

1
2 An act relating to workers' compensation;
3 amending s. 440.49, F.S.; revising procedures
4 and requirements for reimbursement from the
5 fund; providing for barring the filing of a
6 claim for reimbursement under certain
7 circumstances; providing a maximum fund
8 assessment rate; requiring certain fees;
9 requiring the Department of Labor and
10 Employment Security to prepare an annual
11 report; providing a schedule for reimbursements
12 from the fund under certain circumstances;
13 amending s. 625.091, F.S.; providing for
14 accounting for anticipated recoveries under the
15 Special Disability Trust Fund; requiring
16 insurers to identify anticipated recoveries
17 from the fund; providing an appropriation;
18 amending s. 624.4621, F.S.; requiring
19 self-insurance funds to maintain a positive
20 surplus to policyholders; amending s. 624.468,
21 F.S.; requiring self-insurance funds to
22 maintain a positive surplus to policyholders;
23 amending s. 624.470, F.S.; establishing
24 standards for the use of future investment
25 income as an asset for self-insurance funds;
26 amending s. 624.476, F.S.; providing that the
27 Department of Insurance may be appointed
28 receiver for a self-insurance fund under
29 certain circumstances; authorizing the
30 administrative supervision of a self-insurance
31 fund under certain conditions; creating s.

1 624.477, F.S.; requiring the Department of
2 Insurance to supervise, as receiver, the
3 liquidation, rehabilitation, reorganization,
4 conservation, or dissolution of self-insurance
5 funds; amending s. 624.488, F.S.; applying
6 provisions of the Florida Insurance Code
7 relating to rehabilitation and liquidation of
8 an insurer to self-insurance funds; applying
9 provisions relating to insurer assets,
10 liabilities, and deposits to self-insurance
11 funds; applying a provision relating to
12 assessable mutual insurer annual reports to
13 self-insurance funds; amending s. 628.6014,
14 F.S.; establishing standards for the use of
15 future investment income as an asset for
16 assessable mutual insurers; amending s.
17 631.021, F.S.; providing for delinquency
18 proceedings, venue, remedies, and appeals;
19 amending s. 631.182, F.S.; providing for claims
20 reports and procedures; amending s. 631.331,
21 F.S.; providing for notice, payment, and
22 collection procedure; amending s. 631.391,
23 F.S.; providing for revocation of
24 insurance-related licenses under certain
25 conditions; amending s. 631.397, F.S.;
26 specifying applicability of provision relating
27 to use of marshaled assets; amending s. 631.52,
28 F.S.; providing scope of direct insurance;
29 amending s. 631.54, F.S.; providing
30 definitions; amending s. 631.55, F.S.;
31 providing for creation of the association;

1 amending s. 631.57, F.S.; providing for powers
2 and duties of the association; creating ss.
3 631.901, 631.902, 631.903, 631.904, 631.911,
4 631.912, 631.913, 631.914, 631.916, 631.917,
5 631.918, 631.919, 631.921, 631.922, 631.923,
6 631.924, 631.926, and 631.927, F.S.; creating
7 the "Florida Workers' Compensation Insurance
8 Guaranty Association Act"; providing purposes;
9 providing construction; providing definitions;
10 creating the Florida Workers' Compensation
11 Insurance Guaranty Association, Incorporated,
12 by merging the Florida Self-Insurance Fund
13 Guaranty Association and the workers'
14 compensation insurance account; providing for
15 effect of the merger; providing requirements;
16 providing for a board of directors; providing
17 powers and duties of the corporation;
18 authorizing the board to levy assessments for
19 certain purposes; providing procedures;
20 providing requirements and limitations;
21 authorizing an additional assessment for
22 certain purposes; providing procedures;
23 providing requirements and limitations;
24 requiring the board to prepare a plan of
25 operation; providing requirements; providing
26 powers of the board to prevent insolvencies and
27 impairments; providing for examination of
28 certain insurers by the department for certain
29 purposes; providing immunity from liability;
30 specifying prohibited advertisement of
31 solicitation; providing powers of the

1 Department of Insurance; providing for
2 liability of members of impaired self-insurance
3 funds; providing for effect of paid claims;
4 providing requirements; providing procedures;
5 providing for staying certain proceedings;
6 providing for setting aside certain judgments,
7 orders, decisions, verdicts, or findings under
8 certain circumstances; providing for
9 nonapplication of certain attorney's fees
10 provisions under certain circumstances;
11 providing for assumption of liability by the
12 corporation of certain payments; amending s.
13 631.996, F.S.; creating the Florida Workers'
14 Compensation Insurance Guaranty Fund Account;
15 amending s. 631.915, F. S.; revising
16 definitions; amending s. 631.935, F.S.;
17 providing for powers and duties of the
18 association; creating s. 631.929, F.S.;
19 providing for election of remedies by injured
20 workers; providing procedures; providing
21 requirements; amending s. 631.997, F.S.;
22 providing for reports and recommendations of
23 the board; amending s. 631.998, F.S.; providing
24 for application of provisions relating to
25 negotiations with an insurer to the
26 corporation; directing that certain provisions
27 not be published in the Florida Statutes;
28 provides for a report; providing an
29 appropriation from the Insurance Commissioner's
30 Regulatory Trust Fund to the Florida
31 Self-Insurance Fund Guaranty Association;

1 providing for disbursement of appropriated
2 funds; repealing ss. 631.90, 631.905, 631.91,
3 631.915, 631.92, 631.925, 631.93, 631.935,
4 631.94, 631.945, 631.95, 631.955, 631.96,
5 631.965, 631.97, 631.975, 631.98, 631.985,
6 631.99, and 631.995, F.S., relating to the
7 Florida Self-Insurance Fund Guaranty
8 Association; providing an effective date.
9

10 Be It Enacted by the Legislature of the State of Florida:

11
12 Section 1. Subsections (7), (9), and (11) of section
13 440.49, Florida Statutes, 1996 Supplement, are amended to
14 read:

15 440.49 Limitation of liability for subsequent injury
16 through Special Disability Trust Fund.--

17 (7) REIMBURSEMENT OF EMPLOYER.--

18 (a) The right to reimbursement as provided in this
19 section is barred unless written notice of claim of the right
20 to such reimbursement is filed by the employer or carrier
21 entitled to such reimbursement with the division at
22 Tallahassee within 2 years after the date the employee last
23 reached maximum medical improvement, or within 2 years after
24 the date of the first payment of compensation for permanent
25 total disability, wage loss, or death, whichever is later. The
26 notice of claim must contain such information as the division
27 by rule requires; and the employer or carrier claiming
28 reimbursement shall furnish such evidence in support of the
29 claim as the division reasonably may require.

30 (b) For notice of claims on the Special Disability
31 Trust Fund filed on or after July 1, 1978, the Special

1 Disability Trust Fund shall, within 120 days after receipt of
2 notice that a carrier has paid, been required to pay, or
3 accepted liability for excess compensation, serve notice of
4 the acceptance of the claim for reimbursement.

