

## ENROLLED

CS/HB 1007, Engrossed 1

2011 Legislature

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

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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

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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:  
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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.—

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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

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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

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(b) .

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

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

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

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

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

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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



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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

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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

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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

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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

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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

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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

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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:

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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~~



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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.