

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 Committee on Banking and Insurance

BILL: SB 496

INTRODUCER: Senator Rader

SUBJECT: Insurance Guaranty Associations

DATE: March 1, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Matiyow</u>	<u>Knudson</u>	<u>BI</u>	<u>Pre-meeting</u>
2.	_____	_____	<u>AEG</u>	_____
3.	_____	_____	<u>AP</u>	_____

I. Summary:

SB 496 allows an employee of any state’s guaranty association to adjust claims for the Florida Insurance Guaranty Association without being licensed as an adjuster. The bill also changes the way assessments are calculated and paid to the Florida Workers Compensation Insurance Guaranty Association.

The bill’s effective date is July 1, 2019.

II. Present Situation:

Guaranty Associations

Under federal law, insurance companies cannot file for bankruptcy.¹ Instead, they are either rehabilitated or liquidated by their state of domicile. The Insurers Rehabilitation and Liquidation Act in Part I of ch. 631, F.S., establishes the system for the treatment of impaired or insolvent insurers² authorized in Florida. Florida has also established guaranty associations that protect policyholders against the failure of an impaired or insolvent insurer to perform its obligations.³ Guaranty associations ensure policyholders of insolvent insurers are protected with respect to insurance premiums paid and settlement of outstanding claims, up to limits provided by law.⁴ A guaranty association is a not-for-profit corporation created by law and directed to protect policyholders from financial losses and delays in claims payment and settlements due to

¹ 11 U.S.C. s. 109(b)(2).

² An “insolvent insurer” means an insurer that was authorized to transact insurance in this state, either at the time the policy was issued or when the insured event occurred, and against which an order of liquidation with a finding of insolvency has been entered by a court of competent jurisdiction if such order has become final by the exhaustion of appellate review.

³ See ss. 631.50-631.70, F.S., the Florida Insurance Guaranty Association Act; ss. 631.711-631.737, the Florida Life and Health Guaranty Association Act; and ss. 631.901-631.932, The Florida Workers’ Compensation Guaranty Association Act.

⁴ See e.g. ss. 631.57 and 631.631.913, F.S.

the insolvency of an insurer.⁵ Insurers are required to participate in the guaranty associations as a condition of transacting insurance business in Florida.⁶ Florida operates four guaranty associations including the Florida Insurance Guaranty Association (FIGA)⁷ and the Florida Workers' Compensation Insurance Guaranty Association (FWCIGA).⁸

Florida Insurance Guaranty Association (FIGA)

The Florida Insurance Guaranty Association provides a “mechanism for the payment of covered claims under certain insurance policies to avoid” delay and financial loss due to the financial insolvency of an insurer.⁹ It issues guaranty fund payments and provides related services for all lines of property and casualty insurance with certain exceptions.¹⁰ When a property and casualty insurer becomes insolvent, FIGA takes over the claims of that insurer and pays the claims of its policyholders, ensuring that policyholders are not left with unpaid claims. FIGA obtains funds to pay the claims of insolvent insurers located in Florida from the liquidation of the assets of insolvent insurers by the Division of Rehabilitation and Liquidation (the Division) in the Florida Department of Financial Services (DFS) and from the liquidation of assets of insolvent insurers located outside Florida that transact insurance business in Florida.¹¹ If an insurer's assets are insufficient to pay all claims, FIGA can also issue post-insolvency assessments against property and casualty insurers to obtain funds to pay the remaining claims.¹²

When an insolvent insurer is liquidated in Florida, FIGA assumes the claims and is “deemed the insurer to the extent of its obligation on...covered claims, and,...shall have all rights, duties, defenses, and obligations of the insolvent insurer as if the insurer had not become insolvent.”¹³ Additionally, FIGA has the right to employ the necessary staff to handle claims and perform other duties for the association.¹⁴

In general, when an insolvent insurer located in another state is liquidated, the claims in that state are referred to its guaranty association for claims handling. However, FIGA handles claims that exist on policies issued in Florida by insolvent foreign insurers.¹⁵

Florida Workers' Compensation Insurance Guaranty Association (FWCIGA)

The Florida Workers Compensation Insurance Guaranty Association “provides a mechanism for the payment of covered claims under chapter 440 to avoid” delay and financial loss to claimants

⁵ See e.g., ss. 631.51 and 631.902, F.S.

⁶ See e.g. ss. 631.55(1) and 631.911(2), F.S.

⁷ Chapter 631, part II, F.S.

⁸ Chapter 631, part V, F.S.

