

By Senator Holzendorf

2-1366-99

See HB

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.

27
 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. Paragraphs (a) and (b) of subsection (1)
22 and subsection (2) of section 631.57, Florida Statutes, are
23 amended, and paragraph (f) is added to subsection (3) of that
24 section, to read:

25 631.57 Powers and duties of the association.--

26 (1) The association shall:

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

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

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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 (a) Employ or retain such persons as are necessary to
9 handle claims and perform other duties of the association;

10 (b) Borrow funds necessary to effect the purposes of
11 this part in accord with the plan of operation;

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

18 (d) Negotiate and become a party to such contracts as
19 are necessary to carry out the purpose of this part. Without
20 limiting the generality of the foregoing, the association may
21 enter into such contracts with a municipality as are necessary
22 in order for the municipality to issue bonds under s.
23 166.111(2). In connection with the issuance of such bonds and
24 the entering into of the necessary contracts, the association
25 may agree to such terms and conditions as it deems necessary
26 and proper; ~~and-~~

27 (e) Before approving any transaction or series of
28 transactions within the same insurance holding company system
29 permitting one or more insurance companies to transfer
30 substantially all existing insurance policy liabilities or a
31 class of such liabilities to another company which is not

1 expected to issue any new policies, the commissioner shall
2 make a full, detailed disclosure, including, but not limited
3 to, the mode of transfer, the loss reserve, and an asset
4 analysis of the proposed transaction to the association for
5 review. After receiving the specified information about the
6 transaction, if the association requests a public hearing to
7 ascertain whether the risk to the association will
8 unreasonably increase as the result of the company assuming
9 the existing liabilities becoming insolvent, the commissioner
10 shall promptly call such a hearing and permit the association,
11 members of the association, policyholders, and creditors to
12 fully participate in the hearing with the right to submit
13 evidence and to cross examine witnesses in order to properly
14 effectuate the purposes of this section.

15 (3)

16 (f) Any obligation of the association to defend an
17 insured shall cease upon the association's payment, by
18 settlement releasing the insured or upon a judgment, of an
19 amount equal to the lesser of the association's covered claim
20 obligation limit or the applicable policy limit, or upon the
21 payment of \$600,000 in fees and costs with respect to each
22 covered claim.

23 Section 3. Subsection (10) is added to section
24 631.141, Florida Statutes, to read:

25 631.141 Conduct of delinquency proceeding; domestic
26 and alien insurers.--

27 (10) Within 120 days after a final order of
28 liquidation of an insurer by a court of competent jurisdiction
29 of this state, the liquidator shall make application to the
30 court for approval of a proposal to make early access
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1 disbursements out of marshaled assets to a guaranty
2 association having obligations because of the insolvency.

3 Section 4. This act shall take effect October 1, 1999.

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6 LEGISLATIVE SUMMARY

7
8 Revises provisions relating to the Florida Insurance
9 Guaranty Association to exclude from the definition of
10 "covered claims" a claim against an insolvent insured by
11 an insured with a net worth greater than \$25 million,
12 limit payment of claims by the association after \$10
13 million in claims have been paid by the association and
14 allow the association to establish a plan to allocate
15 amounts payable by the association, and provide the
16 association with a right to intervene as a party in
17 actions involving an insolvent insurer. Requires the
18 Insurance Commissioner to disclose information relating
19 to transfers of insurance policy liabilities, to call a
20 public hearing relating to such transfer upon request of
21 the association, and to allow the association to
22 participate in the hearing. Provides for cessation of the
23 association's obligation to defend an insured after a
24 settlement, a judgment, or payment of \$600,000 with
25 respect to each covered claim. Provides for early access
26 disbursements from assets of an insolvent insurer after a
27 final order of liquidation.
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