

By the Committees on Budget; and Banking and Insurance; and
Senator Montford

576-04686-11

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1 A bill to be entitled
2 An act relating to insurer insolvency; amending s.
3 215.5595, F.S.; authorizing a residential property
4 insurer to renegotiate a note issued by the Insurance
5 Capital Build-Up Incentive Program under certain
6 circumstances; amending s. 624.424, F.S.; revising the
7 time limitations on an insurer's use of the same
8 accountant for preparing its annual statement;
9 amending s. 624.610, F.S.; specifying the rating
10 organizations that are deemed acceptable by the
11 Financial Services Commission to assess certain
12 insurers providing reinsurance; amending s. 631.152,
13 F.S.; authorizing the Department of Financial Services
14 to request appointment as ancillary receiver if
15 necessary in order to obtain records to adjudicate
16 covered claims; providing for the reimbursement of
17 specified costs associated with ancillary delinquency
18 proceedings; creating s. 631.2715, F.S.; providing for
19 the State Risk Management Trust Fund to cover
20 specified officers, employees, agents, and other
21 representatives of the Department of Financial
22 Services for liability under specified federal laws
23 relating to receiverships; amending s. 631.391, F.S.;
24 imposing penalties on persons who fail to cooperate in
25 providing records; amending s. 631.54, F.S.; revising
26 the definition of the term "covered claim" to exclude
27 a claim rejected or denied by another state's guaranty
28 fund based upon that state's statutory exclusions;
29 amending s. 631.56, F.S.; providing that a board

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30 member of the Florida Insurance Guaranty Association
31 representing an insurer in receivership shall be
32 terminated as a board member; specifying a termination
33 date; amending s. 631.904, F.S.; revising the
34 definition of the term "covered claim" to exclude a
35 claim rejected or denied by another state's guaranty
36 fund based upon that state's statutory exclusions;
37 amending s. 631.912, F.S.; providing that any board
38 member of the Florida Workers' Compensation Insurance
39 Guaranty Association who is employed by, or has a
40 material relationship with, an insurer in receivership
41 shall be terminated as a board member; specifying a
42 termination date; providing an effective date.

43
44 Be It Enacted by the Legislature of the State of Florida:

45
46 Section 1. Subsection (11) of section 215.5595, Florida
47 Statutes, is amended to read:

48 215.5595 Insurance Capital Build-Up Incentive Program.—

49 (11) For a surplus note issued under this section before
50 January 1, 2011, the insurer may request that the board
51 renegotiate terms of the note as provided in this subsection.
52 The request must be submitted to the board by January 1, 2012.
53 If the insurer agrees to accelerate the payment period of the
54 note by at least 5 years, the board shall agree to exempt the
55 insurer from the premium-to-surplus ratios required under
56 paragraph (2) (d). If the insurer requesting the renegotiation
57 agrees to an acceleration of the payment period of less than 5
58 years, the board may, after consultation with the Office of

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59 Insurance Regulation, agree to an appropriate revision of the
60 premium-to-surplus ratios for the remaining term of the note.
61 However, the revised ratios may not be lower than a minimum
62 writing ratio of net premium to surplus of at least 1 to 1, and
63 alternatively, a minimum writing ratio of gross premium to
64 surplus of at least 3 to 1. ~~On January 15, 2009, the State Board~~
65 ~~of Administration shall transfer to Citizens Property Insurance~~
66 ~~Corporation any funds that have not been committed or reserved~~
67 ~~for insurers approved to receive such funds under the program,~~
68 ~~from the funds that were transferred from Citizens Property~~
69 ~~Insurance Corporation in 2008-2009 for such purposes.~~

70 Section 2. Paragraph (d) of subsection (8) of section
71 624.424, Florida Statutes, is amended to read:

72 624.424 Annual statement and other information.-

73 (8)

74 (d) An insurer may not use the same accountant or partner
75 of an accounting firm responsible for preparing the report
76 required by this subsection for more than 5 ~~7~~ consecutive years.
77 Following this period, the insurer may not use such accountant
78 or partner for 5 ~~a period of 2~~ years, but may use another
79 accountant or partner of the same firm. An insurer may request
80 the office to waive this prohibition based upon an unusual
81 hardship to the insurer and a determination that the accountant
82 is exercising independent judgment that is not unduly influenced
83 by the insurer considering such factors as the number of
84 partners, expertise of the partners or the number of insurance
85 clients of the accounting firm; the premium volume of the
86 insurer; and the number of jurisdictions in which the insurer
87 transacts business.

