

By Senator Alexander

17-1104-03

See HB 693

1 A bill to be entitled
 2 An act relating to the Florida Workers'
 3 Compensation Insurance Guaranty Association,
 4 Incorporated; amending s. 631.904, F.S.;
 5 revising definitions; amending s. 631.913,
 6 F.S.; limiting the corporation's obligation for
 7 a covered claim for return of unearned premium;
 8 amending s. 631.923, F.S.; authorizing the
 9 corporation to recover the amount of certain
 10 covered claims; amending s. 631.924, F.S.;
 11 including insolvent insurers under provisions
 12 for a stay of proceedings; creating s. 631.933,
 13 F.S.; providing severability; providing an
 14 effective date.

15
 16 Be It Enacted by the Legislature of the State of Florida:

17
 18 Section 1. Section 631.904, Florida Statutes, is
 19 amended to read:

20 631.904 Definitions.--As used in this part, the term:

21 (1) "Affiliate" means a person who directly, or
 22 indirectly through one or more intermediaries, controls, is
 23 controlled by, or is under common control with a specified
 24 person on December 31 of the year prior to the year in which
 25 the insurer becomes an insolvent insurer.

26 (2) "Control" means the possession, direct or
 27 indirect, of the power to direct or cause the direction of the
 28 management and policies of a person, whether through the
 29 ownership of voting securities, the holding of proxies by
 30 contract other than a commercial contract for goods or
 31 nonmanagement services, or otherwise, unless the power is

1 solely the result of an official position with or corporate
 2 office held by the person. Control shall be presumed to exist
 3 _____
 4 with the power to vote, or holds proxies representing 10
 5 percent or more of the voting securities or voting power of
 6 _____
 7 showing that control does not exist in fact.

8 (3)~~(1)~~ "Corporation" means the Florida Workers'
 9 Compensation Insurance Guaranty Association, Incorporated.

10 (4)~~(2)~~ "Covered claim" means an unpaid claim,
 11 including a claim for return of unearned premiums, which
 12 arises out of, is within the coverage of, and is not in excess
 13 of the applicable limits of, an insurance policy to which this
 14 part applies, which policy was issued by an insurer and which
 15 claim is made on behalf of a claimant or insured who was a
 16 resident of this state at the time of the injury. The term
 17 "covered claim" does not include:

18 (a) Any amount sought as a return of premium under any
 19 retrospective rating plan;

20 (b) Any amount due any reinsurer, insurer, insurance
 21 pool, or underwriting association, as subrogation recoveries
 22 or otherwise; ~~or~~

23 (c) Any return of premium resulting from a policy that
 24 was not in force on the date of the final order of
 25 liquidation; or

26 (d) Any claim by or against an insured whose net worth
 27 exceeds \$25 million on December 31 of the year prior to the
 28 year in which the insurer becomes an insolvent insurer,
 29 provided an insured's net worth on that date shall be deemed
 30 to include the aggregate net worth of the insured and all of
 31 its subsidiaries and affiliates as calculated on a

1 consolidated basis. However, the exclusion under this
2 paragraph shall not apply to claims against an insured that is
3 a governmental entity or an insured if:

4 1. The insured has:

5 a. Applied for or consented to the appointment of a
6 receiver, trustee, or liquidator for all or a substantial part
7 of its assets;

8 b. Filed a voluntary petition in bankruptcy; or

9 c. Filed a petition or an answer seeking
10 reorganization or arrangement with creditors or to take
11 advantage of any insolvency law; or

12 2. An order, judgment, or decree is entered by a court
13 of competent jurisdiction, on the application of a creditor,
14 adjudicating the insured bankrupt or insolvent or approving a
15 petition seeking reorganization of the insured or all or a
16 substantial part of its assets.

17
18 Member insurers have no right of subrogation against the
19 insured of any insolvent insurer. This provision shall be
20 applied retroactively to cover claims of an insolvent
21 self-insurance fund resulting from accidents or losses
22 incurred prior to January 1, 1994, regardless of the date the
23 Department of Insurance filed a petition in circuit court
24 alleging insolvency and the date the court entered an order
25 appointing a receiver.

