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CS/CS/CS/HB 159

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1 A bill to be entitled
2 An act relating to guaranty associations; amending s.
3 631.52, F.S.; expanding an exemption from the
4 applicability of certain provisions of state law to
5 include workers' compensation claims under employer
6 liability coverage; amending s. 631.54, F.S.; conforming
7 the definition of "account" to changes made by the act;
8 amending s. 631.55, F.S.; revising the separate accounts
9 of the association; amending s. 631.57, F.S.; conforming
10 cross-references; providing a legislative finding and
11 declaration; authorizing insurers to recoup certain
12 assessments levied by the Office of Insurance Regulation
13 by applying certain recoupment factors; deleting
14 provisions relating to classification and payment of
15 emergency assessments; providing guidelines and a
16 methodology for the calculation of recoupment factors for
17 recouping certain assessments; authorizing an insurer to
18 apply a recalculated recoupment factor under certain
19 conditions; providing for the return of excess assessments
20 and recoupment charges; providing that amounts recouped
21 are not premium and not subject to premium taxes, fees, or
22 commissions; requiring that insurers treat failure to pay
23 a recoupment charge as failure to pay the premium;
24 requiring that an insurer file with the office a statement
25 containing certain information within a specified period
26 before applying a recoupment factor to any policies;
27 authorizing an insurer to use a recoupment factor after
28 the expiration of such period; providing that an insurer

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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29 | need submit only one such statement for all lines of
30 | business; requiring that an insurer file with the office
31 | an accounting report containing certain information within
32 | a specified period after the completion of the recoupment
33 | process; providing that an insurer need submit only one
34 | such report for all lines of business; amending s.
35 | 631.713, F.S.; expanding the application of certain
36 | provisions of state law to certain residents of other
37 | states who own certain insurance policies; expanding the
38 | list of contracts and policies to which life and health
39 | insurance guaranty of payments provisions do not apply;
40 | providing for application to coverage under certain
41 | structured settlement annuities under certain
42 | circumstances; amending s. 631.714, F.S.; revising certain
43 | definitions; amending s. 631.717, F.S.; revising a
44 | guaranty association's aggregate liability for life
45 | insurance and deferred annuity contracts; authorizing an
46 | association to issue alternative policies or contracts to
47 | certain policies or contracts under certain circumstances;
48 | subjecting such alternative policies or contracts to
49 | specified requirements; creating s. 631.7295, F.S.;
50 | authorizing an association to succeed to the rights of an
51 | insolvent insurer arising after an order of liquidation or
52 | rehabilitation with regard to certain contracts of
53 | reinsurance; requiring that such an association pay all
54 | unpaid premiums due under the contract; amending s.
55 | 631.735, F.S.; specifying that certain advertisement
56 | prohibitions do not prohibit the furnishing of certain

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57 written information in a form prepared by an association
58 upon request; amending s. 631.904, F.S.; revising the
59 definition of the term "covered claim"; providing an
60 effective date.

61
62 Be It Enacted by the Legislature of the State of Florida:

63
64 Section 1. Subsection (14) of section 631.52, Florida
65 Statutes, is amended to read:

66 631.52 Scope.—This part shall apply to all kinds of direct
67 insurance, except:

68 (14) Workers' compensation, including claims under
69 employer liability coverage;

70 Section 2. Subsection (1) of section 631.54, Florida
71 Statutes, is amended to read:

72 631.54 Definitions.—As used in this part:

73 (1) "Account" means ~~any~~ one of the ~~three~~ accounts created
74 by s. 631.55.

75 Section 3. Subsection (2) of section 631.55, Florida
76 Statutes, is amended to read:

77 631.55 Creation of the association.—

78 (2) For the purposes of administration and assessment, the
79 association shall be divided into two ~~three~~ separate accounts:

80 (a) The auto liability and ~~account~~;

81 ~~(b) The auto physical damage account, and~~

82 (b) (e) The account for all other insurance to which this
83 part applies.