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88 Section 3. Paragraph (e) of subsection (3) of section
89 624.610, Florida Statutes, is amended to read:

90 624.610 Reinsurance.—

91 (3)

92 (e) If the reinsurance is ceded to an assuming insurer not
93 meeting the requirements of paragraph (a), paragraph (b),
94 paragraph (c), or paragraph (d), the commissioner may allow
95 credit, but only if the assuming insurer holds surplus in excess
96 of \$250 ~~\$100~~ million and has a secure financial strength rating
97 from at least two ~~nationally recognized~~ statistical rating
98 organizations deemed acceptable by the commissioner as having
99 experience and expertise in rating insurers doing business in
100 this state, including, but not limited to, Standard & Poor's,
101 Moody's Investors Service, Fitch Ratings, A.M. Best Company, and
102 Demotech. In determining whether credit should be allowed, the
103 commissioner shall consider ~~the following~~:

104 1. The domiciliary regulatory jurisdiction of the assuming
105 insurer.

106 2. The structure and authority of the domiciliary regulator
107 with regard to solvency regulation requirements and the
108 financial surveillance of the reinsurer.

109 3. The substance of financial and operating standards for
110 reinsurers in the domiciliary jurisdiction.

111 4. The form and substance of financial reports required to
112 be filed by the reinsurers in the domiciliary jurisdiction or
113 other public financial statements filed in accordance with
114 generally accepted accounting principles.

115 5. The domiciliary regulator's willingness to cooperate
116 with United States regulators in general and the office in

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117 particular.

118 6. The history of performance by reinsurers in the
119 domiciliary jurisdiction.

120 7. Any documented evidence of substantial problems with the
121 enforcement of valid United States judgments in the domiciliary
122 jurisdiction.

123 8. Any other matters deemed relevant by the commissioner.
124 The commissioner shall give appropriate consideration to insurer
125 group ratings that may have been issued. ~~The commissioner may,~~
126 In lieu of granting full credit under this subsection, the
127 commissioner may reduce the amount required to be held in trust
128 under paragraph (c).

129 Section 4. Section 631.152, Florida Statutes, is amended to
130 read:

131 631.152 Conduct of delinquency proceeding; foreign
132 insurers.—

133 (1) ~~If Whenever under this chapter~~ an ancillary receiver is
134 to be appointed under this chapter in a delinquency proceeding
135 for an insurer not domiciled in this state, the court shall
136 appoint the department as ancillary receiver. The department
137 shall file a petition requesting the appointment on the grounds
138 set forth in s. 631.091:

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

142 (b) If 10 or more persons resident in this state having
143 claims against such insurer file a petition with the department
144 or office requesting the appointment of such ancillary receiver;
145 or

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

148 (2) The domiciliary receiver for the purpose of liquidating
149 an insurer domiciled in a reciprocal state is ~~shall be~~ vested by
150 operation of law with the title to all of the property (except
151 statutory deposits, special statutory deposits, and property
152 located in this state subject to a security interest),
153 contracts, and rights of action, and all of the books and
154 records of the insurer located in this state, and ~~it~~ shall have
155 the immediate right to recover balances due from local agents
156 and ~~to~~ obtain possession of any books and records of the insurer
157 found in this state. The domiciliary receiver is ~~It shall~~ also
158 ~~be~~ entitled to recover the property subject to a security
159 interest, statutory deposits, and special statutory deposits of
160 the insurer located in this state, except that upon the
161 appointment of an ancillary receiver in this state, the
162 ancillary receiver shall during the ancillary receivership
163 proceeding have the sole right to recover such other assets. The
164 ancillary receiver shall, as soon as practicable, liquidate from
165 their respective securities those special deposit claims and
166 secured claims which are proved and allowed in the ancillary
167 proceeding in this state, and ~~shall~~ pay the necessary expenses
168 of the proceeding. The ancillary receiver shall promptly
169 transfer all remaining assets ~~it shall promptly transfer~~ to the
170 domiciliary receiver. Subject to the foregoing provisions, the
171 ancillary receiver and its agents ~~shall~~ have the same powers and
172 are ~~be~~ subject to the same duties with respect to the
173 administration of such assets as a receiver of an insurer
174 domiciled in this state.

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175 (3) The domiciliary receiver of an insurer domiciled in a
176 reciprocal state may sue in this state to recover any assets of
177 such insurer to which it may be entitled under the laws of this
178 state.

179 (4) The provisions of s. 631.141(7)(b) apply to ancillary
180 delinquency proceedings opened for the purpose of obtaining
181 records necessary to adjudicate the covered claims of
182 policyholders in this state.

