

By the Committees on General Government Appropriations; and
Banking and Insurance; and Senator Richter

601-04796-10

20102232c2

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.;
7 conforming the definition of "account" to changes made
8 by the act; amending s. 631.55, F.S.; revising the
9 structure of the Florida Insurance Guaranty
10 Association by combining the auto liability and auto
11 physical damage accounts; amending s. 631.57, F.S.;
12 conforming cross-references; providing legislative
13 intent; providing guidelines for the calculation of
14 recoupment factors; authorizing an insurer to apply a
15 recalculated recoupment factor under certain
16 conditions; providing for the return of excess
17 assessments and recoupment charges; providing that
18 amounts recouped pursuant to specified provisions of
19 state law are not premium and not subject to premium
20 taxes, fees, or commissions; requiring that insurers
21 treat failure to pay a recoupment charge as failure to
22 pay the premium; requiring that an insurer file with
23 the Office of Insurance Regulation a statement
24 containing certain information within a specified
25 period before applying a recoupment factor to any
26 policies; authorizing an insurer to use a recoupment
27 factor after the expiration of such period; providing
28 that an insurer need submit only one such statement
29 for all lines of business; requiring that an insurer

601-04796-10

20102232c2

30 file with the office an accounting report containing
31 certain information within a specified period after
32 the completion of the recoupment process; amending s.
33 631.713, F.S.; expanding the application of certain
34 provisions of state law to certain residents of other
35 states who own certain insurance policies; expanding
36 the list of contracts and policies to which certain
37 provisions of state law do not apply; amending s.
38 631.714, F.S.; revising the definition of "insolvent
39 insurer" to remove the requirement that an order of
40 liquidation become final by the exhaustion of
41 appellate review; expanding the definition of
42 "resident" to account for persons other than
43 individuals and residents of foreign countries and
44 United States possessions, territories, and
45 protectorates; amending s. 631.717, F.S.; limiting a
46 guaranty association's liability for cash surrender,
47 net cash withdrawal, and annuity benefits with respect
48 to life insurance on any one life; authorizing an
49 association to issue substitute coverage under certain
50 circumstances; requiring that such alternate policy or
51 contract meet certain criteria; creating s. 631.7295,
52 F.S.; authorizing an association to succeed to the
53 rights of an insolvent insurer arising after an order
54 of liquidation or rehabilitation with regard to
55 certain contracts of reinsurance; requiring that such
56 an association pay all unpaid premiums due under the
57 contract; amending s. 631.735, F.S.; providing that
58 certain provisions of state law do not prohibit the

601-04796-10

20102232c2

59 furnishing of certain information in a form prepared
60 by the Florida Life and Health Insurance Guaranty
61 Association upon the request of a policyholder or
62 applicant for insurance; amending s. 631.904, F.S.;
63 clarifying the definition of "covered claim" to
64 include unpaid claims under any employer liability
65 coverage of a workers' compensation policy limited to
66 the lesser of a specified amount and the limits of the
67 policy; providing an effective date.

68

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

70

71 Section 1. Section 631.52, Florida Statutes, is amended to
72 read:

73 631.52 Scope.—This part shall apply to all kinds of direct
74 insurance, except:

75 (1) Life, annuity, health, or disability insurance;

76 (2) Mortgage guaranty, financial guaranty, or other forms
77 of insurance offering protection against investment risks;

78 (3) Fidelity or surety bonds, or any other bonding
79 obligations;

80 (4) Credit insurance, vendors' single interest insurance,
81 or collateral protection insurance or any similar insurance
82 protecting the interests of a creditor arising out of a
83 creditor-debtor transaction;

84 (5) Warranty, including motor vehicle service, home
85 warranty, or service warranty;

86 (6) Ambulance service, health care service, or preneed
87 funeral merchandise or service;

601-04796-10

20102232c2

88 (7) Optometric service plan, pharmaceutical service plan,
89 or dental service plan;

90 (8) Legal expense;

91 (9) Health maintenance, prepaid health clinic, or
92 continuing care;

93 (10) Ocean marine or wet marine insurance;

94 (11) Self-insurance and any kind of self-insurance fund,
95 liability pool, or risk management fund;

96 (12) Title insurance;

97 (13) Surplus lines;

98 (14) Workers' compensation, including claims under employer
99 liability coverage;

100 (15) Any transaction or combination of transactions between
101 a person, including affiliates of such person, and an insurer,
102 including affiliates of such insurer, which involves the
103 transfer of investment or credit risk unaccompanied by the
104 transfer of insurance risk; or

105 (16) Any insurance provided by or guaranteed by government.