5 (c) A proof of claim must be filed on each notice of
6 claim on file as of June 30, 1997, within 1 year after July 1,
7 1997, or the right to reimbursement of the claim shall be
8 barred. A notice of claim on file on or before June 30, 1997,
9 may be withdrawn and refiled if, at the time refiled, the
10 notice of claim remains within the limitation period specified
11 in paragraph (a). Such refiling shall not toll, extend, or
12 otherwise alter in any way the limitation period applicable to
13 the withdrawn and subsequently refiled notice of claim. Each
14 proof of claim filed shall be accompanied by a proof-of-claim
15 fee as provided in paragraph (9)(d). The Special Disability
16 Trust Fund shall, within 120 days after receipt of the proof
17 of claim, serve notice of the acceptance of the claim for
18 reimbursement. This paragraph shall apply to all claims
19 notwithstanding the provisions of subsection (12).

20 (d) Each notice of claim filed or refiled on or after
21 July 1, 1997, must be accompanied by a notification fee as
22 provided in paragraph (9)(d). A proof of claim must be filed
23 within 1 year after the date the notice of claim is filed or
24 refiled, accompanied by a proof-of-claim fee as provided in
25 paragraph (9)(d), or the claim shall be barred. The
26 notification fee shall be waived if both the notice of claim
27 and proof of claim are submitted together as a single filing.
28 The Special Disability Trust Fund shall, within 180 days after
29 receipt of the proof of claim, serve notice of the acceptance
30 of the claim for reimbursement. This paragraph shall apply to
31 all claims notwithstanding the provisions of subsection (12).

1 (e) For dates of accident on or after ~~before~~ January
2 1, 1994, the Special Disability Trust Fund shall, within 120
3 days of receipt of notice that a carrier has been required to
4 pay, and has paid over \$10,000 in benefits, serve notice of
5 the acceptance of the claim for reimbursement. Failure of the
6 Special Disability Trust Fund to serve notice of acceptance
7 shall give rise to the right to request a hearing on the claim
8 for reimbursement. If the Special Disability Trust Fund
9 through its representative denies or controverts the claim,
10 the right to such reimbursement shall be barred unless an
11 application for a hearing thereon is filed with the division
12 at Tallahassee within 60 days after notice to the employer or
13 carrier of such denial or controversion. When such application
14 for a hearing is timely filed, the claim shall be heard and
15 determined in accordance with the procedure prescribed in s.
16 440.25, to the extent that such procedure is applicable, and
17 in accordance with the workers' compensation rules of
18 procedure. In such proceeding on a claim for reimbursement,
19 the Special Disability Trust Fund shall be made the party
20 respondent, and no findings of fact made with respect to the
21 claim of the injured employee or the dependents for
22 compensation, including any finding made or order entered
23 pursuant to s. 440.20(12), shall be res judicata. The Special
24 Disability Trust Fund may not be joined or made a party to any
25 controversy or dispute between an employee and the dependents
26 and the employer or between two or more employers or carriers
27 without the written consent of the fund.

28 (f) When it has been determined that an employer or
29 carrier is entitled to reimbursement in any amount, the
30 employer or carrier shall be reimbursed annually from the
31 Special Disability Trust Fund for the compensation and medical

1 benefits paid by the employer or carrier for which the
2 employer or carrier is entitled to reimbursement, upon filing
3 request therefor and submitting evidence of such payment in
4 accordance with rules prescribed by the division, which rules
5 may include parameters for annual audits. The Special
6 Disability Trust Fund shall pay the approved reimbursement
7 requests on a first-in, first-out basis reflecting the order
8 in which the reimbursement requests were received.

9 (9) SPECIAL DISABILITY TRUST FUND.--

10 (a) There is established in the State Treasury a
11 special fund to be known as the "Special Disability Trust
12 Fund," which shall be available only for the purposes stated
13 in this section; and the assets thereof may not at any time be
14 appropriated or diverted to any other use or purpose. The
15 Treasurer shall be the custodian of such fund, and all moneys
16 and securities in such fund shall be held in trust by such
17 Treasurer and shall not be the money or property of the state.
18 The Treasurer is authorized to disburse moneys from such fund
19 only when approved by the division and upon the order of the
20 Comptroller. The Treasurer shall deposit any moneys paid into
21 such fund into such depository banks as the division may
22 designate and is authorized to invest any portion of the fund
23 which, in the opinion of the division, is not needed for
24 current requirements, in the same manner and subject to all
25 the provisions of the law with respect to the deposits of
26 state funds by such Treasurer. All interest earned by such
27 portion of the fund as may be invested by the Treasurer shall
28 be collected by him and placed to the credit of such fund.

29 (b)1. The Special Disability Trust Fund shall be
30 maintained by annual assessments upon the insurance companies
31 writing compensation insurance in the state, the commercial

1 self-insurers under ss. 624.462 and 624.4621, the assessable
2 mutuals under s. 628.601, and the self-insurers under this
3 chapter, which assessments shall become due and be paid
4 quarterly at the same time and in addition to the assessments
5 provided in s. 440.51. The division shall estimate annually in
6 advance the amount necessary for the administration of this
7 subsection and the maintenance of this fund and shall make
8 such assessment in the manner hereinafter provided.

9 2. The annual assessment shall be calculated to
10 produce during the ensuing fiscal year an amount which, when
11 combined with that part of the balance in the fund on June 30
12 of the current fiscal year which is in excess of \$100,000, is
13 equal to the average of:

14 a. The sum of disbursements from the fund during the
15 immediate past 3 calendar years, and

16 b. Two times the disbursements of the most recent
17 calendar year.

18

19 Such amount shall be prorated among the insurance companies
20 writing compensation insurance in the state and the
21 self-insurers.

22 3. The net premiums written by the companies for
23 workers' compensation in this state and the net premium
24 written applicable to the self-insurers in this state are the
25 basis for computing the amount to be assessed as a percentage
26 of net premiums. Such payments shall be made by each insurance
27 company and self-insurer to the division for the Special
28 Disability Trust Fund in accordance with such regulations as
29 the division prescribes.

30 4. The Treasurer is authorized to receive and credit
31 to such Special Disability Trust Fund any sum or sums that may

1 at any time be contributed to the state by the United States
2 under any Act of Congress, or otherwise, to which the state
3 may be or become entitled by reason of any payments made out
4 of such fund.

