

1 A bill to be entitled
2 An act relating to insurer insolvency; amending s.
3 215.5595, F.S., relating to the Insurance Capital Build-Up
4 Incentive Program; providing for renegotiation of surplus
5 notes issued before a specified date; providing for an
6 exemption from certain premium-to-surplus ratios in
7 certain circumstances; amending s. 624.610, F.S.; revising
8 surplus requirements for assuming insurers in connection
9 with reinsurance credits; specifying rating agencies that
10 may rate such assuming insurers; creating s. 631.400,
11 F.S.; providing for rehabilitation plans for title
12 insurers; providing that each title insurer doing business
13 in this state is liable for an assessment for claims
14 against title insurers ordered into rehabilitation;
15 providing for an annual assessment upon request of a
16 receiver; providing for emergency assessments in certain
17 circumstances; providing limits on the amount of an
18 assessment; providing that assessments are considered an
19 asset of the estate and subject to specified provisions;
20 providing for use of assessment proceeds; providing for
21 availability of information concerning unpaid claims;
22 specifying circumstances for release of title insurers
23 from rehabilitation; prohibiting a title insurer in
24 rehabilitation from issuing new policies until released
25 from rehabilitation and permission to issue new policies
26 granted; providing that officers, directors, and
27 shareholders of a title insurer who served in that
28 capacity within the 2-year period prior to the date the

29 | insurer was ordered into rehabilitation or liquidation may
30 | not thereafter serve in that capacity unless the officer,
31 | director, and shareholder meets specified criteria;
32 | creating s. 631.401, F.S.; providing for surcharges on
33 | title insurance policies to collect the amount needed to
34 | cover an assessment for an insolvent insurer; providing
35 | for a maximum period for a surcharge; providing a maximum
36 | for a surcharge; providing for responsibility for payment
37 | of a surcharge; providing for collection of surcharges by
38 | a title insurer doing business in the state writing no
39 | premiums in the prior calendar year; providing for
40 | remission and collection of surcharges within a specified
41 | period; specifying a limit on the amount in surcharges
42 | that may be retained by a title insurer; requiring
43 | notification when the collection of an assessment is
44 | completed; requiring an accounting of assessments paid and
45 | surcharges collected; providing for disposition of
46 | surcharges collected in excess of the amount assessed;
47 | amending s. 631.152, F.S.; authorizing the Department of
48 | Financial Services to request appointment as ancillary
49 | receiver if necessary for obtaining records to adjudicate
50 | covered claims; providing for the reimbursement of
51 | specified costs associated with ancillary delinquency
52 | proceedings; creating s. 631.2715, F.S.; providing for
53 | State Risk Management Trust Fund coverage for specified
54 | officers, employees, agents, and other representatives of
55 | the Department of Financial Services for liability under
56 | specified federal laws relating to receiverships; amending

57 s. 631.391, F.S.; providing liability to persons who fail
 58 to cooperate in the providing of records; amending s.
 59 631.54, F.S.; providing that a covered claim for purposes
 60 of specified guaranty provisions does not include a claim
 61 rejected or denied by another state's guaranty fund based
 62 upon that state's statutory exclusions; amending s.
 63 631.56, F.S.; providing that any board member of the
 64 Florida Insurance Guaranty Association representing an
 65 insurer in receivership shall be terminated as a board
 66 member; specifying a termination date; amending s.
 67 631.904, F.S.; providing that a covered claim for purposes
 68 of specified guaranty provisions does not include a claim
 69 rejected or denied by another state's guaranty fund based
 70 upon that state's statutory exclusions; amending s.
 71 631.912, F.S.; providing that any board member of the
 72 Florida Workers' Compensation Insurance Guaranty
 73 Association who is employed by, or has a material
 74 relationship with, an insurer in receivership shall be
 75 terminated as a board member; specifying a termination
 76 date; amending s. 631.717, F.S.; providing that specified
 77 provisions relieving the Florida Life and Health Insurance
 78 Guaranty Association of liability for certain acts of a
 79 member insurer do not relieve the association of liability
 80 for valid insurance policy or contract claims if warranted
 81 after a specified review; providing an effective date.

