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LEGISLATIVE ACTION

Senate

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House

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05/02/2011 10:26 AM

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Senator Montford moved the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

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

215.5595 Insurance Capital Build-Up Incentive Program.—

(11) For a surplus note issued under this section before
January 1, 2011, the insurer may request that the board
renegotiate terms of the note as provided in this subsection.
The request must be submitted to the board by January 1, 2012.
If the insurer agrees to accelerate the payment period of the
note by at least 5 years, the board shall agree to exempt the



557434

14 insurer from the premium-to-surplus ratios required under
15 paragraph (2) (d). If the insurer requesting the renegotiation
16 agrees to an acceleration of the payment period of less than 5
17 years, the board may, after consultation with the Office of
18 Insurance Regulation, agree to an appropriate revision of the
19 premium-to-surplus ratios required under paragraph (2) (d) for
20 the remaining term of the note. However, the revised ratios may
21 not be lower than a minimum writing ratio of net premium to
22 surplus of at least 1 to 1, and alternatively, a minimum writing
23 ratio of gross premium to surplus of at least 3 to 1. ~~On January~~
24 ~~15, 2009, the State Board of Administration shall transfer to~~
25 ~~Citizens Property Insurance Corporation any funds that have not~~
26 ~~been committed or reserved for insurers approved to receive such~~
27 ~~funds under the program, from the funds that were transferred~~
28 ~~from Citizens Property Insurance Corporation in 2008-2009 for~~
29 ~~such purposes.~~

30 Section 2. Paragraph (e) of subsection (3) of section
31 624.610, Florida Statutes, is amended to read:

32 624.610 Reinsurance.—

33 (3)

34 (e) If the reinsurance is ceded to an assuming insurer not
35 meeting the requirements of paragraph (a), paragraph (b),
36 paragraph (c), or paragraph (d), the commissioner may allow
37 credit, but only if the assuming insurer holds surplus in excess
38 of \$250 ~~\$100~~ million and has a secure financial strength rating
39 from at least two ~~nationally recognized~~ statistical rating
40 organizations deemed acceptable by the commissioner as having
41 experience and expertise in rating insurers doing business in
42 Florida, including, but not limited to, Standard & Poor's,



557434

43 Moody's Investors Service, Fitch Ratings, A.M. Best Company, and
44 Demotech. In determining whether credit should be allowed, the
45 commissioner shall consider the following:

46 1. The domiciliary regulatory jurisdiction of the assuming
47 insurer.

48 2. The structure and authority of the domiciliary regulator
49 with regard to solvency regulation requirements and the
50 financial surveillance of the reinsurer.

51 3. The substance of financial and operating standards for
52 reinsurers in the domiciliary jurisdiction.

53 4. The form and substance of financial reports required to
54 be filed by the reinsurers in the domiciliary jurisdiction or
55 other public financial statements filed in accordance with
56 generally accepted accounting principles.

57 5. The domiciliary regulator's willingness to cooperate
58 with United States regulators in general and the office in
59 particular.

60 6. The history of performance by reinsurers in the
61 domiciliary jurisdiction.

62 7. Any documented evidence of substantial problems with the
63 enforcement of valid United States judgments in the domiciliary
64 jurisdiction.

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

70 Section 3. Section 631.400, Florida Statutes, is created to
71 read:



557434

72 631.400 Rehabilitation of title insurer.-

73 (1) After the entry of an order of rehabilitation, the
74 receiver shall review the condition of the insurer and file a
75 plan of rehabilitation for approval with the court. The plan of
76 rehabilitation shall provide:

77 (a) That policies on real property in this state issued by
78 the title insurer in rehabilitation shall remain in force unless
79 the receiver determines the assessment capacity provided by this
80 section is insufficient to pay claims in the ordinary course of
81 business.

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

87 (c) A claims filing deadline for policies on real property
88 located outside this state which are canceled under paragraph
89 (b).

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

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

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

100 (2) As a condition of doing business in this state, each



557434

101 title insurer shall be liable for an assessment to pay all
102 unpaid title insurance claims and expenses of administering and
103 settling those claims on real property in this state for any
104 title insurer that is ordered into rehabilitation.