84 Section 4. Subsection (3) of section 631.57, Florida

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85 Statutes, is amended to read:

86 631.57 Powers and duties of the association.—

87 (3) (a) To the extent necessary to secure the funds for the
88 respective accounts for the payment of covered claims, to pay
89 the reasonable costs to administer the same, and to the extent
90 necessary to secure the funds for the account specified in s.
91 631.55(2) (b) ~~(e)~~ or to retire indebtedness, including, without
92 limitation, the principal, redemption premium, if any, and
93 interest on, and related costs of issuance of, bonds issued
94 under s. 631.695 and the funding of any reserves and other
95 payments required under the bond resolution or trust indenture
96 pursuant to which such bonds have been issued, the office, upon
97 certification of the board of directors, shall levy assessments
98 in the proportion that each insurer's net direct written
99 premiums in this state in the classes protected by the account
100 bears to the total of said net direct written premiums received
101 in this state by all such insurers for the preceding calendar
102 year for the kinds of insurance included within such account.
103 Assessments shall be remitted to and administered by the board
104 of directors in the manner specified by the approved plan. Each
105 insurer so assessed shall have at least 30 days' written notice
106 as to the date the assessment is due and payable. Every
107 assessment shall be made as a uniform percentage applicable to
108 the net direct written premiums of each insurer in the kinds of
109 insurance included within the account in which the assessment is
110 made. The assessments levied against any insurer shall not
111 exceed in any one year more than 2 percent of that insurer's net
112 direct written premiums in this state for the kinds of insurance

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113 included within such account during the calendar year next
114 preceding the date of such assessments.

115 (b) If sufficient funds from such assessments, together
116 with funds previously raised, are not available in any one year
117 in the respective account to make all the payments or
118 reimbursements then owing to insurers, the funds available shall
119 be prorated and the unpaid portion shall be paid as soon
120 thereafter as funds become available.

121 (c) The Legislature finds and declares that all
122 assessments paid by an insurer or insurer group as a result of a
123 levy by the office, including assessments levied pursuant to
124 paragraph (a) and emergency assessments, constitute advances of
125 funds from the insurer to the association. An insurer may fully
126 recoup such advances by applying a separate recoupment factor to
127 the premium of policies of the same kind or line as were
128 considered by the office in determining the assessment liability
129 of the insurer or insurer group. Assessments shall be included
130 as an appropriate factor in the making of rates.

131 (d) No state funds of any kind shall be allocated or paid
132 to said association or any of its accounts.

133 (e)1.a. In addition to assessments otherwise authorized in
134 paragraph (a) and to the extent necessary to secure the funds
135 for the account specified in s. 631.55(2) (b)-(e) for the direct
136 payment of covered claims of insurers rendered insolvent by the
137 effects of a hurricane and to pay the reasonable costs to
138 administer such claims, or to retire indebtedness, including,
139 without limitation, the principal, redemption premium, if any,
140 and interest on, and related costs of issuance of, bonds issued

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141 | under s. 631.695 and the funding of any reserves and other
142 | payments required under the bond resolution or trust indenture
143 | pursuant to which such bonds have been issued, the office, upon
144 | certification of the board of directors, shall levy emergency
145 | assessments upon insurers holding a certificate of authority.
146 | The emergency assessments payable under this paragraph by any
147 | insurer shall not exceed in any single year more than 2 percent
148 | of that insurer's direct written premiums, net of refunds, in
149 | this state during the preceding calendar year for the kinds of
150 | insurance within the account specified in s. 631.55(2) (b) ~~(e)~~.

151 | b. Any emergency assessments authorized under this
152 | paragraph shall be levied by the office upon insurers referred
153 | to in sub-subparagraph a., upon certification as to the need for
154 | such assessments by the board of directors. In the event the
155 | board of directors participates in the issuance of bonds in
156 | accordance with s. 631.695, emergency assessments shall be
157 | levied in each year that bonds issued under s. 631.695 and
158 | secured by such emergency assessments are outstanding, in such
159 | amounts up to such 2-percent limit as required in order to
160 | provide for the full and timely payment of the principal of,
161 | redemption premium, if any, and interest on, and related costs
162 | of issuance of, such bonds. The emergency assessments provided
163 | for in this paragraph are assigned and pledged to the
164 | municipality, county, or legal entity issuing bonds under s.
165 | 631.695 for the benefit of the holders of such bonds, in order
166 | to enable such municipality, county, or legal entity to provide
167 | for the payment of the principal of, redemption premium, if any,
168 | and interest on such bonds, the cost of issuance of such bonds,