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

108 631.54 Definitions.—As used in this part:

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

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

113 631.55 Creation of the association.—

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

116 (a) The auto liability and auto physical damage account;

601-04796-10

20102232c2

117 and118 ~~(b) The auto physical damage account; and~~119 (b)(e) The account for all other insurance to which this
120 part applies.121 Section 4. Subsection (3) of section 631.57, Florida
122 Statutes, is amended to read:

123 631.57 Powers and duties of the association.—

124 (3) (a) To the extent necessary to secure the funds for the
125 respective accounts for the payment of covered claims, to pay
126 the reasonable costs to administer the same, and to the extent
127 necessary to secure the funds for the account specified in
128 s.631.55(2)(b) ~~s. 631.55(2)(e)~~ or to retire indebtedness,
129 including, without limitation, the principal, redemption
130 premium, if any, and interest on, and related costs of issuance
131 of, bonds issued under s. 631.695 and the funding of any
132 reserves and other payments required under the bond resolution
133 or trust indenture pursuant to which such bonds have been
134 issued, the office, upon certification of the board of
135 directors, shall levy assessments in the proportion that each
136 insurer's net direct written premiums in this state in the
137 classes protected by the account bears to the total of said net
138 direct written premiums received in this state by all such
139 insurers for the preceding calendar year for the kinds of
140 insurance included within such account. Assessments shall be
141 remitted to and administered by the board of directors in the
142 manner specified by the approved plan. Each insurer so assessed
143 shall have at least 30 days' written notice as to the date the
144 assessment is due and payable. Every assessment shall be made as
145 a uniform percentage applicable to the net direct written

601-04796-10

20102232c2

146 premiums of each insurer in the kinds of insurance included
147 within the account in which the assessment is made. The
148 assessments levied against any insurer shall not exceed in any
149 one year more than 2 percent of that insurer's net direct
150 written premiums in this state for the kinds of insurance
151 included within such account during the calendar year next
152 preceding the date of such assessments.

153 (b) If sufficient funds from such assessments, together
154 with funds previously raised, are not available in any one year
155 in the respective account to make all the payments or
156 reimbursements then owing to insurers, the funds available shall
157 be prorated and the unpaid portion shall be paid as soon
158 thereafter as funds become available.

159 (c) The Legislature finds and declares that all assessments
160 paid by an insurer or insurer group as a result of a levy by the
161 office, including assessments levied pursuant to paragraph (a)
162 and emergency assessments, constitute advances of funds from the
163 insurer to the association. The insurer is entitled to fully
164 recoup such advances by applying a separate recoupment factor to
165 the premium of policies of the same kind or line as were
166 considered by the office in determining the assessment liability
167 of the insurer or insurer group. Assessments shall be included
168 as an appropriate factor in the making of rates.

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

171 (e)1.a. In addition to assessments otherwise authorized in
172 paragraph (a) and to the extent necessary to secure the funds
173 for the account specified in s. 631.55(2) (b) ~~s. 631.55(2) (c)~~ for
174 the direct payment of covered claims of insurers rendered

601-04796-10

20102232c2

175 insolvent by the effects of a hurricane and to pay the
176 reasonable costs to administer such claims, or to retire
177 indebtedness, including, without limitation, the principal,
178 redemption premium, if any, and interest on, and related costs
179 of issuance of, bonds issued under s. 631.695 and the funding of
180 any reserves and other payments required under the bond
181 resolution or trust indenture pursuant to which such bonds have
182 been issued, the office, upon certification of the board of
183 directors, shall levy emergency assessments upon insurers
184 holding a certificate of authority. The emergency assessments
185 payable under this paragraph by any insurer shall not exceed in
186 any single year more than 2 percent of that insurer's direct
187 written premiums, net of refunds, in this state during the
188 preceding calendar year for the kinds of insurance within the
189 account specified in s. 631.55(2)(b) ~~s. 631.55(2)(c)~~.

