

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 429 Insurance Guaranty Associations  
**SPONSOR(S):** Insurance & Banking Subcommittee; Smith, D.  
**TIED BILLS:** IDEN./SIM. BILLS: SB 496

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	13 Y, 0 N, As CS	Fortenberry	Luczynski
2) Government Operations & Technology Appropriations Subcommittee			
3) Commerce Committee			

### SUMMARY ANALYSIS

Florida law provides for guaranty associations to ensure policyholders of insolvent insurers are protected with respect to insurance premiums paid and settlement of outstanding claims. Florida has four guaranty associations including the Florida Insurance Guaranty Association (FIGA) and the Florida Workers' Compensation Insurance Guaranty Association (FWCIGA).

When a property and casualty insurer becomes insolvent, FIGA takes over the claims of that insurer and pays the claims of its policyholders. It has the rights and duties of the insurer, including adjusting the claims. In general, claims filed with a liquidated insurer in another state are referred to that state's guaranty association for handling. FIGA handles claims involving insolvent Florida insurers and claims on policies issued in Florida by liquidated foreign insurers. As such, it may be appropriate and efficient for the employees of another state's guaranty association to be involved in the adjusting process of a Florida claim. The bill allows those employees to adjust Florida claims without being licensed adjusters, as long as that adjusting is authorized by the contract between FIGA and the other state's guaranty association. It also allows FIGA employees to adjust claims without being licensed adjusters.

When a workers' compensation insurer or self-insurance fund becomes insolvent, FWCIGA takes over the claims of that insurer and pays the claims of its policyholders. FWCIGA is funded through the liquidation of insolvent insurers, potentially including a portion of the estates of insolvent insurers in other states. FWCIGA also has the authority to levy assessments on workers' compensation insurers if the estates of insolvent insurers are insufficient to pay claims. The Florida law that sets forth the methods of levying those assessments was amended significantly in 2016. This bill provides additional changes to those methods to conform them to workers' compensation industry standards.

The bill clarifies the method by which assessments are levied against insurers and collected by FWCIGA related to policies with deductibles and revises the treatment related to retrospectively rated policies. The bill provides the authority for FWCIGA to audit reports from insurers regarding the payments made to FWCIGA and the amounts collected from policyholders. It provides that assessments paid that are required to be remitted by the insurer prior to surcharging policyholders constitute advances of funds to FWCIGA to allow for proper accounting treatment. It also makes other technical and structural changes.

This bill does not impact local or state government revenues or expenditures. It has positive and negative direct economic impacts on the private sector.

This bill has an effective date of July 1, 2019.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Guaranty Associations**

Under federal law, insurance companies cannot file for bankruptcy.<sup>1</sup> Instead, they are either rehabilitated or liquidated by their state of domicile. Florida law establishes the system for the treatment of impaired or insolvent insurers<sup>2</sup> in Florida and sets up guaranty payments where necessary.<sup>3</sup> Florida laws provides for guaranty associations to ensure policyholders of insolvent insurers are protected with respect to insurance premiums paid and settlement of outstanding claims, up to limits provided by law.<sup>4</sup> A guaranty association is a not-for-profit corporation created by law and directed to protect policyholders from financial losses and delays in claims payment and settlements due to the insolvency of an insurer.<sup>5</sup> Insurers are required to participate in the guaranty associations as a condition of transacting insurance business in Florida. Florida operates four guaranty associations including the Florida Insurance Guaranty Association (FIGA)<sup>6</sup> and the Florida Workers' Compensation Insurance Guaranty Association (FWCIGA)<sup>7</sup>.

##### **Florida Insurance Guaranty Association**

FIGA provides a “mechanism for the payment of covered claims under certain insurance policies to avoid” delay and financial loss due to the financial insolvency of an insurer.<sup>8</sup> It issues guaranty fund payments and provides related services for all lines of property and casualty insurance with certain exceptions.<sup>9</sup> When a property and casualty insurer becomes insolvent, FIGA takes over the claims of that insurer and pays the claims of its policyholders, ensuring that policyholders are not left with unpaid claims. FIGA obtains funds to pay the claims of insolvent insurers located in Florida from the liquidation of the assets of insolvent insurers by the Division of Rehabilitation and Liquidation (the Division) in the Florida Department of Financial Services (DFS) and from the liquidation of assets of insolvent insurers located outside Florida that transact insurance business in Florida.<sup>10</sup> If an insurer’s assets are insufficient to pay all claims, FIGA can also issue post-insolvency assessments against property and casualty insurers to obtain funds to pay the remaining claims.<sup>11</sup>