5 (c) Notwithstanding the Special Disability Trust Fund
6 assessment rate calculated pursuant to this section, the rate
7 assessed shall not exceed 4.52 percent ~~provisions of this~~
8 ~~subsection, in order to implement specific appropriations 1475~~
9 ~~and 1748 of the 1996-1997 General Appropriations Act, for~~
10 ~~fiscal year 1996-1997 only, the workers' compensation Special~~
11 ~~Disability Trust Fund assessment rate in effect on January 1,~~
12 ~~1995, shall remain in effect until June 30, 1997. This~~
13 ~~paragraph is repealed on July 1, 1997.~~

14 (d) The Special Disability Trust Fund shall be
15 supplemented by a \$250 notification fee on each notice of
16 claim filed or refiled after July 1, 1997, and a \$500 fee on
17 each proof of claim filed in accordance with subsection (7).
18 Revenues from the fee shall be deposited into the Special
19 Disability Trust Fund and are exempt from the deduction
20 required by s. 215.20. The fees provided in this paragraph
21 shall not be imposed upon any insurer which is in receivership
22 with the Department of Insurance.

23 (e) The Department of Labor and Employment Security
24 shall report annually on the status of the Special Disability
25 Trust Fund. The report shall update the projected change in
26 fund liability, change in the total number of notices of claim
27 on file with the fund in addition to the number of newly filed
28 notices of claim, change in the number of proofs of claim
29 processed by the fund, and the fee revenues refunded and
30 revenues applied to pay down the liability of the fund. The
31 department shall submit its initial report to the Governor,

1 the President of the Senate, and the Speaker of the House of
2 Representatives by March 1, 1998, for the period ending
3 February 1, 1998, with additional reports submitted by
4 December 1, 1998, and December 1, 1999.

5 (11) EFFECTIVE DATES.--This section does not apply to
6 any case in which the accident causing the subsequent injury
7 or death or the disablement or death from a subsequent
8 occupational disease occurred prior to July 1, 1955, or on or
9 after January 1, 1998. In no event shall the Special
10 Disability Trust Fund be liable for, or reimburse employers or
11 carriers for, any case in which the accident causing the
12 subsequent injury or death or the disablement or death from a
13 subsequent occupational disease occurred on or after January
14 1, 1998. The Special Disability Trust Fund shall continue to
15 reimburse employers or carriers for subsequent injuries
16 occurring prior to January 1, 1998, and the division shall
17 continue to assess for and fund reimbursements as provided in
18 subsection (9) for this purpose.

19 Section 2. Subsection (4) is added to section 625.091,
20 Florida Statutes, to read:

21 625.091 Losses and loss adjustment expense reserves;
22 liability insurance and workers' compensation insurance.--The
23 reserve liabilities recorded in the insurer's annual statement
24 and financial statements for unpaid losses and loss adjustment
25 expenses shall be the estimated value of its claims when
26 ultimately settled and shall be computed as follows:

27 (4)(a) Accounting credit for anticipated recoveries
28 from the Special Disability Trust Fund may only be taken in
29 the determination of loss reserves and may not be reflected on
30 the financial statements in any manner other than that allowed
31 pursuant to this subsection.

1 (b)1. For calendar years 1999-2003, an insurer
2 recording anticipated recoveries from the Special Disability
3 Trust Fund shall limit the aggregate amount to the amount
4 management reasonably expects will be reimbursed or the
5 following amount, whichever is lower:

6 a. For financial statements filed in 2000, an insurer
7 may take accounting credit in an amount equalling 80% of the
8 amount utilized in calendar year 1996.

9 b. For financial statements filed in 2001, an insurer
10 may take accounting credit in an amount equalling 60% of the
11 amount utilized in calendar year 1996.

12 c. For financial statements filed in 2002, an insurer
13 may take accounting credit in an amount equalling 40% of the
14 amount utilized in calendar year 1996.

15 d. For financial statements filed in 2003, an insurer
16 may take accounting credit in an amount equalling 20% of the
17 amount utilized in calendar year 1996.

18 2. Subparagraph 1. does not apply to an insurer
19 recording anticipated recoveries from the Special Disability
20 Trust Fund on the basis of:

21 a. A proof of claim which the Fund has reviewed,
22 determined to be a valid claim and so notified the carrier,
23 and extended a payment offer; or

24 b. A reimbursement request audited and approved for
25 payment or paid by the Fund;

26 (c) Beginning with financial statements filed in 2004,
27 an insurer may only take accounting credit for anticipated
28 recoveries from the Special Disability Trust Fund for each
29 proof of claim which the Fund has reviewed, determined to be a
30 valid claim and so notified the carrier, and extended a

31

1 payment offer; or a reimbursement request audited and approved
2 for payment or paid by the Fund.

3 (d)1. Beginning in calendar year 1998, each insurer
4 shall separately identify anticipated recoveries from the
5 Special Disability Trust Fund on the annual statement required
6 to be filed pursuant to s. 624.424.

7 2. For all financial statements filed with the
8 department beginning in calendar year 1998, each insurer shall
9 disclose in the notes to the financial statements of any
10 financial statement required to be filed pursuant to s.
11 624.424 any credit in loss reserves taken for anticipated
12 recoveries from the Special Disability Trust Fund. That
13 disclosure shall include:

14 a. The amount of credit taken by the insurer in the
15 determination of its loss reserves for the prior calendar year
16 and the current reporting period on a year-to-date basis.

17 b. The amount of payments received by the insurer from
18 the Special Disability Trust Fund during the prior calendar
19 year and the year-to-date recoveries for the current year.

20 c. The amount the insurer was assessed by the Special
21 Disability Trust Fund during the prior calendar year and
22 during the current calendar year.

23 Section 3. There is hereby appropriated from the
24 Special Disability Trust Fund in the Department of Labor and
25 Employment Security \$2,743,000 for Other Personal Services and
26 \$300,000 for related expenses.

27 Section 4. Subsection (10) is added to section
28 624.4621, Florida Statutes, to read:

29 624.4621 Group self-insurance funds.--
30
31

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

4 Section 5. Subsection (7) of section 624.468, Florida
5 Statutes, is amended to read:

6 624.468 Continuing requirements for certificate of
7 authority.--After issuance of its initial certificate of
8 authority a commercial self-insurance fund shall thereafter
9 meet the following requirements as a condition of maintaining
10 its certificate of authority:

11 (7) Any self-insurance fund which holds a certificate
12 of authority on or after January 1, 1998, shall maintain
13 surplus to policyholders in a positive amount.~~Maintenance of~~
14 ~~an aggregate net worth of at least \$500,000 of all fund~~
15 ~~members, as further specified in s. 624.466(8). A fund shall~~
16 ~~not be required to provide financial statements of its members~~
17 ~~evidencing conformity to this requirement after its~~
18 ~~certificate of authority has been issued, unless required to~~
19 ~~do so by the department upon a showing of good cause.~~

20 Section 6. Subsection (1) of section 624.470, Florida
21 Statutes, is amended to read:

22 624.470 Annual reports.--

23 (1)(a) Every ~~commercial~~ self-insurance fund shall,
24 annually within 3 months of the end of the fiscal year, file a
25 financial statement of the fund, including its balance sheet
26 and a statement of operations for the preceding year, verified
27 by the oath of a member of the board of trustees or by an
28 administrative executive appointed by the board. An entry for
29 future investment income, reported on or after January 1,
30 1998, may only be reflected as an aggregate write-in asset on
31 the balance sheet of the annual and quarterly financial

1 statements. Future investment income shall be calculated as
2 the sum of the admitted asset value of Line 1 (Bonds) plus the
3 admitted asset value of Line 6 (Cash and Short-Term
4 Investments) as reported on page 2 in the annual or quarterly
5 financial statement, times the 3-year treasury note yield as
6 of the date of the financial statement, times 3.

