The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Rules Committee

BILL: CS/CS/SB 1568

INTRODUCER: Budget Committee, Banking and Insurance Committee, and Senator Montford

SUBJECT: Insurer Insolvency

DATE: April 22, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Matiyow	Burgess	BI	**Fav/CS**
2.	Betta	Meyer, C.	BC	**Fav/CS**
3.	Betta	Phelps	RC	**Favorable**
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	X	Statement of Substantial Changes
B. AMENDMENTS........................		Technical amendments were recommended
		Amendments were recommended
		Significant amendments were recommended

I. Summary:

This bill includes the following provisions.

- Allows the Department of Financial Services (department) to be named as an ancillary receiver of a non-Florida domiciled company in order to obtain records to adjudicate covered claims of policy holders in Florida.
- Requires that the Insurance Regulation Trust Fund within the department cover all unreimbursed costs to the department when opening ancillary delinquency proceedings for the purposes of obtaining records.
- Further clarifies the department's power to obtain records from third-party administrators.
- Provides for the State Risk Management Trust Fund[1] to cover employees, officers, and agents at the department for liability under 31 U.S.C. s. 3713, relating to priority of claims paid by the department while acting as a receiver.

[1]The State Risk Management Trust Fund provides the self-insurance pool for payment of workers' compensation claims, general liability claims, automotive liability claims, federal civil rights claims and court awarded attorney's fees. The revenues for this fund are premiums paid by state agencies from the agency's special appropriation category for risk management insurance.

- Makes changes to the Florida Insurance Guaranty Association (FIGA) and Florida Workers' Compensation Insurance Guaranty Association (FWCIGA) statutes relating to the definition of "covered claims" rejected by another state's guaranty fund.
- Amends qualifications of FIGA and FWCIGA board members representing, or employed by, an insurer in receivership.

This bill substantially amends the following sections of the Florida Statutes: 631.152, 631.391, 631.54, 631.56, 631.904, and 631.912.

The bill creates section 631.2715, Florida Statutes.

II. Present Situation:

Chapter 631, F.S., governs the rehabilitation and liquidation process for insurers in Florida. Federal law specifies that insurance companies are exempted from federal bankruptcy jurisdiction and are instead subject to state laws regarding receivership.[2] Insurers are "rehabilitated" or "liquidated" by the state. In Florida, the Division of Rehabilitation and Liquidation in the department is responsible for rehabilitating or liquidating insurance companies. Section 631.152, F.S., allows for the department to be named as an ancillary receiver for a delinquency proceeding of a non-Florida domiciled insurance company.

Typically, insurers are put into liquidation when the company is or is about to become insolvent;[3] whereas, insurers are placed into rehabilitation[4] for numerous reasons, one of which is that the insurer is impaired or failed to comply with an order of the office to address an impairment of capital or surplus or both. The goal of rehabilitation is to return the insurer to solvency. The goal of liquidation, however, is to liquidate the business of the insurer and use the proceeds to pay off the company's debts and outstanding insurance claims.

Under Florida law s. 631.271(1)(d), F.S., debts owed to the federal government by an insurer in receivership are to be paid after: all of the receiver's costs and expenses of administration are paid; all of the expenses of a guaranty association or foreign guaranty association in handling claims are paid; all claims under policies for losses incurred, including third-party claims are paid; and all claims are paid under nonassessable policies for unearned premiums or premium refunds. However, under 31 U.S.C. s. 3713(b), "a representative of a person or an estate (except a trustee acting under title 11) paying any part of a debt of the person or estate before paying a claim of the Government is liable to the extent of the payment for unpaid claims of the Government." As a result s. 631.271(1)(d), F.S., could expose employees, officers and agents at the department to personal liabilities owed to the federal government while performing their duties as receiver.

Section 631.391, F.S., requires officers and employees of an insurance company cooperate with the department when the department is acting as receiver of that company. Many insurance companies utilize third-party administrators (TPA) to handle some of their administrative functions such as claims processing. Given that a TPA is a separate entity apart for the insurance

[2] U.S.C. s. 109(b)(2).
[3] Section 631.061, F.S.
[4] Section 631.051, F.S.

company, some argue the department lacks the legal authority to impose costs and fees to any TPA that refuses to furnish records of an insurance company the TPA had provided services for.

Guaranty Associations

In Florida, five insurance guaranty funds have been established to ensure that policyholders of liquidated insurers are protected with respect to insurance premiums paid and settlement of outstanding claims, up to limits provided by law. A guaranty association generally is a nonprofit corporation created by law directed to protect policyholders from financial losses and delays in claim payment and settlement due to the insolvency of an insurance company. Insurers are required by law to participate in guaranty associations as a condition of transacting business in Florida.

Covered Claims

Florida‘s associations provide coverage for policies written to employees within Florida. Some states' guaranty associations do not provide coverage if the company in that state has a large deductible policy, unless the policyholder (employer) is insolvent.[5] When the guaranty association of another state denies coverage, the injured worker (claimant) could possibly look to other states where the employer may also does business. Many national companies have locations in all fifty states including Florida. As a result of other states associations denying claims, Florida's guaranty associations could potentially end up paying claims to injured workers in other states.