82
 83 Be It Enacted by the Legislature of the State of Florida:
 84

85 Section 1. Subsection (11) of section 215.5595, Florida
 86 Statutes, is amended to read:

87 215.5595 Insurance Capital Build-Up Incentive Program.—

88 (11) For a surplus note issued under this section before
 89 January 1, 2011, the insurer may request that the board
 90 renegotiate terms of the note as provided in this subsection.
 91 The request must be submitted to the board by January 1, 2012.
 92 If the insurer agrees to accelerate the payment period of the
 93 note by at least 5 years, the board shall agree to exempt the
 94 insurer from the premium-to-surplus ratios required under
 95 paragraph (2) (d). If the insurer requesting the renegotiation
 96 agrees to an acceleration of the payment period of less than 5
 97 years, the board may, after consultation with the Office of
 98 Insurance Regulation, agree to an appropriate revision of the
 99 premium-to-surplus ratios required under paragraph (2) (d) for
 100 the remaining term of the note. However, the revised ratios may
 101 not be lower than a minimum writing ratio of net premium to
 102 surplus of at least 1:1, and alternatively, a minimum writing
 103 ratio of gross premium to surplus of at least 3:1 ~~On January 15,~~
 104 ~~2009, the State Board of Administration shall transfer to~~
 105 ~~Citizens Property Insurance Corporation any funds that have not~~
 106 ~~been committed or reserved for insurers approved to receive such~~
 107 ~~funds under the program, from the funds that were transferred~~
 108 ~~from Citizens Property Insurance Corporation in 2008-2009 for~~
 109 ~~such purposes.~~

110 Section 2. Paragraph (e) of subsection (3) of section
 111 624.610, Florida Statutes, is amended to read:

112 624.610 Reinsurance.—

- 113 (3)
- 114 (e) If the reinsurance is ceded to an assuming insurer not
115 meeting the requirements of paragraph (a), paragraph (b),
116 paragraph (c), or paragraph (d), the commissioner may allow
117 credit, but only if the assuming insurer holds surplus in excess
118 of \$250 ~~\$100~~ million and has a secure financial strength rating
119 from at least two ~~nationally recognized~~ statistical rating
120 organizations deemed acceptable by the commissioner as having
121 experience and expertise in rating insurers doing business in
122 Florida, including, but not limited to, Standard & Poor's,
123 Moody's Investors Service, Fitch Ratings, A.M. Best Company, and
124 Demotech. In determining whether credit should be allowed, the
125 commissioner shall consider the following:
- 126 1. The domiciliary regulatory jurisdiction of the assuming
127 insurer.
- 128 2. The structure and authority of the domiciliary
129 regulator with regard to solvency regulation requirements and
130 the financial surveillance of the reinsurer.
- 131 3. The substance of financial and operating standards for
132 reinsurers in the domiciliary jurisdiction.
- 133 4. The form and substance of financial reports required to
134 be filed by the reinsurers in the domiciliary jurisdiction or
135 other public financial statements filed in accordance with
136 generally accepted accounting principles.
- 137 5. The domiciliary regulator's willingness to cooperate
138 with United States regulators in general and the office in
139 particular.
- 140 6. The history of performance by reinsurers in the

141 domiciliary jurisdiction.

142 7. Any documented evidence of substantial problems with
 143 the enforcement of valid United States judgments in the
 144 domiciliary jurisdiction.

145 8. Any other matters deemed relevant by the commissioner.
 146 The commissioner shall give appropriate consideration to insurer
 147 group ratings that may have been issued. The commissioner may,
 148 in lieu of granting full credit under this subsection, reduce
 149 the amount required to be held in trust under paragraph (c).

