

By the Committee on Financial Services and Representatives
Safley, Maygarden, Sanderson, Bainter, Lawson, Lippman,
Effman, Rayson, Ball and Dennis

1 A bill to be entitled
2 An act relating to insurance solvency; amending
3 s. 624.4621, F.S.; requiring self-insurance
4 funds to maintain a positive surplus to
5 policyholders; amending s. 624.468, F.S.;
6 requiring self-insurance funds to maintain a
7 positive surplus to policyholders; amending s.
8 624.470, F.S.; establishing standards for the
9 use of future investment income as an asset for
10 self-insurance funds; amending s. 624.476,
11 F.S.; providing that the Department of
12 Insurance may be appointed receiver for a
13 self-insurance fund under certain
14 circumstances; authorizing the administrative
15 supervision of a self-insurance fund under
16 certain conditions; creating s. 624.477, F.S.;
17 requiring the Department of Insurance to
18 supervise, as receiver, the liquidation,
19 rehabilitation, reorganization, conservation,
20 or dissolution of self-insurance funds;
21 amending s. 624.488, F.S.; applying provisions
22 of the Florida Insurance Code relating to
23 rehabilitation and liquidation of an insurer to
24 self-insurance funds; applying provisions
25 relating to insurer assets, liabilities, and
26 deposits to self-insurance funds; applying a
27 provision relating to assessable mutual insurer
28 annual reports to self-insurance funds;
29 amending s. 628.6014, F.S.; establishing
30 standards for the use of future investment
31 income as an asset for assessable mutual

1 insurers; amending s. 631.021, F.S.; providing
2 for delinquency proceedings, venue, remedies,
3 and appeals; amending s. 631.182, F.S.;
4 providing for claims reports and procedures;
5 amending s. 631.331, F.S.; providing for
6 notice, payment, and collection procedure;
7 amending s. 631.391, F.S.; providing for
8 revocation of insurance-related licenses under
9 certain conditions; amending s. 631.52, F.S.;
10 providing scope of direct insurance; amending
11 s. 631.54, F.S.; providing definitions;
12 amending s. 631.55, F.S.; providing for
13 creation of the association; amending s.
14 631.57, F.S.; providing for powers and duties
15 of the association; creating ss. 631.901,
16 631.902, 631.903, 631.904, 631.911, 631.912,
17 631.913, 631.914, 631.916, 631.917, 631.918,
18 631.919, 631.921, 631.922, 631.923, 631.924,
19 631.926, and 631.927, F.S.; creating the
20 "Florida Workers' Compensation Insurance
21 Guaranty Association Act"; providing purposes;
22 providing construction; providing definitions;
23 creating the Florida Workers' Compensation
24 Insurance Guaranty Association, Incorporated,
25 by merging the Florida Self-Insurance Fund
26 Guaranty Association and the workers'
27 compensation insurance account; providing for
28 effect of the merger; providing requirements;
29 providing for a board of directors; providing
30 powers and duties of the corporation;
31 authorizing the board to levy assessments for

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1 certain purposes; providing procedures;
2 providing requirements and limitations;
3 authorizing the board to levy a surcharge for
4 certain purposes; providing procedures;
5 providing requirements and limitations;
6 requiring the board to prepare a plan of
7 operation; providing requirements; providing
8 powers of the board to prevent insolvencies and
9 impairments; providing for examination of
10 certain insurers by the department for certain
11 purposes; providing immunity from liability;
12 specifying prohibited advertisement of
13 solicitation; providing powers of the
14 Department of Insurance; providing for
15 liability of members of impaired self-insurance
16 funds; providing for effect of paid claims;
17 providing requirements; providing procedures;
18 providing for staying certain proceedings;
19 providing for setting aside certain judgments,
20 orders, decisions, verdicts, or findings under
21 certain circumstances; providing for
22 nonapplication of certain attorney's fees
23 provisions under certain circumstances;
24 providing for assumption of liability by the
25 corporation of certain payments; amending s.
26 631.996, F.S.; creating the Florida Workers'
27 Compensation Insurance Guaranty Fund Account;
28 creating s. 631.929, F.S.; providing for
29 election of remedies by injured workers;
30 providing procedures; providing requirements;
31 amending s. 631.997, F.S.; providing for

1 reports and recommendations of the board;
2 amending s. 631.998, F.S.; providing for
3 confidentiality of negotiations between an
4 insurer and the corporation; providing a public
5 meetings and public records exemption;
6 repealing ss. 631.90, 631.905, 631.91, 631.915,
7 631.92, 631.925, 631.93, 631.935, 631.94,
8 631.945, 631.95, 631.955, 631.96, 631.965,
9 631.97, 631.975, 631.98, 631.985, 631.99, and
10 631.995, F.S., relating to the Florida
11 Self-Insurance Fund Guaranty Association;
12 providing an effective date.

13
14 Be It Enacted by the Legislature of the State of Florida:

15
16 Section 1. Subsection (10) is added to section
17 624.4621, Florida Statutes, to read:

18 624.4621 Group self-insurance funds.--

19 (10) Any self-insurance fund which holds a certificate
20 of authority on or after January 1, 1998, shall maintain
21 surplus to policyholders in a positive amount.

22 Section 2. Subsection (7) of section 624.468, Florida
23 Statutes, is amended to read:

24 624.468 Continuing requirements for certificate of
25 authority.--After issuance of its initial certificate of
26 authority a commercial self-insurance fund shall thereafter
27 meet the following requirements as a condition of maintaining
28 its certificate of authority:

29 (7) Any self-insurance fund which holds a certificate
30 of authority on or after January 1, 1998, shall maintain
31 surplus to policyholders in a positive amount.~~Maintenance of~~

1 ~~an aggregate net worth of at least \$500,000 of all fund~~
2 ~~members, as further specified in s. 624.466(8). A fund shall~~
3 ~~not be required to provide financial statements of its members~~
4 ~~evidencing conformity to this requirement after its~~
5 ~~certificate of authority has been issued, unless required to~~
6 ~~do so by the department upon a showing of good cause.~~

7 Section 3. Subsection (1) of section 624.470, Florida
8 Statutes, is amended to read:

9 624.470 Annual reports.--

10 (1)(a) Every ~~commercial~~ self-insurance fund shall,
11 annually within 3 months of the end of the fiscal year, file a
12 financial statement of the fund, including its balance sheet
13 and a statement of operations for the preceding year, verified
14 by the oath of a member of the board of trustees or by an
15 administrative executive appointed by the board. An entry for
16 future investment income, reported after January 1, 1998, may
17 only be reflected as an aggregate write-in asset on the
18 balance sheet of the annual and quarterly financial
19 statements. Future investment income shall be calculated as
20 the sum of the admitted asset value of Line 1 (Bonds) plus the
21 admitted asset value of Line 6 (Cash and Short-Term
22 Investments) as reported on page 2 in the annual or quarterly
23 financial statement, times the 3-year treasury note yield as
24 of the date of the financial statement, times 3.

