

By Senator Montford

6-01425A-11

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1 A bill to be entitled
2 An act relating to insurer insolvency; creating s.
3 631.2715, F.S.; providing for State Risk Management
4 Trust Fund coverage for specified officers, employees,
5 agents, and other representatives of the Department of
6 Financial Services for liability under specified
7 federal laws relating to receiverships; providing for
8 retroactive application; amending s. 631.54, F.S.;
9 providing that a covered claim for purposes of
10 specified guaranty provisions does not include a claim
11 rejected by another state's guaranty fund or
12 liquidation law on the basis that it constitutes a
13 claim under a policy issued by an insolvent insurer
14 which is within a deductible or self-insured
15 retention; amending s. 631.56, F.S.; providing that
16 any board member of the Florida Insurance Guaranty
17 Association representing an insurer in receivership
18 shall be terminated as a board member; specifying a
19 termination date; amending s. 631.57, F.S.; providing
20 for actions by the Florida Insurance Guaranty
21 Association to obtain custody and control of records
22 and data related to an insolvent insurer; providing
23 for an award of attorney's fees and costs in certain
24 circumstances; providing for construction with other
25 rights and remedies; amending s. 631.904, F.S.;
26 providing that a covered claim for purposes of
27 specified guaranty provisions does not include a claim
28 rejected by another state's guaranty fund or
29 liquidation law on the basis that it constitutes a

6-01425A-11

20111568

30 claim under a policy issued by an insolvent insurer
31 which is within a deductible or self-insured
32 retention; amending s. 631.912, F.S.; providing that
33 any board member of the Florida Workers' Compensation
34 Insurance Guaranty Association who is employed by, or
35 has a material relationship with, an insurer in
36 receivership shall be terminated as a board member;
37 specifying a termination date; amending s. 631.913,
38 F.S.; providing for actions by the Florida Workers'
39 Compensation Insurance Guaranty Association to obtain
40 custody and control of records and data related to an
41 insolvent insurer; providing for an award of
42 attorney's fees and costs in certain circumstances;
43 providing for construction with other rights and
44 remedies; providing an effective date.

45
46 Be It Enacted by the Legislature of the State of Florida:

47
48 Section 1. Section 631.2715, Florida Statutes, is created
49 to read:

50 631.2715 Liability under federal priority of claims law.-
51 The State Risk Management Trust Fund shall cover department
52 officers, employees, agents, and other representatives for any
53 liability under the federal act relating to priority of claims,
54 31 U.S.C. s. 3713, for any action taken by them in the
55 performance of their powers and duties under this chapter. This
56 section applies to any receivership commenced after July 1,
57 1957.

58 Section 2. Subsection (3) of section 631.54, Florida

6-01425A-11

20111568

59 Statutes, is amended to read:

60 631.54 Definitions.—As used in this part:

61 (3) "Covered claim" means an unpaid claim, including one of
62 unearned premiums, which arises out of, and is within the
63 coverage, and not in excess of, the applicable limits of an
64 insurance policy to which this part applies, issued by an
65 insurer, if such insurer becomes an insolvent insurer and the
66 claimant or insured is a resident of this state at the time of
67 the insured event or the property from which the claim arises is
68 permanently located in this state. For entities other than
69 individuals, the residence of a claimant, insured, or
70 policyholder is the state in which the entity's principal place
71 of business is located at the time of the insured event.

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

73 (a) Any amount due any reinsurer, insurer, insurance pool,
74 or underwriting association, sought directly or indirectly
75 through a third party, as subrogation, contribution,
76 indemnification, or otherwise; or

77 (b) Any claim that would otherwise be a covered claim under
78 this part that has been rejected by any other state guaranty
79 fund on the grounds that an insured's net worth is greater than
80 that allowed under that state's guaranty law, or that was
81 rejected by another state's guaranty fund or liquidation law on
82 the basis that it constitutes a claim under a policy issued by
83 an insolvent insurer which is within a deductible or self-
84 insured retention. Member insurers ~~shall~~ have no right of
85 subrogation, contribution, indemnification, or otherwise, sought
86 directly or indirectly through a third party, against the
87 insured of any insolvent member.

6-01425A-11

20111568

88 Section 3. Subsection (4) is added to section 631.56,
89 Florida Statutes, to read:

90 631.56 Board of directors.—

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

94 Section 4. Subsection (2) of section 631.57, Florida
95 Statutes, is amended to read:

96 631.57 Powers and duties of the association.—

97 (2) The association may:

98 (a) Employ or retain such persons as are necessary to
99 handle claims and perform other duties of the association;

100 (b) Borrow funds necessary to effect the purposes of this
101 part in accord with the plan of operation;

102 (c) Sue or be sued, provided that service of process shall
103 be made upon the person registered with the department as agent
104 for the receipt of service of process; ~~and~~

105 (d) Negotiate and become a party to such contracts as are
106 necessary to carry out the purpose of this part. Additionally,
107 the association may enter into such contracts with a
108 municipality, a county, or a legal entity created pursuant to s.
109 163.01(7)(g) as are necessary in order for the municipality,
110 county, or legal entity to issue bonds under s. 631.695. In
111 connection with the issuance of any such bonds and the entering
112 into of any such necessary contracts, the association may agree
113 to such terms and conditions as the association deems necessary
114 and proper; and