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

118 (4) Assessments shall be based on the total of the direct
119 title insurance premiums written in this state as reported to
120 the office for the most recent calendar year. Each title insurer
121 doing business in this state shall be assessed on a pro rata
122 share basis of the total direct title insurance premiums written
123 in this state.

124 (5) Assessments shall be paid to the receiver within 90
125 days after notice of the assessment or pursuant to a quarterly
126 installment plan approved by the receiver. Any insurer that
127 elects to pay an assessment on an installment plan shall also
128 pay a financing charge to be determined by the receiver.

129 (6) The office shall order an emergency assessment if



557434

130 requested by the receiver. The total of any emergency
131 assessment, when added to any annual assessment in a single
132 calendar year, may not exceed the limitation in subsection (7).

133 (7) No title insurer shall be required to pay an assessment
134 in any one year that exceeds 3 percent of its surplus to
135 policyholders as of the end of the previous calendar year or
136 more than 10 percent of its surplus to policyholders over any
137 consecutive 5-year period. The 10 percent limitation shall be
138 calculated as the sum of the percentages of surplus to
139 policyholders assessed in each of those 5 years.

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

143 (9) In an effort to keep in force the policies on real
144 property located in this state issued by the title insurer in
145 rehabilitation, the receiver may use the proceeds of an
146 assessment to acquire reinsurance or otherwise provide for the
147 assumption of policy obligations by another insurer.

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

150 (11) A title insurer in rehabilitation may not be released
151 from rehabilitation until all of the assessed insurers have
152 recovered the amount assessed either through surcharges
153 collected pursuant to s. 631.401 or payments from the insurer in
154 rehabilitation.

155 (12) A title insurer in rehabilitation for which an
156 assessment has been ordered pursuant to this section may not
157 issue any new policies until released from rehabilitation and it
158 shall have received approval from the office to resume issuing



557434

159 policies.

160 (13) Officers, directors, and shareholders of a title
161 insurer who served in that capacity within the 2-year period
162 prior to the date the title insurer was ordered into
163 rehabilitation or liquidation may not thereafter serve as an
164 officer, director, or shareholder of an insurer authorized in
165 this state unless the officer, director, or shareholder
166 demonstrates to the office for the 2-year period immediately
167 preceding the receivership that:

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

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

172 (c) He or she did not receive directly or indirectly any
173 distribution of funds from the insurer in excess of amounts
174 authorized in writing by the office;

175 (d) The financial statements filed with the office were
176 true and correct statements of the title insurer's financial
177 contribution;

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

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

183 Section 4. Section 631.401, Florida Statutes, is created to
184 read:

185 631.401 Recovery of assessments and assumed policy
186 obligations.-

187 (1) Upon the making of any assessment allowed by s.



557434

188 631.400, the office shall order a surcharge on each title
189 insurance policy thereafter issued insuring an interest in real
190 property in this state. The office shall set the per transaction
191 surcharge at an amount estimated to generate sufficient funds to
192 recover the amount assessed over a period of not more than 7
193 years. The amount of the surcharge ordered under this section
194 may not exceed \$25 per transaction for each impaired title
195 insurer. If additional surcharges are occasioned by additional
196 title insurers becoming impaired, the office shall order an
197 increase in the amount of the surcharge to reflect the aggregate
198 surcharge.

199 (2) The party responsible for payment of title insurance
200 premium, unless otherwise agreed between the parties, shall be
201 responsible for the payment of the surcharge. No surcharge will
202 be due or owing as to any policy of title insurance issued at
203 the simultaneous issue rate. For all other purposes, the
204 surcharge will be considered a governmental assessment to be
205 separately stated on any settlement statement. The surcharge is
206 not subject to premium tax or reserve requirements under chapter
207 625.

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

213 (4) Each title insurance agent, agency, or direct title
214 operation shall collect the surcharge as to each title insurance
215 policy written and remit those surcharges along with the
216 policies and premiums within 60 days to the title insurer on



557434

217 whom the policy was written.