When an insolvent insurer is liquidated in Florida, FIGA assumes the claims and is “deemed the insurer to the extent of its obligation on...covered claims, and,...shall have all rights, duties, defenses, and obligations of the insolvent insurer as if the insurer had not become insolvent.”<sup>12</sup> Additionally, FIGA has the right to employ the necessary staff to handle claims and perform other duties for the association.<sup>13</sup>

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<sup>1</sup> 11 U.S.C. § 109(b)(2).

<sup>2</sup> An “insolvent insurer” means an insurer that was authorized to transact insurance in this state, either at the time the policy was issued or when the insured event occurred, and against which an order of liquidation with a finding of insolvency has been entered by a court of competent jurisdiction if such order has become final by the exhaustion of appellate review. S. 631.904(4), F.S.

<sup>3</sup> Ch. 631, F.S.

<sup>4</sup> *Id.*

<sup>5</sup> See e.g., ss. 631.51 and 631.902, F.S.

<sup>6</sup> Ch. 631, part II, F.S.

<sup>7</sup> Ch. 631, part V, F.S.

<sup>8</sup> S. 631.51, F.S.

<sup>9</sup> S. 631.52, F.S.

<sup>10</sup> See s. 631.061, F.S. for grounds for liquidation. See s. 631.025, F.S., for an overview of persons subject to proceedings initiated by the Division.

<sup>11</sup> S. 631.57, F.S.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

In general, when an insolvent insurer located in another state is liquidated, the claims in that state are referred to its guaranty association for claims handling. However, FIGA handles claims that exist on policies issued in Florida by insolvent foreign insurers.<sup>14</sup> Due to the nature of the claims process and the involvement of more than one state's guaranty association in these claims, it may be appropriate and efficient for an employee of another state's guaranty association to adjust a Florida claim.

#### *Effect of the Bill*

The bill allows employees of FIGA to adjust losses for FIGA without being licensed adjusters.<sup>15</sup> It also allows FIGA to authorize employees of any state guaranty association whose insurance regulators are members of the National Association of Insurance Commissioners to adjust Florida claims for FIGA.<sup>16</sup> While the bill does not require that the employee adjusting losses be a licensed insurance adjuster in Florida, the authorization for the state guaranty association's employee to adjust losses must be included in the contract between FIGA and the state guaranty association whose employee is doing the adjusting. This provision of the bill will allow FIGA and other states' guaranty associations to efficiently provide continuity of claims handling and adjusting claims within Florida and when claims cross state lines.

#### **Florida Workers' Compensation Insurance Guaranty Association**

FWCIGA "provides a mechanism for the payment of covered claims under chapter 440 to avoid" delay and financial loss to claimants due to the insolvency of a workers' compensation insurer.<sup>17</sup> FWCIGA services workers' compensation claims against insolvent workers' compensation insurers<sup>18</sup> and self-insurance funds.<sup>19</sup> When a workers' compensation insurer or self-insurance fund becomes insolvent, FWCIGA takes over the claims of that insurer and pays the claims of its policyholders, ensuring that policyholders are not left with unpaid claims. Like FIGA, FWCIGA is funded through the liquidation of insolvent insurers, including a portion of the estates of insolvent insurers in other states. If the assets of the liquidated insurer are insufficient to pay claims, FWCIGA in conjunction with the Office of Insurance Regulation (OIR), may order assessments of workers' compensation insurers and self-insurance funds writing workers' compensation coverage in Florida.<sup>20</sup> FWCIGA levied assessments from its inception in 1998 through 2005.<sup>21</sup> It has not levied any assessments since 2005, but anticipates doing so effective January 1, 2020.<sup>22</sup>

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<sup>14</sup> A foreign insurer is one formed under the laws of any state, district, territory, or commonwealth of the United States other than Florida. S. 624.06, F.S.

<sup>15</sup> DFS has indicated that the licensure status of the person determining the amount of loss (i.e., adjusting a claim) has no bearing on the contractual obligations of the insurer from a regulatory standpoint. Therefore, an insured whose claim is being handled by FIGA by virtue of an insurer insolvency and whose claim was adjusted by an unlicensed employee of FIGA or another state's guaranty association does not lose any rights or remedies should that insured dispute the amount of loss as determined by the adjuster. Email from Greg Thomas, Director Division of Agents and Agency Services, Department of Financial Services, RE: HB 429 (Feb. 14, 2019).