7 (b) For financial statements filed on or after January
8 1, 1998, future investment income may only be reported as an
9 admitted asset by an Assessable Mutual or Self-Insurance Fund
10 which reported future investment income in financial
11 statements filed with the department prior to January 1, 1998.

12 Section 7. Section 624.476, Florida Statutes, is
13 amended to read:

14 624.476 Impaired self-insurance funds.--

15 (1) If the assets of a self-insurance fund are at any
16 time insufficient to comply with the requirements of law or to
17 discharge its liabilities, other than any liability on account
18 of funds contributed by the trustees or others, and to meet
19 the required conditions of financial soundness, or if a
20 judgment against the fund has remained unsatisfied for 30
21 days, its trustees shall forthwith make up the deficiency or
22 levy an assessment upon the members for the amount needed to
23 make up the deficiency, but subject to the limitation set
24 forth in the trust agreement or the policy.

25 (2) If any fund levies an assessment pursuant to
26 subsection (1), the department shall require the fund to
27 consent to administrative supervision under part VI of chapter
28 624. The department may waive the requirement to consent to
29 administrative supervision for good cause.

30 (3)~~(2)~~ If the trustees fail to make an assessment as
31 required by subsection (1), the department shall order the

1 trustees to do so. If the deficiency is not sufficiently made
2 up within 60 days after the date of the order, the fund shall
3 be deemed insolvent and grounds shall exist to proceed against
4 the fund as provided for in part I of chapter 631.

5 (4) Notwithstanding the requirement of the fund to
6 make an assessment pursuant to subsection (1) or subsection
7 (3), the department may at any time request to be appointed
8 receiver for purposes of rehabilitation or liquidation if it
9 is able to demonstrate that any grounds for rehabilitation or
10 liquidation exist pursuant to s. 631.051 or s. 631.061.

11 ~~(3) Subject to this section, any rehabilitation,~~
12 ~~liquidation, conservation, or dissolution of a self-insurance~~
13 ~~fund shall be conducted under the supervision of the~~
14 ~~department, which shall have all power with respect thereto~~
15 ~~granted to it under part I of chapter 631 governing the~~
16 ~~rehabilitation, liquidation, conservation, or dissolution of~~
17 ~~insurers.~~

18 Section 8. Section 624.477, Florida Statutes, is
19 created to read:

20 624.477 Liquidation, rehabilitation, reorganization,
21 and conservation.--Any rehabilitation, liquidation,
22 conservation, or dissolution of a self-insurance fund shall be
23 conducted under the supervision of the department, which shall
24 have all power with respect thereto granted to the fund under
25 part I of chapter 631 governing the rehabilitation,
26 liquidation, conservation, or dissolution of insurers and
27 including all grounds for the appointment of a receiver
28 contained in ss. 631.051 and 631.061.

29 Section 9. Section 624.488, Florida Statutes, is
30 amended to read:

31

1 624.488 Applicability of related laws.--In addition to
2 other provisions of the code cited in ss. 624.460-624.488:
3 (1) Sections 624.155, 624.308, 624.414, 624.415, and
4 624.416(4); ss. 624.418-624.4211, except s. 624.418(2)(f); and
5 s. 624.501;
6 (2) Parts I, Part II, and III of chapter 625;
7 (3) Applicable sections of part VI of chapter 626; s.
8 626.9541(1)(a), (b), (c), (d), (e), (f), (h), (i), (j), (k),
9 (l), (m), (n), (o), (q), (u), (w), and (x); and ss.
10 626.9561-626.9641;
11 (4) Sections 627.291, 627.413, 627.4132, 627.416,
12 627.418, 627.420, 627.421, 627.425, 627.426, 627.4265,
13 627.427, 627.428, 627.702, and 627.706; part XI of chapter
14 627; ss. 627.912, 627.913, and 627.918; ~~and~~
15 (5) Subsection Section 628.361(2) and s. 628.6014;
16 and;
17 (6) Parts I and V of chapter 631,
18
19 apply to self-insurance funds. Only those sections of the code
20 that are expressly and specifically cited in ss.
21 624.460-~~624.489~~~~624.488~~ apply to self-insurance funds.
22 Section 10. Section 628.6014, Florida Statutes, is
23 amended to read:
24 628.6014 Annual reports.--
25 (1) An assessable mutual shall file a financial
26 statement within 90 days of the end of its accounting year.
27 The requirements of s. 624.470 shall apply, except an entry
28 for future investment income, reported on or after January 1,
29 1998, may only on losses and allocated loss adjustment expense
30 reserves and unallocated loss adjustment expense reserves
31 ~~shall~~ be reflected as an aggregate write-in asset on the

1 balance sheet of the annual and quarterly financial statements
2 ~~statement for assets and policyholder surplus.~~ Future
3 investment income shall be calculated as the sum of the
4 admitted asset value of Line 1 (Bonds) plus the admitted asset
5 value of Line 6 (Cash and Short-Term Investments) as reported
6 on page 2 in the annual or quarterly financial statement,
7 times the 3-year treasury note yield as of the date of the
8 financial statement, times 3.~~follows:~~

9

10
$$A + B + C = D, \text{ where}$$

11

12 ~~A - losses and allocated loss adjustment expense reserves,~~

13 ~~B - unallocated loss adjustment expense reserves,~~

14 ~~C - excess of statutory reserves over statement reserves, and~~

15 ~~D - present value of A + B + C.~~

16 (2) For financial statements filed on or after January
17 1, 1998, future investment income may only be reported as an
18 admitted asset by an assessable mutual which reported future
19 investment income in financial statements filed with the
20 department prior to December 31, 1996.

21 Section 11. Subsection (3) of section 631.021, Florida
22 Statutes, is amended to read:

23 631.021 Jurisdiction of delinquency proceeding; venue;
24 change of venue; exclusiveness of remedy; appeal.--

25 (3) A delinquency proceeding pursuant to this chapter
26 constitutes the sole and exclusive method of liquidating,
27 rehabilitating, reorganizing, or conserving an insurer. No
28 court shall entertain a petition for the commencement of such
29 a proceeding unless the petition has been filed in the name of
30 the state on the relation of the department. The Florida
31 Insurance Guaranty Association, Incorporated, the Florida

1 Workers' Compensation Insurance Guaranty Association,
2 Incorporated, and the Florida Life and Health Guaranty
3 Association, Incorporated, shall be given reasonable written
4 notice by the department of all hearings which pertain to an
5 adjudication of insolvency of a member insurer.

