

HB 1007

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1 A bill to be entitled
2 An act relating to insurer insolvency; creating s.
3 631.2715, F.S.; providing for Insurance Risk Management
4 Trust Fund coverage for specified officers, employees,
5 agents, and other representatives of the Department of
6 Financial Services for liability under specified federal
7 laws relating to receiverships; providing for retroactive
8 application; amending s. 631.54, F.S.; providing that a
9 covered claim for purposes of specified guaranty
10 provisions does not include a claim rejected by another
11 state's guaranty fund or liquidation law on the basis that
12 it constitutes a claim under a policy issued by an
13 insolvent insurer with a deductible or self-insured
14 retention; amending s. 631.56, F.S.; providing that any
15 board member of the Florida Insurance Guaranty Association
16 representing an insurer in receivership shall be
17 terminated as a board member; specifying a termination
18 date; amending s. 631.57, F.S.; providing for actions by
19 the Florida Insurance Guaranty Association to obtain
20 custody and control of records and data related to an
21 insolvent insurer; providing for award of attorney's fees
22 and costs in certain circumstances; providing for
23 construction with other rights and remedies; amending s.
24 631.904, F.S.; providing that a covered claim for purposes
25 of specified guaranty provisions does not include a claim
26 rejected by another state's guaranty fund or liquidation
27 law on the basis that it constitutes a claim under a
28 policy issued by an insolvent insurer with a deductible or

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29 self-insured retention; amending s. 631.912, F.S.;

30 providing that any board member of the Florida Workers'

31 Compensation Insurance Guaranty Association who is

32 employed by, or has a material relationship with, an

33 insurer in receivership shall be terminated as a board

34 member; specifying a termination date; amending s.

35 631.913, F.S.; providing that a covered claim for purposes

36 of specified guaranty provisions does not include a claim

37 rejected by another state's guaranty fund or liquidation

38 law on the basis that it constitutes a claim under a

39 policy issued by an insolvent insurer with a deductible or

40 self-insured retention; providing an effective date.

41

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

43

44 Section 1. Section 631.2715, Florida Statutes, is created

45 to read:

46 631.2715 Liability under federal priority of claims law.—

47 The Insurance Risk Management Trust Fund shall cover department

48 officers, employees, agents, and other representatives for any

49 liability under the federal act relating to priority of claims,

50 31 U.S.C. s. 3713, for any action taken by them in the

51 performance of their powers and duties under this chapter. This

52 section applies to any receivership commenced after July 1,

53 1957.

54 Section 2. Subsection (3) of section 631.54, Florida

55 Statutes, is amended to read:

56 631.54 Definitions.—As used in this part:

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57 (3) "Covered claim" means an unpaid claim, including one
58 of unearned premiums, which arises out of, and is within the
59 coverage, and not in excess of, the applicable limits of an
60 insurance policy to which this part applies, issued by an
61 insurer, if such insurer becomes an insolvent insurer and the
62 claimant or insured is a resident of this state at the time of
63 the insured event or the property from which the claim arises is
64 permanently located in this state. For entities other than
65 individuals, the residence of a claimant, insured, or
66 policyholder is the state in which the entity's principal place
67 of business is located at the time of the insured event.

68 "Covered claim" does ~~shall~~ not include:

69 (a) Any amount due any reinsurer, insurer, insurance pool,
70 or underwriting association, sought directly or indirectly
71 through a third party, as subrogation, contribution,
72 indemnification, or otherwise; or

73 (b) Any claim that would otherwise be a covered claim
74 under this part that has been rejected by any other state
75 guaranty fund on the grounds that an insured's net worth is
76 greater than that allowed under that state's guaranty law, or
77 that was rejected by another state's guaranty fund or
78 liquidation law on the basis that it constitutes a claim under a
79 policy issued by an insolvent insurer with a deductible or self-
80 insured retention. Member insurers ~~shall~~ have no right of
81 subrogation, contribution, indemnification, or otherwise, sought
82 directly or indirectly through a third party, against the
83 insured of any insolvent member.

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84 Section 3. Subsection (4) is added to section 631.56,
 85 Florida Statutes, to read:

86 631.56 Board of directors.—

87 (4) Any board member representing an insurer in
 88 receivership shall be terminated as a board member, effective as
 89 of the date of the entry of the order of receivership.

90 Section 4. Subsection (2) of section 631.57, Florida
 91 Statutes, is amended to read:

92 631.57 Powers and duties of the association.—

93 (2) The association may:

94 (a) Employ or retain such persons as are necessary to
 95 handle claims and perform other duties of the association;

96 (b) Borrow funds necessary to effect the purposes of this
 97 part in accord with the plan of operation;

98 (c) Sue or be sued, provided that service of process shall
 99 be made upon the person registered with the department as agent
 100 for the receipt of service of process; ~~and~~

101 (d) Negotiate and become a party to such contracts as are
 102 necessary to carry out the purpose of this part. Additionally,
 103 the association may enter into such contracts with a
 104 municipality, a county, or a legal entity created pursuant to s.
 105 163.01(7)(g) as are necessary in order for the municipality,
 106 county, or legal entity to issue bonds under s. 631.695. In
 107 connection with the issuance of any such bonds and the entering
 108 into of any such necessary contracts, the association may agree
 109 to such terms and conditions as the association deems necessary
 110 and proper; and