Florida Insurance Guaranty Association (FIGA)

Part II of ch. 631, F.S., governs FIGA, which operates under a board of directors as a nonprofit corporation. FIGA is composed of all insurers licensed to sell property and casualty insurance in the state. When a property and casualty insurance company becomes insolvent, FIGA is required by law to assume the claims of the insurer and pay the claims of the company's policyholders. FIGA is responsible for claims on residential and commercial property insurance, automobile insurance, and liability insurance, among others.

The maximum claim amount FIGA will cover is $300,000, but special limits apply to damages relating to the structure and contents on homeowners', condominium, and homeowners' association claims. For damages to structure and contents on homeowners' claims, FIGA covers an additional $200,000, for a total of $500,000. For condominium and homeowners' association claims, FIGA covers the lesser of policy limits or $100,000 multiplied by the number of units in the association. In addition to any deductible in the insurance policy, all claims are subject to a $100 FIGA deductible.

[5] Missouri Law 375.772 2(c)j - Any amount that constitutes a claim under a policy issued by an insolvent insurer with a deductible or self- insured retention of three hundred thousand dollars or more. However, such a claim shall be considered a covered claim, if, as of the deadline set forth for the filing of claims against the insolvent insurer or its liquidator, the insured is a debtor under 11 U.S.C. Section 701, et seq.;

FIGA is divided into three accounts: auto liability, auto physical damage, and all other property and casualty insurance other than workers' compensation.[6] This "all other" account includes property insurance (such as claims resulting from hurricane-related insolvencies), personal liability, commercial liability, commercial multi-peril, professional liability, and all other types of property and casualty insurance other than automobile and workers' compensation.

Funding is provided by assessments against authorized insurers, as needed for the payment of covered claims and costs of administration. The maximum annual assessment against each insurer is 2 percent of the insurer's net direct written premiums in the state in the prior year, for the types of insurance in each account. FIGA may also impose annual emergency assessments on insurers of up to 2 percent of written premium if necessary to fund revenue bonds issued by a municipality or county to pay claims of an insurer rendered insolvent due to a hurricane. FIGA also obtains funds from the liquidation of assets of insolvent insurers domiciled in other states but having claims in Florida.

Insurers pay the assessment to FIGA and submit a rate filing with the Office of Insurance Regulation (office) to recoup the assessment from their policyholders.[7] Pursuant to s. 631.64, F.S., the rates and premiums charged for insurance policies may include amounts sufficient to recoup a sum equal to the amounts paid to FIGA by the member insurer, less any amounts returned to the member insurer by FIGA, and such rates shall not be deemed excessive because they contain an amount reasonably calculated to recoup assessments paid by the member insurer.

Section 631.56, F.S., establish requirements for selecting members to the FIGA board. The board shall consist of not less than five or more than nine members. Each board member serves for a 4 -year term and may be reappointed. The department approves and appoints each member recommended by the member insurers (all companies writing licensed business in that state). In the event the department finds a candidate does not meet the qualifications for service on the board, the department shall request the member insurers to recommend another candidate. Vacancies on the board are filled for the remaining term and are handled in the same manner as initial appointments. Currently members on the board representing an insurer in receivership are not required to step down.

Florida Workers' Compensation Insurance Guaranty Association (FWCIGA)

The FWCIGA pays workers' compensation claims of insolvent insurers and group self-insurance funds authorized in Florida, as well as unearned premium claims. FWCIGA does not have a coverage limit for workers' compensation claims of insolvent insurers. When FWCIGA was created, the responsibility for handling insolvent workers' compensation claims was transferred from FIGA to FWCIGA. However, claims under the employer's liability part of a workers' compensation insurance policy continue to be covered by FIGA. According to representatives of FIGA, FIGA experiences difficulties in the administration of employer liability claims if FIGA is required to assess workers' compensation carriers for a portion of their workers' compensation premium. A workers' compensation insurance policy is divided into Part A and Part B. Part A provides workers' compensation coverage to cover medical expenses, lost income wages,

[6]Section 631.55, F.S.
[7]Section 631.57(3)(a), F.S.

rehabilitation costs and, if needed, death benefits for employees who sustain an injury or illness as a result of their employment. Part B provides employer's liability coverage to cover the employer in the event the injured employee elects not to accept the coverage offered under Part A of the policy. In such case, the employee exercises his or her right to sue the employer and part B defends and protects the employer's interests.

Section 631.912, F.S., establishes requirements for selecting members to the FWCIGA board. The board shall consist of 11 persons, 1 of whom is the insurance consumer advocate appointed under s. 627.0613, F.S., and 1 of whom is designated by the Chief Financial Officer (CFO). The department shall appoint to the board 6 persons selected by private carriers from among the 20 workers' compensation insurers with the largest amount of net direct written premium as determined by the department, and 3 persons selected by the self-insurance funds. At least two of the private carriers shall be foreign carriers authorized to do business in this state. The board shall elect a chairperson from among its members. The CFO may remove any board member for cause. Each board member shall serve for a 4-year term and may be reappointed. A vacancy on the board shall be filled for the remaining term and in the same manner by which the original appointment was made. Currently members on the board who have material relationships with or are employed by an insurer in receivership are not required to step down.