6 Section 12. Subsection (2) of section 631.182, Florida
7 Statutes, is amended to read:

8 631.182 Receiver claims report and claimants
9 objections procedure.--

10 (2) At the hearing, any interested person is entitled
11 to appear. The hearing shall not be de novo but shall be
12 limited to the record as described in s. 631.181(2), ~~and~~ The
13 court shall enter an order allowing, allowing in part, or
14 disallowing the claim. Any such order is deemed to be an
15 appealable order. In the interests of judicial economy, the
16 court may appoint a special master to resolve objections or to
17 perform any particular service required by the court. This
18 subsection shall apply to receivership proceedings commencing
19 prior to, or subsequent to, July 1, 1997.

20 Section 13. Paragraph (b) of subsection (4) of section
21 631.331, Florida Statutes, is amended to read:

22 631.331 Assessment prima facie correct; notice;
23 payment; proceeding to collect.--

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

27 (b) Appears in the manner and form required by law in
28 response to the order, the court shall hear and determine the
29 matter and enter a judgment in accordance with its decision.
30 In the interests of judicial economy, the court may appoint a
31 special master to resolve objections or to perform any

1 particular service required by the court. This paragraph shall
2 apply to receivership proceedings commencing prior to, or
3 subsequent to, July 1, 1997.

4 Section 14. Subsection (5) is added to section
5 631.391, Florida Statutes, to read:

6 631.391 Cooperation of officers and employees.--

7 (5) Refusal by any person referred to in subsection
8 (1) to provide records upon the request of the department is
9 grounds for revocation of any insurance-related license,
10 including, but not limited to, agent and third-party
11 administrator licenses.

12 Section 15. Subsection (1) of section 631.397, Florida
13 Statutes, is amended to read:

14 631.397 Use of certain marshaled assets.--

15 (1) Within 120 days of a final determination of
16 insolvency of an insurer by a court of competent jurisdiction
17 of this state, the department, as receiver, shall apply to the
18 court for approval of a proposal to disburse assets out of
19 such insurer's marshaled assets, as such assets become
20 available, to each association entitled thereto or, if there
21 are no assets available for such disbursement, then for
22 approval of such proposal as the receiver deems appropriate.
23 For the purposes of this section, the term "association"
24 includes the Florida Insurance Guaranty Association,
25 Incorporated, the Florida Workers' Compensation Insurance
26 Guaranty Association, and any entity or person performing a
27 function in another state similar to that performed in this
28 state by the Florida Insurance Guaranty Association,
29 Incorporated, or the Florida Workers' Compensation Insurance
30 Guaranty Association, provided the Florida Insurance Guaranty
31 Association, Incorporated, or the Florida Workers'

1 Compensation Insurance Guaranty Association, is entitled to
2 like payment under the laws of the association's state of
3 domicile in respect to insolvent companies doing business in
4 that state.

5 Section 16. Subsections (14) and (15) of section
6 631.52, Florida Statutes, are renumbered as subsections (15)
7 and (16), respectively, and new subsection (14) is added to
8 said section, to read:

9 631.52 Scope.--This part shall apply to all kinds of
10 direct insurance, except:

11 (14) Workers' compensation;

12 Section 17. Subsection (1) of section 631.54, Florida
13 Statutes, is amended to read:

14 631.54 Definitions.--As used in this part:

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

17 Section 18. Subsection (2) of section 631.55, Florida
18 Statutes, is amended to read:

19 631.55 Creation of the association.--

20 (2) For the purposes of administration and assessment,
21 the association shall be divided into three ~~four~~ separate
22 accounts:

23 ~~(a) The workers' compensation insurance account, which~~
24 ~~includes excess workers' compensation insurance;~~

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

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

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

29 Section 19. Paragraph (a) of subsection (1) of section
30 631.57, Florida Statutes, is amended to read:

31 631.57 Powers and duties of the association.--

1 (1) The association shall:

2 (a)1. Be obligated to the extent of the covered claims
3 existing:

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

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

8 c. Before the insured replaces the policy or causes
9 its cancellation, if he does so within 30 days of the
10 determination.

11 2. The obligation under subparagraph 1. shall include
12 only that amount of each covered claim which is in excess of
13 \$100 and is less than \$300,000, except ~~that~~:

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

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

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

30
31

1 The foregoing notwithstanding, the association shall have no
2 obligation to pay covered claims to be paid from the proceeds
3 of bonds issued under s. 166.111(2). However, the association
4 shall cause assessments to be made under paragraph (3)(e) for
5 such covered claims, and such assessments shall be assigned
6 and pledged under paragraph (3)(e) to or on behalf of the
7 issuer of such bonds for the benefit of the holders of such
8 bonds. The association shall administer any such covered
9 claims and present valid covered claims for payment in
10 accordance with the provisions of the assistance program in
11 connection with which such bonds have been issued.

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

18 Section 20. Sections 631.901, 631.902, 631.903,
19 631.904, 631.911, 631.912, 631.913, 631.914, 631.916, 631.917,
20 631.918, 631.919, 631.921, 631.922, 631.923, 631.924, 631.926,
21 and 631.927, Florida Statutes, are created to read:

22 631.901 Title.--This part may be cited as the "Florida
23 Workers' Compensation Insurance Guaranty Association Act."

24 631.902 Purposes.--The purposes of this part are to:

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

31

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

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

5 (4) Provide for the prompt payment by the corporation
6 of workers' compensation claims incurred by insolvent
7 insurers.

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

13 631.904 Definitions.--As used in this part, the term:

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

16 (2) "Covered claim" means an unpaid claim, including a
17 claim for return of unearned premiums, which arises out of, is
18 within the coverage of, and is not in excess of the applicable
19 limits of, an insurance policy to which this part applies,
20 which policy was issued by an insurer and which claim is made
21 on behalf of a claimant or insured who was a resident of this
22 state at the time of the injury. The term does not include any
23 amount due any reinsurer, insurer, insurance pool, or
24 underwriting association, as subrogation recoveries or
25 otherwise. Member insurers have no right of subrogation
26 against the insured of any insolvent insurer. This provision
27 shall be applied retroactively to cover claims of an insolvent
28 self-insurance fund resulting from accidents or losses
29 incurred prior to January 1, 1994, regardless of the date the
30 Department of Insurance filed a petition in circuit court

31

1 alleging insolvency and the date the court entered an order
2 appointing a receiver.

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

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

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

18 (6) "Insurer" means an insurance carrier or
19 self-insurance fund authorized to insure under chapter 440.
20 For purposes of this Act, "insurer" does not include a
21 qualified local government self-insurance fund, as defined in
22 s. 624.4622, or an individual self-insurer as defined in s.
23 440.385.

24 (7) "Self-insurance fund" means a group self-insurance
25 fund authorized under s. 624.4621, a commercial self-insurance
26 fund writing workers' compensation insurance authorized under
27 s. 624.462, or an assessable mutual insurer authorized under
28 s. 628.6011. For purposes of this Act, "self-insurance fund"
29 does not include a qualified local government self-insurance
30 fund, as defined in s. 624.4622, or an individual self-insurer
31 as defined in s. 440.385.