25 (b) For financial statements filed after January 1,
26 1998, future investment income may only be reported as an
27 admitted asset by an Assessable Mutual or Self-Insurance Fund
28 which reported future investment income in financial
29 statements filed with the department prior to December 31,
30 1997.

31

1 Section 4. Section 624.476, Florida Statutes, is
2 amended to read:

3 624.476 Impaired self-insurance funds.--

4 (1) If the assets of a self-insurance fund are at any
5 time insufficient to comply with the requirements of law or to
6 discharge its liabilities, other than any liability on account
7 of funds contributed by the trustees or others, and to meet
8 the required conditions of financial soundness, or if a
9 judgment against the fund has remained unsatisfied for 30
10 days, its trustees shall forthwith make up the deficiency or
11 levy an assessment upon the members for the amount needed to
12 make up the deficiency, but subject to the limitation set
13 forth in the trust agreement or the policy.

14 (2) If any fund levies an assessment pursuant to
15 subsection (1), the department may elect to require the fund
16 to consent to administrative supervision under part VI of
17 chapter 624.

18 ~~(3)(2)~~ If the trustees fail to make an assessment as
19 required by subsection (1), the department shall order the
20 trustees to do so. If the deficiency is not sufficiently made
21 up within 60 days after the date of the order, the fund shall
22 be deemed insolvent and grounds shall exist to proceed against
23 the fund as provided for in part I of chapter 631.

24 (4) Notwithstanding the requirement of the fund to
25 make an assessment pursuant to subsection (1) or subsection
26 (3), the department may at any time request to be appointed
27 receiver for purposes of rehabilitation or liquidation if it
28 is able to demonstrate that any grounds for rehabilitation or
29 liquidation exist pursuant to s. 631.051 or s. 631.061.

30 ~~(3) Subject to this section, any rehabilitation,~~
31 ~~liquidation, conservation, or dissolution of a self-insurance~~

1 ~~fund shall be conducted under the supervision of the~~
2 ~~department, which shall have all power with respect thereto~~
3 ~~granted to it under part I of chapter 631 governing the~~
4 ~~rehabilitation, liquidation, conservation, or dissolution of~~
5 ~~insurers.~~

6 Section 5. Section 624.477, Florida Statutes, is
7 created to read:

8 624.477 Liquidation, rehabilitation, reorganization,
9 and conservation.--Any rehabilitation, liquidation,
10 conservation, or dissolution of a self-insurance fund shall be
11 conducted under the supervision of the department, which shall
12 have all power with respect thereto granted to the fund under
13 part I of chapter 631 governing the rehabilitation,
14 liquidation, conservation, or dissolution of insurers and
15 including all grounds for the appointment of a receiver
16 contained in ss. 631.051 and 631.061.

17 Section 6. Section 624.488, Florida Statutes, is
18 amended to read:

19 624.488 Applicability of related laws.--In addition to
20 other provisions of the code cited in ss. 624.460-624.488:

21 (1) Sections 624.155, 624.308, 624.414, 624.415, and
22 624.416(4); ss. 624.418-624.4211, except s. 624.418(2)(f); and
23 s. 624.501;

24 (2) Parts I, Part II, and III of chapter 625;

25 (3) Applicable sections of part VI of chapter 626; s.
26 626.9541(1)(a), (b), (c), (d), (e), (f), (h), (i), (j), (k),
27 (l), (m), (n), (o), (q), (u), (w), and (x); and ss.
28 626.9561-626.9641;

29 (4) Sections 627.291, 627.413, 627.4132, 627.416,
30 627.418, 627.420, 627.421, 627.425, 627.426, 627.4265,

31

1 627.427, 627.428, 627.702, and 627.706; part XI of chapter
2 627; ss. 627.912, 627.913, and 627.918; ~~and~~
3 (5) Subsection Section 628.361(2) and s. 628.6014;
4 and,
5 (6) Parts I and V of chapter 631,
6
7 apply to self-insurance funds. Only those sections of the code
8 that are expressly and specifically cited in ss.
9 624.460-~~624.489~~~~624.488~~ apply to self-insurance funds.
10 Section 7. Section 628.6014, Florida Statutes, is
11 amended to read:
12 628.6014 Annual reports.--
13 (1) An assessable mutual shall file a financial
14 statement within 90 days of the end of its accounting year.
15 The requirements of s. 624.470 shall apply, except an entry
16 for future investment income, reported after January 1, 1998,
17 may only on losses and allocated loss adjustment expense
18 reserves and unallocated loss adjustment expense reserves
19 shall be reflected as an aggregate write-in asset on the
20 balance sheet of the annual and quarterly financial statements
21 ~~<O>statement for assets and policyholder surplus. Future~~
22 investment income shall be calculated as the sum of the
23 admitted asset value of Line 1 (Bonds) plus the admitted asset
24 value of Line 6 (Cash and Short-Term Investments) as reported
25 on page 2 in the annual or quarterly financial statement,
26 times the 3-year treasury note yield as of the date of the
27 financial statement, times 3.~~follows:~~
28
29
$$A + B + C - D, \text{ where}$$

30
31 ~~A = losses and allocated loss adjustment expense reserves,~~

1 ~~B = unallocated loss adjustment expense reserves,~~
2 ~~C = excess of statutory reserves over statement reserves, and~~
3 ~~D = present value of A + B + C.~~

4 (2) For financial statements filed after January 1,
5 1998, future investment income may only be reported as an
6 admitted asset by an assessable mutual which reported future
7 investment income in financial statements filed with the
8 department prior to December 31, 1996.