⁹ Section 631.51, F.S.

¹⁰ Section 631.52, F.S.

¹¹ See s. 631.061, F.S. for grounds for liquidation. See s. 631.025, F.S., for an overview of persons subject to proceedings initiated by the Division.

¹² Section 631.57, F.S.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ A foreign insurer is one formed under the laws of any state, district, territory, or commonwealth of the United States other than Florida. Section 624.06, F.S.

due to the insolvency of a workers' compensation insurer.¹⁶ FWCIGA services workers' compensation claims against insolvent workers' compensation insurers¹⁷ and self-insurance funds.¹⁸ When a workers' compensation insurer or self-insurance fund becomes insolvent, FWCIGA takes over the claims of that insurer and pays the claims of its policyholders, ensuring that policyholders are not left with unpaid claims. Like FIGA, FWCIGA is funded through the liquidation of insolvent insurers, including a portion of the estates of insolvent insurers in other states. If the assets of the liquidated insurer are insufficient to pay claims, FWCIGA in conjunction with the Office of Insurance Regulation (OIR), may order assessments of workers' compensation insurers and self-insurance funds writing workers' compensation coverage in Florida.¹⁹ FWCIGA levied assessments from its inception in 1998 through 2005.²⁰ It has not levied any assessments since 2005, but anticipates doing so effective January 1, 2020.²¹

Method of Assessment

In 2016, the method of assessment for the FWCIGA was amended to be more consistent with the method used to levy assessments on the other Florida guaranty associations.²² Since the 2016 amendments, the law has provided for two methods by which the FWCIGA can collect assessments from workers' compensation insurers and self-insurance funds.²³ The FWCIGA may choose to fund an assessment by either of the following methods:²⁴

- Single payment, subject to true-up (pay and recover)²⁵ – under this method, the insurer pays the assessment to the FWCIGA and then recovers its payment from its insureds through policy surcharges. The assessment payment is due and payable no earlier than 30 days following written notice of the assessment order. For accounting purposes, the billed surcharges are a receivable and an asset for the purposes of the National Association of Insurance Commissioners' Statement of Statutory Accounting Principles Number 4²⁶ and would be recorded separately from the liability for OIR reports.

¹⁶ Section 631.902, F.S.

¹⁷ “‘Insurer’ means an insurance carrier or self-insurance fund authorized to insure under chapter 440. For purposes of this act, ‘insurer’ does not include a qualified local government self-insurance fund, as defined in s. 624.4622, or an individual self-insurer as defined in s. 440.385.” S. 631.904(5), F.S.

¹⁸ “‘Self-insurance fund’ means a group self-insurance fund authorized under s. 624.4621, a commercial self-insurance fund writing workers' compensation insurance authorized under s. 624.462, or an assessable mutual insurer authorized under s. 628.6011. For purposes of this act, the term ‘self-insurance fund’ does not include a qualified local government self-insurance fund, as defined in s. 624.4622, an independent educational institution self-insurance fund as defined in s. 624.4623, an electric cooperative self-insurance fund as described in s. 624.4626, or an individual self-insurer as defined in s. 440.385.” S. 631.904(6), F.S.

¹⁹ Section 631.914, F.S.

²⁰ Florida Workers' Compensation Insurance Guaranty Association, *Assessments*, <https://fwciga.org/assessments> (last visited Feb. 27, 2019).

²¹ Florida Workers' Compensation Guaranty Association, *Bulletin 2019-1*, https://fwciga.org/wp-content/uploads/2019/01/Surcharge-Bulletin_sm.pdf (last visited Feb. 27, 2019). Pursuant to s. 631.914(4)(a), F.S., an insurer may be exempted from an assessment if, in the opinion of OIR, the assessment would impair the solvency of the insurer.

²² Ch. 2016-170, L.O.F.

²³ See s. 631.914, F.S.

²⁴ See *id.*

²⁵ Section 631.914(1)(d), F.S.

²⁶ National Association of Insurance Commissioners & The Center for Insurance Policy and Research, *Statutory Accounting Principles*, http://www.naic.org/cipr_topics/topic_statutory_accounting_principles.htm (last visited Feb. 27, 2015).