<sup>16</sup> *Id.*

<sup>17</sup> S. 631.902, F.S.

<sup>18</sup> "Insurer" means an insurance carrier or self-insurance fund authorized to insure under chapter 440. For purposes of this act, "insurer" does not include a qualified local government self-insurance fund, as defined in s. 624.4622, or an individual self-insurer as defined in s. 440.385." S. 631.904(5), F.S.

<sup>19</sup> "Self-insurance fund" means a group self-insurance fund authorized under s. 624.4621, a commercial self-insurance fund writing workers' compensation insurance authorized under s. 624.462, or an assessable mutual insurer authorized under s. 628.6011. For purposes of this act, the term "self-insurance fund" does not include a qualified local government self-insurance fund, as defined in s. 624.4622, an independent educational institution self-insurance fund as defined in s. 624.4623, an electric cooperative self-insurance fund as described in s. 624.4626, or an individual self-insurer as defined in s. 440.385." S. 631.904(6), F.S.

<sup>20</sup> S. 631.914, F.S.

<sup>21</sup> Florida Workers' Compensation Insurance Guaranty Association, *Assessments*, <https://fwciga.org/assessments> (last visited Feb. 14, 2019).

<sup>22</sup> Florida Workers' Compensation Guaranty Association, *Bulletin 2019-1*, [https://fwciga.org/wp-content/uploads/2019/01/Surcharge-Bulletin\\_sm.pdf](https://fwciga.org/wp-content/uploads/2019/01/Surcharge-Bulletin_sm.pdf) (last visited Feb. 14, 2019). Pursuant to s. 631.914(4)(a), F.S., an insurer may be exempted from an assessment if, in the opinion of OIR, the assessment would impair the solvency of the insurer.

## Method of Assessment

In 2016, the method of assessment for FWCIGA was amended to be more consistent with the methods used to levy assessments on the other Florida guaranty associations.<sup>23</sup> Since the 2016 amendments, the law has provided for two methods by which FWCIGA can collect assessments from workers' compensation insurers and self-insurance funds.<sup>24</sup> FWCIGA may choose to fund an assessment by either of the following methods:<sup>25</sup>

- Single payment, subject to true-up (pay and recover)<sup>26</sup> – under this method, the insurer pays the assessment to the FWCIGA and then recovers its payment from its insureds through policy surcharges. The assessment payment is due and payable no earlier than 30 days following written notice of the assessment order. For accounting purposes, the billed surcharges are a receivable and an asset for the purposes of the National Association of Insurance Commissioners' Statement of Statutory Accounting Principles Number 4<sup>27</sup> and would be recorded separately from the liability for OIR reports.
- Installment (collect and remit) – under this method, the insurer would bill the insured for the surcharge as policies are written and remit the collected surcharges to the FWCIGA quarterly.<sup>28</sup>

The insurer is required to submit a reconciliation report within 120 days following the end of the 12 month assessment recovery period showing the amount initially paid and the amount of the surcharge collected.<sup>29</sup> This results in a "true-up" of the actual assessment amount if the initial calculation and payment was too low or too high.<sup>30</sup>

## Calculation of Insurer Assessment Amount

OIR, upon certification of need by FWCIGA, levies assessments on each insurer "initially estimated in the proportion that the insurer's net direct written premiums" in Florida bear to the total net direct premiums received in Florida by all workers' compensation insurers during the previous calendar year.<sup>31</sup> The assessments levied against insurers and self-insurance funds are computed based upon the net direct written premium amounts set forth in Florida for workers' compensation insurance without consideration for any discount in premium or credit for deductibles.<sup>32</sup>

The assessment is limited to 2 percent of an insurer's or self-insurance fund's net direct written premium in any given calendar year.<sup>33</sup> If the assessment is insufficient to meet FWCIGA's funding need for payments owing to claimants in a calendar year, then, upon certification by FWCIGA, OIR shall levy assessments of up to an additional 1.5 percent of the insurer's net direct written premiums in Florida.<sup>34</sup> Insurers and self-insurance funds must report to FWCIGA the amount of initial payment or installment payments made to FWCIGA and the amount collected from policyholders.<sup>35</sup> The reporting must occur within 120 days after the 12-month assessment period and annually thereafter for 3 years.<sup>36</sup>

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<sup>23</sup> Ch. 16-170, Laws of Fla.