190 b. Any emergency assessments authorized under this
191 paragraph shall be levied by the office upon insurers referred
192 to in sub-subparagraph a., upon certification as to the need for
193 such assessments by the board of directors. In the event the
194 board of directors participates in the issuance of bonds in
195 accordance with s. 631.695, emergency assessments shall be
196 levied in each year that bonds issued under s. 631.695 and
197 secured by such emergency assessments are outstanding, in such
198 amounts up to such 2-percent limit as required in order to
199 provide for the full and timely payment of the principal of,
200 redemption premium, if any, and interest on, and related costs
201 of issuance of, such bonds. The emergency assessments provided
202 for in this paragraph are assigned and pledged to the
203 municipality, county, or legal entity issuing bonds under s.

601-04796-10

20102232c2

204 631.695 for the benefit of the holders of such bonds, in order
205 to enable such municipality, county, or legal entity to provide
206 for the payment of the principal of, redemption premium, if any,
207 and interest on such bonds, the cost of issuance of such bonds,
208 and the funding of any reserves and other payments required
209 under the bond resolution or trust indenture pursuant to which
210 such bonds have been issued, without the necessity of any
211 further action by the association, the office, or any other
212 party. To the extent bonds are issued under s. 631.695 and the
213 association determines to secure such bonds by a pledge of
214 revenues received from the emergency assessments, such bonds,
215 upon such pledge of revenues, shall be secured by and payable
216 from the proceeds of such emergency assessments, and the
217 proceeds of emergency assessments levied under this paragraph
218 shall be remitted directly to and administered by the trustee or
219 custodian appointed for such bonds.

220 c. Emergency assessments under this paragraph may be
221 payable in a single payment or, at the option of the
222 association, may be payable in 12 monthly installments with the
223 first installment being due and payable at the end of the month
224 after an emergency assessment is levied and subsequent
225 installments being due not later than the end of each succeeding
226 month.

227 d. If emergency assessments are imposed, the report
228 required by s. 631.695(7) shall include an analysis of the
229 revenues generated from the emergency assessments imposed under
230 this paragraph.

231 e. If emergency assessments are imposed, the references in
232 sub-subparagraph (1)(a)3.b. and s. 631.695(2) and (7) to

601-04796-10

20102232c2

233 assessments levied under paragraph (a) shall include emergency
234 assessments imposed under this paragraph.

235 ~~2. In order to ensure that insurers paying emergency~~
236 ~~assessments levied under this paragraph continue to charge rates~~
237 ~~that are neither inadequate nor excessive, within 90 days after~~
238 ~~being notified of such assessments, each insurer that is to be~~
239 ~~assessed pursuant to this paragraph shall submit a rate filing~~
240 ~~for coverage included within the account specified in s.~~
241 ~~631.55(2)(c) and for which rates are required to be filed under~~
242 ~~s. 627.062. If the filing reflects a rate change that, as a~~
243 ~~percentage, is equal to the difference between the rate of such~~
244 ~~assessment and the rate of the previous year's assessment under~~
245 ~~this paragraph, the filing shall consist of a certification so~~
246 ~~stating and shall be deemed approved when made. Any rate change~~
247 ~~of a different percentage shall be subject to the standards and~~
248 ~~procedures of s. 627.062.~~

249 2.3. ~~If~~ In the event the board of directors participates in
250 the issuance of bonds in accordance with s. 631.695, an annual
251 assessment under this paragraph shall continue while the bonds
252 issued with respect to which the assessment was imposed are
253 outstanding, including any bonds the proceeds of which were used
254 to refund bonds issued pursuant to s. 631.695, unless adequate
255 provision has been made for the payment of the bonds in the
256 documents authorizing the issuance of such bonds.

