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

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

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

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

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

(2) "Control" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, the holding of proxies by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is solely the result of an official position with or corporate office held by the person. Control shall be presumed to exist if a person, directly or indirectly,



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31 owns, controls, holds with the power to vote, or holds proxies  
32 representing 10 percent or more of the voting securities or  
33 voting power of any other person. This presumption may be  
34 rebutted by a showing that control does not exist in fact.

35 (3)~~(1)~~ "Corporation" means the Florida Workers'  
36 Compensation Insurance Guaranty Association, Incorporated.

37 (4)~~(2)~~ "Covered claim" means an unpaid claim, including a  
38 claim for return of unearned premiums, which arises out of, is  
39 within the coverage of, and is not in excess of the applicable  
40 limits of, an insurance policy to which this part applies, which  
41 policy was issued by an insurer and which claim is made on  
42 behalf of a claimant or insured who was a resident of this state  
43 at the time of the injury. The term "covered claim" does not  
44 include:

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

47 (b) Any amount due any reinsurer, insurer, insurance pool,  
48 or underwriting association, as subrogation recoveries or  
49 otherwise; ~~or~~

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

52 (d) Any claim by or against an insured whose net worth  
53 exceeds \$25 million on December 31 of the year prior to the year  
54 in which the insurer becomes an insolvent insurer, provided an  
55 insured's net worth on that date shall be deemed to include the  
56 aggregate net worth of the insured and all of its subsidiaries  
57 and affiliates as calculated on a consolidated basis. However,  
58 the exclusion under this paragraph shall not apply to claims  
59 against an insured that is a governmental entity or an insured  
60 if:



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- 61        1. The insured has:  
 62            a. Applied for or consented to the appointment of a  
 63 receiver, trustee, or liquidator for all or a substantial part  
 64 of its assets;  
 65            b. Filed a voluntary petition in bankruptcy; or  
 66            c. Filed a petition or an answer seeking reorganization or  
 67 arrangement with creditors or to take advantage of any  
 68 insolvency law; or  
 69        2. An order, judgment, or decree is entered by a court of  
 70 competent jurisdiction, on the application of a creditor,  
 71 adjudicating the insured bankrupt or insolvent or approving a  
 72 petition seeking reorganization of the insured or all or a  
 73 substantial part of its assets.

74  
 75 Member insurers have no right of subrogation against the insured  
 76 of any insolvent insurer. This provision shall be applied  
 77 retroactively to cover claims of an insolvent self-insurance  
 78 fund resulting from accidents or losses incurred prior to  
 79 January 1, 1994, regardless of the date the Department of  
 80 Insurance filed a petition in circuit court alleging insolvency  
 81 and the date the court entered an order appointing a receiver.

82        ~~(5)(3)~~ "Department" means the Department of Insurance.

83        (6) "Governmental entity" means any state, county,  
 84 municipality, or special district or any subdivision or agency  
 85 of a state, county, or municipality.

86        ~~(7)(4)~~ "Insolvency" means that condition in which all of  
 87 the assets of the insurer, if made immediately available, would  
 88 not be sufficient to discharge all of its liabilities or that  
 89 condition in which the insurer is unable to pay its debts as  
 90 they become due in the usual course of business. When the



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91 context of any provision of this part so indicates, insolvency  
92 also includes impairment of surplus or impairment of capital.

93 (8)~~(5)~~ "Insolvent insurer" means an insurer that was  
94 authorized to transact insurance in this state, either at the  
95 time the policy was issued or when the insured event occurred,  
96 and against which an order of liquidation with a finding of  
97 insolvency has been entered by a court of competent jurisdiction  
98 if such order has become final by the exhaustion of appellate  
99 review.

100 (9)~~(6)~~ "Insurer" means an insurance carrier or self-  
101 insurance fund authorized to insure under chapter 440. For  
102 purposes of this act, "insurer" does not include a qualified  
103 local government self-insurance fund, as defined in s. 624.4622,  
104 or an individual self-insurer as defined in s. 440.385.

105 (10)~~(7)~~ "Self-insurance fund" means a group self-insurance  
106 fund authorized under s. 624.4621, a commercial self-insurance  
107 fund writing workers' compensation insurance authorized under s.  
108 624.462, or an assessable mutual insurer authorized under s.  
109 628.6011. For purposes of this act, "self-insurance fund" does  
110 not include a qualified local government self-insurance fund, as  
111 defined in s. 624.4622, or an individual self-insurer as defined  
112 in s. 440.385.

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

115 631.913 Powers and duties of the corporation.--

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

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



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

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

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126 Notwithstanding such criteria, the corporation's obligation for  
127 a covered claim for the return of unearned premium shall not  
128 exceed \$50,000 per policy. In addition, the corporation is not  
129 obligated to a policyholder or claimant in an amount in excess  
130 of the obligation of the insolvent insurer under the policy from  
131 which the claim arises.

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

134 631.923 Effect of paid claims.--

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

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

143 (b) Any person who is an affiliate of the insolvent  
144 insurer,

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146 and whose liability obligations to other persons are satisfied  
147 in whole or in part by payments made pursuant to this part.

148 Section 4. Section 631.924, Florida Statutes, is amended  
149 to read:



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150           631.924 Stay of proceedings; reopening of default  
151 judgments.--All proceedings in which the insolvent insurer or  
152 self-insurance fund is a party or is obligated to defend a party  
153 in any court or before any quasi-judicial body or administrative  
154 board in this state must be stayed for 6 months, or such  
155 additional period from the date the insolvency is adjudicated,  
156 by a court of competent jurisdiction to allow proper defense by  
157 the association of all pending causes of action as to any  
158 covered claims. The stay may be extended for a period of time  
159 greater than 6 months upon proper application to a court of  
160 competent jurisdiction. The association, either on its own  
161 behalf or on behalf of the insured, may apply to have any  
162 judgment, order, decision, verdict, or finding based on the  
163 default of the insolvent insurer or self-insurance fund or its  
164 failure to defend an insured set aside by the same court or  
165 administrator that made the judgment, order, decision, verdict,  
166 or finding and may defend against the claim on the merits. If  
167 the association so requests, the stay of proceedings may be  
168 shortened or waived.

169           Section 5. Section 631.933, Florida Statutes, is created  
170 to read:

171           631.933 Severability.--If any provision of this part or the  
172 application thereof to any person or circumstance is held invalid,  
173 such invalidity does not affect other provisions or applications of  
174 this part which can be given effect without the invalid application  
175 or provision, and to this end the provisions of this part are  
176 declared severable.

177           Section 6. This act shall take effect upon becoming a law.