218 (5) A title insurer may not retain more in surcharges for
219 an ordered assessment than the amount of assessment that title
220 insurer paid.

221 (6) Each title insurer collecting surcharges shall promptly
222 notify the office when it has collected surcharges equal to the
223 amount of the assessment paid pursuant to s. 631.400. The office
224 shall notify all companies, including those collecting
225 surcharges as required by subsection (3), to cease collecting
226 surcharges when notified that all assessments have been
227 recovered.

228 (7) In conjunction with the filing of each quarterly
229 financial statement, each title insurer shall provide the office
230 with an accounting of assessments paid and surcharges collected
231 during the period. Any surcharges collected in excess of the
232 amount assessed shall be paid to the Insurance Regulatory Trust
233 Fund.

234 Section 5. Section 631.152, Florida Statutes, is amended to
235 read:

236 631.152 Conduct of delinquency proceeding; foreign
237 insurers.—

238 (1) Whenever under this chapter an ancillary receiver is to
239 be appointed in a delinquency proceeding for an insurer not
240 domiciled in this state, the court shall appoint the department
241 as ancillary receiver. The department shall file a petition
242 requesting the appointment on the grounds set forth in s.
243 631.091:

244 (a) If it finds that there are sufficient assets of the
245 insurer located in this state to justify the appointment of an



557434

246 ancillary receiver; ~~or~~

247 (b) If 10 or more persons resident in this state having
248 claims against such insurer file a petition with the department
249 or office requesting the appointment of such ancillary receiver;
250 or-

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

253 (2) The domiciliary receiver for the purpose of liquidating
254 an insurer domiciled in a reciprocal state shall be vested by
255 operation of law with the title to all of the property (except
256 statutory deposits, special statutory deposits, and property
257 located in this state subject to a security interest),
258 contracts, and rights of action, and all of the books and
259 records of the insurer located in this state, and it shall have
260 the immediate right to recover balances due from local agents
261 and to obtain possession of any books and records of the insurer
262 found in this state. It shall also be entitled to recover the
263 property subject to a security interest, statutory deposits, and
264 special statutory deposits of the insurer located in this state,
265 except that upon the appointment of an ancillary receiver in
266 this state, the ancillary receiver shall during the ancillary
267 receivership proceeding have the sole right to recover such
268 other assets. The ancillary receiver shall, as soon as
269 practicable, liquidate from their respective securities those
270 special deposit claims and secured claims which are proved and
271 allowed in the ancillary proceeding in this state, and shall pay
272 the necessary expenses of the proceeding. All remaining assets
273 it shall promptly transfer to the domiciliary receiver. Subject
274 to the foregoing provisions, the ancillary receiver and its



557434

275 agents shall have the same powers and be subject to the same
276 duties with respect to the administration of such assets as a
277 receiver of an insurer domiciled in this state.

278 (3) The domiciliary receiver of an insurer domiciled in a
279 reciprocal state may sue in this state to recover any assets of
280 such insurer to which it may be entitled under the laws of this
281 state.

282 (4) Section 631.141(7)(b) applies to ancillary delinquency
283 proceedings opened for the purpose of obtaining records
284 necessary to adjudicate the covered claims of Florida
285 policyholders.

286 Section 6. Section 631.2715, Florida Statutes, is created
287 to read:

288 631.2715 Liability under federal priority of claims law.-
289 The State Risk Management Trust Fund shall cover department
290 officers, employees, agents, and other representatives for any
291 liability under the federal act relating to priority of claims,
292 31 U.S.C. s. 3713, for any action taken by them in the
293 performance of their powers and duties under this chapter.

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

296 631.391 Cooperation of officers and employees.-

297 (6) Any person referred to in subsection (1) who refuses to
298 cooperate in providing records upon the request of the
299 department or office is liable for any penalties, fines, or
300 other costs assessed against the guaranty association or the
301 receiver that result from the refusal or delay to provide
302 records.

