides a mechanism for the payment of covered claims, including unearned premiums, of insolvent property and casualty insurance companies. Property and casualty insurance companies doing business in Florida are required to

be a member of FIGA as a condition of their authority to transact insurance. When a property and casualty insurance company becomes insolvent, FIGA is required to assume the claims of the insurer and pay the claims of the company's policyholders, which includes claims on residential and commercial property insurance, automobile insurance, and liability insurance, among others.

The maximum claim amount FIGA will cover is \$300,000, but special limits apply to damages to structure and contents on homeowners, condominiums, and homeowners' association claims. For damages to structure and contents on homeowners' claims, FIGA covers an additional \$200,000, for a total of \$500,000. For condominium and homeowners' association claims, FIGA covers the lesser of policy limits or \$100,000 multiplied by the number of units in the association.

### ***FIGA Funding and Assessments***

In order to pay the remaining covered claims and maintain the operations of an insolvent insurer, FIGA has several potential funding sources. For example, FIGA receives funds that are available from distributions of the estate of the insolvent insurance company. The Division of Rehabilitation and Liquidation in the Department of Financial Services is responsible for the liquidation of assets of insolvent insurance companies. In addition, FIGA also obtains funds from the liquidation of assets of insolvent insurers domiciled in other states, but having claims in Florida.

After insolvency occurs, FIGA may levy assessments against Florida member insurance companies under two separate statutory provisions. Under s. 631.57(3)(a), F.S., FIGA is authorized to levy an assessment ("regular assessment") as necessary for up to 2 percent of an insurer's net written premium for the kind of insurance included in the account for which the assessment is levied. The second assessment is an emergency assessment authorized under s. 631.57(3)(e), F.S., that may be levied only to pay covered claims of an insurer that was rendered insolvent by the effects of a hurricane. At the discretion of FIGA, emergency assessments are payable in 12 monthly installments or in a single payment. The emergency assessment is capped at 2 percent of an insurer's net direct written premiums in Florida for the calendar year preceding the assessment.

Insurers pay the assessments upfront and recoup the assessment from policyholders upon issuance or renewal of the policies. The procedure used by FIGA to levy both regular and emergency assessments on member insurance companies and the procedure used by member insurance companies to pass the assessment on to their policyholders are provided in s. 631.57(3), F.S. The procedures are generally the same for regular and emergency assessments:

1. FIGA determines that an assessment is necessary to pay claims or administration costs, or to pay bonds issued by FIGA.
2. FIGA certifies the need for an assessment levy to the OIR.
3. The Office of Insurance Regulation (OIR) reviews the certification, and if it is sufficient, the OIR issues an order to all insurance companies subject to the FIGA assessment to pay their assessment to FIGA.

4. Insurance companies must pay regular assessments within 30 days of the levy. Insurers may pay emergency assessments either paid in one payment at the end of that month, or spread out over 12 months, at the option of FIGA.
5. For both types of assessments, once an insurance company pays the assessment to FIGA, it may begin to recoup the assessment from its policyholders at the policy issuance or renewal.<sup>1</sup> An insurer must submit an informational filing to the OIR at least 15 days before applying the recoupment factor to any policies. The factor is applied to policies issued or renewed by the insurer for 1 year under the affected lines of insurance. The 15-day requirement also applies if the insurer needs to continue applying the recoupment factor for an additional year. The factor is calculated to provide for the probable recoupment of assessments over a 1-year period, unless an insurer elects to recoup the assessment over a longer period. If the excess amount does not exceed 15 percent of the total assessment paid, the excess amount is remitted to FIGA within 60 days after the end of the 1-year period in which the excess recoupment charges were collected. Any excess recoupments remitted to FIGA are used to reduce future assessments. If the excess amount exceeds 15 percent of the total assessment paid, the excess amount is required to be returned to an insurer's current policyholders by refunds or premium credits.

### *Accounting for Assessments*

Most insurers authorized to do business in the United States are required by their state regulators to prepare financial statements in accordance with statutory accounting principles (SAP). These principles are tools that assist state insurance departments in the regulation of the solvency. SAP is characterized as a conservative approach since it evaluates liquidity and the ability to pay claims in the future. In contrast, other users of financial information, such as shareholders, bondholders, banks, credit rating agencies, and the Securities and Exchange Commission, may require financial statements that are prepared in accordance with generally accepted accounting principles (GAAP), which attempt to match revenues to expenses. The OIR requires insurers to file annual SAP statements and independently audited financial reports.<sup>2</sup>

In some respects, GAAP differs from SAP in the treatment of certain transactions, such as the FIGA assessments. Under both accounting methods, a liability is recognized. However, SAP allows the recognition of an asset for the amount that is likely to be recovered from future premium surcharges for an assessment, which offsets or eliminates the negative effect on statutory surplus.<sup>3</sup> For purposes of GAAP, the assessment recoverable from future premium writings does not qualify as an asset, resulting in a reduction of retained earnings in the period an assessment is levied. The impact of the assessment on GAAP financial statements is essentially a timing issue; retained earnings are reduced in the year the assessment is paid; however, it is increased the following year as the assessment is recouped from policyholders. The OIR requires that assessments levied before policy surcharges are collected result in a receivable, which must

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<sup>1</sup> See Frequently Asked Questions at FLAHIGA's website: <http://www.flahiga.org/faqprint.cfm> (last viewed on February 13, 2015).

<sup>2</sup> Section 624.424, F.S.

