

By Representative Ogles

1                                   A bill to be entitled  
 2           An act relating to the Florida Insurance  
 3           Guaranty Association; amending s. 631.54, F.S.;  
 4           excluding certain claims from the definition of  
 5           "covered claim"; amending s. 631.57, F.S.;  
 6           providing a limitation on payment of certain  
 7           claims by the association under certain  
 8           circumstances; providing construction;  
 9           providing for a plan to allocate amounts  
 10          payable by the association under certain  
 11          circumstances; excluding certain claims as  
 12          covered claims under certain circumstances;  
 13          providing to the association a right to  
 14          intervene as a party; requiring the Insurance  
 15          Commissioner to disclose certain information  
 16          relating to transfers of certain liabilities  
 17          under certain circumstances; requiring the  
 18          commissioner to call a public hearing upon  
 19          request of the association; providing for the  
 20          association to participate in the hearing;  
 21          providing for cessation of the association's  
 22          obligation to defend an insured under certain  
 23          circumstances; amending s. 631.141, F.S.;  
 24          providing for early access disbursements from  
 25          certain assets after a final order of  
 26          liquidation; providing an effective date.

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

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 30           Section 1. Subsection (3) of section 631.54, Florida  
 31   Statutes, is amended to read:

1           631.54 Definitions.--As used in this part:

2           (3) "Covered claim" means an unpaid claim, including  
3 one of unearned premiums, which arises out of, and is within  
4 the coverage, and not in excess of, the applicable limits of  
5 an insurance policy to which this part applies, issued by an  
6 insurer, if such insurer becomes an insolvent insurer after  
7 October 1, 1970, and the claimant or insured is a resident of  
8 this state at the time of the insured event or the property  
9 from which the claim arises is permanently located in this  
10 state. "Covered claim" shall not include any amount due any  
11 reinsurer, insurer, insurance pool, or underwriting  
12 association, as subrogation recoveries or otherwise. Member  
13 insurers shall have no right of subrogation against the  
14 insured of any insolvent member. "Covered claim" shall not  
15 include any claim by an insured whose net worth exceeds \$25  
16 million on December 31 of the year next preceding the date the  
17 insurer becomes an insolvent insurer, provided that an  
18 insured's net worth on such date shall be deemed to include  
19 the aggregate net worth of the insured and all of its  
20 subsidiaries as calculated on a consolidated basis.

21           Section 2. Paragraph (a) of subsection (1) and  
22 paragraph (c) of subsection (2) of section 631.57, Florida  
23 Statutes, are amended, and paragraph (e) is added to  
24 subsection (2) and paragraph (f) is added to subsection (3) of  
25 said section, to read:

26           631.57 Powers and duties of the association.--

27           (1) The association shall:

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

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

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

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

6           2. The obligation under subparagraph 1. shall include  
7 only that amount of each covered claim which is in excess of  
8 \$100 and is less than \$300,000, except with respect to  
9 policies covering condominium associations or homeowners'  
10 associations, which associations have a responsibility to  
11 provide insurance coverage on residential units within the  
12 association, the obligation shall include that amount of each  
13 covered property insurance claim which is less than \$100,000  
14 multiplied by the number of condominium units or other  
15 residential units; however, as to homeowners' associations,  
16 this subparagraph applies only to claims for damage or loss to  
17 residential units and structures attached to residential  
18 units.

19           3. In no event shall the association be obligated to a  
20 policyholder or claimant in an amount in excess of the  
21 obligation of the insolvent insurer under the policy from  
22 which the claim arises.

23           4. Notwithstanding any other provisions of this  
24 paragraph, except in the case of a claim for benefits under  
25 workers' compensation coverage, any obligation of the  
26 association to any person shall cease when \$10,000,000 has  
27 been paid in the aggregate by the association and any one or  
28 more associations similar to the association of any other  
29 state or any property or casualty security fund which obtains  
30 contributions from insurers on a pre-insolvency basis, to or  
31 on behalf of any insured and its affiliates on covered claims

1 or allowed claims arising under any policies of any one  
2 insolvent insurer. For purposes of this section, the term  
3 "affiliate" means a person who directly or indirectly, through  
4 one or more intermediaries, controls, is controlled by, or is  
5 under common control with another person. If the association  
6 determines that there may be more than one claimant having a  
7 covered claim or allowed claim against the association or any  
8 associations similar to the association or any property or  
9 casualty insurance security fund in other states, under the  
10 policy or policies of any one insolvent insurer, the  
11 association may establish a plan to allocate amounts payable  
12 by the association in such manner as the association in its  
13 discretion deems equitable.

