

1                   A bill to be entitled  
2     An act relating to insurer insolvency; amending s.  
3     631.152, F.S.; authorizing the Department of Financial  
4     Services to request appointment as ancillary receiver if  
5     necessary for obtaining records to adjudicate covered  
6     claims; providing for the reimbursement of specified costs  
7     associated with ancillary delinquency proceedings;  
8     creating s. 631.2715, F.S.; providing for State Risk  
9     Management Trust Fund coverage for specified officers,  
10    employees, agents, and other representatives of the  
11    Department of Financial Services for liability under  
12    specified federal laws relating to receiverships; amending  
13    s. 631.391, F.S.; providing liability to persons who fail  
14    to cooperate in the providing of records; amending s.  
15    631.54, F.S.; providing that a covered claim for purposes  
16    of specified guaranty provisions does not include a claim  
17    rejected or denied by another state's guaranty fund based  
18    upon that state's statutory exclusions; amending s.  
19    631.56, F.S.; providing that any board member of the  
20    Florida Insurance Guaranty Association representing an  
21    insurer in receivership shall be terminated as a board  
22    member; specifying a termination date; amending s.  
23    631.904, F.S.; providing that a covered claim for purposes  
24    of specified guaranty provisions does not include a claim  
25    rejected or denied by another state's guaranty fund based  
26    upon that state's statutory exclusions; amending s.  
27    631.912, F.S.; providing that any board member of the  
28    Florida Workers' Compensation Insurance Guaranty

29 Association who is employed by, or has a material  
 30 relationship with, an insurer in receivership shall be  
 31 terminated as a board member; specifying a termination  
 32 date; providing an effective date.

33  
 34 Be It Enacted by the Legislature of the State of Florida:

35  
 36 Section 1. Section 631.152, Florida Statutes, is amended  
 37 to read:

38 631.152 Conduct of delinquency proceeding; foreign  
 39 insurers.—

40 (1) Whenever under this chapter an ancillary receiver is  
 41 to be appointed in a delinquency proceeding for an insurer not  
 42 domiciled in this state, the court shall appoint the department  
 43 as ancillary receiver. The department shall file a petition  
 44 requesting the appointment on the grounds set forth in s.

45 631.091:

46 (a) If it finds that there are sufficient assets of the  
 47 insurer located in this state to justify the appointment of an  
 48 ancillary receiver; ~~or~~

49 (b) If 10 or more persons resident in this state having  
 50 claims against such insurer file a petition with the department  
 51 or office requesting the appointment of such ancillary receiver;  
 52 or—

53 (c) If it finds it is necessary to obtain records to  
 54 adjudicate the covered claims of Florida policyholders.

55 (2) The domiciliary receiver for the purpose of  
 56 liquidating an insurer domiciled in a reciprocal state shall be

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57 | vested by operation of law with the title to all of the property  
58 | (except statutory deposits, special statutory deposits, and  
59 | property located in this state subject to a security interest),  
60 | contracts, and rights of action, and all of the books and  
61 | records of the insurer located in this state, and it shall have  
62 | the immediate right to recover balances due from local agents  
63 | and to obtain possession of any books and records of the insurer  
64 | found in this state. It shall also be entitled to recover the  
65 | property subject to a security interest, statutory deposits, and  
66 | special statutory deposits of the insurer located in this state,  
67 | except that upon the appointment of an ancillary receiver in  
68 | this state, the ancillary receiver shall during the ancillary  
69 | receivership proceeding have the sole right to recover such  
70 | other assets. The ancillary receiver shall, as soon as  
71 | practicable, liquidate from their respective securities those  
72 | special deposit claims and secured claims which are proved and  
73 | allowed in the ancillary proceeding in this state, and shall pay  
74 | the necessary expenses of the proceeding. All remaining assets  
75 | it shall promptly transfer to the domiciliary receiver. Subject  
76 | to the foregoing provisions, the ancillary receiver and its  
77 | agents shall have the same powers and be subject to the same  
78 | duties with respect to the administration of such assets as a  
79 | receiver of an insurer domiciled in this state.

80 |       (3) The domiciliary receiver of an insurer domiciled in a  
81 | reciprocal state may sue in this state to recover any assets of  
82 | such insurer to which it may be entitled under the laws of this  
83 | state.

