

HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

BILL #: CS/HB 1023 Insolvent Insurers
SPONSOR(S): Commerce Committee; Fabricio
TIED BILLS: **IDEN./SIM. BILLS:** CS/CS/SB 1430

FINAL HOUSE FLOOR ACTION: 116 Y's 0 N's **GOVERNOR'S ACTION:** Approved

SUMMARY ANALYSIS

CS/HB 1023 passed the House on March 2, 2022, and subsequently passed the Senate on March 4, 2022.

As a condition of selling and servicing insurance in Florida, insurers must be members of a guaranty association that is related to the lines of coverage the insurer sells. If an admitted insurer becomes unsound or insolvent, the Office of Insurance Regulation (OIR) may place the insurer in confidential administrative supervision, and, if rehabilitation is impossible, recommend liquidation by the Department of Financial Services, Division of Rehabilitation and Liquidation (DFS). Existing insurance policies are cancelled 30 days after a judge issues an order of liquidation and the applicable guaranty association becomes responsible for managing any outstanding claims.

The bill makes minor changes to procedures of the Florida Insurance Guaranty Association (FIGA) and Florida Workers' Compensation Insurance Guaranty Association (FWCIGA), and requires that claims data from insolvent insurers be used in the ratemaking process for workers' compensation insurance.

If the assets of an insolvent estate are not enough to pay covered claims, the applicable guaranty association may ask OIR to levy assessments against association members. The bill makes technical changes to the laws governing assessments that would allow certain property and casualty insurers to: 1) pay assessments in quarterly installments rather than one full payment on a date selected by OIR; and 2) decline to recoup the cost of assessments if, for example, the cost of placing a surcharge on policies exceeds the cost of the assessment.

OIR adopts rates for workers' compensation insurance annually, based on recommendations from the National Council on Compensation Insurance (NCCI), which evaluates risks associated with more than 500 occupational classes by tracking covered claims of insurers. Insurers that are in an unsound financial condition or become insolvent do not always report claims to NCCI. When all claims are not reported, the adequacy of workers' compensation insurance rates can be affected and the experience rating modification factor of an individual insured may be inaccurate. When an insurer is ordered into liquidation, the responsibility for claims data reporting falls to DFS, as court appointed receiver, and FWCIGA, as administrator of any open claims.

The bill adds the impact of missing claims data from insolvent insurers to a list of factors that are used in the determination of workers' compensation rates.

The bill has no fiscal impact on state or local government and a minimal impact on the private sector.

The bill was approved by the Governor on May 25, 2022, ch. 2022-139, L.O.F., and will become effective on July 1, 2022.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Current Situation

Insolvent Insurers

The Office of Insurance Regulation (OIR) monitors the financial strength of insurers authorized to do business in Florida by reviewing annual and quarterly financial statements submitted to the National Association of Insurance Commissioners. Florida law establishes the required minimum surplus¹ and risk-based capital requirements² for different types of insurers, identifies the types of investments that may be designated as an admitted asset on the insurer's financial statements,³ and places restrictions on the investments an insurer makes in its subsidiaries or affiliated companies.⁴

Insurers Must Belong to a Guaranty Association

As a condition of selling and servicing insurance in Florida, insurers must be members of the guaranty association associated with the lines of coverage the insurer sells. The Insurance Code authorizes the:

- Florida Insurance Guaranty Association (FIGA), for property and casualty insurances, including homeowners and automobile insurance;⁵
- Florida Life & Health Guaranty Association (FLAHIGA), for life and health insurance policies, annuity contracts, and related supplemental insurance contracts;⁶ and
- Florida Workers' Compensation Insurance Guaranty Association (FWCIGA), for workers' compensation and employer liability coverages.⁷

Similar protections are available to persons who subscribe to Health Maintenance Organizations through the Health Maintenance Organization Consumer Assistance Plan.⁸

Insolvency

If an insurer becomes insolvent,⁹ OIR may place the insurer in confidential administrative supervision. If the insurer cannot be rehabilitated, OIR may refer the matter to the Department of Financial Services, Division of Liquidation and Rehabilitation (DFS), for appointment of a receiver to liquidate the insurance company.¹⁰

When a circuit court judge issues an order of liquidation, the order appoints DFS as receiver for the insolvent insurer's estate and requires that the appropriate guaranty association administer all outstanding claims.¹¹

¹ Ss. 624.407 and 627.408, F.S.