150 Section 3. Section 631.400, Florida Statutes, is created
 151 to read:

152 631.400 Rehabilitation of title insurer.-

153 (1) After the entry of an order of rehabilitation, the
 154 receiver shall review the condition of the insurer and file a
 155 plan of rehabilitation for approval with the court. The plan of
 156 rehabilitation shall provide:

157 (a) That policies on real property in this state issued by
 158 the title insurer in rehabilitation shall remain in force unless
 159 the receiver determines the assessment capacity provided by this
 160 section is insufficient to pay claims in the ordinary course of
 161 business.

162 (b) That policies on real property located outside the
 163 this state may be canceled as of a date provided by the receiver
 164 and approved by the court if the state in which the property is
 165 located does not have statutory provisions to pay future losses
 166 on those policies.

167 (c) A claims filing deadline for policies on real property
 168 located outside this state which are canceled under paragraph

169 (b) .

170 (d) A proposed percentage of the remaining estate assets
171 to fund out-of-state claims where policies have been canceled,
172 with any unused funds being returned to the general assets of
173 the estate.

174 (e) A proposed percentage of the remaining estate assets
175 to fund out-of-state claims where policies remain in force.

176 (f) That the funds allocated to pay claims on policies
177 located outside of this state shall be based on the pro rata
178 share of premiums written in each state over each of the 5
179 calendar years preceding the date of an order of rehabilitation.

180 (2) As a condition of doing business in this state, each
181 title insurer shall be liable for an assessment to pay all
182 unpaid title insurance claims and expenses of administering and
183 settling those claims on real property in this state for any
184 title insurer that is ordered into rehabilitation.

185 (3) The office shall order an assessment if requested by
186 the receiver on an annual basis in an amount that the receiver
187 deems sufficient for the payment of known claims, loss
188 adjustment expenses, and the cost of administration of the
189 rehabilitation expenses. The receiver shall consider the
190 remaining assets of the insurer in receivership when making its
191 request to the office. Annual assessments may be made until no
192 more policies of the title insurer in rehabilitation are in
193 force or the potential future liability has been satisfied. The
194 office may exempt or limit the assessment of a title insurer if
195 such assessment would result in a reduction to surplus as to
196 policyholders below the minimum required to maintain the

197 insurer's certificate of authority in any state.

198 (4) Assessments shall be based on the total of the direct
 199 title insurance premiums written in this state as reported to
 200 the office for the most recent calendar year. Each title insurer
 201 doing business in this state shall be assessed on a pro rata
 202 share basis of the total direct title insurance premiums written
 203 in this state.

204 (5) Assessments shall be paid to the receiver within 90
 205 days after notice of the assessment or pursuant to a quarterly
 206 installment plan approved by the receiver. Any insurer that
 207 elects to pay an assessment on an installment plan shall also
 208 pay a financing charge to be determined by the receiver.

209 (6) The office shall order an emergency assessment if
 210 requested by the receiver. The total of any emergency
 211 assessment, when added to any annual assessment in a single
 212 calendar year, may not exceed the limitation in subsection (7).

213 (7) No title insurer shall be required to pay an
 214 assessment in any one year that exceeds 3 percent of its surplus
 215 to policyholders as of the end of the previous calendar year or
 216 more than 10 percent of its surplus to policyholders over any
 217 consecutive 5-year period. The 10 percent limitation shall be
 218 calculated as the sum of the percentages of surplus to
 219 policyholders assessed in each of those 5 years.

220 (8) Assessments and emergency assessments once ordered by
 221 the office shall be considered assets of the estate and subject
 222 to the provisions of s. 631.154.

223 (9) In an effort to keep in force the policies on real
 224 property located in this state issued by the title insurer in

225 rehabilitation, the receiver may use the proceeds of an
 226 assessment to acquire reinsurance or otherwise provide for the
 227 assumption of policy obligations by another insurer.