9 Section 8. Subsection (3) of section 631.021, Florida
10 Statutes, is amended to read:

11 631.021 Jurisdiction of delinquency proceeding; venue;
12 change of venue; exclusiveness of remedy; appeal.--

13 (3) A delinquency proceeding pursuant to this chapter
14 constitutes the sole and exclusive method of liquidating,
15 rehabilitating, reorganizing, or conserving an insurer. No
16 court shall entertain a petition for the commencement of such
17 a proceeding unless the petition has been filed in the name of
18 the state on the relation of the department. The Florida
19 Insurance Guaranty Association, Incorporated, the Florida
20 Workers' Compensation Insurance Guaranty Association,
21 Incorporated, and the Florida Life and Health Guaranty
22 Association, Incorporated, shall be given reasonable written
23 notice by the department of all hearings which pertain to an
24 adjudication of insolvency of a member insurer.

25 Section 9. Subsection (2) of section 631.182, Florida
26 Statutes, is amended to read:

27 631.182 Receiver claims report and claimants
28 objections procedure.--

29 (2) At the hearing, any interested person is entitled
30 to appear. The hearing shall not be de novo but shall be
31 limited to the record as described in s. 631.181(2). ~~and The~~

1 court shall enter an order allowing, allowing in part, or
2 disallowing the claim. Any such order is deemed to be an
3 appealable order. In the interests of judicial economy, the
4 court may appoint a special master to resolve objections or to
5 perform any particular service required by the court. This
6 subsection shall apply to receivership proceedings commencing
7 prior to, or subsequent to, July 1, 1997.

8 Section 10. Paragraph (b) of subsection (4) of section
9 631.331, Florida Statutes, is amended to read:

10 631.331 Assessment prima facie correct; notice;
11 payment; proceeding to collect.--

12 (4) If the subscriber or member after due service of a
13 copy of the order and petition referred to in subsection (3)
14 is made upon him:

15 (b) Appears in the manner and form required by law in
16 response to the order, the court shall hear and determine the
17 matter and enter a judgment in accordance with its decision.
18 In the interests of judicial economy, the court may appoint a
19 special master to resolve objections or to perform any
20 particular service required by the court. This paragraph shall
21 apply to receivership proceedings commencing prior to, or
22 subsequent to, July 1, 1997.

23 Section 11. Subsection (5) is added to section
24 631.391, Florida Statutes, to read:

25 631.391 Cooperation of officers and employees.--

26 (5) Refusal by any person referred to in subsection
27 (1) to provide records upon the request of the department is
28 grounds for revocation of any insurance-related license,
29 including, but not limited to, agent and third-party
30 administrator licenses.

31

1 Section 12. Subsections (14) and (15) of section
2 631.52, Florida Statutes, are renumbered as subsections (15)
3 and (16), respectively, and new subsection (14) is added to
4 said section, to read:

5 631.52 Scope.--This part shall apply to all kinds of
6 direct insurance, except:

7 (14) Workers' compensation;

8 Section 13. Subsection (1) of section 631.54, Florida
9 Statutes, is amended to read:

10 631.54 Definitions.--As used in this part:

11 (1) "Account" means any one of the three ~~four~~ accounts
12 created by s. 631.55.

13 Section 14. Subsection (2) of section 631.55, Florida
14 Statutes, is amended to read:

15 631.55 Creation of the association.--

16 (2) For the purposes of administration and assessment,
17 the association shall be divided into three ~~four~~ separate
18 accounts:

19 ~~(a) The workers' compensation insurance account, which~~
20 ~~includes excess workers' compensation insurance;~~

21 (a)~~(b)~~ The auto liability account;

22 (b)~~(c)~~ The auto physical damage account; and

23 (c)~~(d)~~ The account for all other insurance to which
24 this part applies.

25 Section 15. Paragraph (a) of subsection (1) of section
26 631.57, Florida Statutes, is amended to read:

27 631.57 Powers and duties of the association.--

28 (1) The association shall:

29 (a)1. Be obligated to the extent of the covered claims
30 existing:

31

1 a. Prior to adjudication of insolvency and arising
2 within 30 days after the determination of insolvency;

3 b. Before the policy expiration date if less than 30
4 days after the determination; or

5 c. Before the insured replaces the policy or causes
6 its cancellation, if he does so within 30 days of the
7 determination.

8 2. The obligation under subparagraph 1. shall include
9 only that amount of each covered claim which is in excess of
10 \$100 and is less than \$300,000, except ~~that~~

11 ~~a. The association shall pay the full amount of any~~
12 ~~covered claim arising out of a workers' compensation policy.~~

13 ~~b.~~ with respect to policies covering condominium
14 associations or homeowners' associations, which associations
15 have a responsibility to provide insurance coverage on
16 residential units within the association, the obligation shall
17 include that amount of each covered property insurance claim
18 which is less than \$100,000 multiplied by the number of
19 condominium units or other residential units; however, as to
20 homeowners' associations, this sub-subparagraph applies only
21 to claims for damage or loss to residential units and
22 structures attached to residential units.

23 3. In no event shall the association be obligated to a
24 policyholder or claimant in an amount in excess of the
25 obligation of the insolvent insurer under the policy from
26 which the claim arises.

27
28 The foregoing notwithstanding, the association shall have no
29 obligation to pay covered claims to be paid from the proceeds
30 of bonds issued under s. 166.111(2). However, the association
31 shall cause assessments to be made under paragraph (3)(e) for

1 such covered claims, and such assessments shall be assigned
2 and pledged under paragraph (3)(e) to or on behalf of the
3 issuer of such bonds for the benefit of the holders of such
4 bonds. The association shall administer any such covered
5 claims and present valid covered claims for payment in
6 accordance with the provisions of the assistance program in
7 connection with which such bonds have been issued.

8 (b) Be deemed the insurer to the extent of its
9 obligation on the covered claims, and, to such extent, shall
10 have all rights, duties, and obligations of the insolvent
11 insurer as if the insurer had not become insolvent. In no
12 event shall the association be liable for any penalties or
13 interest.

14 Section 16. Sections 631.901, 631.902, 631.903,
15 631.904, 631.911, 631.912, 631.913, 631.914, 631.916, 631.917,
16 631.918, 631.919, 631.921, 631.922, 631.923, 631.924, 631.926,
17 and 631.927, Florida Statutes, are created to read:

18 631.901 Title.--This part may be cited as the "Florida
19 Workers' Compensation Insurance Guaranty Association Act."