1 631.911 Creation of the Florida Workers' Compensation
2 Insurance Guaranty Association, Incorporated; merger; effect
3 of merger.--

4 (1)(a) The Florida Self-Insurance Fund Guaranty
5 Association established in part V of chapter 631 and the
6 workers' compensation insurance account, which includes excess
7 workers' compensation insurance, established in s.
8 631.55(2)(a) shall be merged, effective October 1, 1997, or as
9 provided in paragraph (b), in accordance with the plan of
10 operation adopted by the interim board of directors. The
11 successor nonprofit corporation shall be known as the "Florida
12 Workers' Compensation Insurance Guaranty Association,
13 Incorporated."

14 (b) The merger may be effected prior to October 1,
15 1997, if:

16 1. the interim board of directors of the Workers'
17 Compensation Insurance Guaranty Association provides the
18 Department of Insurance with written notice of its intent to
19 effectuate the merger as of a date certain and its functional
20 readiness to initiate operations, such notice setting forth
21 the plan or summary thereof for effecting the merger; and,

22 2. the department, upon review of the plan or summary
23 thereof, determines the Workers' Compensation Insurance
24 Guaranty Association is functionally ready to initiate
25 operations and so certifies to the interim board of directors.

26 (c) Prior to the effective date of the merger, the
27 Florida Self-Insurance Fund Guaranty Association shall be the
28 entity responsible for the claims of insolvent self-insurance
29 funds resulting from accidents or losses incurred prior to
30 January 1, 1994, regardless of the date the Department of
31 Insurance filed a petition in circuit court alleging

1 insolvency and the date the court entered an order appointing
2 a receiver.

3 (d) Upon the effective date of the merger:

4 1. The Florida Self-Insurance Fund Guaranty
5 Association and the workers' compensation insurance account
6 within the Florida Insurance Guaranty Association cease to
7 exist and are succeeded by the Florida Workers' Compensation
8 Insurance Guaranty Association.

9 2. Title to all assets of any description, all real
10 estate and other property, or any interest therein, owned by
11 each party to the merger is vested in the successor
12 corporation without reversion or impairment.

13 3. The successor corporation shall be responsible and
14 liable for all the liabilities and obligations of each party
15 to the merger.

16 4. Any claim existing or action or proceeding pending
17 by or against any party to the merger may be continued as if
18 the merger did not occur or the successor corporation may be
19 substituted in the proceeding for the corporation or account
20 which ceased existence.

21 5. Neither the rights of creditors nor any liens upon
22 the property of any party to the merger shall be impaired by
23 such merger.

24 6. Outstanding assessments levied by the Florida
25 Self-Insurance Guaranty Association or the Florida Insurance
26 Guaranty Association on behalf of the workers' compensation
27 insurance account remain in full force and effect and shall be
28 paid when due.

29 (2) All insurers must be members of the corporation as
30 a condition of their authority to offer workers' compensation
31 coverage in this state. An insurer must reimburse the

1 corporation for all funds advanced to the insurer and all
2 claim payments the insurer makes on the insured's behalf if
3 the insurer, having been placed in rehabilitation
4 receivership, is subsequently rehabilitated.

5 (3) The corporation shall perform its functions under
6 a plan of operation and shall exercise its powers through a
7 board of directors. Upon adoption of a plan of operation for
8 the corporation, the board shall manage the Florida Workers'
9 Compensation Insurance account.

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

13 631.912 Board of directors.--

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

1 (2) Members of the board may be reimbursed from the
2 assets of the corporation for actual and reasonable
3 out-of-pocket expenses incurred by them as members of the
4 board of directors, however, members of the board may not
5 otherwise be compensated by the corporation for their
6 services.

7 (3) Effective upon this act becoming a law, the
8 persons on the board of directors created pursuant to s.
9 627.311(4)(a) who evidence a willingness to serve in writing,
10 shall serve as an interim board of directors of the
11 corporation until the initial board of directors has been
12 appointed for the corporation in accordance with the
13 provisions of subsection (1). The interim board of directors
14 shall serve for a period not to exceed 6 months. The initial
15 meeting shall be called by the commissioner within 30 days
16 after this act becomes a law. The interim board of directors
17 shall establish a process for the selection of persons to
18 serve on the board of the Florida Workers' Compensation
19 Insurance Guaranty Association in accordance with the terms of
20 subsection (1). The board of directors shall adopt an interim
21 plan of operation to effect the merger in s. 631.911 and avoid
22 any interruption of benefit payments to injured workers. When
23 necessary and upon approval of the chairs of their respective
24 board of directors, the Florida Self-Insurance Fund Guaranty
25 Association and the Florida Insurance Guaranty Association
26 shall provide staff support to the interim board of directors.
27 The board shall submit the interim plan to the commissioner,
28 who shall approve or disapprove the plan within 30 days after
29 receipt.

30 631.913 Powers and duties of the corporation.--
31

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

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

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

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

10
11 The corporation is not obligated to a policyholder or claimant
12 in an amount in excess of the obligation of the insolvent
13 insurer under the policy from which the claim arises.

14 (2) The corporation is considered to be the insurer to
15 the extent of its obligation on the covered claims, and, to
16 such extent, has all rights, duties, and obligations of the
17 insolvent insurer as if the insurer had not become insolvent.
18 The corporation is not liable for any penalties or interest.

19 (3) The corporation may:

20 (a) Employ or retain such persons as are necessary to
21 handle claims and perform other duties of the corporation.

22 (b) Borrow funds necessary to effect the purposes of
23 this part in accordance with the plan of operation.

24 (c) Sue or be sued. Service of process in such legal
25 actions must be made upon the person registered with the
26 department as agent for the receipt of service of process.

27 (d) Enter into such contracts as are necessary to
28 carry out the purpose of this part.

29 (4) The corporation may assist and advise the
30 department, when appropriate, concerning rehabilitation,
31 payment of claims, continuance of coverage, or the performance

1 of other contractual obligations of any impaired or insolvent
2 insurer. The corporation may also assist and advise
3 departments of insurance of other states; other guaranty
4 associations; and conservators, rehabilitators, and receivers
5 appointed or acting in regard to any member insured wherever
6 located, for the purpose of developing plans to coordinate
7 protection of policyholders. Costs of such activities may be
8 charged against the Florida Workers' Compensation Insurance
9 Guaranty Association Account at the discretion of the board of
10 directors, notwithstanding any other provision of this act.

11 (5) The corporation shall have standing to appear
12 before any court in this state which has jurisdiction over an
13 impaired or insolvent insurer to which the corporation is or
14 may become obligated under this act. Such standing shall
15 extend to all matters germane to the powers and duties of the
16 corporation, including but not limited to, proposals for
17 reinsuring or guaranteeing the covered policies of the
18 impaired or insolvent insurer and the determination of the
19 covered policies and contractual obligations.