<sup>24</sup> See s. 631.914, F.S.

<sup>25</sup> See *id.*

<sup>26</sup> S. 631.914(1)(d), F.S.

<sup>27</sup> National Association of Insurance Commissioners & The Center for Insurance Policy and Research, *Statutory Accounting Principles*, [http://www.naic.org/cipr\\_topics/topic\\_statutory\\_accounting\\_principles.htm](http://www.naic.org/cipr_topics/topic_statutory_accounting_principles.htm) (last visited Feb. 14, 2015).

<sup>28</sup> S. 631.914(1)(d), F.S.

<sup>29</sup> S. 631.914(1)(d)3., F.S.

<sup>30</sup> *Id.*

<sup>31</sup> S. 631.914(1)(a), F.S.

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> S. 631.914(1)(c), F.S.

<sup>35</sup> S. 631.914(1)(a)d.3., F.S.

<sup>36</sup> *Id.*

### *Effect of the Bill*

The bill revises the method by which assessments are levied against insurers and collected by FWCIGA, by providing that an insurer shall fully recoup assessments by applying a uniform surcharge percentage levied by OIR to all policies of the same kind or line as were considered by OIR in determining the assessment liability of the insurer.

The bill clarifies that no insurer's direct written premium calculated for the purposes of determining its premium subject to surcharge will be reduced by any discount or credit for deductibles in any policy. It also does not reduce an insurer's direct written premium calculated for the purposes of determining the insurer's premium subject to surcharge for any premium adjustment on retrospectively rated policies.<sup>37</sup>

The bill provides the authority for FWCIGA to audit the reports from insurers regarding the payments made to FWCIGA and the amounts collected from policyholders. It provides that assessments paid by workers' compensation insurers constitute advances of funds to FWCIGA under certain circumstances to allow for proper accounting treatment.

The bill removes the word "net" from "net direct written premium" to use the more common workers' compensation industry terminology of "direct written premium." The bill provides for other technical and structural changes and conforms statutory cross-references as needed.

## B. SECTION DIRECTORY:

**Section 1.** Creates s. 626.8621, F.S., relating to adjustments by guaranty association employees.

**Section 2.** Amends s. 631.914, F.S., relating to assessments.

**Section 3.** Provides an effective date of July 1, 2019.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

None.

#### 2. Expenditures:

None.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

None.

#### 2. Expenditures:

None.

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<sup>37</sup> A retrospectively rated policy is one with a rating plan that adjusts the premium to reflect current loss experience of an insured. IRMI, *Retrospective Rating*, <https://www.irmi.com/term/insurance-definitions/retrospective-rating> (last visited Feb. 15, 2019).

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

Changing the method by which FWCIGA calculates assessments may increase costs for certain employers and decrease costs for others based on the changes to treatment of premium discounts and credits, or premium adjustments in calculating assessments.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

**1. Applicability of Municipality/County Mandates Provision:**

Not applicable. This bill does not appear to affect county or municipal governments.

**2. Other:**

None.

**B. RULE-MAKING AUTHORITY:**

The bill neither authorizes nor requires administrative rulemaking.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On February 20, 2019, the Insurance & Banking Subcommittee considered the bill, adopted three amendments, and reported the bill favorably as a committee substitute. The committee substitute made the following changes to the bill:

- Clarified language authorizing employees of FIGA and state guaranty associations to adjust losses for FIGA.
- Moved the statutory section creating by the bill from ch. 631, F.S., to ch. 626, F.S., part VI, as that part of ch. 626, F.S., addresses the regulation and practice of insurance adjusters.
- Removed the word “large” before “deductibles” and replaced “without consideration of any applicable discount or credit for deductibles” with language clarifying that no insurer shall receive a reduction in direct written premium for any credit or discount for any deductible.
- Clarified that no insurer shall receive a reduction in direct written premium for any premium adjustment on retrospectively rated policies.
- Restored the annual reporting requirements following an assessment from two years back to the three years currently in the statute to conform to industry standards regarding audits of workers’ compensation policies.

The staff analysis has been updated to reflect the committee substitute.