257 3.4. Emergency assessments under this paragraph are not
258 premium and are not subject to the premium tax, to any fees, or
259 to any commissions. An insurer is liable for all emergency
260 assessments that the insurer collects and shall treat the
261 failure of an insured to pay an emergency assessment as a

601-04796-10

20102232c2

262 failure to pay the premium. An insurer is not liable for
263 uncollectible emergency assessments.

264 (f) The recoupment factor applied to policies in accordance
265 with paragraph (c) shall be selected by the insurer or insurer
266 group so as to provide for the probable recoupment of both
267 assessments levied pursuant to paragraph (a) and emergency
268 assessments over a period of 12 months, unless the insurer or
269 insurer group, at its option, elects to recoup the assessment
270 over a longer period. The recoupment factor shall apply to all
271 policies of the same kind or line as were considered by the
272 office in determining the assessment liability of the insurer or
273 insurer group issued or renewed during a 12-month period. If the
274 insurer or insurer group does not collect the full amount of the
275 assessment during one 12-month period, the insurer or insurer
276 group may apply recalculated recoupment factors to policies
277 issued or renewed during one or more succeeding 12-month
278 periods. If, at the end of a 12-month period, the insurer or
279 insurer group has collected from the combined kinds or lines of
280 policies subject to assessment more than the total amount of the
281 assessment paid by the insurer or insurer group, the excess
282 amount shall be disbursed as follows:

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

288 2. If the excess amount exceeds 15 percent of the total
289 assessment paid by the insurer or insurer group, the excess
290 amount shall be returned to the insurer's or insurer group's

601-04796-10

20102232c2

291 current policyholders by refunds or premium credits. The
292 association shall use any remitted excess recoupment amounts to
293 reduce future assessments.

294 (g) Amounts recouped pursuant to this subsection for
295 assessments levied under paragraph (a) due to insolvencies on or
296 after July 1, 2010, are considered premium solely for premium
297 tax purposes and are not subject to fees or commissions.
298 However, insurers shall treat the failure of an insured to pay a
299 recoupment charge as a failure to pay the premium.

300 (h) At least 15 days before applying the recoupment factor
301 to any policies, the insurer or insurer group shall file with
302 the office a statement for informational purposes only setting
303 forth the amount of the recoupment factor and an explanation of
304 how the recoupment factor will be applied. Such statement shall
305 include documentation of the assessment paid by the insurer or
306 insurer group and the arithmetic calculations supporting the
307 recoupment factor. The insurer or insurer group may use the
308 recoupment factor at any time after the expiration of the 15-day
309 period. The insurer or insurer group need submit only one
310 informational statement for all lines of business using the same
311 recoupment factor.

312 (i) No later than 90 days after the insurer or insurer
313 group has completed the recoupment process, it shall file with
314 the office, for information purposes only, a final accounting
315 report documenting the recoupment. The report shall provide the
316 amounts of assessments paid by the insurer or insurer group, the
317 amounts and percentages recouped by year from each affected line
318 of business, and the direct written premium subject to
319 recoupment by year. The insurer or insurer group need submit

601-04796-10

20102232c2

320 only one report for all lines of business using the same
321 recoupment factor.

322 Section 5. Paragraph (b) of subsection (2) of section
323 631.713, Florida Statutes, is amended, paragraphs (n), (o), and
324 (p) are added to subsection (3) of that section, and subsection
325 (5) is added to that section, to read:

326 631.713 Application of part.—

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

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

330 1. Are residents of this state; or

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

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

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

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

340 d. Such persons are not eligible for coverage by such
341 associations.