84 |       (4) Section 631.141(7)(b) applies to ancillary delinquency

85 proceedings opened for the purpose of obtaining records  
 86 necessary to adjudicate the covered claims of Florida  
 87 policyholders.

88 Section 2. Section 631.2715, Florida Statutes, is created  
 89 to read:

90 631.2715 Liability under federal priority of claims law.-  
 91 The State Risk Management Trust Fund shall cover department  
 92 officers, employees, agents, and other representatives for any  
 93 liability under the federal act relating to priority of claims,  
 94 31 U.S.C. s. 3713, for any action taken by them in the  
 95 performance of their powers and duties under this chapter.

96 Section 3. Subsection (6) is added to section 631.391,  
 97 Florida Statutes, to read:

98 631.391 Cooperation of officers and employees.-

99 (6) Any person referred to in subsection (1) who refuses  
 100 to cooperate in providing records upon the request of the  
 101 department or office is liable for any penalties, fines, or  
 102 other costs assessed against the guaranty association or the  
 103 receiver that result from the refusal or delay to provide  
 104 records.

105 Section 4. Subsection (3) of section 631.54, Florida  
 106 Statutes, is amended to read:

107 631.54 Definitions.-As used in this part:

108 (3) "Covered claim" means an unpaid claim, including one  
 109 of unearned premiums, which arises out of, and is within the  
 110 coverage, and not in excess of, the applicable limits of an  
 111 insurance policy to which this part applies, issued by an  
 112 insurer, if such insurer becomes an insolvent insurer and the

113 claimant or insured is a resident of this state at the time of  
 114 the insured event or the property from which the claim arises is  
 115 permanently located in this state. For entities other than  
 116 individuals, the residence of a claimant, insured, or  
 117 policyholder is the state in which the entity's principal place  
 118 of business is located at the time of the insured event.

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

120 (a) Any amount due any reinsurer, insurer, insurance pool,  
 121 or underwriting association, sought directly or indirectly  
 122 through a third party, as subrogation, contribution,  
 123 indemnification, or otherwise; or

124 (b) Any claim that would otherwise be a covered claim  
 125 under this part that has been rejected or denied by any other  
 126 state guaranty fund based upon that state's statutory  
 127 exclusions, including, but not limited to, those based on  
 128 coverage, policy type, or an insured's net worth ~~on the grounds~~  
 129 ~~that an insured's net worth is greater than that allowed under~~  
 130 ~~that state's guaranty law.~~ Member insurers ~~shall~~ have no right  
 131 of subrogation, contribution, indemnification, or otherwise,  
 132 sought directly or indirectly through a third party, against the  
 133 insured of any insolvent member.

134 Section 5. Subsection (4) is added to section 631.56,  
 135 Florida Statutes, to read:

136 631.56 Board of directors.—

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

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140 Section 6. Subsection (2) of section 631.904, Florida  
141 Statutes, is amended to read:

142 631.904 Definitions.—As used in this part, the term:

143 (2) "Covered claim" means an unpaid claim, including a  
144 claim for return of unearned premiums, which arises out of, is  
145 within the coverage of, and is not in excess of the applicable  
146 limits of, an insurance policy to which this part applies, which  
147 policy was issued by an insurer and which claim is made on  
148 behalf of a claimant or insured who was a resident of this state  
149 at the time of the injury. The term "covered claim" includes  
150 unpaid claims under any employer liability coverage of a  
151 workers' compensation policy limited to the lesser of \$300,000  
152 or the limits of the policy. The term "covered claim" does not  
153 include any amount sought as a return of premium under any  
154 retrospective rating plan; any amount due any reinsurer,  
155 insurer, insurance pool, or underwriting association, as  
156 subrogation recoveries or otherwise; any claim that would  
157 otherwise be a covered claim that has been rejected or denied by  
158 any other state guaranty fund based upon that state's statutory  
159 exclusions, including, but not limited to, those based on  
160 coverage, policy type, or an insured's net worth ~~on the grounds~~  
161 ~~that the insured's net worth is greater than that allowed under~~  
162 ~~that state's guaranty fund or liquidation law~~, 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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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 7. 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 8. This act shall take effect July 1, 2011.