303 Section 8. Subsection (3) of section 631.54, Florida



557434

304 Statutes, is amended to read:

305 631.54 Definitions.—As used in this part:

306 (3) "Covered claim" means an unpaid claim, including one of
307 unearned premiums, which arises out of, and is within the
308 coverage, and not in excess of, the applicable limits of an
309 insurance policy to which this part applies, issued by an
310 insurer, if such insurer becomes an insolvent insurer and the
311 claimant or insured is a resident of this state at the time of
312 the insured event or the property from which the claim arises is
313 permanently located in this state. For entities other than
314 individuals, the residence of a claimant, insured, or
315 policyholder is the state in which the entity's principal place
316 of business is located at the time of the insured event.

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

318 (a) Any amount due any reinsurer, insurer, insurance pool,
319 or underwriting association, sought directly or indirectly
320 through a third party, as subrogation, contribution,
321 indemnification, or otherwise; or

322 (b) Any claim that would otherwise be a covered claim under
323 this part that has been rejected or denied by any other state
324 guaranty fund based upon that state's statutory exclusions,
325 including, but not limited to, those based on coverage, policy
326 type, or an insured's net worth ~~on the grounds that an insured's~~
327 ~~net worth is greater than that allowed under that state's~~
328 ~~guaranty law.~~ Member insurers ~~shall~~ have no right of
329 subrogation, contribution, indemnification, or otherwise, sought
330 directly or indirectly through a third party, against the
331 insured of any insolvent member.

332 Section 9. Subsection (4) is added to section 631.56,



557434

333 Florida Statutes, to read:

334 631.56 Board of directors.—

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

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

340 631.904 Definitions.—As used in this part, the term:

341 (2) "Covered claim" means an unpaid claim, including a
342 claim for return of unearned premiums, which arises out of, is
343 within the coverage of, and is not in excess of the applicable
344 limits of, an insurance policy to which this part applies, which
345 policy was issued by an insurer and which claim is made on
346 behalf of a claimant or insured who was a resident of this state
347 at the time of the injury. The term "covered claim" includes
348 unpaid claims under any employer liability coverage of a
349 workers' compensation policy limited to the lesser of \$300,000
350 or the limits of the policy. The term "covered claim" does not
351 include any amount sought as a return of premium under any
352 retrospective rating plan; any amount due any reinsurer,
353 insurer, insurance pool, or underwriting association, as
354 subrogation recoveries or otherwise; any claim that would
355 otherwise be a covered claim that has been rejected or denied by
356 any other state guaranty fund based upon that state's statutory
357 exclusions, including, but not limited to, those based on
358 coverage, policy type, or an insured's net worth ~~on the grounds~~
359 ~~that the insured's net worth is greater than that allowed under~~
360 ~~that state's guaranty fund or liquidation law, except this~~
361 exclusion from the definition of covered claim does ~~shall~~ not



557434

362 apply to employers who, prior to April 30, 2004, entered into an
363 agreement with the corporation preserving the employer's right
364 to seek coverage of claims rejected by another state's guaranty
365 fund; or any return of premium resulting from a policy that was
366 not in force on the date of the final order of liquidation.
367 Member insurers have no right of subrogation against the insured
368 of any insolvent insurer. This provision applies ~~shall be~~
369 ~~applied~~ retroactively to cover claims of an insolvent self-
370 insurance fund resulting from accidents or losses incurred prior
371 to January 1, 1994, regardless of the date the petition in
372 circuit court was filed alleging insolvency and the date the
373 court entered an order appointing a receiver.

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

376 631.912 Board of directors.—

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

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

383 631.717 Powers and duties of the association.—

384 (11) The association shall not be liable for any civil
385 action under s. 624.155 arising from any acts alleged to have
386 been committed by a member insurer prior to its liquidation.
387 This subsection does not affect the association's obligation to
388 pay valid insurance policy or contract claims if warranted after
389 its independent de novo review of the policies, contracts, and
390 claims presented to it, whether domestic or foreign, after a



557434

391 ~~Florida domestic rehabilitation or a liquidation; however, this~~
392 ~~subsection does not affect the association's obligation to pay~~
393 ~~valid claims presented to it.~~