14 5. Notwithstanding any other provision of this  
15 paragraph, a covered claim shall not include a claim filed  
16 with the association after the earlier of 18 months after the  
17 date of the order of liquidation or the final dates et by the  
18 court for the filing of claims against the liquidator,  
19 receiver, or insolvent insurer.

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21 The foregoing notwithstanding, the association shall have no  
22 obligation to pay covered claims to be paid from the proceeds  
23 of bonds issued under s. 166.111(2). However, the association  
24 shall cause assessments to be made under paragraph (3)(e) for  
25 such covered claims, and such assessments shall be assigned  
26 and pledged under paragraph (3)(e) to or on behalf of the  
27 issuer of such bonds for the benefit of the holders of such  
28 bonds. The association shall administer any such covered  
29 claims and present valid covered claims for payment in  
30 accordance with the provisions of the assistance program in  
31 connection with which such bonds have been issued.

1 (b) Be deemed the insurer to the extent of its  
2 obligation on the covered claims, and, to such extent, shall  
3 have all rights, duties, and obligations of the insolvent  
4 insurer as if the insurer had not become insolvent. In no  
5 event shall the association be liable for any penalties or  
6 interest.

7 (2) The association may:

8 (c) Sue or be sued, provided that service of process  
9 shall be made upon the person registered with the department  
10 as agent for the receipt of service of process, including the  
11 power and right to intervene as a party before any court in  
12 this state that has jurisdiction over an insolvent insurer;  
13 and

14 (e) Before approving any transaction or series of  
15 transactions within the same insurance holding company system  
16 permitting one or more insurance companies to transfer  
17 substantially all existing insurance policy liabilities or a  
18 class of such liabilities to another company which is not  
19 expected to issue any new policies, the commissioner shall  
20 make a full, detailed disclosure, including, but not limited  
21 to, the mode of transfer, the loss reserve, and an asset  
22 analysis of the proposed transaction to the association for  
23 review. After receiving the specified information about the  
24 transaction, if the association requests a public hearing to  
25 ascertain whether the risk to the association will  
26 unreasonably increase as the result of the company assuming  
27 the existing liabilities becoming insolvent, the commissioner  
28 shall promptly call such a hearing and permit the association,  
29 members of the association, policyholders, and creditors to  
30 fully participate in the hearing with the right to submit  
31

1 evidence and to cross examine witnesses in order to properly  
2 effectuate the purposes of this section.

3 (3)

4 (f) Any obligation of the association to defend an  
5 insured shall cease upon the association's payment, by  
6 settlement releasing the insured or upon a judgment, of an  
7 amount equal to the lesser of the association's covered claim  
8 obligation limit or the applicable policy limit, or upon the  
9 payment of \$600,000 in fees and costs with respect to each  
10 covered claim.

11 Section 3. Subsection (10) is added to section  
12 631.141, Florida Statutes, to read:

13 631.141 Conduct of delinquency proceeding; domestic  
14 and alien insurers.--

15 (10) Within 120 days after a final order of  
16 liquidation of an insurer by a court of competent jurisdiction  
17 of this state, the liquidator shall make application to the  
18 court for approval of a proposal to make early access  
19 disbursements out of marshaled assets to a guaranty  
20 association having obligations because of the insolvency.

21 Section 4. This act shall take effect October 1, 1999.  
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HOUSE SUMMARY

Revises provisions relating to the Florida Insurance Guaranty Association to exclude from the definition of "covered claims" a claim against an insolvent insured by an insured with a net worth greater than \$25 million, limit payment of claims by the association after \$10 million in claims have been paid by the association and allow the association to establish a plan to allocate amounts payable by the association, and provide the association with a right to intervene as a party in actions involving an insolvent insurer. Requires the Insurance Commissioner to disclose information relating to transfers of insurance policy liabilities, to call a public hearing relating to such transfer upon request of the association, and to allow the association to participate in the hearing. Provides for cessation of the association's obligation to defend an insured after a settlement, a judgment, or payment of \$600,000 with respect to each covered claim. Provides for early access disbursements from assets of an insolvent insurer after a final order of liquidation.