

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 Finance and Tax

BILL: CS/CS/SB 828

INTRODUCER: Finance and Tax Committee; Banking and Insurance Committee; and Senator Bean

SUBJECT: Insurance Guaranty Association Assessments

DATE: January 26, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Johnson</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>Fournier</u>	<u>Diez-Arguelles</u>	<u>FT</u>	<u>Fav/CS</u>
3.	_____	_____	<u>FP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 828 substantially revises the assessment process of the Florida Workers' Compensation Insurance Guaranty Association (FWCIGA). The FWCIGA provides payment of workers' compensation claims of insolvent insurers and group self-insurance funds to avoid excessive delay in payment and to avoid financial loss to claimants in the event of the insolvency of a member insurer.

The bill provides the following changes to the FWCIGA assessment process:

- Increases the assessment cap for self-insurance funds from 1.5 to 2 percent of net direct written premiums in Florida for workers' compensation insurance, which is consistent with the cap for insurers;
- Revises the assessment recoupment method from recouping the assessment as part of the premium in a rate filing to adding a policy surcharge that is collected by the insurer. The surcharge will not be subject to the insurance premium tax;
- Authorizes two assessment options for the FWCIGA, namely, an immediate single assessment payment by insurers with recoupment through policy surcharges; and an installment payment, which requires insurers to collect and remit policy surcharges quarterly to the FWCIGA;
- Revises the insurer's premium subject to an assessment from being based on the prior year's net direct written premium to the net direct written premium of the calendar year of the assessment; and

- Transfers order authority for assessments and other FWCIGA reporting related to insurer financial condition from the Department of Financial Services (DFS) to the Office of Insurance Regulation (OIR).

The Revenue Estimating Conference has determined that this bill has no impact on state or local revenues.

II. Present Situation:

Chapter 631, F.S., governs the rehabilitation and liquidation process for insurers in Florida. Federal law exempts insurance companies from federal bankruptcy jurisdiction. Insurers are instead subject to state laws regarding receivership.¹ Insurers are “rehabilitated” or “liquidated” by the state. In Florida, the Division of Rehabilitation and Liquidation in the Department of Financial Services (DFS) is responsible for rehabilitating or liquidating insurance companies.²

Florida Workers' Compensation Insurance Guaranty Association

As a condition of their authority to offer workers' compensation insurance coverage in Florida, all insurers and group self-insurance funds authorized under s. 624.4621, F.S., are required to be members of the Florida Workers' Compensation Insurance Guaranty Association, Inc. (FWCIGA).³ The FWCIGA is a not-for-profit corporation established pursuant to Part V of ch. 631, F.S., as a mechanism for the payment of workers' compensation covered claims and to assist in the detection and prevention of insurer insolvencies.⁴ The FWCIGA operates under the supervision and approval of a board of directors, which comprises eleven appointed members.⁵ The FWCIGA evaluates workers' compensation claims made by insureds against insolvent member companies or funds, and determines if such claims are covered claims subject to payment by FWCIGA.

The FWCIGA is funded by distributions from the estates of insolvent insurers, investment income, and assessments of member insurers. The FWCIGA determines whether an assessment against its members is necessary to pay covered claims of an insolvent insurer or to reimburse the FWCIGA for expenses associated with administering its statutory functions. The assessments are levied on each insurer in the proportion of the insurer's net direct written premium in Florida bears to the total of all such insurers writing workers' compensation coverages in Florida for the preceding calendar year. The maximum assessment rate is 2 percent and 1.5 percent for insurers and self-insurance funds, respectively. If these assessments are insufficient to satisfy claims and administration costs, an additional assessment of 1.5 percent can be levied.⁶ The most recent assessment was levied in 2005.⁷

¹ 11 U.S.C. s. 109(b)2.

² 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 debts of a company and outstanding insurance claims.

³ Section 631.911, F.S.

⁴ Section 631.902, F.S.

⁵ Section 631.912, F.S.

⁶ Section 631.914(1)(c), F.S.

⁷ A 2 percent assessment and a 1 percent assessment were levied in 2004 against insurance companies and self-insurance funds, respectively, for inclusion in the 2005 premium rates, available at <http://fwciga.org/index.php?q=assessments> (last visited Jan. 3, 2016).

Assessments are included in the rate charged for coverage as part of the premium and are recouped through the rate filing process. Section 631.914(1)(b), F.S., provides that assessments “shall be included as an appropriate factor in the making of rates” that the OIR will take into consideration when ordering rates. Therefore, such assessment may be included in the rate filing of an insurer or a rating organization (the National Council on Compensation Insurance or NCCI) that files rates on behalf of all workers’ compensation insurers in the state. The recoupment of FWCIGA’s assessment by insurers generally begins in January each year when the NCCI rate filing becomes effective. However, the NCCI may make a filing at any time if insurers want to recoup the assessment when levied, rather than at the beginning of the calendar year.

According to the FWCIGA, the timing of the NCCI rate filing with the OIR requires the FWCIGA board to determine the need for an assessment in June of each year. However, insolvencies do not occur with any predictability and the board must estimate the future cash needs over the next 18 months if the assessment is to be recouped in the upcoming year’s rates.⁸

Since the assessment is included in the rate filing as part of the premium, the assessment is subject to the state’s insurance premium tax.⁹ Section 624.509, F.S., imposes a premium tax of 1.75 percent on property and casualty premiums (which includes workers’ compensation premiums¹⁰) received during the preceding calendar year. For group self-insurance funds, the tax is 1.6 percent of the gross amount of premium.^{11 12} Section 624.509, F.S., provide various tax credits and deductions that reduce the premium tax liability.

