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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/22/2011	.	
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	.	

The Committee on Banking and Insurance (Bennett) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

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

631.152 Conduct of delinquency proceeding; foreign
insurers.-

(1) If ~~Whenever under this chapter~~ an ancillary receiver is
to be appointed under this chapter in a delinquency proceeding
for an insurer not domiciled in this state, the court shall
appoint the department as ancillary receiver. The department



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13 shall file a petition requesting the appointment on the grounds
14 set forth in s. 631.091:

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

18 (b) If 10 or more persons resident in this state having
19 claims against such insurer file a petition with the department
20 or office requesting the appointment of such ancillary receiver;
21 or

22 (c) If it finds it is necessary to obtain records to
23 adjudicate the covered claims of policyholders in this state.

24 (2) The domiciliary receiver for the purpose of liquidating
25 an insurer domiciled in a reciprocal state is ~~shall be~~ vested by
26 operation of law with the title to all of the property (except
27 statutory deposits, special statutory deposits, and property
28 located in this state subject to a security interest),
29 contracts, and rights of action, and all of the books and
30 records of the insurer located in this state, and ~~it~~ shall have
31 the immediate right to recover balances due from local agents
32 and ~~to~~ obtain possession of any books and records of the insurer
33 found in this state. The domiciliary receiver is ~~it shall~~ also
34 ~~be~~ entitled to recover the property subject to a security
35 interest, statutory deposits, and special statutory deposits of
36 the insurer located in this state, except that upon the
37 appointment of an ancillary receiver in this state, the
38 ancillary receiver shall during the ancillary receivership
39 proceeding have the sole right to recover such other assets. The
40 ancillary receiver shall, as soon as practicable, liquidate from
41 their respective securities those special deposit claims and



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42 secured claims which are proved and allowed in the ancillary
43 proceeding in this state, and ~~shall~~ pay the necessary expenses
44 of the proceeding. The ancillary receiver shall promptly
45 transfer all remaining assets ~~it shall promptly transfer~~ to the
46 domiciliary receiver. Subject to the foregoing provisions, the
47 ancillary receiver and its agents ~~shall~~ have the same powers and
48 are ~~be~~ subject to the same duties with respect to the
49 administration of such assets as a receiver of an insurer
50 domiciled in this state.

51 (3) The domiciliary receiver of an insurer domiciled in a
52 reciprocal state may sue in this state to recover any assets of
53 such insurer to which it may be entitled under the laws of this
54 state.

55 (4) The provisions of s. 631.141(7)(b) apply to ancillary
56 delinquency proceedings opened for the purpose of obtaining
57 records necessary to adjudicate the covered claims of
58 policyholders in this state.

59 Section 2. Section 631.2715, Florida Statutes, is created
60 to read:

61 631.2715 Liability under federal priority of claims law.—
62 The State Risk Management Trust Fund shall cover department
63 officers, employees, agents, and other representatives for any
64 liability under the federal act relating to priority of claims,
65 31 U.S.C. s. 3713, for any action taken by them in the
66 performance of their powers and duties under this chapter.

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

69 631.391 Cooperation of officers and employees.—

70 (6) Any person referred to in subsection (1) who refuses to



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71 cooperate in providing records upon the request of the
72 department or office is liable for any penalties, fines, or
73 other costs assessed against the guaranty association or the
74 receiver which result from the refusal or delay to provide
75 records.

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

78 631.54 Definitions.—As used in this part:

79 (3) "Covered claim" means an unpaid claim, including one of
80 unearned premiums, which arises out of, and is within the
81 coverage, and not in excess of, the applicable limits of an
82 insurance policy to which this part applies, issued by an
83 insurer, if such insurer becomes an insolvent insurer and the
84 claimant or insured is a resident of this state at the time of
85 the insured event or the property from which the claim arises is
86 permanently located in this state. For entities other than
87 individuals, the residence of a claimant, insured, or
88 policyholder is the state in which the entity's principal place
89 of business is located at the time of the insured event.