228 (10) The receiver shall make available information
 229 regarding unpaid claims on a quarterly basis.

230 (11) A title insurer in rehabilitation may not be released
 231 from rehabilitation until all of the assessed insurers have
 232 recovered the amount assessed either through surcharges
 233 collected pursuant to s. 631.401 or payments from the insurer in
 234 rehabilitation.

235 (12) A title insurer in rehabilitation for which an
 236 assessment has been ordered pursuant to this section may not
 237 issue any new policies until released from rehabilitation and it
 238 shall have received approval from the office to resume issuing
 239 policies.

240 (13) Officers, directors, and shareholders of a title
 241 insurer who served in that capacity within the 2-year period
 242 prior to the date the title insurer was ordered into
 243 rehabilitation or liquidation may not thereafter serve as an
 244 officer, director, or shareholder of an insurer authorized in
 245 this state unless the officer, director, or shareholder
 246 demonstrates to the office for the 2-year period immediately
 247 preceding the receivership that:

248 (a) His or her personal actions or omissions were not a
 249 significant contributing cause to the receivership;

250 (b) He or she did not willfully violate any order of the
 251 office;

252 (c) He or she did not receive directly or indirectly any

253 distribution of funds from the insurer in excess of amounts
 254 authorized in writing by the office;

255 (d) The financial statements filed with the office were
 256 true and correct statements of the title insurer's financial
 257 contribution;

258 (e) He or she did not engage in any business practices
 259 which were hazardous to the policyholders, creditors, or the
 260 public; and

261 (f) He or she at all times acted in the best interests of
 262 the title insurer.

263 Section 4. Section 631.401, Florida Statutes, is created
 264 to read:

265 631.401 Recovery of assessments and assumed policy
 266 obligations.—

267 (1) Upon the making of any assessment allowed by s.
 268 631.400, the office shall order a surcharge on each title
 269 insurance policy thereafter issued insuring an interest in real
 270 property in this state. The office shall set the per transaction
 271 surcharge at an amount estimated to generate sufficient funds to
 272 recover the amount assessed over a period of not more than 7
 273 years. The amount of the surcharge ordered under this section
 274 may not exceed \$25 per transaction for each impaired title
 275 insurer. If additional surcharges are occasioned by additional
 276 title insurers becoming impaired, the office shall order an
 277 increase in the amount of the surcharge to reflect the aggregate
 278 surcharge.

279 (2) The party responsible for payment of title insurance
 280 premium, unless otherwise agreed between the parties, shall be

281 responsible for the payment of the surcharge. No surcharge will
282 be due or owing as to any policy of title insurance issued at
283 the simultaneous issue rate. For all other purposes, the
284 surcharge will be considered a governmental assessment to be
285 separately stated on any settlement statement. The surcharge is
286 not subject to premium tax or reserve requirements under chapter
287 625.

288 (3) Title insurers doing business in this state writing no
289 premiums in the prior calendar year shall collect the same per
290 transaction surcharge as provided by this section. Such
291 surcharge collected shall be paid to the receiver within 60 days
292 after receipt from the title agent or agency.

293 (4) Each title insurance agent, agency, or direct title
294 operation shall collect the surcharge as to each title insurance
295 policy written and remit those surcharges along with the
296 policies and premiums within 60 days to the title insurer on
297 whom the policy was written.

298 (5) A title insurer may not retain more in surcharges for
299 an ordered assessment than the amount of assessment that title
300 insurer paid.

301 (6) Each title insurer collecting surcharges shall
302 promptly notify the office when it has collected surcharges
303 equal to the amount of the assessment paid pursuant to s.
304 631.400. The office shall notify all companies, including those
305 collecting surcharges as required by subsection (3), to cease
306 collecting surcharges when notified that all assessments have
307 been recovered.