<sup>3</sup> See Thomas Howell Ferguson P.A., *Accounting for Guaranty Fund Assessments*, memorandum to Sandy Robinson at FIGA, December 3, 2013, (on file with the Senate Committee on Banking and Insurance).

be recognized as an admissible asset<sup>4</sup> under SAP, to the extent the receivable is likely to be realized.<sup>5</sup>

### **Florida Life and Health Insurance Guaranty Association (FLAHIGA)**

The powers and duties of FLAHIGA are contained in part III of chapter 631, F.S. Insurance companies, with limited exceptions,<sup>6</sup> authorized to write life and health insurance or annuities in Florida are required, as a condition of doing business in Florida, to be a member of FLAHIGA. In the event a member insurer is found to be insolvent and is ordered to be liquidated by a court, FLAHIGA provides protection to Florida residents who have life and health insurance policies and certain annuities with the insolvent insurer.

Generally, direct individual or direct group life and health insurance policies, as well as individual and allocated annuity contracts<sup>7</sup> issued by FLAHIGA's member insurers are covered.<sup>8</sup> A policy must meet coverage requirements, and there are limits to the amounts FLAHIGA pays as a maximum amount of protection provided by FLAHIGA for any one person, which is:

- Life Insurance Death Benefit: \$300,000 per insured life.
- Life Insurance Cash Surrender: \$100,000 per insured life.
- Health Insurance Claims: \$300,000 per insured life.
- Annuity Cash Surrender: \$250,000 for deferred annuity contracts per contract owner.
- Annuity in Benefit: \$300,000 per contract owner.<sup>9</sup>

When a FLAHIGA member insurer is found to be insolvent and is ordered liquidated, a receiver takes over the insurer under court supervision and processes the assets and liabilities through liquidation. Upon liquidation, FLAHIGA automatically becomes liable for the policy obligations the liquidated insurer owed to its Florida policyholders. FLAHIGA services the policies, collects premiums and pays claims under the policies. FLAHIGA's rights under the policies are those that applied to the insurer prior to liquidation. FLAHIGA may cancel the policy if the insurer could have done so, but normally FLAHIGA continues the policies until the association can transfer (or substitute) the policies to another insurer with approval by the OIR.

In 2011, legislation<sup>10</sup> was enacted specifying that FLAHIGA's immunity from bad faith lawsuits did not affect the FLAHIGA's obligation to pay valid insurance policy or contract claims if warranted after its independent de novo review of the policies, contracts, and claims presented to it, whether domestic or foreign, after a Florida *domestic* rehabilitation or liquidation. However,

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<sup>4</sup> As defined in the National Association of Insurance Commissioners' Statement of Statutory Accounting Principles No. 4.

<sup>5</sup> Office of Insurance Regulation, Supplemental Memorandum to Information Memorandum OIR-06-023M (Dec. 1, 2006). <http://www.floir.com/siteDocuments/SupplementalMemo.pdf> (Last accessed by Banking and Insurance Committee Staff on February 10, 2015).

<sup>6</sup> Section 631.713(3), F.S.

<sup>7</sup> Allocated annuity contracts are directly issued to and owned by individuals or annuities that directly guarantee benefits to individuals by the insurer.

<sup>8</sup> FLAHIGA covers only policyholders and certificate holders that were Florida residents on the date that a member insurer is declared insolvent and liquidated with some exceptions.

<sup>9</sup> See Frequently Asked Questions at FLAHIGA's website: <http://www.flahiga.org/faqprint.cfm> (last viewed on February 13, 2015).

<sup>10</sup> Ch. 2011-226, Laws of Fla.

the statute is silent as to FLAHIGA's obligations to pay after a *foreign* rehabilitation or liquidation.

### III. Effect of Proposed Changes:

The bill specifies that assessments levied before policy surcharges are collected result in a receivable, which is recognized as an admissible asset under statutory accounting principles, to the extent the receivable is likely to be realized. This codifies the current practice of the OIR. The bill provides that an asset must be established and recorded separately from the liability. The insurer must reduce the amount recorded as an asset if it cannot fully recoup the assessment amount because of a reduction in writings or withdrawal from the market. For emergency assessments that are paid after policy surcharges are collected pursuant to the monthly installment method, the recognition of assets would be based on the actual premium written offset by the obligation to FIGA. The bill does not appear to address assessments that are recouped through future premium rate structures, and therefore those assessments would still be subject to SSAP 35R<sup>11</sup> and would still be likely be non-admitted assets.<sup>12</sup>

The bill transfers the 2011 exception from immunity from FLAHIGA's powers and duties statute, s. 631.717, F.S., to s. 631.737, F.S., which pertains to FLAHIGA's duty to review claims involving covered policies, and clarifies that this duty is not limited solely to policies, contracts, and claims following domestic rehabilitations and liquidations. It would also include foreign rehabilitations and liquidations.

The bill takes effect July 1, 2015.

### IV. Constitutional Issues:

#### A. Municipality/County Mandates Restrictions:

None.

#### B. Public Records/Open Meetings Issues:

None.

#### C. Trust Funds Restrictions:

None.

### V. Fiscal Impact Statement:

#### A. Tax/Fee Issues:

None.

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<sup>11</sup> National Association of Insurance Commissioners, *Statements on Statutory Accounting Principles, No. 35R, Guaranty Fund and Other Assessments (SSAP 35R)*.

<sup>12</sup> Office of Insurance Regulation, *Senate Bill 600 Fiscal Analysis* (January 27, 2015) (on file with the Senate Committee on Banking and Insurance).

**B. Private Sector Impact:**

The bill will clarify statutory accounting treatment for the recognition of FIGA assessments as admissible assets by codifying the OIR's interpretation.

The bill also clarifies FLAHIGA's obligations to pay after a *foreign* rehabilitation or liquidation.

**C. Government Sector Impact:**

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 625.012, 631.717, 631.737, 624.316, 625.031, 625.305, 627.828, and 629.401.

**IX. Additional Information:****A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Banking and Insurance on February 17, 2015:**

The CS provides technical, clarifying changes.

**B. Amendments:**

None.