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

91 (a) Any amount due any reinsurer, insurer, insurance pool,
92 or underwriting association, sought directly or indirectly
93 through a third party, as subrogation, contribution,
94 indemnification, or otherwise; or

95 (b) Any claim that would otherwise be a covered claim under
96 this part that has been rejected or denied by any other state
97 guaranty fund based upon that state's statutory exclusions,
98 including, but not limited to, those based on coverage, policy
99 type, or an insured's net worth ~~on the grounds that an insured's~~



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100 ~~net worth is greater than that allowed under that state's~~
101 ~~guaranty law.~~ Member insurers shall have no right of
102 subrogation, contribution, indemnification, or otherwise, sought
103 directly or indirectly through a third party, against the
104 insured of any insolvent member.

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

107 631.56 Board of directors.—

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

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

113 631.904 Definitions.—As used in this part, the term:

114 (2) "Covered claim" means an unpaid claim, including a
115 claim for return of unearned premiums, which arises out of, is
116 within the coverage of, and is not in excess of the applicable
117 limits of, an insurance policy to which this part applies, which
118 policy was issued by an insurer and which claim is made on
119 behalf of a claimant or insured who was a resident of this state
120 at the time of the injury. The term ~~"covered claim"~~ includes
121 unpaid claims under any employer liability coverage of a
122 workers' compensation policy limited to the lesser of \$300,000
123 or the limits of the policy. The term ~~"covered claim"~~ does not
124 include any amount sought as a return of premium under any
125 retrospective rating plan; any amount due any reinsurer,
126 insurer, insurance pool, or underwriting association, as
127 subrogation recoveries or otherwise; any claim that would
128 otherwise be a covered claim that has been rejected or denied by



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129 any other state guaranty fund based upon that state's statutory
130 exclusions, including, but not limited to, those based on
131 coverage, policy type, or an insured's net worth ~~on the grounds~~
132 ~~that the insured's net worth is greater than that allowed under~~
133 ~~that state's guaranty fund or liquidation law,~~ except this
134 exclusion from the definition of covered claim does ~~shall~~ not
135 apply to employers who, before ~~prior to~~ April 30, 2004, entered
136 into an agreement with the corporation preserving the employer's
137 right to seek coverage of claims rejected by another state's
138 guaranty fund; or any return of premium resulting from a policy
139 that was not in force on the date of the final order of
140 liquidation. Member insurers have no right of subrogation
141 against the insured of any insolvent insurer. This provision
142 applies ~~shall be applied~~ retroactively to cover claims of an
143 insolvent self-insurance fund resulting from accidents or losses
144 incurred before ~~prior to~~ January 1, 1994, regardless of the date
145 the petition in circuit court was filed alleging insolvency and
146 the date the court entered an order appointing a receiver.

147 Section 7. Subsection (3) is added to section 631.912,
148 Florida Statutes, to read:

149 631.912 Board of directors.—

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

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

155
156 ===== T I T L E A M E N D M E N T =====

157 And the title is amended as follows:



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158 Delete everything before the enacting clause
159 and insert:

160 A bill to be entitled
161 An act relating to insurer insolvency; amending s.
162 631.152, F.S.; authorizing the Department of Financial
163 Services to request appointment as ancillary receiver
164 if necessary to obtain records to adjudicate covered
165 claims; providing for the reimbursement of specified
166 costs associated with ancillary delinquency
167 proceedings; creating s. 631.2715, F.S.; providing for
168 the State Risk Management Trust Fund to cover
169 specified officers, employees, agents, and other
170 representatives of the Department of Financial
171 Services for liability under specified federal laws
172 relating to receiverships; amending s. 631.391, F.S.;
173 imposing penalties on persons who fail to cooperate in
174 providing records; amending s. 631.54, F.S.; revising
175 the definition of the term "covered claim" to exclude
176 a claim rejected or denied by another state's guaranty
177 fund based upon that state's statutory exclusions;
178 amending s. 631.56, F.S.; providing that a board
179 member of the Florida Insurance Guaranty Association
180 representing an insurer in receivership shall be
181 terminated as a board member; specifying a termination
182 date; amending s. 631.904, F.S.; revising the
183 definition of "covered claim" to exclude a claim
184 rejected or denied by another state's guaranty fund
185 based upon that state's statutory exclusions; amending
186 s. 631.912, F.S.; providing that any board member of



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187 the Florida Workers' Compensation Insurance Guaranty
188 Association who is employed by, or has a material
189 relationship with, an insurer in receivership shall be
190 terminated as a board member; specifying a termination
191 date; providing an effective date.