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

22 631.914 Assessments.--

23 (1)(a) To the extent necessary to secure the funds for
24 the payment of covered claims, and also to pay the reasonable
25 costs to administer the same, the department, upon
26 certification by the board, shall levy assessments on each
27 insurer in the proportion that the insurer's net direct
28 written premiums in this state bears to the total of said net
29 direct written premiums received in this state by all such
30 workers' compensation insurers for the preceding calendar
31 year. Assessments shall be remitted to and administered by

1 the board of directors in the manner specified by the approved
2 plan of operation. The board shall give each insurer so
3 assessed at least 30 days' written notice of the date the
4 assessment is due and payable. Each assessment shall be a
5 uniform percentage applicable to the net direct written
6 premiums of each insurer writing workers' compensation
7 insurance.

8 1. Beginning July 1, 1997, assessments levied against
9 insurers, other than self-insurance funds, shall not exceed in
10 any calendar year more than 2 percent of that insurer's net
11 direct written premiums in this state for workers'
12 compensation insurance during the calendar year next preceding
13 the date of such assessments.

14 2. Beginning July 1, 1997, assessments levied against
15 self-insurance funds shall not exceed in any calendar year
16 more than 1.50 percent of that self-insurance fund's net
17 direct written premiums in this state for workers'
18 compensation insurance during the calendar year next preceding
19 the date of such assessments.

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

22 (c)1. Effective July 1, 1999, if assessments otherwise
23 authorized in paragraph (a) are insufficient to make all
24 payments on reimbursements then owing to claimants in a
25 calendar year, then upon certification by the board, the
26 department shall levy additional assessments of up to 1.5
27 percent of the insurer's net direct written premiums in this
28 state during calendar year next proceeding the date of such
29 assessments against insurers to secure the necessary funds.

30 2. To assure that insurers paying assessments levied
31 under this paragraph continue to charge rates that are neither

1 inadequate nor excessive, each insurer that is to be assessed
2 pursuant to this paragraph, or a licensed rating organization
3 to which the insurer subscribes, may make, within 90 days
4 after being notified of such assessments, a rate filing for
5 workers' compensation coverage pursuant to ss. 627.072 and
6 627.091. If the filing reflects a percentage rate change
7 equal to the difference between the rate of such assessment
8 and the rate of the previous year's assessment under this
9 paragraph, the filing shall consist of a certification so
10 stating and shall be deemed approved when made. Any rate
11 change of a different percentage shall be subject to the
12 standards and procedures of ss. 627.072 and 627.091.

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

19 (b) The board may temporarily defer, in whole or in
20 part, assessments against an insurer if, in the opinion of the
21 department, payment of the assessment would endanger the
22 ability of the insurer to fulfill its contractual obligations.
23 In the case of a self-insurance fund, the trustees of the fund
24 determined to be endangered must immediately levy an
25 assessment upon the members of that self-insurance fund in an
26 amount sufficient to pay the assessments to the corporation.

27 (c) The board may allow an insurer to pay an
28 assessment on a quarterly basis.

29 631.916 Plan of operation.--The board of directors
30 shall prepare and submit to the department a plan of operation
31 and any amendments to the plan which are necessary or suitable

1 to assure the fair, reasonable, and equitable administration
2 of the corporation. The plan of operation and any amendments
3 to the plan shall become effective unless disapproved in
4 writing by the department within 30 days after receipt. If the
5 corporation fails to submit a plan of operation within 90 days
6 after the appointment of the new board, the department shall
7 implement a plan of operation which will be effective until
8 the board submits a plan of operation. The plan of operation
9 prepared by the board is subject to periodic review by the
10 department. All member insurers shall comply with the approved
11 plan of operation. The plan of operation must, in addition to
12 the requirements enumerated elsewhere in this part:

13 (1) Establish procedures for handling the assets of
14 the corporation.

15 (2) Establish regular places and times for meetings of
16 the board of directors.

17 (3) Establish procedures for keeping records of all
18 financial transactions of the corporation, its agents, and the
19 board of directors.

20 (4) Establish procedures for levying and collecting
21 assessments and deficiency surcharges.

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

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

26 631.917 Prevention of insolvencies.--To aid in the
27 detection and prevention of insolvencies or impairments:

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

1 (b) If the results of an investigation reasonably lead
2 to a finding that certain actions taken or not taken by those
3 handling, processing, or preparing covered claims for payment
4 or other benefit pursuant to any workers' compensation
5 insurance policy, contributed to the insolvency of an insurer,
6 such information may, in the discretion of the board, be
7 provided to the department in an expedited manner.

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

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

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

1 request for an examination shall be kept on file by the
2 department.

3 (5) The board is authorized to assist and aid the
4 department, in any manner consistent with existing laws and
5 this chapter, in the department's investigation or referral
6 for prosecution of those whose action or inaction may have
7 contributed to the impairment or insolvency of the insurer.

8 (6) The board may make recommendations to the
9 department for the detection and prevention of insurer
10 insolvencies.

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

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

31

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

6 631.922 Liability of members of an impaired
7 self-insurance fund for unpaid claims.--This act may not be
8 construed to reduce the liability of a member of an impaired
9 self-insurance fund for the member's liability under s.
10 624.4621 or s. 624.476.

11 631.923 Effect of paid claims.--

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

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

31

1 (3) The corporation shall periodically file with the
2 receiver or liquidator of the insolvent insurer statements of
3 the covered claims paid by the corporation and estimates of
4 anticipated claims on the corporation, which shall preserve
5 the rights of the corporation against the assets of the
6 insolvent insurer.

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

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

30 631.926 Attorney's fees.--The provisions of s. 627.428
31 providing for an attorney's fee are inapplicable to any claim

1 presented to the corporation under this part, unless the
2 corporation denies, by affirmative action other than delay, a
3 covered claim or a portion thereof.

4 631.927 Assumption of liability.--Notwithstanding s.
5 631.913, the corporation shall assume the liability for the
6 payment of the workers' compensation indemnity and medical
7 benefits that are due to claimants covered by the Certified
8 Pulpwood Dealers Self-Insurers Fund. The corporation shall
9 assess the former members of the Certified Pulpwood Dealers
10 Self-Insurers Fund pursuant to the provisions of this act.

11 Section 21. Subsection (3) of section 631.915, Florida
12 Statutes, is amended to read:

13 631.915 Definitions.--As used in this part, the term:

14 (3) "Covered claim" means an unpaid claim, including
15 one of unearned premiums, which arises out of, is within the
16 coverage of, and is not in excess of the applicable limits of,
17 an insurance policy to which this part applies, issued by a
18 self-insurer's fund, which claim is made on behalf of a
19 claimant or insured who is a resident of this state at the
20 time of the injury. The term does not include any ~~claims~~
21 ~~resulting from dates of accidents or losses incurred by a~~
22 ~~member self-insurance fund before January 1, 1994, or any~~
23 ~~amount due any reinsurer, insurer, insurance pool, or~~
24 ~~underwriting association, as subrogation recoveries or~~
25 ~~otherwise. Member self-insurer's funds have no right of~~
26 ~~subrogation against the insured of any insolvent~~
27 ~~self-insurance fund. This provision shall be applied~~
28 ~~retroactively to cover all claims on accidents or losses~~
29 ~~incurred prior to January 1, 1994, regardless of the date the~~
30 ~~Department of Insurance filed a petition in the circuit court~~
31

1 alleging insolvency and the court entered an order appointing
2 a receiver.