20 631.902 Purposes.--The purposes of this part are to:

21 (1) Create a not-for-profit Florida Workers'
22 Compensation Insurance Guaranty Association, Incorporated, to
23 provide a mechanism for the payment of covered claims under
24 chapter 440 to avoid excessive delay in payment and to avoid
25 financial loss to claimants because of the insolvency of a
26 member insurer.

27 (2) Assist in the detection and prevention of insurer
28 insolvencies.

29 (3) Allocate the cost of such protection among the
30 insurers.

31

1 (4) Provide for the prompt payment by the corporation
2 of workers' compensation claims incurred by insolvent
3 insurers.

4 631.903 Construction.--The statutes controlling the
5 corporation shall be construed liberally to achieve the
6 purposes stated in s. 631.902. The corporation shall perform
7 its functions under a plan of operation established by its
8 board of directors and approved by the department.

9 631.904 Definitions.--As used in this part, the term:

10 (1) "Corporation" means the Florida Workers'
11 Compensation Insurance Guaranty Association, Incorporated.

12 (2) "Covered claim" means an unpaid claim, including a
13 claim for return of unearned premiums, which arises out of, is
14 within the coverage of, and is not in excess of the applicable
15 limits of, an insurance policy to which this part applies,
16 which policy was issued by an insurer and which claim is made
17 on behalf of a claimant or insured who was a resident of this
18 state at the time of the injury. The term does not include any
19 amount due any reinsurer, insurer, insurance pool, or
20 underwriting association, as subrogation recoveries or
21 otherwise. Member insurers have no right of subrogation
22 against the insured of any insolvent insurer.

23 (3) "Department" means the Department of Insurance.

24 (4) "Insolvency" means that condition in which all of
25 the assets of the insurer, if made immediately available,
26 would not be sufficient to discharge all of its liabilities or
27 that condition in which the insurer is unable to pay its debts
28 as they become due in the usual course of business. When the
29 context of any provision of this part so indicates, insolvency
30 also includes impairment of surplus or impairment of capital.

31

1 (5) "Insolvent insurer" means an insurer that was
2 authorized to transact insurance in this state, either at the
3 time the policy was issued or when the insured event occurred,
4 and against which an order of liquidation with a finding of
5 insolvency has been entered by a court of competent
6 jurisdiction if such order has become final by the exhaustion
7 of appellate review.

8 (6) "Insurer" means an insurance carrier or
9 self-insurance fund authorized to insure under chapter 440.

10 (7) "Self-insurance fund" means a group self-insurance
11 fund authorized under s. 624.4621, a commercial self-insurance
12 fund writing workers' compensation insurance authorized under
13 s. 624.462, or an assessable mutual insurer authorized under
14 s. 628.6011.

15 631.911 Creation of the Florida Workers' Compensation
16 Insurance Guaranty Association, Incorporated; merger; effect
17 of merger.--

18 (1)(a) The Florida Self-Insurance Fund Guaranty
19 Association established in part V of chapter 631 and the
20 workers' compensation insurance account, which includes excess
21 workers' compensation insurance, established in s.
22 631.55(2)(a) are hereby merged to create a new nonprofit
23 corporation to be known as the "Florida Workers' Compensation
24 Insurance Guaranty Association, Incorporated."

25 (b) As a result of the merger:

26 1. The Florida Self-Insurance Fund Guaranty
27 Association and the workers' compensation insurance account
28 within the Florida Insurance Guaranty Association cease to
29 exist.

30
31

1 2. Title to all real estate and other property, or any
2 interest therein, owned by each party to the merger is vested
3 in the new corporation without reversion or impairment.

4 3. The new corporation shall be responsible and liable
5 for all the liabilities and obligations of each party to the
6 merger.

7 4. Any claim existing or action or proceeding pending
8 by or against any party to the merger may be continued as if
9 the merger did not occur or the new corporation may be
10 substituted in the proceeding for the corporation or account
11 which ceased existence.

12 5. Neither the rights of creditors nor any liens upon
13 the property of any party to the merger shall be impaired by
14 such merger.

15 6. Outstanding assessments levied by the Florida
16 Self-Insurance Guaranty Association or the Florida Insurance
17 Guaranty Association on behalf of the workers' compensation
18 insurance account remain in full force and effect and shall be
19 paid when due.

20 (2) All insurers must be members of the corporation as
21 a condition of their authority to offer workers' compensation
22 coverage in this state. An insurer must reimburse the
23 corporation for all funds advanced to the insurer and all
24 claim payments the insurer makes on the insured's behalf if
25 the insurer, having been placed in rehabilitation
26 receivership, is subsequently rehabilitated.

27 (3) The corporation shall perform its functions under
28 a plan of operation and shall exercise its powers through a
29 board of directors. Upon adoption of a plan of operation for
30 the corporation, the board shall establish and manage the
31 Florida Workers' Compensation Insurance account.

1 (4) The corporation has all powers granted or allowed
2 to not-for-profit corporations under chapter 617, in addition
3 to other powers granted in this section.

4 631.912 Board of directors.--

5 (1) The board of directors of the corporation shall
6 consist of 11 persons, one of whom is the Insurance Consumer
7 Advocate appointed under s. 627.0613 and one of whom is
8 designated by the Insurance Commissioner. The department
9 shall appoint to the board seven persons selected by private
10 carriers from among the 20 workers' compensation insurers with
11 the largest amount of net direct written premium as determined
12 by the department, and two persons selected by the
13 self-insurance funds. At least two of the private carriers
14 shall be foreign carriers authorized to do business in this
15 state. The board shall elect a chairperson from among its
16 members. The commissioner may remove any board member for
17 cause. Each board member shall serve for a 4-year term and
18 may be reappointed, except that four members of the initial
19 board shall have 2-year terms so as to stagger the periods of
20 service. A vacancy on the board shall be filled for the
21 remaining period of the term in the same manner by which the
22 original appointment was made.

23 (2) Members of the board may be reimbursed from the
24 assets of the corporation for actual and reasonable
25 out-of-pocket expenses incurred by them as members of the
26 board of directors, however, members of the board may not
27 otherwise be compensated by the corporation for their
28 services.