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169 and the funding of any reserves and other payments required
170 under the bond resolution or trust indenture pursuant to which
171 such bonds have been issued, without the necessity of any
172 further action by the association, the office, or any other
173 party. To the extent bonds are issued under s. 631.695 and the
174 association determines to secure such bonds by a pledge of
175 revenues received from the emergency assessments, such bonds,
176 upon such pledge of revenues, shall be secured by and payable
177 from the proceeds of such emergency assessments, and the
178 proceeds of emergency assessments levied under this paragraph
179 shall be remitted directly to and administered by the trustee or
180 custodian appointed for such bonds.

181 c. Emergency assessments under this paragraph may be
182 payable in a single payment or, at the option of the
183 association, may be payable in 12 monthly installments with the
184 first installment being due and payable at the end of the month
185 after an emergency assessment is levied and subsequent
186 installments being due not later than the end of each succeeding
187 month.

188 d. If emergency assessments are imposed, the report
189 required by s. 631.695(7) shall include an analysis of the
190 revenues generated from the emergency assessments imposed under
191 this paragraph.

192 e. If emergency assessments are imposed, the references in
193 sub-subparagraph (1)(a)3.b. and s. 631.695(2) and (7) to
194 assessments levied under paragraph (a) shall include emergency
195 assessments imposed under this paragraph.

196 ~~2. In order to ensure that insurers paying emergency~~

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197 ~~assessments levied under this paragraph continue to charge rates~~
 198 ~~that are neither inadequate nor excessive, within 90 days after~~
 199 ~~being notified of such assessments, each insurer that is to be~~
 200 ~~assessed pursuant to this paragraph shall submit a rate filing~~
 201 ~~for coverage included within the account specified in s.~~
 202 ~~631.55(2)(c) and for which rates are required to be filed under~~
 203 ~~s. 627.062. If the filing reflects a rate change that, as a~~
 204 ~~percentage, is equal to the difference between the rate of such~~
 205 ~~assessment and the rate of the previous year's assessment under~~
 206 ~~this paragraph, the filing shall consist of a certification so~~
 207 ~~stating and shall be deemed approved when made. Any rate change~~
 208 ~~of a different percentage shall be subject to the standards and~~
 209 ~~procedures of s. 627.062.~~

210 2.3. ~~If In the event~~ the board of directors participates
 211 in the issuance of bonds in accordance with s. 631.695, an
 212 annual assessment under this paragraph shall continue while the
 213 bonds issued with respect to which the assessment was imposed
 214 are outstanding, including any bonds the proceeds of which were
 215 used to refund bonds issued pursuant to s. 631.695, unless
 216 adequate provision has been made for the payment of the bonds in
 217 the documents authorizing the issuance of such bonds.

218 3.4. Emergency assessments under this paragraph are not
 219 premium and are not subject to the premium tax, to any fees, or
 220 to any commissions. An insurer is liable for all emergency
 221 assessments that the insurer collects and shall treat the
 222 failure of an insured to pay an emergency assessment as a
 223 failure to pay the premium. An insurer is not liable for
 224 uncollectible emergency assessments.

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225 (f) The recoupment factor applied to policies in
226 accordance with paragraph (c) shall be selected by the insurer
227 or insurer group so as to provide for the probable recoupment of
228 both assessments levied pursuant to paragraph (a) and emergency
229 assessments over a period of 12 months, unless the insurer or
230 insurer group, at its option, elects to recoup the assessment
231 over a longer period. The recoupment factor shall apply to all
232 policies of the same kind or line as were considered by the
233 office in determining the assessment liability of the insurer or
234 insurer group issued or renewed during a 12-month period. If the
235 insurer or insurer group does not collect the full amount of the
236 assessment during one 12-month period, the insurer or insurer
237 group may apply recalculated recoupment factors to policies
238 issued or renewed during one or more succeeding 12-month
239 periods. If, at the end of a 12-month period, the insurer or
240 insurer group has collected from the combined kinds or lines of
241 policies subject to assessment more than the total amount of the
242 assessment paid by the insurer or insurer group, the excess
243 amount shall be disbursed as follows:

244 1. If the excess amount does not exceed 15 percent of the
245 total assessment paid by the insurer or insurer group, the
246 excess amount shall be remitted to the association within 60
247 days after the end of the 12-month period in which the excess
248 recoupment charges were collected.