² S. 624.4085, F.S.

³ Ch. 625, part II, F.S.

⁴ Ss. 625.325 and 625.332, F.S.

⁵ Ss. 631.50-631.70, F.S.

⁶ Ss. 631.711-631.738, F.S.

⁷ Ss. 631.901-631.932, F.S.

⁸ Ss. 631.811-631.828, F.S.

⁹ S. 631.011(14), F.S. states: "Insolvency" means that all the assets of the insurer, if made immediately available, would not be sufficient to discharge all its liabilities or that the insurer is unable to pay its debts as they become due in the usual course of business. When the context of any provision of this code so indicates, insolvency also includes and is defined as "impairment of surplus," as defined in subsection (13), and "impairment of capital," as defined in subsection (12).

¹⁰ Ss. 624.81 and 631.051, F.S.

¹¹ S. 631.395, F.S.

Existing policies are cancelled 30 days after the order of liquidation, unless: 1) the policy expires prior to the 30-day deadline; 2) the insured or the receiver finds a replacement policy with another insurer, or 3) the policyholder terminates the policy.¹²

The applicable guaranty association becomes responsible for managing any outstanding claims that were pending upon appointment of the receiver or filed during the 30-day cancellation period.

Assessments

When the assets of an insolvent estate are not enough to pay covered claims, the guaranty association may ask OIR to levy assessments against association members.¹³

Insurers that belong to FIGA may recoup the cost of assessments by applying a uniform surcharge to all policies of the kind identified in OIR's assessment order.¹⁴

Insurers that belong to FLAHIGA may receive a refund of contributions that exceed the amount needed to carry out the obligations of FLAHIGA, and may offset the cost of assessments against either the insurer's liability for premium taxes or corporate income taxes.¹⁵

Insurers that belong to FWCIGA pay assessments by collecting surcharges placed on policies and remitting the surcharge to FWCIGA.¹⁶

Workers' Compensation Rates

All carriers selling workers' compensation insurance in Florida subscribe to the National Council on Compensation Insurance (NCCI), an industry group that develops policy forms, premium rates, and rules for its members in 37 states.¹⁷

NCCI develops rates annually, based on the risks associated with more than 500 occupational classes. OIR reviews and approves proposed rates in accordance with the standards established by Florida law.¹⁸ The following factors are used in the determination of workers' compensation insurance rates:

- The past loss experience and prospective loss experience within and outside this state;
- The conflagration and catastrophe hazards;
- A reasonable margin for underwriting profit and contingencies;
- Dividends, savings, or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members, or subscribers;
- Investment income on unearned premium reserves and loss reserves;
- Past expenses and prospective expenses, both those countrywide and those specifically applicable to this state; and
- All other relevant factors, including judgment factors, within and outside this state.¹⁹

To calculate premium, the insurer applies rates approved for specific jobs, called class codes, to every \$100 of an employer's payroll. This results in a manual rate that is adjusted by an experience rating factor calculated by NCCI, based on the employer's loss experience in the prior 3 years. An employer with better

¹² S. 631.252(1), F.S.

¹³ Ss. 631.57, 631.718, and 631.914, F.S.

¹⁴ S. 631.57(3), F.S.

¹⁵ Ss. 631.718(5) and 631.72(1), F.S.

¹⁶ S. 631.914(1), F.S.

¹⁷ S. 627.091(3), F.S.

¹⁸ Ss. 627.062 and 627.072, F.S.

¹⁹ S. 627.072, F.S.

than average loss experience may receive a credit; an employer with above average losses will pay more than the manual rate.²⁰

Insurers report claims to NCCI, so NCCI can track loss experience across industries, identify trends associated with different types of risks, and adjust rates associated with specific class codes accordingly.²¹

Workers' Compensation Claims Reporting by Insolvent Insurers

Insurers that are in an unsound financial condition or become insolvent do not always report claims to NCCI. When all claims are not reported, the adequacy of workers' compensation insurance rates can be affected and the experience rating modification factor of an individual insured may be inaccurate. When an insurer is ordered into liquidation, the responsibility for claims data reporting falls to DFS, as court appointed receiver, and FWCIGA, as administrator of any open claims.