29 (3) Effective upon this act becoming a law, the
30 persons on the board of directors created pursuant to s.
31 627.311(4)(a) who evidence a willingness to serve in writing,

1 shall serve as an interim board of directors of the
2 corporation until the initial board of directors has been
3 appointed for the corporation in accordance with the
4 provisions of subsection (1). The interim board of directors
5 shall serve for a period not to exceed 6 months. The initial
6 meeting shall be called by the commissioner within 30 days
7 after this act becomes a law. The interim board of directors
8 shall establish a process for the selection of persons to
9 serve on the board of the Florida Workers' Compensation
10 Insurance Guaranty Association in accordance with the terms of
11 subsection (1). The board of directors shall adopt an interim
12 plan of operation to expedite the initial payment of benefits
13 to injured workers. The board shall submit the interim plan
14 to the commissioner, who shall approve or disapprove the plan
15 within 30 days after receipt.

16 631.913 Powers and duties of the corporation.--

17 (1) The corporation is obligated to the extent of the
18 full amount of the covered claims:

19 (a) Existing before the adjudication of insolvency and
20 arising within 30 days after the determination of insolvency;

21 (b) Existing before the policy expiration date if less
22 than 30 days after the determination of insolvency; or

23 (c) Existing before the insured replaces the policy or
24 causes its cancellation, if the insured does so within 30 days
25 after the determination of insolvency.

26
27 The corporation is not obligated to a policyholder or claimant
28 in an amount in excess of the obligation of the insolvent
29 insurer under the policy from which the claim arises.

30 (2) The corporation is considered to be the insurer to
31 the extent of its obligation on the covered claims, and, to

1 such extent, has all rights, duties, and obligations of the
2 insolvent insurer as if the insurer had not become insolvent.
3 The corporation is not liable for any penalties or interest.
4 (3) The corporation may:
5 (a) Employ or retain such persons as are necessary to
6 handle claims and perform other duties of the corporation.
7 (b) Borrow funds necessary to effect the purposes of
8 this part in accordance with the plan of operation.
9 (c) Sue or be sued. Service of process in such legal
10 actions must be made upon the person registered with the
11 department as agent for the receipt of service of process.
12 (d) Enter into such contracts as are necessary to
13 carry out the purpose of this part.
14 (4) The corporation may assist and advise the
15 department, when appropriate, concerning rehabilitation,
16 payment of claims, continuance of coverage, or the performance
17 of other contractual obligations of any impaired or insolvent
18 insurer. The corporation may also assist and advise
19 departments of insurance of other states; other guaranty
20 associations; and conservators, rehabilitators, and receivers
21 appointed or acting in regard to any member insured wherever
22 located, for the purpose of developing plans to coordinate
23 protection of policyholders. Costs of such activities may be
24 charged against the Florida Workers' Compensation Insurance
25 Guaranty Association Account at the discretion of the board of
26 directors, notwithstanding any other provision of this act.
27 (5) The corporation shall have standing to appear
28 before any court in this state which has jurisdiction over an
29 impaired or insolvent insurer to which the corporation is or
30 may become obligated under this act. Such standing shall
31 extend to all matters germane to the powers and duties of the

1 corporation, including but not limited to, proposals for
2 reinsuring or guaranteeing the covered policies of the
3 impaired or insolvent insurer and the determination of the
4 covered policies and contractual obligations.

5 (6) State funds may not be allocated or paid to the
6 corporation.

7 631.914 Assessments; guaranty fund surcharge.--

8 (1)(a) To the extent necessary to secure the funds for
9 the payment of covered claims, other than those referenced in
10 sub-subparagraph (d)1.b., and also to pay the reasonable costs
11 to administer the same, the board, upon certification by the
12 department, shall levy assessments on each insurer in the
13 proportion that the insurer's net direct written premiums in
14 this state bears to the total of said net direct written
15 premiums received in this state by all such workers'
16 compensation insurers for the preceding calendar year.

17 Assessments shall be remitted to and administered by the board
18 of directors in the manner specified by the approved plan of
19 operation. The board shall give each insurer so assessed at
20 least 30 days' written notice of the date the assessment is
21 due and payable. Each assessment shall be a uniform
22 percentage applicable to the net direct written premiums of
23 each insurer writing workers' compensation insurance. Prior
24 to July 1, 1998, the board may levy assessments against any
25 insurer, other than a self-insurance fund, and such
26 assessments shall not exceed in any calendar year more than 2
27 percent of that insurer's net direct written premiums in this
28 state for workers' compensation insurance during the calendar
29 year next preceding the date of such assessments. Prior to
30 July 1, 1998, the board may levy assessments against any
31 self-insurance fund to fund the obligations and liabilities

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1 assumed by the corporation from the Florida Self-Insurance
2 Fund Guaranty Association and any obligations and liabilities
3 resulting from a self-insurance fund insolvency prior to that
4 date. Such assessment shall not exceed in any calendar year
5 more than 1 percent of that self-insurance fund's net direct
6 written premiums in this state for workers' compensation
7 insurance during the calendar year next preceding the date of
8 such assessments. Effective July 1, 1998, the assessments
9 levied against any insurer shall not exceed in any calendar
10 year more than 1.5 percent of that insurer's net direct
11 written premiums in this state for workers' compensation
12 insurance during the calendar year next preceding the date of
13 such assessments.

14 (b) Assessments shall be included as an appropriate
15 factor in the making of rates.

16 (c) No state funds of any kind shall be allocated or
17 paid to the corporation.

18 (d)1.a. If funds from assessments levied under
19 paragraph (a), together with funds previously raised, are not
20 sufficient in any calendar year to make all payments or
21 reimbursements then owing to claimants, then a guaranty fund
22 surcharge shall be levied against all insurers in an amount
23 necessary to make all payments or reimbursements for the
24 current year.

25 b. If funds from assessments against self-insurance
26 funds, together with those previously raised, are not
27 sufficient to fund current-year payments on those covered
28 claims assumed by the corporation from the Florida
29 Self-Insurance Fund Guaranty Association, payments for claims
30 of self-insurance funds declared insolvent prior to July 1,
31 1998, and payments for claims resulting from dates of

1 accidents or losses incurred by a self-insurance fund prior to
2 January 1, 1994, a guaranty fund surcharge shall be levied
3 against all insurers in an amount necessary to make all
4 payments or reimbursements for the current year.