249 2. If the excess amount exceeds 15 percent of the total
250 assessment paid by the insurer or insurer group, the excess
251 amount shall be returned to the insurer's or insurer group's
252 current policyholders by refunds or premium credits. The

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253 association shall use any remitted excess recoupment amounts to
254 reduce future assessments.

255 (g) Amounts recouped pursuant to this subsection for
256 assessments levied under paragraph (a) due to insolvencies on or
257 after July 1, 2010, are considered premium solely for premium
258 tax purposes and are not subject to fees or commissions.

259 However, insurers shall treat the failure of an insured to pay a
260 recoupment charge as a failure to pay the premium.

261 (h) At least 15 days before applying the recoupment factor
262 to any policies, the insurer or insurer group shall file with
263 the office a statement for informational purposes only setting
264 forth the amount of the recoupment factor and an explanation of
265 how the recoupment factor will be applied. Such statement shall
266 include documentation of the assessment paid by the insurer or
267 insurer group and the arithmetic calculations supporting the
268 recoupment factor. The insurer or insurer group may use the
269 recoupment factor at any time after the expiration of the 15-day
270 period. The insurer or insurer group need submit only one
271 informational statement for all lines of business using the same
272 recoupment factor.

273 (i) No later than 90 days after the insurer or insurer
274 group has completed the recoupment process, the insurer or
275 insurer group shall file with the office, for information
276 purposes only, a final accounting report documenting the
277 recoupment. The report shall provide the amounts of assessments
278 paid by the insurer or insurer group, the amounts and
279 percentages recouped by year from each affected line of
280 business, and the direct written premium subject to recoupment

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281 by year. The insurer or insurer group need submit only one
 282 report for all lines of business using the same recoupment
 283 factor.

284 Section 5. Paragraph (b) of subsection (2) of section
 285 631.713, Florida Statutes, is amended, paragraphs (n), (o), and
 286 (p) are added to subsection (3) of that section, and subsection
 287 (5) is added to that section, to read:

288 631.713 Application of part.—

289 (2) Coverage under this part shall be provided to:

290 (b) Persons who are owners of or certificateholders under
 291 such policies or contracts, and who:

292 1. Are residents of this state; or

293 2. Are residents of other states, but only if:

294 a. The insurers which issued such policies or contracts
 295 are domiciled in this state;

296 b. Such insurers were not licensed ~~never held a license or~~
 297 ~~certificate of authority~~ in the states in which such persons
 298 reside at the time specified in a state's guaranty association
 299 law as necessary for coverage by that state's association;

300 c. Such other states have associations similar to the
 301 association created by this part; and

302 d. Such persons are not eligible for coverage by such
 303 associations.

304 (3) This part does not apply to:

305 (n) A portion of a policy or contract, to the extent that
 306 the rate of interest on which the policy or contract is based,
 307 or the interest rate, crediting rate, or similar factor
 308 determined by use of an index or other external reference stated

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309 in the policy or contract employed in calculating returns or
310 changes in value:

311 1. Averaged over the period of 4 years immediately
312 preceding the date on which the member insurer becomes an
313 impaired or insolvent insurer under this part, whichever is
314 earlier, exceeds the rate of interest determined by subtracting
315 2 percentage points from Moody's Corporate Bond Yield Average
316 averaged for that same 4-year period or for such lesser period
317 if the policy or contract was issued less than 4 years before
318 the member insurer becomes an impaired or insolvent insurer
319 under this part, whichever is earlier; and

320 2. On and after the date on which the member insurer
321 becomes an impaired or insolvent insurer under this part,
322 whichever is earlier, exceeds the rate of interest determined by
323 subtracting 3 percentage points from the most current version of
324 Moody's Corporate Bond Yield Average.