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

395

396 ===== T I T L E A M E N D M E N T =====

397 And the title is amended as follows:

398 Delete everything before the enacting clause
399 and insert:

400 A bill to be entitled
401 An act relating to insurer insolvency; amending s.
402 215.5595, F.S., relating to the Insurance Capital
403 Build-Up Incentive Program; providing for
404 renegotiation of surplus notes issued before a
405 specified date; providing for an exemption from
406 certain premium-to-surplus ratios in certain
407 circumstances; amending s. 624.610, F.S.; revising
408 surplus requirements for assuming insurers in
409 connection with reinsurance credits; specifying rating
410 agencies that may rate such assuming insurers;
411 creating s. 631.400, F.S.; providing for
412 rehabilitation plans for title insurers; providing
413 that each title insurer doing business in this state
414 is liable for an assessment for claims against title
415 insurers ordered into rehabilitation; providing for an
416 annual assessment upon request of a receiver;
417 providing for emergency assessments in certain
418 circumstances; providing limits on the amount of an
419 assessment; providing that assessments are considered



557434

420 an asset of the estate and subject to specified
421 provisions; providing for use of assessment proceeds;
422 providing for availability of information concerning
423 unpaid claims; specifying circumstances for release of
424 title insurers from rehabilitation; prohibiting a
425 title insurer in rehabilitation from issuing new
426 policies until released from rehabilitation and
427 permission to issue new policies granted; providing
428 that officers, directors, and shareholders of a title
429 insurer who served in that capacity within the 2-year
430 period prior to the date the insurer was ordered into
431 rehabilitation or liquidation may not thereafter serve
432 in that capacity unless the officer, director, and
433 shareholder meets specified criteria; creating s.
434 631.401, F.S.; providing for surcharges on title
435 insurance policies to collect the amount needed to
436 cover an assessment for an insolvent insurer;
437 providing for a maximum period for a surcharge;
438 providing a maximum for a surcharge; providing for
439 responsibility for payment of a surcharge; providing
440 for collection of surcharges by a title insurer doing
441 business in the state writing no premiums in the prior
442 calendar year; providing for remission and collection
443 of surcharges within a specified period; specifying a
444 limit on the amount in surcharges that may be retained
445 by a title insurer; requiring notification when the
446 collection of an assessment is completed; requiring an
447 accounting of assessments paid and surcharges
448 collected; providing for disposition of surcharges



557434

449 collected in excess of the amount assessed; amending
450 s. 631.152, F.S.; authorizing the Department of
451 Financial Services to request appointment as ancillary
452 receiver if necessary for obtaining records to
453 adjudicate covered claims; providing for the
454 reimbursement of specified costs associated with
455 ancillary delinquency proceedings; creating s.
456 631.2715, F.S.; providing for State Risk Management
457 Trust Fund coverage for specified officers, employees,
458 agents, and other representatives of the Department of
459 Financial Services for liability under specified
460 federal laws relating to receiverships; amending s.
461 631.391, F.S.; providing liability to persons who fail
462 to cooperate in the providing of records; amending s.
463 631.54, F.S.; providing that a covered claim for
464 purposes of specified guaranty provisions does not
465 include a claim rejected or denied by another state's
466 guaranty fund based upon that state's statutory
467 exclusions; amending s. 631.56, F.S.; providing that
468 any board member of the Florida Insurance Guaranty
469 Association representing an insurer in receivership
470 shall be terminated as a board member; specifying a
471 termination date; amending s. 631.904, F.S.; providing
472 that a covered claim for purposes of specified
473 guaranty provisions does not include a claim rejected
474 or denied by another state's guaranty fund based upon
475 that state's statutory exclusions; amending s.
476 631.912, F.S.; providing that any board member of the
477 Florida Workers' Compensation Insurance Guaranty



557434

478 Association who is employed by, or has a material
479 relationship with, an insurer in receivership shall be
480 terminated as a board member; specifying a termination
481 date; amending s. 631.717, F.S.; providing that
482 specified provisions relieving the Florida Life and
483 Health Insurance Guaranty Association of liability for
484 certain acts of a member insurer do not relieve the
485 association of liability for valid insurance policy or
486 contract claims if warranted after a specified review;
487 providing an effective date.