III. Effect of Proposed Changes:

The bill substantially revises the FWCIGA assessment process. The bill increases the assessment cap for self-insurance funds from 1.5 to 2 percent of net direct written premiums in Florida for workers’ compensation insurance, which is consistent with the assessment cap for insurers. The bill also revises the assessment base from the net direct written premiums for the previous year to the calendar year of assessment. The bill provides that FWCIGA assessments are not premium and are not subject to any premium tax, fees, or commissions.

The bill transfers the authority to order assessments from the DFS to the OIR. The bill provides that the failure of an insured to pay the surcharge or the recoupment of an assessment is considered as the nonpayment of premium, which could result in the cancellation of a policy. The bill provides that an insurer is not liable for any uncollectible assessments. The bill also provides that only insurers are subject to assessments by the FWCIGA and the provisions do not give a policyholder a cause of action regarding the FWCIGA assessments.

⁸ FWCIGA Proposed Change to the FWCIGA Assessment Summary (Aug. 28, 2015) (on file with the Senate Committee on Banking and Insurance).

⁹ Section 631.914(1)(b) and (c), F.S.

¹⁰ Section 624.605(1)(c), F.S.

¹¹ Section 624.475, F.S.

¹² For purposes of the FWCIGA assessments, under s. 631.904(6), F.S., a self-insurance fund means a group self-insurance fund authorized under 624.4621, F.S., a commercial self-insurance fund writing worker’ compensation insurance authorized under 624.462, F.S., or an assessable mutual insurer authorized under s. 628.6011, F.S.

Assessment Methods

The bill eliminates the recoupment of assessments through the rate filing process and institutes a recoupment through policy surcharges. The bill allows the FWCIGA to have the option of using an immediate single assessment method (advance payment) before the collection of the surcharge or an installment method, which allows the insurer to collect and remit assessments. Under both methods, the member insurers would collect surcharges at a uniform percentage rate for 12 months, as specified in the OIR order. The collection of such surcharges begins 90 days after the FWCIGA certifies the need for an assessment to the OIR.

Immediate Method. Under the immediate method, the FWCIGA certifies the need for an assessment, and the OIR orders the assessment on member insurers. The assessment is due and payable no earlier than 30 days following the written notice of the assessment order to the insurers. The certification and levy require insurers to collect a uniform percentage and a specific four-quarter assessment year for the recoupment of the assessment through policy surcharges.

For purposes of statutory accounting, the bill provides that billed policy surcharges are recognized as a receivable and an admissible asset under the National Association of Insurance Commissioners' Statement of Statutory Accounting Principles No. 4, to the extent the receivable is likely to be realized. However, if the insurer is unable to recoup the amount of the assessment, the amount recognized as an asset must be reduced to the amount reasonably expected to be recouped.

Installment Method. Like the immediate method, the FWCIGA board certifies the need for an assessment and the OIR issues an order levying the assessment on member companies. Insurers are required to collect surcharges at a uniform percentage rate for a specified four-quarter assessment year and remit the surcharges to the FWCIGA quarterly. The bill provides that the recognition of assets is based on actual premium written offset by the obligation to the FWCIGA.

Under both assessment methods, insurers are required to submit a reconciliation report to the FWCIGA within 120 days after the end of the 12-month assessment period. If the insurer's reconciled assessment obligation was more than the amount paid to the FWCIGA, the insurer is required to pay the difference to the FWCIGA. If the insurer's reconciled assessment obligation was less than the amount paid to the FWCIGA, the overpayment is returned to the insurer.

The bill is effective July 1, 2016.

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:

The Revenue Estimating Conference determined that CS/HB 467 (House companion to CS/CS/SB 828) has no impact on state or local revenues.

B. Private Sector Impact:

CS/CS/SB 828 provides the FWCIGA the discretion to use the immediate single payment method or an installment method, which does not require insurers to advance funds to the FWCIGA.

For purposes of the immediate assessment method, the clarification of the statutory accounting treatment of a “receivable for policy surcharges to be billed” as an admissible asset should mitigate the impact of such assessments on an insurer’s financial statements.

According to the OIR, workers’ compensation insurers would be required to file new forms with the OIR to incorporate the changes in the assessment process. For example, the forms would need to disclose the surcharge as a separate line item on the declaration page of the policy, and include a provision that coverage is subject to cancellation if the insured fails to pay the policy surcharge. Finally, if the assessment becomes a surcharge, the OIR will require the filing and review of all large deductible programs.¹³

C. Government Sector Impact:

Indeterminate. As noted above, the OIR indicates that insurers will be required to file forms and large deductible plans with the OIR. However, the OIR has not provided an estimate of the fiscal impact of these requirements.

VI. Technical Deficiencies:

CS/CS/SB 828 does not include the FWCIGA assessments pursuant to s. 631.914, F.S., in the definition of an admissible asset in s. 625.012, F.S., – Assets defined. According to the OIR, by not including the assessments under s. 631.914, F.S., as an admissible asset under s. 625.012, F.S., it is not consistent with s. 625.012(15) (a) and (b), F.S., that allow for the assessments levied pursuant to s. 631.57(3)(a) and (e), F.S., for the Florida Insurance Guaranty Association.¹⁴

VII. Related Issues:

None.

¹³ Office of Insurance Regulation, *Senate Bill 828 Fiscal Analysis* (Nov. 17, 2015) (on file with the Senate Committee on Banking and Insurance).

¹⁴ *Id.*

VIII. Statutes Affected:

This bill substantially amends section 631.914 of the Florida Statutes.

IX. 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 Finance and Tax on January 25, 2016:

The CS/CS provides that if an insurer's reconciled assessment is less than the amount paid to FWCIGA, the association must return the overpayment to the insurer.

CS by Banking and Insurance on January 11, 2016:

The CS provides technical, clarifying amendments relating to the assessment process.

- B. **Amendments:**

None.