115 (e) Bring an action against any third-party administrator,
116 agent, attorney, or other representative of the insolvent

6-01425A-11

20111568

117 insurer to obtain custody and control of all files, records, and
118 electronic data related to an insolvent company that are
119 appropriate or necessary for the association, or a similar
120 association in other states, to carry out its duties under this
121 part. In such a suit, the association has the absolute right
122 through emergency equitable relief to obtain custody and control
123 of all such claims information in the custody or control of such
124 third-party administrator, agent, attorney, or other
125 representative of the insolvent insurer, regardless of where
126 such claims information may be physically located. In bringing
127 such an action, the association is not subject to any defense,
128 possessory or nonpossessory lien, or other legal or equitable
129 ground whatsoever for refusal to surrender such claims
130 information that might be asserted against the liquidator of the
131 insolvent insurers. To the extent that litigation is required
132 for the association to obtain custody of the claims information
133 requested and it results in the relinquishment of claims
134 information to the association after refusal to provide the
135 information in response to a written demand, the court shall
136 award the association its costs, expenses, and reasonable
137 attorney's fees incurred in bringing the action. This paragraph
138 does not affect the rights and remedies that the custodian of
139 such claims information may have against the insolvent insurers,
140 so long as such rights and remedies do not conflict with the
141 rights of the association to custody and control of the claims
142 information under this part.

143 Section 5. Subsection (2) of section 631.904, Florida
144 Statutes, is amended to read:

145 631.904 Definitions.—As used in this part, the term:

6-01425A-11

20111568

146 (2) "Covered claim" means an unpaid claim, including a
147 claim for return of unearned premiums, which arises out of, is
148 within the coverage of, and is not in excess of the applicable
149 limits of, an insurance policy to which this part applies, which
150 policy was issued by an insurer and which claim is made on
151 behalf of a claimant or insured who was a resident of this state
152 at the time of the injury. The term "covered claim" includes
153 unpaid claims under any employer liability coverage of a
154 workers' compensation policy limited to the lesser of \$300,000
155 or the limits of the policy. The term "covered claim" does not
156 include any amount sought as a return of premium under any
157 retrospective rating plan; any amount due any reinsurer,
158 insurer, insurance pool, or underwriting association, as
159 subrogation recoveries or otherwise; any claim that would
160 otherwise be a covered claim that has been rejected by any other
161 state guaranty fund on the grounds that the insured's net worth
162 is greater than that allowed under that state's guaranty fund or
163 liquidation law, or that was rejected by another state's
164 guaranty fund or liquidation law on the basis that it
165 constitutes a claim under a policy issued by an insolvent
166 insurer which is within a deductible or self-insured retention,
167 except this exclusion from the definition of covered claim does
168 ~~shall~~ not apply to employers who, prior to April 30, 2004,
169 entered into an agreement with the corporation preserving the
170 employer's right to seek coverage of claims rejected by another
171 state's guaranty fund; or any return of premium resulting from a
172 policy that was not in force on the date of the final order of
173 liquidation. Member insurers have no right of subrogation
174 against the insured of any insolvent insurer. This provision

6-01425A-11

20111568

175 ~~applies shall be applied~~ retroactively to cover claims of an
176 insolvent self-insurance fund resulting from accidents or losses
177 incurred prior to January 1, 1994, regardless of the date the
178 petition in circuit court was filed alleging insolvency and the
179 date the court entered an order appointing a receiver.

180 Section 6. Subsection (3) is added to section 631.912,
181 Florida Statutes, to read:

182 631.912 Board of directors.—

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

187 Section 7. Paragraph (e) is added to subsection (3) of
188 section 631.913, Florida Statutes, to read:

189 631.913 Powers and duties of the corporation.—

190 (3) The corporation may:

191 (e) Bring an action against any third-party administrator,
192 agent, attorney, or other representative of the insolvent
193 insurer to obtain custody and control of all files, records, and
194 electronic data related to an insolvent company that are
195 appropriate or necessary for the association, or a similar
196 association in other states, to carry out its duties under this
197 part. In such a suit, the association has the absolute right
198 through emergency equitable relief to obtain custody and control
199 of all such claims information in the custody or control of such
200 third-party administrator, agent, attorney, or other
201 representative of the insolvent insurer, regardless of where
202 such claims information may be physically located. In bringing
203 such an action, the association is not subject to any defense,

6-01425A-11

20111568__

204 possessory or nonpossessory lien, or other legal or equitable
205 ground whatsoever for refusal to surrender such claims
206 information that might be asserted against the liquidator of the
207 insolvent insurers. To the extent that litigation is required
208 for the association to obtain custody of the claims information
209 requested and it results in the relinquishment of claims
210 information to the association after refusal to provide the
211 information in response to a written demand, the court shall
212 award the association its costs, expenses, and reasonable
213 attorney's fees incurred in bringing the action. This paragraph
214 does not affect the rights and remedies that the custodian of
215 such claims information may have against the insolvent insurers,
216 so long as such rights and remedies do not conflict with the
217 rights of the association to custody and control of the claims
218 information under this part.

219 Section 8. This act shall take effect upon becoming a law.