

By the Committee on Banking and Insurance; and Senator Holzendorf

311-2008B-02

1 A bill to be entitled
2 An act relating to insurance guaranty
3 associations; amending s. 631.904, F.S.;
4 redefining the term "covered claim"; defining
5 the term "net direct written premiums";
6 amending s. 631.913, F.S.; revising powers and
7 duties of the corporation with respect to
8 payments to a claimant; amending s. 631.929,
9 F.S.; providing certain limitations with
10 respect to the election of remedies; providing
11 an effective date.

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

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15 Section 1. Subsection (2) of section 631.904, Florida
16 Statutes, is amended, and subsection (8) is added to that
17 section, to read:

18 631.904 Definitions.--As used in this part, the term:
19 (2) "Covered claim" means an unpaid claim, including a
20 claim for return of unearned premiums, which arises out of, is
21 within the coverage of, and is not in excess of the applicable
22 limits of, an insurance policy to which this part applies,
23 which policy was issued by an insurer and which claim is made
24 on behalf of a claimant or insured who was a resident of this
25 state at the time of the injury. The term "covered claim" does
26 not include any amount sought as a return of premium under any
27 retrospective rating plan; any amount due any reinsurer,
28 insurer, insurance pool, or underwriting association, as
29 subrogation recoveries or otherwise; or any return of premium
30 resulting from a policy that was not in force on the date of
31 the final order of liquidation. Member insurers have no right

1 of subrogation against the insured of any insolvent insurer.
2 This provision shall be applied retroactively to cover claims
3 of an insolvent self-insurance fund resulting from accidents
4 or losses incurred prior to January 1, 1994, regardless of the
5 date the Department of Insurance filed a petition in circuit
6 court alleging insolvency and the date the court entered an
7 order appointing a receiver.

8 (8) "Net direct written premiums" means direct gross
9 premiums, less return premiums, written in this state on
10 insurance policies to which this part applies and dividends
11 paid or credited to policyholders on that direct business.
12 Premiums written by any insurer on policies to self-insurers
13 to which this part applies, regardless of whether designated
14 as reinsurance contracts or workers' compensation excess
15 insurance, shall be deemed net direct written premiums. Any
16 such premium must be reported as a workers' compensation
17 premium. The term "net direct written premiums" does not
18 include premiums on contracts between insurers or reinsurers.

19 Section 2. Subsection (1) of section 631.913, Florida
20 Statutes, is amended to read:

21 631.913 Powers and duties of the corporation.--

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

24 1.(a) Existing before the adjudication of insolvency
25 and arising within 30 days after the determination of
26 insolvency;

27 2.(b) Existing before the policy expiration date if
28 less than 30 days after the determination of insolvency; or

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

1 (b) The obligation shall be satisfied by paying to the
2 claimant an amount as follows:

3 1. The full amount of a covered claim for benefits
4 under a workers' compensation insurance coverage.

5 2. An amount not exceeding \$50,000 per policy for a
6 covered claim for the return of unearned premium.

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

11 Section 3. Section 631.929, Florida Statutes, is
12 amended to read:

13 631.929 Election of remedies.--An injured worker who
14 has a date of accident which occurred before January 1, 1994,
15 and is not receiving benefits due under chapter 440 due to the
16 insolvency of a self-insurance fund or its successors,
17 regardless of the date declared insolvent by the court, may
18 elect to seek medical care, treatment, and attendance, and
19 compensation required under ss. 440.15 and 440.16 from the
20 corporation and forego the remedy to seek benefits from his or
21 her employer or the insolvent self-insurance fund. An
22 employee who so elects may be required to obtain medical care,
23 treatment, and attendance through a managed care plan
24 comporting with the requirement of s. 440.134 if the plan of
25 operation so provides. An injured worker has 60 days to seek
26 benefits from the corporation upon ratification by the
27 corporation of his or her right to elect a remedy under this
28 part. If the injured worker elects to pursue his or her
29 remedy under the provisions of this part, the corporation may,
30 with the agreement of the injured employee, pay a lump-sum
31 payment in exchange for the corporation's and employer's

1 release from liability for future medical and compensation
2 expenses, as well as any other benefit provided under chapter
3 440. However, there shall be no entitlement to attorney's
4 fees, penalties, interest, or costs to be paid on any claim
5 presented to the corporation under this part. This section
6 shall not create any cause of action against any employer who
7 purchased workers' compensation insurance coverage pursuant to
8 s. 440.38. An employee who elects to seek benefits from his or
9 her employer or insolvent self-insurance fund may not then
10 seek payment from the corporation. An employer who provides
11 payment to an employee under this section has no right of
12 subrogation against the corporation.

13 Section 4. This act shall take effect upon becoming a
14 law.

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16 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
17 COMMITTEE SUBSTITUTE FOR
18 Senate Bill 1822

19 The Committee Substitute deletes the provisions that excluded
20 from the definition of "covered claim" for purposes of the
21 Florida Workers' Compensation Insurance Guaranty Fund, claims
22 for workers that reside out-of-state at the time of the injury
23 and workers' compensation Coverage B - Employers Liability
24 Insurance.

25 The definition of net direct written premiums is clarified to
26 specifically provide that workers' compensation excess
27 insurance would be subject to the guaranty fund assessment.
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