111 (e) Bring an action against any third-party administrator,

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112 agent, attorney, or other representative of the insolvent
113 insurer to obtain custody and control of all files, records, and
114 electronic data related to an insolvent company that are
115 appropriate or necessary for the association, or a similar
116 association in other states, to carry out its duties under this
117 part. In such a suit, the association has the absolute right
118 through emergency equitable relief to obtain custody and control
119 of all such claims information in the custody or control of such
120 third-party administrator, agent, attorney, or other
121 representative of the insolvent insurer, regardless of where
122 such claims information may be physically located. In bringing
123 such an action, the association is not subject to any defense,
124 possessory or nonpossessory lien, or other legal or equitable
125 ground whatsoever for refusal to surrender such claims
126 information that might be asserted against the liquidator of the
127 insolvent insurers. To the extent that litigation is required
128 for the association to obtain custody of the claims information
129 requested and it results in the relinquishment of claims
130 information to the association after refusal to provide the
131 information in response to a written demand, the court shall
132 award the association its costs, expenses, and reasonable
133 attorney's fees incurred in bringing the action. This paragraph
134 does not affect the rights and remedies that the custodian of
135 such claims information may have against the insolvent insurers,
136 so long as such rights and remedies do not conflict with the
137 rights of the association to custody and control of the claims
138 information under this part.

139 Section 5. Subsection (2) of section 631.904, Florida

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140 Statutes, is amended to read:

141 631.904 Definitions.—As used in this part, the term:

142 (2) "Covered claim" means an unpaid claim, including a
143 claim for return of unearned premiums, which arises out of, is
144 within the coverage of, and is not in excess of the applicable
145 limits of, an insurance policy to which this part applies, which
146 policy was issued by an insurer and which claim is made on
147 behalf of a claimant or insured who was a resident of this state
148 at the time of the injury. The term "covered claim" includes
149 unpaid claims under any employer liability coverage of a
150 workers' compensation policy limited to the lesser of \$300,000
151 or the limits of the policy. The term "covered claim" does not
152 include any amount sought as a return of premium under any
153 retrospective rating plan; any amount due any reinsurer,
154 insurer, insurance pool, or underwriting association, as
155 subrogation recoveries or otherwise; any claim that would
156 otherwise be a covered claim that has been rejected by any other
157 state guaranty fund on the grounds that the insured's net worth
158 is greater than that allowed under that state's guaranty fund or
159 liquidation law, or that was rejected by another state's
160 guaranty fund or liquidation law on the basis that it
161 constitutes a claim under a policy issued by an insolvent
162 insurer with a deductible or self-insured retention, except this
163 exclusion from the definition of covered claim does ~~shall~~ not
164 apply to employers who, prior to April 30, 2004, entered into an
165 agreement with the corporation preserving the employer's right
166 to seek coverage of claims rejected by another state's guaranty
167 fund; or any return of premium resulting from a policy that was

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

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168 not in force on the date of the final order of liquidation.
 169 Member insurers have no right of subrogation against the insured
 170 of any insolvent insurer. This provision applies ~~shall be~~
 171 ~~applied~~ retroactively to cover claims of an insolvent self-
 172 insurance fund resulting from accidents or losses incurred prior
 173 to January 1, 1994, regardless of the date the petition in
 174 circuit court was filed alleging insolvency and the date the
 175 court entered an order appointing a receiver.

176 Section 6. Subsection (3) is added to section 631.912,
 177 Florida Statutes, to read:

178 631.912 Board of directors.—

179 (3) Any board member who is employed by, or has a material
 180 relationship with, an insurer in receivership shall be
 181 terminated as a board member, effective as of the date of the
 182 entry of the order of receivership.

183 Section 7. Paragraph (e) is added to subsection (3) of
 184 section 631.913, Florida Statutes, to read:

185 631.913 Powers and duties of the corporation.—

186 (3) The corporation may:

187 (e) Bring an action against any third-party administrator,
 188 agent, attorney, or other representative of the insolvent
 189 insurer to obtain custody and control of all files, records, and
 190 electronic data related to an insolvent company that are
 191 appropriate or necessary for the association, or a similar
 192 association in other states, to carry out its duties under this
 193 part. In such a suit, the association has the absolute right
 194 through emergency equitable relief to obtain custody and control
 195 of all such claims information in the custody or control of such

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196 third-party administrator, agent, attorney, or other
197 representative of the insolvent insurer, regardless of where
198 such claims information may be physically located. In bringing
199 such an action, the association is not subject to any defense,
200 possessory or nonpossessory lien, or other legal or equitable
201 ground whatsoever for refusal to surrender such claims
202 information that might be asserted against the liquidator of the
203 insolvent insurers. To the extent that litigation is required
204 for the association to obtain custody of the claims information
205 requested and it results in the relinquishment of claims
206 information to the association after refusal to provide the
207 information in response to a written demand, the court shall
208 award the association its costs, expenses, and reasonable
209 attorney's fees incurred in bringing the action. This paragraph
210 does not affect the rights and remedies that the custodian of
211 such claims information may have against the insolvent insurers,
212 so long as such rights and remedies do not conflict with the
213 rights of the association to custody and control of the claims
214 information under this part.

215 Section 8. This act shall take effect July 1, 2011.