5 2. The board shall levy, after verification by the
6 department, a guaranty fund surcharge to be collected by
7 insurers upon issuance or renewal of policies in the year
8 following the levy of the assessment. The amount of the
9 guaranty fund surcharge shall be a uniform percentage of the
10 next preceding year's direct written premium for workers'
11 compensation insurance as determined by the board and verified
12 by the department. Guaranty fund surcharges shall be remitted
13 to and administered by the board of directors in the manner
14 specified by the approved plan of operation. The board shall
15 give each insurer so surcharged at least 30 days' written
16 notice of the date the surcharge is due and payable. Each
17 guaranty fund surcharge shall be a uniform percentage
18 applicable to the net direct written premiums of each insurer
19 writing workers' compensation insurance.

20 3. A guaranty fund surcharge shall neither be included
21 as a factor in the making of rates, nor be included as a
22 consideration in the Insurance Commissioner's final rate
23 order.

24 4. A guaranty fund surcharge shall be a separate line
25 item on the workers' compensation insurance premium statement
26 and shall be collected at the same time and in the same manner
27 as the premium. The guaranty fund surcharge shall be a factor
28 in the calculation of the final audit of the policy. Any
29 overpayments or underpayments of the guaranty fund surcharge
30 shall be credited or billed to the insured. The guaranty fund
31 surcharge shall not be considered premium for purposes of any

1 assessment or tax, and shall not be reported to the department
2 or the licensed statistical agent or rating organization as
3 premium.

4 5. The board may temporarily defer, in whole or in
5 part, the guaranty fund surcharge of an insurer if, in the
6 opinion of the department, payment of the surcharge would
7 endanger the ability of the insurer to fulfill its contractual
8 obligations. In the case of a self-insurance fund, the
9 trustees of the fund determined to be endangered must
10 immediately levy a surcharge upon the members of that
11 self-insurance fund in an amount sufficient to pay the
12 surcharge to the corporation.

13 (2) The department may exempt any insurer from an
14 assessment if an assessment would result in such insurer's
15 financial statement reflecting an amount of capital or surplus
16 less than the minimum amount required by any jurisdiction in
17 which the insurer is authorized to transact insurance.

18 (3) Any necessary and proper expenses incurred by an
19 insurer in the investigation, adjustment, compromise,
20 settlement, denial, or handling of claims assigned to the
21 insurer shall, upon proper verification by the corporation,
22 entitle the insurer to reimbursement. Any insurer whose
23 employee serves as the staff to the corporation may set off
24 from its assessment any necessary and proper expenses incurred
25 by the insurer resulting from said service of its employee.
26 An insurer which ceases to engage in the business of writing
27 property or casualty insurance policies in this state shall
28 have no right to a refund of any assessment previously
29 remitted.

30 (4) With respect to self-insurance funds:
31

1 (a) Failure of any self-insurance fund to pay, when
2 due, an assessment that has not been deferred constitutes
3 grounds for the department to fine the insurer or bring action
4 to suspend, revoke, or fine the self-insurance fund, or both.

5 (b) If any fund does not pay its assessment, the
6 corporation has standing and authority to file a civil action
7 and to collect the assessment against that self-insurance fund
8 directly from the members of the self-insurance fund. Any
9 member of that self-insurance fund, as of the date of the
10 assessment or at any time in the 3 years next preceding the
11 notice of assessment, is liable for the assessment in the
12 proportion that premiums paid by the member to that
13 self-insurance fund bear to premiums paid to the
14 self-insurance fund by all members of such fund in the same
15 period.

16 (c) The board shall assess members of the delinquent
17 self-insurance fund for the assessment that would have been
18 levied against the delinquent fund for its share of the
19 assessment as if the assessment had not been caused by such
20 fund, and each such member is liable in the proportion that
21 premiums paid by the member to the self-insurance fund to
22 premiums paid to that self-insurance fund by all members of
23 such fund in that same period. The corporation may bring suit
24 in the courts of this state to collect such assessments.

25 631.916 Plan of operation.--The board of directors
26 shall prepare and submit to the department a plan of operation
27 and any amendments to the plan which are necessary or suitable
28 to assure the fair, reasonable, and equitable administration
29 of the corporation. The plan of operation and any amendments
30 to the plan shall become effective unless disapproved in
31 writing by the department within 30 days after receipt. If the

1 corporation fails to submit a plan of operation within 90 days
2 after the appointment of the new board, the department shall
3 implement a plan of operation which will be effective until
4 the board submits a plan of operation. The plan of operation
5 prepared by the board is subject to periodic review by the
6 department. All member insurers shall comply with the approved
7 plan of operation. The plan of operation must, in addition to
8 the requirements enumerated elsewhere in this part:

9 (1) Establish procedures for handling the assets of
10 the corporation.

11 (2) Establish regular places and times for meetings of
12 the board of directors.

13 (3) Establish procedures for keeping records of all
14 financial transactions of the corporation, its agents, and the
15 board of directors.

16 (4) Establish procedures for levying and collecting
17 assessments and deficiency surcharges.

18 (5) Establish procedures to allow injured workers to
19 make claims and to adjust and pay such claims.

20 (6) Establish additional provisions necessary or
21 proper for executing the powers and duties of the association.

22 631.917 Prevention of insolvencies.--To aid in the
23 detection and prevention of insolvencies or impairments:

24 (1)(a) The board may make reasonable and lawful
25 investigation into the practices of any third-party
26 administrator or service company for a self-insurance fund
27 declared insolvent by the court.

28 (b) If the results of an investigation reasonably lead
29 to a finding that certain actions taken or not taken by those
30 handling, processing, or preparing covered claims for payment
31 or other benefit pursuant to any workers' compensation

1 insurance policy, contributed to the insolvency of an insurer,
2 such information may, in the discretion of the board, be
3 provided to the department in an expedited manner.

4 (2) The board of directors may make reports and
5 recommendations to the department upon any matter germane to
6 the solvency, liquidation, rehabilitation, or conservation of
7 any member insurer or germane to the solvency of any insurer
8 seeking to do insurance business in this state.