308 (7) In conjunction with the filing of each quarterly

309 financial statement, each title insurer shall provide the office
 310 with an accounting of assessments paid and surcharges collected
 311 during the period. Any surcharges collected in excess of the
 312 amount assessed shall be paid to the Insurance Regulatory Trust
 313 Fund.

314 Section 5. Section 631.152, Florida Statutes, is amended
 315 to read:

316 631.152 Conduct of delinquency proceeding; foreign
 317 insurers.—

318 (1) Whenever under this chapter an ancillary receiver is
 319 to be appointed in a delinquency proceeding for an insurer not
 320 domiciled in this state, the court shall appoint the department
 321 as ancillary receiver. The department shall file a petition
 322 requesting the appointment on the grounds set forth in s.
 323 631.091:

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

327 (b) If 10 or more persons resident in this state having
 328 claims against such insurer file a petition with the department
 329 or office requesting the appointment of such ancillary receiver;
 330 or—

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

333 (2) The domiciliary receiver for the purpose of
 334 liquidating an insurer domiciled in a reciprocal state shall be
 335 vested by operation of law with the title to all of the property
 336 (except statutory deposits, special statutory deposits, and

337 | property located in this state subject to a security interest),
338 | contracts, and rights of action, and all of the books and
339 | records of the insurer located in this state, and it shall have
340 | the immediate right to recover balances due from local agents
341 | and to obtain possession of any books and records of the insurer
342 | found in this state. It shall also be entitled to recover the
343 | property subject to a security interest, statutory deposits, and
344 | special statutory deposits of the insurer located in this state,
345 | except that upon the appointment of an ancillary receiver in
346 | this state, the ancillary receiver shall during the ancillary
347 | receivership proceeding have the sole right to recover such
348 | other assets. The ancillary receiver shall, as soon as
349 | practicable, liquidate from their respective securities those
350 | special deposit claims and secured claims which are proved and
351 | allowed in the ancillary proceeding in this state, and shall pay
352 | the necessary expenses of the proceeding. All remaining assets
353 | it shall promptly transfer to the domiciliary receiver. Subject
354 | to the foregoing provisions, the ancillary receiver and its
355 | agents shall have the same powers and be subject to the same
356 | duties with respect to the administration of such assets as a
357 | receiver of an insurer domiciled in this state.

358 | (3) The domiciliary receiver of an insurer domiciled in a
359 | reciprocal state may sue in this state to recover any assets of
360 | such insurer to which it may be entitled under the laws of this
361 | state.

362 | (4) Section 631.141(7)(b) applies to ancillary delinquency
363 | proceedings opened for the purpose of obtaining records
364 | necessary to adjudicate the covered claims of Florida

365 policyholders.

366 Section 6. Section 631.2715, Florida Statutes, is created
367 to read:

368 631.2715 Liability under federal priority of claims law.-
369 The State Risk Management Trust Fund shall cover department
370 officers, employees, agents, and other representatives for any
371 liability under the federal act relating to priority of claims,
372 31 U.S.C. s. 3713, for any action taken by them in the
373 performance of their powers and duties under this chapter.

374 Section 7. Subsection (6) is added to section 631.391,
375 Florida Statutes, to read:

376 631.391 Cooperation of officers and employees.-

377 (6) Any person referred to in subsection (1) who refuses
378 to cooperate in providing records upon the request of the
379 department or office is liable for any penalties, fines, or
380 other costs assessed against the guaranty association or the
381 receiver that result from the refusal or delay to provide
382 records.

383 Section 8. Subsection (3) of section 631.54, Florida
384 Statutes, is amended to read:

385 631.54 Definitions.-As used in this part:

386 (3) "Covered claim" means an unpaid claim, including one
387 of unearned premiums, which arises out of, and is within the
388 coverage, and not in excess of, the applicable limits of an
389 insurance policy to which this part applies, issued by an
390 insurer, if such insurer becomes an insolvent insurer and the
391 claimant or insured is a resident of this state at the time of
392 the insured event or the property from which the claim arises is

393 permanently located in this state. For entities other than
 394 individuals, the residence of a claimant, insured, or
 395 policyholder is the state in which the entity's principal place
 396 of business is located at the time of the insured event.