325 (o) A portion of a policy or contract to the extent the
326 policy or contract provides for interest or other changes in
327 value to be determined by the use of an index or other external
328 reference stated in the policy or contract, but which has not
329 been credited to the policy or contract, or as to which the
330 policy or contract owner's rights are subject to forfeiture, as
331 of the date the member insurer becomes an impaired or insolvent
332 insurer under this part. However, if the interest or change in
333 value is credited less frequently than annually as determined by
334 using the procedures defined in the policy or contract, interest
335 or change in value shall be credited by using the procedure
336 defined in the policy or contract as if the contractual date of

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337 crediting interest or changing values was the date of impairment
338 or insolvency, whichever is earlier, and shall not be subject to
339 forfeiture.

340 (p) A policy or contract providing any hospital, medical,
341 prescription drug, or other health care benefits pursuant to
342 Medicare Part C or Part D or any regulations issued pursuant to
343 Medicare Part C or Part D.

344 (5) Notwithstanding any other provisions of this part,
345 this part applies to coverage of a person who is a payee under a
346 structured settlement annuity, or a beneficiary if the payee is
347 deceased, with a coverage limit of \$300,000 by the association,
348 if:

349 (a) The payee is a resident of this state, regardless of
350 where the contract owner resides.

351 (b) Neither the payee, the beneficiary, nor the contract
352 owner is eligible for coverage by the association of the state
353 in which the contract owner resides.

354 Section 6. Subsections (6) and (10) of section 631.714,
355 Florida Statutes, are amended to read:

356 631.714 Definitions.—As used in this part, the term:

357 (6) "Insolvent insurer" means a member insurer authorized
358 to transact insurance in this state, either at the time the
359 policy was issued or when the insured event occurred, and
360 against which an order of liquidation with a finding of
361 insolvency has been entered by a court of competent
362 jurisdiction, ~~if such order has become final by the exhaustion~~
363 ~~of appellate review.~~

364 (10) "Resident" means any person who resides in this state

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365 at the time a member insurer is determined to be an impaired or
 366 insolvent insurer and to whom contractual obligations are owed
 367 by such impaired or insolvent member insurer. A person may be a
 368 resident of only one state, which in the case of a person other
 369 than an individual shall be the person's principal place of
 370 business. Citizens of the United States who are residents of
 371 foreign countries or United States possessions, territories, or
 372 protectorates that do not have an association similar to the
 373 guaranty association created by this part shall be deemed
 374 residents of the state of domicile of the insurer issuing the
 375 policies or contracts.

376 Section 7. Subsection (9) of section 631.717, Florida
 377 Statutes, is amended, and paragraph (g) is added to subsection
 378 (12) of that section, to read:

379 631.717 Powers and duties of the association.—

380 (9) The association's liability for the contractual
 381 obligations of the insolvent insurer shall be as great as, but
 382 no greater than, the contractual obligations of the insurer in
 383 the absence of such insolvency, unless such obligations are
 384 reduced as permitted by subsection (4), but the aggregate
 385 liability of the association shall not exceed \$100,000 in net
 386 cash surrender and net cash withdrawal values for life
 387 insurance, \$250,000 in net cash surrender and net cash
 388 withdrawal values for deferred annuity contracts, or \$300,000
 389 for all benefits including cash values, with respect to any one
 390 life. In no event shall the association be liable for any
 391 penalties or interest.

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393 (g) In carrying out its duties in connection with
 394 guaranteeing, assuming, or reinsuring policies or contracts
 395 under subsections (2) and (3), the association may, subject to
 396 approval of the receivership court, issue substitute coverage
 397 for a policy or contract that provides an interest rate,
 398 crediting rate, or similar factor determined by use of an index
 399 or other external reference stated in the policy or contract
 400 employed in calculating returns or changes in value by issuing
 401 an alternative policy or contract. In lieu of the index or other
 402 external reference provided for in the original policy or
 403 contract, the alternative policy or contract must provide for a
 404 fixed interest rate, payment of dividends with minimum
 405 guarantees, or a different method for calculating interest or
 406 changes in value. In such case:

407 1. There is no requirement for evidence of insurability,
 408 waiting period, or other exclusion that would not have applied
 409 under the replaced policy or contract.