Capital Build-up Incentive Program

In 2006, the Legislature created the Insurance Capital Build-up Incentive Program (program) to provide insurance companies low-cost capital to write additional residential property insurance to Florida residents (ch. 2006-12, L.O.F.). The program's goal is to increase the availability of residential property insurance coverage and to restrain increases in property insurance premiums. To accomplish this goal, the state loaned funds, in the form of surplus notes, to new or existing authorized residential property insurers. In order to receive these funds, the participating insurers agreed to write additional residential property insurance in Florida and to contribute new capital to their respective companies.

III. Effect of Proposed Changes:

By allowing the department to be named as an ancillary receiver, for the purposes of obtaining records, the bill will allow the department the legal grounds to seek records from third party administrators of insurance companies in other states. Allowing any unpaid cost to be covered by the Insurance Regulation Trust Fund will provide the department the proper resources needed to obtain records needed by the associations.

By extending coverage of the State Risk Management Trust Fund to protect the department employees, the bill provides state employees personal protection against actions brought by the federal government while they are performing the department's duties as the receiver of an insolvent insurance company.

The bill provides the department the authority to seek costs and fees of third party administrators who refuse to turn over records. This provision should aid the department in its efforts to obtain records on behalf of the associations.

The bill provides that a claim will not be covered by FIGA or FWCIGA if that claim had already been rejected by another state's guaranty fund. This provision will protect the associations and Florida policyholders from having to pay claims for workers of companies domiciled in other states.

The bill requires that a board member of FIGA or FWCIGA must immediately step down if the company the member represents goes into receivership.

The bill allows an insurer to request that the SBA renegotiate the terms of a surplus note issued under the Insurance Capital Build-up Incentive Program before January 1, 2011. The insurer's 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 five years, the board must agree to exempt the insurer from the required premium-to-surplus ratios. If the insurer agrees to an acceleration of the payment period for less than five years, the board may, after consultation with the Office of Insurance Regulation, agree to an appropriate revision of the required premium-to-surplus ratios if the revised ratios are not lower than a net premium to surplus of at least one to one and, alternatively, a gross premium to surplus of at least three to one.

The bill enacts prohibitions recommended by the National Association of Insurance Commissioners that prohibit an insurer from using the same accountant or partner of an accounting firm to prepare its annual audit and audited financial report for more than five consecutive years, and to require a five-year waiting period before the accountant or partner can be retained by the insurer for that purpose. Current law permits use of the same accountant or partner for seven straight years followed by a two-year waiting period.

To coincide with the National Association of Insurance Commissioners Model Act, the bill increases the surplus requirements from $100 million to $250 million for foreign insurers that provide reinsurance, in order for the reinsurance to be deemed acceptable by the Office of Insurance Regulation. The bill expands nationally recognized statistical rating organizations that must provide a secure financial rating, to include the specific rating agencies Standard & Poor's, Moody's Investors Service, Fitch Ratings, A.M. Best Company, and Demotech. Two of these organizations or others acceptable by the commissioner must provide a secure financial strength rating, in addition to the surplus requirements, for the reinsurance to be deemed acceptable by the Office of Insurance Regulation.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Third-party administrators could be responsible to pay costs and fees for failing to turn over records to the department.

C. Government Sector Impact:

Department employees will be covered by the State Risk Management Trust Fund for potential liability to the federal government while performing their duties as receiver of an insolvent insurance company.

If an insurer does not have the funds to reimburse the department for costs incurred for the purposes of obtaining records, there could be an indeterminate cost to the Insurance Regulation Trust Fund.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Budget on April 15, 2011

The committee substitute:

- Allows an insurer to request that the SBA renegotiate the terms of a surplus note issued under the Insurance Capital Build-Up Incentive Program before January 1, 2011.
- Enacts prohibitions recommended by the National Association of Insurance Commissioners that prohibit an insurer from using the same accountant or partner of an accounting firm to prepare its annual audit and audited financial report for more

than five consecutive years, and to require a five year waiting period before the accountant or partner can be retained by the insurer for that purpose.

- Increases the surplus requirements for foreign insurers in order to receive credit for reinsurance ceded to these foreign insurers from $100 million to $250 million.
- Expands the list of nationally recognized statistical rating organizations that may be utilized to provide a secure financial rating.

CS by Banking and Insurance on March 22, 2011

The Committee Substitute:

- Allows the department to be named as an ancillary receiver of a non-Florida domiciled company in order to obtain records to adjudicate covered claims of policy holders in Florida.

- Provides the Insurance Regulation Trust Fund shall cover all unreimbursed costs to the department when opening ancillary delinquency proceedings for the purposes of obtaining records.

- Provides the department, rather than the associations, the authority to seek costs and fees of third party administrators who refuse to turn over records.

- Removes the retroactive language from the bill.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.