26 (5)(3) "Department" means the Department of Insurance.

27 (6) "Governmental entity" means any state, county,
28 municipality, or special district or any subdivision or agency
29 of a state, county, or municipality.

30 (7)(4) "Insolvency" means that condition in which all
31 of the assets of the insurer, if made immediately available,

1 would not be sufficient to discharge all of its liabilities or
2 that condition in which the insurer is unable to pay its debts
3 as they become due in the usual course of business. When the
4 context of any provision of this part so indicates, insolvency
5 also includes impairment of surplus or impairment of capital.

6 (8)~~(5)~~ "Insolvent insurer" means an insurer that was
7 authorized to transact insurance in this state, either at the
8 time the policy was issued or when the insured event occurred,
9 and against which an order of liquidation with a finding of
10 insolvency has been entered by a court of competent
11 jurisdiction if such order has become final by the exhaustion
12 of appellate review.

13 (9)~~(6)~~ "Insurer" means an insurance carrier or
14 self-insurance fund authorized to insure under chapter 440.
15 For purposes of this act, "insurer" does not include a
16 qualified local government self-insurance fund, as defined in
17 s. 624.4622, or an individual self-insurer as defined in s.
18 440.385.

19 (10)~~(7)~~ "Self-insurance fund" means a group
20 self-insurance fund authorized under s. 624.4621, a commercial
21 self-insurance fund writing workers' compensation insurance
22 authorized under s. 624.462, or an assessable mutual insurer
23 authorized under s. 628.6011. For purposes of this act,
24 "self-insurance fund" does not include a qualified local
25 government self-insurance fund, as defined in s. 624.4622, or
26 an individual self-insurer as defined in s. 440.385.

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

29 631.913 Powers and duties of the corporation.--

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

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

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

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

8
9 Notwithstanding such criteria, the corporation's obligation
10 for a covered claim for the return of unearned premium shall
11 not exceed \$50,000 per policy. In addition, the corporation is
12 not obligated to a policyholder or claimant in an amount in
13 excess of the obligation of the insolvent insurer under the
14 policy from which the claim arises.

15 Section 3. Subsection (5) is added to section 631.923,
16 Florida Statutes, to read:

17 631.923 Effect of paid claims.--

18 (5) The corporation shall have the right to recover
19 the amount of any covered claim paid on behalf of:

20 (a) An insured whose net worth exceeds \$25 million on
21 December 31 of the year prior to the year in which the insurer
22 becomes an insolvent insurer, provided an insured's net worth
23 on that date shall be deemed to include the aggregate net
24 worth of the insured and all of its subsidiaries and
25 affiliates, as calculated on a consolidated basis; or

26 (b) Any person who is an affiliate of the insolvent
27 insurer,

28
29 and whose liability obligations to other persons are satisfied
30 in whole or in part by payments made pursuant to this part.

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1 Section 4. Section 631.924, Florida Statutes, is
 3 631.924 Stay of proceedings; reopening of default
 4 judgments.--All proceedings in which the insolvent _____
 5 self-insurance fund is a party or is obligated to defend a
 6 party in any court or before any quasi-judicial body or
 8 months, or such additional period from the date the insolvency
 9 is adjudicated, by a court of competent jurisdiction to allow
 11 action as to any covered claims. The stay may be extended for
 12 a period of time greater than 6 months upon proper application
 14 on its own behalf or on behalf of the insured, may apply to
 15 have any judgment, order, decision, verdict, or finding based
 insurer or self-insurance fund
 18 court or administrator that made the judgment, order,
 19 decision, verdict, or finding and may defend against the claim
 21 proceedings may be shortened or waived.

22 Section 5. Section 631.933, Florida Statutes, is
 24 631.933 Severability.--If any provision of this part
or the application thereof to any person or circumstance is
 26 _____
 27 or applications of this part which can be given effect without
the invalid application or provision, and to this end the
 29 _____
 30 Section 6. This act shall take effect upon becoming a
 31 law.

CODING: Words _____ are deletions; words underlined