410 2. The alternative policy or contract shall be
 411 substantially similar to the replaced policy or contract in all
 412 other material terms.

413 Section 8. Section 631.7295, Florida Statutes, is created
 414 to read:

415 631.7295 Reinsurance.—With respect to covered policies for
 416 which the association becomes obligated after an entry of an
 417 order of liquidation or rehabilitation, the association may
 418 elect to succeed to the rights of the insolvent insurer arising
 419 after the order of liquidation or rehabilitation under any
 420 contract of reinsurance to which the insolvent insurer was a

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421 party, to the extent such contract provides coverage for losses
 422 occurring after the date of the order of liquidation or
 423 rehabilitation. As a condition to making such election, the
 424 association must pay all unpaid premiums due under the contract
 425 for coverage relating to periods before and after the date on
 426 which the order of liquidation or rehabilitation was entered.

427 Section 9. Section 631.735, Florida Statutes, is amended
 428 to read:

429 631.735 Prohibited advertisement of Florida Life and
 430 Health Insurance Guaranty Association Act in sale of insurance.—
 431 A ~~No~~ person may not ~~shall~~ make, publish, disseminate, circulate,
 432 or place before the public, or cause directly or indirectly to
 433 be made, published, disseminated, circulated, or placed before
 434 the public, in any newspaper, magazine, or other publication, or
 435 in the form of a notice, circular, pamphlet, letter, or poster,
 436 or over any radio station or television station, or in any other
 437 way, any advertisement, announcement, or statement which uses
 438 the existence of the Insurance Guaranty Association of this
 439 state for the purpose of sales, solicitation, or inducement to
 440 purchase any form of insurance covered by the Florida Life and
 441 Health Insurance Guaranty Association Act. However, this section
 442 does ~~shall~~ not apply to the Florida Life and Health Insurance
 443 Guaranty Association or any other entity that ~~which~~ does not
 444 sell or solicit insurance. This section also does not prohibit
 445 the furnishing of written information that is in a form prepared
 446 by the association, that summarizes the claim, cash value, and
 447 annuity cash value limits of the association, upon request of
 448 the policyholder or applicant for insurance.

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449 Section 10. Subsection (2) of section 631.904, Florida
 450 Statutes, is amended to read:
 451 631.904 Definitions.—As used in this part, the term:
 452 (2) "Covered claim" means an unpaid claim, including a
 453 claim for return of unearned premiums, which arises out of, is
 454 within the coverage of, and is not in excess of the applicable
 455 limits of, an insurance policy to which this part applies, which
 456 policy was issued by an insurer and which claim is made on
 457 behalf of a claimant or insured who was a resident of this state
 458 at the time of the injury. The term "covered claim" includes
 459 unpaid claims under any employer liability coverage of a
 460 workers' compensation policy limited to the lesser of \$300,000
 461 or the limits of the policy. The term "covered claim" does not
 462 include any amount sought as a return of premium under any
 463 retrospective rating plan; any amount due any reinsurer,
 464 insurer, insurance pool, or underwriting association, as
 465 subrogation recoveries or otherwise; any claim that would
 466 otherwise be a covered claim that has been rejected by any other
 467 state guaranty fund on the grounds that the insured's net worth
 468 is greater than that allowed under that state's guaranty fund or
 469 liquidation law, except this exclusion from the definition of
 470 covered claim shall not apply to employers who, prior to April
 471 30, 2004, entered into an agreement with the corporation
 472 preserving the employer's right to seek coverage of claims
 473 rejected by another state's guaranty fund; or any return of
 474 premium resulting from a policy that was not in force on the
 475 date of the final order of liquidation. Member insurers have no
 476 right of subrogation against the insured of any insolvent

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477 insurer. This provision shall be applied retroactively to cover
478 claims of an insolvent self-insurance fund resulting from
479 accidents or losses incurred prior to January 1, 1994,
480 regardless of the date the petition in circuit court was filed
481 alleging insolvency and the date the court entered an order
482 appointing a receiver.

483 Section 11. This act shall take effect July 1, 2010.