9 (3) The board of directors, in its discretion, may
10 notify the department of any information indicating that any
11 member insurer may be an impaired or insolvent insurer.

12 (4) The board of directors, in its discretion, may
13 request that the department order an examination of any member
14 insurer which the board in good faith believes may be an
15 impaired or insolvent insurer. Within 30 days after receipt
16 of such a request, the department shall begin such an
17 examination. The examination may be conducted as a National
18 Association of Insurance Commissioners examination or may be
19 conducted by such persons as the Insurance Commissioner
20 designates. The cost of such examination shall be paid by the
21 corporation and the examination report shall be treated in a
22 manner similar to other examination reports pursuant to s.
23 624.319. In no event may such examination report be released
24 to the board of directors before its release to the public,
25 but this requirement does not preclude the department from
26 complying with s. 631.398(2). The department shall notify the
27 board of directors when the examination is completed. The
28 request for an examination shall be kept on file by the
29 department.

30 (5) The board is authorized to assist and aid the
31 department, in any manner consistent with existing laws and

1 this chapter, in the department's investigation or referral
2 for prosecution of those whose action or inaction may have
3 contributed to the impairment or insolvency of the insurer.

4 (6) The board may make recommendations to the
5 department for the detection and prevention of insurer
6 insolvencies.

7 631.918 Immunity.--There is no liability on the part
8 of, and a cause of action may not arise against, the
9 corporation, its agents or employees, or members of its board
10 of directors, or the department or its agents or employees,
11 for any action taken by them in the performance of their
12 powers and duties under this section, unless such action is
13 found to be a violation of antitrust laws, was in bad faith,
14 or was undertaken with malicious purpose or in a manner
15 exhibiting wanton and willful disregard of human rights,
16 safety, or property.

17 631.919 Prohibited advertisement of solicitation.--A
18 person may not make, publish, disseminate, advertise,
19 circulate, or place before the public, or cause, directly or
20 indirectly, to be made, published, disseminated, circulated,
21 or placed before the public, in any print, television, or
22 broadcast media, or in any circular, letter, pamphlet, or
23 publication of any kind, a statement or announcement that uses
24 the existence of the Florida Workers' Compensation Insurance
25 Guaranty Association, Incorporated, to induce an employer to
26 purchase membership in or insurance from a member insurer.

27 631.921 Department powers.--The corporation shall be
28 subject to examination by the department. By March 1 of each
29 year, the board of directors shall cause a financial report to
30 be filed with the department for the immediately preceding
31 calendar year in a form approved by the department.

1 631.922 Liability of members of an impaired
2 self-insurance fund for unpaid claims.--This act may not be
3 construed to reduce the liability of a member of an impaired
4 self-insurance fund for the member's liability under s.
5 624.4621 or s. 624.476.

6 631.923 Effect of paid claims.--

7 (1) Any person who recovers under this part is
8 considered to have assigned his or her rights under the policy
9 to the corporation to the extent of his or her recovery from
10 the corporation. Every insured or claimant seeking the
11 protection of this part shall cooperate with the corporation
12 to the same extent as the insured or claimant would have been
13 required to cooperate with the insolvent insurer. The
14 corporation has no cause of action against the insured of the
15 insolvent insurer for any sums the insured has paid out except
16 such causes of action as the insolvent insurer would have had
17 if the sums had been paid by the insolvent insurer.

18 (2) The receiver, liquidator, or statutory successor
19 of an insolvent insurer is bound by settlements of covered
20 claims by the corporation. The court having jurisdiction shall
21 grant such claims priority equal to that to which the claimant
22 would have been entitled, in the absence of this part, against
23 the assets of the insolvent insurer. The expenses of the
24 association or similar organization in handling claims must be
25 accorded the same priority as the liquidator's expenses.

26 (3) The corporation shall periodically file with the
27 receiver or liquidator of the insolvent insurer statements of
28 the covered claims paid by the corporation and estimates of
29 anticipated claims on the corporation, which shall preserve
30 the rights of the corporation against the assets of the
31 insolvent insurer.

1 (4) Any release of the corporation and its insured
2 must clearly state whether or not any claim filed with the
3 receiver in excess of the liability of the corporation under
4 s. 631.57 is waived.

5 631.924 Stay of proceedings; reopening of default
6 judgments.--All proceedings in which the insolvent
7 self-insurance fund is a party or is obligated to defend a
8 party in any court or before any quasi-judicial body or
9 administrative board in this state must be stayed for 6
10 months, or such additional period from the date the insolvency
11 is adjudicated, by a court of competent jurisdiction to allow
12 proper defense by the association of all pending causes of
13 action as to any covered claims. The stay may be extended for
14 a period of time greater than 6 months upon proper application
15 to a court of competent jurisdiction. The association, either
16 on its own behalf or on behalf of the insured, may apply to
17 have any judgment, order, decision, verdict, or finding based
18 on the default of the insolvent self-insurance fund or its
19 failure to defend an insured set aside by the same court or
20 administrator that made the judgment, order, decision,
21 verdict, or finding and may defend against the claim on the
22 merits. If the association so requests, the stay of
23 proceedings may be shortened or waived.

24 631.926 Attorney's fees.--The provisions of s. 627.428
25 providing for an attorney's fee are inapplicable to any claim
26 presented to the corporation under this part, unless the
27 corporation denies, by affirmative action other than delay, a
28 covered claim or a portion thereof.

29 631.927 Assumption of liability.--Notwithstanding s.
30 631.913, the corporation shall assume the liability for the
31 payment of the workers' compensation indemnity and medical

1 benefits that are due to claimants covered by the Certified
2 Pulpwood Dealers Self-Insurers Fund. The corporation shall
3 assess the former members of the Certified Pulpwood Dealers
4 Self-Insurers Fund pursuant to the provisions of this act.

5 Section 17. Section 631.996, Florida Statutes, is
6 renumbered as section 631.928, Florida Statutes, and is
7 amended to read:

8 631.928 ~~631.996~~ Florida Workers' Compensation
9 Insurance Guaranty Association ~~Group Self-Insurance Fund~~
10 Account.--Notwithstanding the provisions of s. 215.3207, the
11 Florida Workers' Compensation Insurance Guaranty Association
12 ~~Group Self-Insurance Fund~~ Account is hereby created, to be
13 managed by the Florida Workers' Compensation Insurance ~~Group~~
14 ~~Self-Insurance Fund~~ Guaranty Association. Funds shall be
15 credited to the fund as provided in chapter 93-415, Laws of
16 Florida, or similar legislation, to be used for the purposes
17 set forth therein.