The impact on missing claims data from insolvent insurers is discussed in an actuarial analysis conducted for FWCIGA, which focused on the 2017 insolvency of Guarantee Insurance Company (GIC).²² The study concluded that the insolvency – which had 8,600 active policies, 10,500 claims and \$487 million in claim liabilities when it was placed into liquidation – did not create significant market disruption because policyholders were able to obtain coverage in the voluntary market.²³ However, if accurate claims data had been reported to NCCI, workers' compensation rate decreases approved in 2016 and 2018 could have been slightly smaller.²⁴ The claim's experience GIC reported to NCCI was slightly worse than average; during liquidation, it was determined that GIC's actual experience was understated by nearly \$100 million.²⁵

The actuarial analysis warned that missing claims data could impact the overall statewide rate for workers' compensation insurance if Florida were to experience multiple insolvencies at the same time. Similarly, missing claims data for one insolvent insurer with a book of business concentrated in a single industry group or class code could have a material impact on the affected industry group or class code.²⁶

The actuary recommended that the claims data of insolvent insurers be collected and reported to NCCI – to the extent that such data can be reported consistently and at a reasonable cost – for inclusion in ratemaking and experience rating.²⁷

NCCI reviews the characteristics of an insolvent carrier (prior premium market share, distribution of premium writings across individual job classifications, and whether prior employers will be able to obtain coverage in the voluntary market) to assess the impact the insolvency may have on future worker's compensation rates.²⁸ Claims data reported during receivership is subject to data validation checks prior to being used in ratemaking.²⁹

Effect of the Bill

²⁰ National Council on Compensation Insurance, *ABCs of Experience Rating*, https://www.ncci.com/Articles/Documents/UW_ABC_Exp_Rating.pdf (last visited Feb. 14, 2022).

²¹ *Id.*

²² Perr & Knight, *Insolvency Materiality Analysis for the Florida Workers' Compensation Insurance Guaranty Association*, May 29, 2019.

²³ *Id.* at 4.

²⁴ Memo to the Board of Directors of the Florida Workers' Compensation Insurance Guaranty Association, Inc., by Tom Streukens, Sept. 19, 2019.

²⁵ *Id.*

²⁶ *Id.* at 17.

²⁷ *Id.* at 19-20.

²⁸ Email from George Fejoo, Governmental Affairs Consultant with Floridian Partners, RE: FWCIGA Post-Liquidation Data Reporting (Jan. 19, 2022).

²⁹ *Id.*

For FIGA, the bill amends s. 631.57, F.S., to state that property and casualty insurers are not required to recoup the cost of assessments levied by OIR on behalf of FIGA. An insurer that declines to recoup an assessment would still make payments to FIGA, based on the amount of premium generated for the line of insurance specified in an assessment order, but would not be permitted to record the assessment as an asset on its annual financial statement. Additionally, if the FIGA board of directors certifies the need for an assessment, the board may ask OIR to permit payments on a quarterly basis instead of full payment on a date selected by OIR at the commencement of the assessment year.

For FWCIGA, the bill amends s. 631.914, F.S., to permit payment of assessments in a single payment or on a quarterly basis, at the discretion of the FWCIGA board based on cash flow needs. Currently, workers' compensation insurance carriers may pay assessments on a quarterly basis only if the FWCIGA board determines that full payment of the assessment would result in an impairment of an insurer's required minimum amount of capital and surplus.

For workers' compensation rates, the bill amends s. 627.072, F.S., to add the impact of missing data from insolvent insurers to the list of factors that are used in the determination of workers' compensation insurance rates. Due to the difficulty of obtaining and validating claims data of an insolvent insurer, the bill permits the use of "prior reported data" and "all other relevant information" during the ratemaking process.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill provides flexibility to insurance carriers by providing the option of paying assessments on an annual or quarterly basis. Insurance carriers would not be required to recoup the cost of an assessment if, for example, the administrative cost of recoupment outweighs the benefit of recoupment.

D. FISCAL COMMENTS:

None.