183 Section 5. Section 631.2715, Florida Statutes, is created
184 to read:

185 631.2715 Liability under federal priority of claims law.—
186 The State Risk Management Trust Fund shall cover department
187 officers, employees, agents, and other representatives for any
188 liability under the federal act relating to priority of claims,
189 31 U.S.C. s. 3713, for any action taken by them in the
190 performance of their powers and duties under this chapter.

191 Section 6. Subsection (6) is added to section 631.391,
192 Florida Statutes, to read:

193 631.391 Cooperation of officers and employees.—

194 (6) Any person referred to in subsection (1) who refuses to
195 cooperate in providing records upon the request of the
196 department or office is liable for any penalties, fines, or
197 other costs assessed against the guaranty association or the
198 receiver which result from the refusal or delay to provide
199 records.

200 Section 7. Subsection (3) of section 631.54, Florida
201 Statutes, is amended to read:

202 631.54 Definitions.—As used in this part:

203 (3) "Covered claim" means an unpaid claim, including one of

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204 unearned premiums, which arises out of, and is within the
205 coverage, and not in excess of, the applicable limits of an
206 insurance policy to which this part applies, issued by an
207 insurer, if such insurer becomes an insolvent insurer and the
208 claimant or insured is a resident of this state at the time of
209 the insured event or the property from which the claim arises is
210 permanently located in this state. For entities other than
211 individuals, the residence of a claimant, insured, or
212 policyholder is the state in which the entity's principal place
213 of business is located at the time of the insured event.

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

215 (a) Any amount due any reinsurer, insurer, insurance pool,
216 or underwriting association, sought directly or indirectly
217 through a third party, as subrogation, contribution,
218 indemnification, or otherwise; or

219 (b) Any claim that would otherwise be a covered claim under
220 this part that has been rejected or denied by any other state
221 guaranty fund based upon that state's statutory exclusions,
222 including, but not limited to, those based on coverage, policy
223 type, or an insured's net worth ~~on the grounds that an insured's~~
224 ~~net worth is greater than that allowed under that state's~~
225 ~~guaranty law.~~ Member insurers ~~shall~~ have no right of
226 subrogation, contribution, indemnification, or otherwise, sought
227 directly or indirectly through a third party, against the
228 insured of any insolvent member.

229 Section 8. Subsection (4) is added to section 631.56,
230 Florida Statutes, to read:

231 631.56 Board of directors.—

232 (4) Any board member representing an insurer in

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233 receivership shall be terminated as a board member, effective as
234 of the date of the entry of the order of receivership.

235 Section 9. Subsection (2) of section 631.904, Florida
236 Statutes, is amended to read:

237 631.904 Definitions.—As used in this part, the term:

238 (2) "Covered claim" means an unpaid claim, including a
239 claim for return of unearned premiums, which arises out of, is
240 within the coverage of, and is not in excess of the applicable
241 limits of, an insurance policy to which this part applies, which
242 policy was issued by an insurer and which claim is made on
243 behalf of a claimant or insured who was a resident of this state
244 at the time of the injury. The term ~~"covered claim"~~ includes
245 unpaid claims under any employer liability coverage of a
246 workers' compensation policy limited to the lesser of \$300,000
247 or the limits of the policy. The term ~~"covered claim"~~ does not
248 include any amount sought as a return of premium under any
249 retrospective rating plan; any amount due any reinsurer,
250 insurer, insurance pool, or underwriting association, as
251 subrogation recoveries or otherwise; any claim that would
252 otherwise be a covered claim that has been rejected or denied by
253 any other state guaranty fund based upon that state's statutory
254 exclusions, including, but not limited to, those based on
255 coverage, policy type, or an insured's net worth ~~on the grounds~~
256 ~~that the insured's net worth is greater than that allowed under~~
257 ~~that state's guaranty fund or liquidation law~~, except this
258 exclusion from the definition of covered claim does ~~shall~~ not
259 apply to employers who, before ~~prior to~~ April 30, 2004, entered
260 into an agreement with the corporation preserving the employer's
261 right to seek coverage of claims rejected by another state's

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262 guaranty fund; or any return of premium resulting from a policy
263 that was not in force on the date of the final order of
264 liquidation. Member insurers have no right of subrogation
265 against the insured of any insolvent insurer. This provision
266 applies ~~shall be applied~~ retroactively to cover claims of an
267 insolvent self-insurance fund resulting from accidents or losses
268 incurred before ~~prior to~~ January 1, 1994, regardless of the date
269 the petition in circuit court was filed alleging insolvency and
270 the date the court entered an order appointing a receiver.

271 Section 10. Subsection (3) is added to section 631.912,
272 Florida Statutes, to read:

273 631.912 Board of directors.—

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

278 Section 11. This act shall take effect July 1, 2011.