- Installment (collect and remit) – under this method, the insurer would bill the insured for the surcharge as policies are written and remit the collected surcharges to the FWCIGA quarterly.²⁷

The insurer is required to submit a reconciliation report within 120 days following the end of the 12 month assessment recovery period showing the amount initially paid and the amount of the surcharge collected.²⁸ This results in a “true-up” of the actual assessment amount if the initial calculation and payment was too low or too high.²⁹

Calculation of Insurer Assessment Amount

The Office of Insurance Regulation, upon certification of need by FWCIGA, levies assessments on each insurer “initially estimated in the proportion that the insurer’s net direct written premiums” in Florida bear to the total net direct premiums received in Florida by all workers’ compensation insurers during the previous calendar year.³⁰ The assessments levied against insurers and self-insurance funds are computed based upon the net direct written premium amounts set forth in Florida for workers’ compensation insurance without consideration for any discount in premium or credit for deductibles.³¹

The assessment is limited to 2 percent of an insurer’s or self-insurance fund’s net direct written premium in any given calendar year.³² If the assessment is insufficient to meet FWCIGA’s funding need for payments owing to claimants in a calendar year, then, upon certification by FWCIGA, OIR shall levy assessments of up to an additional 1.5 percent of the insurer’s net direct written premiums in Florida.³³ Insurers and self-insurance funds must report to FWCIGA the amount of initial payment or installment payments made to FWCIGA and the amount collected from policyholders.³⁴ The reporting must occur within 120 days after the 12-month assessment period and annually thereafter for 3 years.³⁵

III. Effect of Proposed Changes:

Section 1 - Allows the Florida Insurance Guaranty Association to authorize an employee of any state’s guaranty association to adjust claims without being licensed as an adjuster. The authorization for another guaranty association’s employee to adjust claims for FIGA must be included in a contract between FIGA and the employees’ guaranty association or their representative. Allowing other state’s guaranty association employees to adjust for FIGA should allow for the continuity of claims when an insolvent insurer’s policyholders are located in other states.

²⁷ Section 631.914(1)(d), F.S.

²⁸ Section 631.914(1)(d)3., F.S.

²⁹ *Id.*

³⁰ Section 631.914(1)(a), F.S.

³¹ *Id.*

³² *Id.*

³³ Section 631.914(1)(c), F.S.

³⁴ Section 631.914(1)(a)d.3., F.S.

³⁵ *Id.*

Section 2 - Revises the method by which the Florida Workers' Compensation Insurance Guaranty Association levies assessments against insurers. Provides that an insurer must fully recoup assessments by applying a uniform surcharge percentage levied by OIR to all policies of the same kind or line, as were considered in determining the assessment liability of the insurer.

The bill revises the calculation used to determine an insurer's direct written premium in this state for workers' compensation insurance, which is the basis for computing and levying assessments. The bill provides that an insurer's direct written premium must be computed without consideration of discounts or credits for large deductible or retrospectively rated policies.³⁶ This will allow a reduction in direct written premium for all other deductibles, which is currently prohibited.³⁷

The bill provides the authority for FWCIGA to audit the reports from insurers regarding the payments made to FWCIGA and the amounts collected from policyholders. It also changes the requirement for annual reporting following an assessment from 3 years to 2 years.

The bill provides that assessments paid by workers' compensation insurers constitute advances of funds to FWCIGA under certain circumstances to allow for proper accounting treatment. The bill removes the word "net" from "net direct written premium" to use the more common workers' compensation industry terminology of "direct written premium."

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

³⁶ A retrospectively rated policy in one with a rating plan that adjusts the premium to reflect current loss experience of an insured. IRMI, *Retrospective Rating*, <https://www.irmi.com/term/insurance-definitions/retrospective-rating> (last visited Feb. 27, 2019). See also *drafting issues or other comments*.

³⁷ See *drafting issues or other comments*.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

Changing the method FWCIGA calculates assessments may increase costs for certain employers and decrease costs for others based on the changes to treatment of discounts and credits in calculating assessments.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

The phrase “without consideration” in line 56 of the bill may cause confusion as to the intent of this portion of the bill, which is to establish that no insurer who has large deductible policies shall receive an offset in its premium subject to surcharge for that portion of the premium that is discounted by the large deductible. Credit or discount to the premium subject to surcharge shall remain available for all other deductibles besides large deductibles.

The phrase “or retrospectively rated policies” in lines 57 and 58 of the bill may not adequately express the intent of this portion of the bill. The purpose of this portion of the text is to establish that no reduction will be given in the calculation of an insurer’s direct written premium for the purposes of assessments for the return of premium for retrospectively rated policies. The provision dealing with “retrospectively rated policies” could be interpreted to not subject those policies to assessments.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 631.914 of the Florida Statutes.

This bill creates section 631.576 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

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

None.

B. Amendments:

None.

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