18 Section 18. Section 631.929, Florida Statutes, is
19 created to read:

20 631.929 Election of remedies.--An injured worker who
21 has a date of accident which occurred before January 1, 1994,
22 and is not receiving benefits due under chapter 440 due to the
23 insolvency of a self-insurance fund or its successors,
24 regardless of the date declared insolvent by the court, may
25 elect to seek medical care, treatment, and attendance, and
26 compensation required under ss. 440.15 and 440.16 from the
27 corporation and forego the remedy to seek benefits from his
28 employer or the insolvent self-insurance fund. An employee
29 who so elects may be required to obtain medical care,
30 treatment, and attendance through a managed care plan
31 comporting with the requirement of s. 440.134 if the plan of

1 operation so provides. An injured worker has 60 days to seek
2 benefits from the corporation upon ratification by the
3 corporation of his right to elect a remedy under this part.
4 If the injured worker elects to pursue his remedy under the
5 provisions of this part, the corporation may, with the
6 agreement of the injured employee, pay a lump-sum payment in
7 exchange for the corporation's and employer's release from
8 liability for future medical and compensation expenses, as
9 well as any other benefit provided under chapter 440.
10 However, there shall be no entitlement to attorney's fees,
11 penalties, interest, or costs to be paid on any claim
12 presented to the corporation under this part. This section
13 shall not create any cause of action against any employer who
14 purchased workers' compensation insurance coverage pursuant to
15 s. 440.38.

16 Section 19. Section 631.997, Florida Statutes, is
17 renumbered as section 631.931, Florida Statutes, and is
18 amended to read:

19 631.931 ~~631.997~~ Reports and recommendations by board;
20 public records exemption.--

21 (1) Reports and recommendations made by the Board of
22 Directors of the Florida Workers' Compensation Insurance
23 ~~Self-Insurance Fund~~ Guaranty Association to the Department of
24 Insurance under s. 631.917 ~~631.95~~ upon any matter germane to
25 the solvency, liquidation, rehabilitation, or conservation of
26 any member insurer ~~self-insurance fund~~ are confidential and
27 exempt from the provisions of s. 119.07(1) and s. 24(a), Art.
28 I of the State Constitution until the termination of a
29 delinquency proceeding.

30 (2) The Legislature finds that it is a public
31 necessity that reports and recommendations made by the Board

1 of Directors of the Florida Workers' Compensation Insurance
2 ~~Self-Insurance Fund~~ Guaranty Association which are provided to
3 the Department of Insurance pursuant to s. 631.917 ~~631.95~~
4 regarding the solvency, liquidation, rehabilitation, or
5 conservation of any member insurer ~~self-insurance fund~~ be held
6 confidential and exempt from the public records law until
7 termination of a delinquency proceeding. Release of such
8 reports and recommendations regarding the insolvency or
9 impairment of an insurer ~~a self-insurance fund~~ before the
10 department further investigated and took action on the matter
11 could negatively affect the economic stability of that insurer
12 ~~fund~~ in that members would seek insurance coverage elsewhere,
13 thus further creating financial crisis for that insurer fund.
14 This would make it even more difficult to rehabilitate the
15 fund. Furthermore, there is little public utility in premature
16 release of such information because monitoring and evaluation
17 of the department's response and actions regarding any
18 affected insurer fund is not significantly impaired by waiting
19 until termination of a delinquency proceeding to release the
20 reports and recommendations.

21 Section 20. Section 631.998, Florida Statutes, is
22 renumbered as section 631.932, Florida Statutes, and is
23 amended to read:

24 631.932 ~~631.998~~ Negotiations; public meetings and
25 records exemptions.--

26 (1) Negotiations held between an insurer ~~a~~
27 ~~self-insurance fund~~ and the Florida Workers' Compensation
28 Insurance ~~Self-Insurance Fund~~ Guaranty Association are exempt
29 from the provisions of s. 286.011 and s. 24(b), Art. I of the
30 State Constitution. Documents related to such negotiations
31 that reveal identifiable payroll and loss and individual claim

1 information are confidential and exempt from the provisions of
2 s. 119.07(1) and s. 24(a), Art. I of the State Constitution.
3 (2) The Legislature finds that it is a public
4 necessity that records revealing identifiable payroll and loss
5 and individual claim information regarding an insurer ~~a~~
6 ~~self-insurance fund~~ held by the Florida Workers' Compensation
7 Insurance Self-Insurance Fund Guaranty Association be held
8 confidential and exempt from the public records law, and that
9 negotiations between the insurer ~~self-insurance fund~~ and the
10 corporation ~~association~~ be held confidential and exempt from
11 the public meetings law. If this information were revealed to
12 the public, sensitive financial information gathered for the
13 purposes of determining, for example, the best course of
14 action regarding potential liquidation or rehabilitation of an
15 insurer ~~a fund~~ would be available to all corporation
16 ~~association~~ members and ~~fund~~ competitors. ~~This would foster~~
17 ~~fear among the more solvent fund members, who might seek to~~
18 ~~withdraw from the fund, and knowledge of such information~~
19 ~~would provide an opportunity for fund competitors to strip~~
20 ~~away fund membership, all to the financial detriment of the~~
21 ~~fund (as to the member employers and their employees) and the~~
22 ~~association, whose members would have to compensate an injured~~
23 ~~worker if the fund became financially insolvent. Additionally,~~
24 If negotiation sessions were public, sensitive, proprietary
25 business information could be revealed regarding the various
26 contracts necessary to administer the corporation ~~association~~,
27 thereby impeding the corporation's ~~association's~~ ability to
28 function effectively and efficiently.
29 Section 21. Sections 631.90, 631.905, 631.91, 631.915,
30 631.92, 631.925, 631.93, 631.935, 631.94, 631.945, 631.95,
31

1 631.955, 631.96, 631.965, 631.97, 631.975, 631.98, 631.985,
2 631.99, and 631.995, Florida Statutes, are hereby repealed.
3 Section 22. This act shall take effect July 1, 1997.
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