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

398 (a) Any amount due any reinsurer, insurer, insurance pool,
 399 or underwriting association, sought directly or indirectly
 400 through a third party, as subrogation, contribution,
 401 indemnification, or otherwise; or

402 (b) Any claim that would otherwise be a covered claim
 403 under this part that has been rejected or denied by any other
 404 state guaranty fund based upon that state's statutory
 405 exclusions, including, but not limited to, those based on
 406 coverage, policy type, or an insured's net worth ~~on the grounds~~
 407 ~~that an insured's net worth is greater than that allowed under~~
 408 ~~that state's guaranty law.~~ Member insurers ~~shall~~ have no right
 409 of subrogation, contribution, indemnification, or otherwise,
 410 sought directly or indirectly through a third party, against the
 411 insured of any insolvent member.

412 Section 9. Subsection (4) is added to section 631.56,
 413 Florida Statutes, to read:

414 631.56 Board of directors.—

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

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

420 631.904 Definitions.—As used in this part, the term:

421 (2) "Covered claim" means an unpaid claim, including a
422 claim for return of unearned premiums, which arises out of, is
423 within the coverage of, and is not in excess of the applicable
424 limits of, an insurance policy to which this part applies, which
425 policy was issued by an insurer and which claim is made on
426 behalf of a claimant or insured who was a resident of this state
427 at the time of the injury. The term "covered claim" includes
428 unpaid claims under any employer liability coverage of a
429 workers' compensation policy limited to the lesser of \$300,000
430 or the limits of the policy. The term "covered claim" does not
431 include any amount sought as a return of premium under any
432 retrospective rating plan; any amount due any reinsurer,
433 insurer, insurance pool, or underwriting association, as
434 subrogation recoveries or otherwise; any claim that would
435 otherwise be a covered claim that has been rejected or denied by
436 any other state guaranty fund based upon that state's statutory
437 exclusions, including, but not limited to, those based on
438 coverage, policy type, or an insured's net worth ~~on the grounds~~
439 ~~that the insured's net worth is greater than that allowed under~~
440 ~~that state's guaranty fund or liquidation law~~, except this
441 exclusion from the definition of covered claim does ~~shall~~ not
442 apply to employers who, prior to April 30, 2004, entered into an
443 agreement with the corporation preserving the employer's right
444 to seek coverage of claims rejected by another state's guaranty
445 fund; or any return of premium resulting from a policy that was
446 not in force on the date of the final order of liquidation.
447 Member insurers have no right of subrogation against the insured
448 of any insolvent insurer. This provision applies ~~shall be~~

449 ~~applied~~ retroactively to cover claims of an insolvent self-
450 insurance fund resulting from accidents or losses incurred prior
451 to January 1, 1994, regardless of the date the petition in
452 circuit court was filed alleging insolvency and the date the
453 court entered an order appointing a receiver.

454 Section 11. Subsection (3) is added to section 631.912,
455 Florida Statutes, to read:

456 631.912 Board of directors.—

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

461 Section 12. Subsection (11) of section 631.717, Florida
462 Statutes, is amended to read:

463 631.717 Powers and duties of the association.—

464 (11) The association shall not be liable for any civil
465 action under s. 624.155 arising from any acts alleged to have
466 been committed by a member insurer prior to its liquidation.
467 This subsection does not affect the association's obligation to
468 pay valid insurance policy or contract claims if warranted after
469 its independent de novo review of the policies, contracts, and
470 claims presented to it, whether domestic or foreign, after a
471 Florida domestic rehabilitation or a liquidation ; ~~however, this~~
472 ~~subsection does not affect the association's obligation to pay~~
473 ~~valid claims presented to it.~~

474 Section 13. This act shall take effect July 1, 2011.