342 (3) This part does not apply to:

343 (n) A portion of a policy or contract, to the extent that
344 the rate of interest on which it is based, or the interest rate,
345 crediting rate, or similar factor determined by use of an index
346 or other external reference stated in the policy or contract
347 employed in calculating returns or changes in value:

348 1. Averaged over the period of 4 years immediately

601-04796-10

20102232c2

349 preceding the date on which the member insurer becomes an
350 impaired or insolvent insurer under this part, whichever is
351 earlier, exceeds the rate of interest determined by subtracting
352 2 percentage points from Moody's Corporate Bond Yield Average
353 averaged for that same 4-year period or for such lesser period
354 if the policy or contract was issued less than 4 years before
355 the member insurer becomes an impaired or insolvent insurer
356 under this part, whichever is earlier; and

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

362 (o) A portion of a policy or contract to the extent it
363 provides for interest or other changes in value to be determined
364 by the use of an index or other external reference stated in the
365 policy or contract, but which has not been credited to the
366 policy or contract, or as to which the policy or contract
367 owner's rights are subject to forfeiture, as of the date the
368 member insurer becomes an impaired or insolvent insurer under
369 state law. However, if the interest or change in value is
370 credited less frequently than annually as determined by using
371 the procedures defined in the policy or contract, interest or
372 change in value shall be credited by using the procedure defined
373 in the policy or contract as if the contractual date of
374 crediting interest or changing values were the date of
375 impairment or insolvency, whichever is earlier, and will not be
376 subject to forfeiture.

377 (p) A policy or contract providing any hospital, medical,

601-04796-10

20102232c2

378 prescription drug, or other health care benefits pursuant to
379 Medicare Part C or D or any regulations issued pursuant to
380 Medicare Part C or D.

381 (5) Notwithstanding any other provisions of this part, this
382 part includes coverage to a person who is a payee under a
383 structured settlement annuity, or a beneficiary if the payee is
384 deceased, with a coverage limit of \$300,000 by the association,
385 if:

386 (a) The payee is a resident of this state, regardless of
387 where the contract owner resides; and

388 (b) Neither the payee, beneficiary, nor contract owner is
389 eligible for coverage by the association of the state in which
390 the contract owner resides.

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

393 631.714 Definitions.—As used in this part, the term:

394 (6) "Insolvent insurer" means a member insurer authorized
395 to transact insurance in this state, either at the time the
396 policy was issued or when the insured event occurred, and
397 against which an order of liquidation with a finding of
398 insolvency has been entered by a court of competent
399 jurisdiction, ~~if such order has become final by the exhaustion~~
400 ~~of appellate review.~~

401 (10) "Resident" means any person who resides in this state
402 at the time a member insurer is determined to be an impaired or
403 insolvent insurer and to whom contractual obligations are owed
404 by such impaired or insolvent member insurer. A person may be a
405 resident of only one state, which in the case of a person other
406 than an individual shall be the person's principal place of

601-04796-10

20102232c2

407 business. Citizens of the United States who are residents of
408 foreign countries or United States possessions, territories, or
409 protectorates that do not have an association similar to the
410 guaranty association created by this part, shall be deemed
411 residents of the state of domicile of the insurer issuing the
412 policies or contracts.

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

416 631.717 Powers and duties of the association.—

417 (9) The association's liability for the contractual
418 obligations of the insolvent insurer shall be as great as, but
419 no greater than, the contractual obligations of the insurer in
420 the absence of such insolvency, unless such obligations are
421 reduced as permitted by subsection (4), but the aggregate
422 liability of the association shall not exceed \$100,000 in net
423 cash surrender and net cash withdrawal values for life
424 insurance, \$250,000 in net cash surrender and net cash
425 withdrawal values for deferred annuity contracts, or \$300,000
426 for all benefits including cash values, with respect to any one
427 life. In no event shall the association be liable for any
428 penalties or interest.

429 (12)

430 (g) In carrying out its duties in connection with
431 guaranteeing, assuming, or reinsuring policies or contracts
432 under subsections (2) and (3), the association may, subject to
433 approval of the receivership court, issue substitute coverage
434 for a policy or contract that provides an interest rate,
435 crediting rate, or similar factor determined by use of an index

601-04796-10

20102232c2

436 or other external reference stated in the policy or contract
437 employed in calculating returns or changes in value by issuing
438 an alternative policy or contract. In lieu of the index or other
439 external reference provided for in the original policy or
440 contract, the alternative policy or contract must provide for a
441 fixed interest rate, payment of dividends with minimum
442 guarantees, or a different method for calculating interest or
443 changes in value. In such case:

444 1. There is no requirement for evidence of insurability,
445 waiting period, or other exclusion that would not have applied
446 under the replaced policy or contract; and

447 2. The alternative policy or contract shall be
448 substantially similar to the replaced policy or contract in all
449 other material terms.