3 Section 22. Subsection (4) of section 631.935, Florida
4 Statutes, is amended to read:

5 631.935 Powers and duties of the association.--

6 ~~(4) State funds may not be allocated or paid to the~~
7 ~~association.~~

8 Section 23. Section 631.996, Florida Statutes, is
9 renumbered as section 631.928, Florida Statutes, and is
10 amended to read:

11 631.928 ~~631.996~~ Florida Workers' Compensation

12 Insurance Guaranty Association Group Self-Insurance Fund

13 Account.--Notwithstanding the provisions of s. 215.3207, the

14 Florida Workers' Compensation Insurance Guaranty Association

15 ~~Group Self-Insurance Fund~~ Account is hereby created, to be

16 managed by the Florida Workers' Compensation Insurance Group

17 ~~Self-Insurance Fund~~ Guaranty Association. Funds shall be

18 credited to the fund as provided in chapter 93-415, Laws of

19 Florida, or similar legislation, to be used for the purposes

20 set forth therein.

21 Section 24. Section 631.929, Florida Statutes, is
22 created to read:

23 631.929 Election of remedies.--An injured worker who

24 has a date of accident which occurred before January 1, 1994,

25 and is not receiving benefits due under chapter 440 due to the

26 insolvency of a self-insurance fund or its successors,

27 regardless of the date declared insolvent by the court, may

28 elect to seek medical care, treatment, and attendance, and

29 compensation required under ss. 440.15 and 440.16 from the

30 corporation and forego the remedy to seek benefits from his

31 employer or the insolvent self-insurance fund. An employee

1 who so elects may be required to obtain medical care,
2 treatment, and attendance through a managed care plan
3 comporting with the requirement of s. 440.134 if the plan of
4 operation so provides. An injured worker has 60 days to seek
5 benefits from the corporation upon ratification by the
6 corporation of his right to elect a remedy under this part.
7 If the injured worker elects to pursue his remedy under the
8 provisions of this part, the corporation may, with the
9 agreement of the injured employee, pay a lump-sum payment in
10 exchange for the corporation's and employer's release from
11 liability for future medical and compensation expenses, as
12 well as any other benefit provided under chapter 440.
13 However, there shall be no entitlement to attorney's fees,
14 penalties, interest, or costs to be paid on any claim
15 presented to the corporation under this part. This section
16 shall not create any cause of action against any employer who
17 purchased workers' compensation insurance coverage pursuant to
18 s. 440.38.

19 Section 25. Section 631.997, Florida Statutes, 1996
20 Supplement, is renumbered as section 631.931, Florida
21 Statutes, and subsection (1) of said section is amended to
22 read:

23 631.931 ~~631.997~~ Reports and recommendations by board;
24 public records exemption.--

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

1 I of the State Constitution until the termination of a
2 delinquency proceeding.

3 Section 26. Section 631.998, Florida Statutes, 1996
4 Supplement, is renumbered as section 631.932, Florida
5 Statutes, and subsection (1) of said section is amended to
6 read:

7 631.932 ~~631.998~~ Negotiations; public meetings and
8 records exemptions.--

9 (1) Negotiations held between an insurer ~~a~~
10 ~~self-insurance fund~~ and the Florida Workers' Compensation
11 Insurance Self-Insurance Fund Guaranty Association are exempt
12 from the provisions of s. 286.011 and s. 24(b), Art. I of the
13 State Constitution. Documents related to such negotiations
14 that reveal identifiable payroll and loss and individual claim
15 information are confidential and exempt from the provisions of
16 s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

17 Section 27. The Division of Statutory Revision of the
18 Joint Legislative Management Committee shall omit from the
19 next edition of the official Florida Statutes subsection (2)
20 of section 631.997, Florida Statutes (renumbered as section
21 631.931, Florida Statutes, by this act), and subsection (2) of
22 section 631.998, Florida Statutes (renumbered as section
23 631.932, Florida Statutes, by this act). Subsection (2) of
24 section 1 of chapter 93-423, Laws of Florida, and subsection
25 (2) of section 2 of chapter 93-423, Laws of Florida, shall
26 remain valid in the form enacted by that chapter.

27 Section 28. Report by the Department of
28 Insurance.--The Department of Insurance shall conduct a study
29 and report on the feasibility of:

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31

1 (1) Enabling the self-insurance funds and assessable
2 mutual insurers to transition to fully capitalized insurers
3 over a five year period;

4 (2) Establishing alternative methodologies by which
5 self-insurance funds and assessable mutual insurers may
6 satisfy payment obligations other than capital and surplus
7 requirements; and

8 (3) Permitting captive insurers to be utilized by
9 businesses in the same trade or business.

10
11 The department shall submit its report to the Governor, the
12 President of the Senate and the Speaker of the House of
13 Representatives by December 1, 1997.

14 Section 29. Notwithstanding s. 631.913, Florida
15 Statutes, there is hereby appropriated \$5 million from the
16 Insurance Commissioner's Regulatory Trust Fund to the Florida
17 Self-Insurance Fund Guaranty Association, Incorporated, or
18 successor corporation resulting from the merger effected in s.
19 631.911. Of the amount appropriated, the board of directors
20 of the Florida Self-Insurance Fund Guaranty Association may
21 disburse funds to the interim board of directors of the
22 Florida Workers' Compensation Insurance Guaranty Association
23 as necessary for the purpose of carrying out the duties and
24 responsibilities of said interim board under the Florida
25 Workers' Compensation Insurance Guaranty Association Act.

26 Section 30. Sections 631.90, 631.905, 631.91, 631.915,
27 631.92, 631.925, 631.93, 631.935, 631.94, 631.945, 631.95,
28 631.955, 631.96, 631.965, 631.97, 631.975, 631.98, 631.985,
29 631.99, and 631.995, Florida Statutes, are hereby repealed
30 effective October 1, 1997, or the effective date of the merger

31

1 pursuant to section 631.911, Florida Statutes, as certified by
2 the Department of Insurance, whichever occurs first.

3 Section 31. This act shall take effect upon becoming a
4 law, except that the amendments to sections 631.52, 631.54,
5 631.55, 631.57, and 631.997, Florida Statutes, shall take
6 effect October 1, 1997, or the effective date of the merger
7 pursuant to section 631.911, Florida Statutes, as certified by
8 the Department of Insurance, whichever occurs first.

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