450 Section 8. Section 631.7295, Florida Statutes, is created
451 to read:

452 631.7295 Reinsurance.—With respect to covered policies for
453 which the association becomes obligated after an entry of an
454 order of liquidation or rehabilitation, the association may
455 elect to succeed to the rights of the insolvent insurer arising
456 after the order of liquidation or rehabilitation under any
457 contract of reinsurance to which the insolvent insurer was a
458 party, to the extent that such contract provides coverage for
459 losses occurring after the date of the order of liquidation or
460 rehabilitation. As a condition to making such election, the
461 association must pay all unpaid premiums due under the contract
462 for coverage relating to periods before and after the date on
463 which the order of liquidation or rehabilitation was entered.

464 Section 9. Section 631.735, Florida Statutes, is amended to

601-04796-10

20102232c2

465 read:

466 631.735 Prohibited advertisement of Florida Life and Health
467 Insurance Guaranty Association Act in sale of insurance.—No
468 person shall make, publish, disseminate, circulate, or place
469 before the public, or cause directly or indirectly to be made,
470 published, disseminated, circulated, or placed before the
471 public, in any newspaper, magazine, or other publication, or in
472 the form of a notice, circular, pamphlet, letter, or poster, or
473 over any radio station or television station, or in any other
474 way, any advertisement, announcement, or statement which uses
475 the existence of the Insurance Guaranty Association of this
476 state for the purpose of sales, solicitation, or inducement to
477 purchase any form of insurance covered by the Florida Life and
478 Health Insurance Guaranty Association Act. However, this section
479 does ~~shall~~ not apply to the Florida Life and Health Insurance
480 Guaranty Association or any other entity that ~~which~~ does not
481 sell or solicit insurance. This section also does not prohibit
482 the furnishing of written information, in a form prepared by the
483 association, which summarizes the claim, cash value, and annuity
484 cash value limits of the association, upon request of the
485 policyholder or applicant for insurance.

486 Section 10. Subsection (2) of section 631.904, Florida
487 Statutes, is amended to read:

488 631.904 Definitions.—As used in this part, the term:

489 (2) "Covered claim" means an unpaid claim, including a
490 claim for return of unearned premiums, which arises out of, is
491 within the coverage of, and is not in excess of the applicable
492 limits of, an insurance policy to which this part applies, which
493 policy was issued by an insurer and which claim is made on

601-04796-10

20102232c2

494 behalf of a claimant or insured who was a resident of this state
495 at the time of the injury. The term "covered claim" includes
496 unpaid claims under any employer liability coverage of a
497 workers' compensation policy limited to the lesser of \$300,000
498 and the limits of the policy. The term "covered claim" does not
499 include any amount sought as a return of premium under any
500 retrospective rating plan; any amount due any reinsurer,
501 insurer, insurance pool, or underwriting association, as
502 subrogation recoveries or otherwise; any claim that would
503 otherwise be a covered claim that has been rejected by any other
504 state guaranty fund on the grounds that the insured's net worth
505 is greater than that allowed under that state's guaranty fund or
506 liquidation law, except this exclusion from the definition of
507 covered claim shall not apply to employers who, prior to April
508 30, 2004, entered into an agreement with the corporation
509 preserving the employer's right to seek coverage of claims
510 rejected by another state's guaranty fund; or any return of
511 premium resulting from a policy that was not in force on the
512 date of the final order of liquidation. Member insurers have no
513 right of subrogation against the insured of any insolvent
514 insurer. This provision shall be applied retroactively to cover
515 claims of an insolvent self-insurance fund resulting from
516 accidents or losses incurred prior to January 1, 1994,
517 regardless of the date the petition in circuit court was filed
518 alleging insolvency and the date the court entered an order
519 appointing a receiver.

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