SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 1822

SPONSOR: Banking and Insurance Committee and Senator Holzendorf

SUBJECT: Insurance

DATE: February 25, 2002 REVISED: _____ _____ _____ _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Johnson	Deffenbaugh	BI	Favorable/CS
2.			CM	
3.			AGG	
4.			AP	
5.				
6.				

I. Summary:

The Florida Workers' Compensation Insurance Guaranty Association (corporation), a nonprofit corporation, is charged with the responsibility of providing a mechanism for the payment of workers' compensation covered claims, avoiding excessive delay in payment, and avoiding financial loss to claimants because of the insolvency of a member insurer. [1] The committee substitute revises the powers and duties of the corporation by providing the following changes:

1. Revises the definition of the term, "covered claim," to exclude, as a covered claim, any amount sought as a return on premium under a retrospective rating plan and any return of premium resulting from a policy that was not in force on the date of the final order of liquidation of an insurer.
2. Limits the amount that the corporation must pay for a covered claim for the return of unearned premium to $50,000 per policy.
3. Defines the term, "net direct written premiums," for purposes of reporting and assessing member insurers and self-insurance funds under the provisions of s. 631.914, F.S.
4. Clarifies that an employee has an election of remedies available to pursue benefits either through an employer or the corporation and provides that an employer who provides payment to an employee under s. 631.929, F.S., would not have the right of subrogation against the corporation.

This bill substantially amends the following sections of the Florida Statutes: 631.904, 631.913, and 631.929.

[1] Part V, Chapter 631, F.S.

II. Present Situation:

Florida Workers' Compensation Insurance Guaranty Association
In 1997, the Legislature created the Florida Workers' Compensation Insurance Guaranty Association, a nonprofit corporation to provide a mechanism for the payment of covered claims under ch. 440, F.S., to avoid excessive delay in payment, and to avoid financial loss to claimants because of the insolvency of a member insurer. [2] Part V of ch. 631, F.S., provides for the powers and duties of the corporation. The corporation was created through a merger of the Florida Self-Insurance Fund Guaranty Association and the workers' compensation account of the Florida Insurance Guaranty Association. The board is comprised of eleven members: the Insurance Consumer Advocate or designee, the Insurance Commissioner or designee, six members appointed by the Department of Insurance (selected by private carriers from the top 20 workers' compensation insurers), and three persons selected by the self-insurance funds.

When the Florida Workers' Compensation Insurance Guaranty Corporation was established, pre-1994 claimants not receiving benefits, due to insolvency of a self-insurance fund, were provided an election of remedies to pursue benefits from the corporation or seek benefits directly from the employer (or the insolvent self-insurance fund). No cause of action was created against an employer by this election.

The corporation evaluates workers' compensation claims made by insureds against insolvent members (self-insured funds and insurers) to determine if such claims are covered claims, which should be paid or settled by the corporation. The corporation also determines whether an assessment against its members is necessary to pay covered claims of an insolvent insurer or self-insurance fund, or to reimburse the corporation for expenses associated with the administration of the claims.

The corporation is authorized to assess self-insurance funds at a rate of 1.5 percent and all other insurers at a rate of 2 percent of the insurer's or fund's annual net written workers' compensation insurance premiums in Florida. If this assessment is not adequate to make payments on reimbursements, the corporation is authorized to levy an additional assessment of up to 1.5 percent.[3]

National Association of Insurance Commissioners Model Acts
The National Association of Insurance Commissioners (NAIC) established a program for accreditation of states in 1989. Florida and New York were the first two states to be accredited; New York's accreditation was suspended in March 1993 because of its failure to adopt NAIC models relating to managing general agents and reinsurance intermediaries. In order to be accredited, a state must adopt by law or rule the substance of a number of NAIC model laws and rules relating to insurer solvency.

Accreditation of a state provides a benefit to insurers domiciled in that state. Because of accreditation, other accredited states accept Florida examination reports of Florida domestics. Other state laws may provide exemptions for insurers domiciled in accredited states; for

[2] Chapter 97-262, L.O.F.
[3] Section 631.914, F.S.

example, Florida's insurance holding company law applies to Florida domestics and to insurers domiciled in non-accredited states. Florida relies on the accreditation process to assure itself that insurers domiciled in other accredited states are adequately regulated as to solvency.

Accreditation also provides a national system of solvency regulation, relying on each accredited state to regulate the solvency of its domestic insurers sufficiently to meet national standards. In the last several years, accreditation was seen as an alternative to the program of federal regulation of insurer solvency.

The National Association of Insurance Commissioners has adopted a model act entitled, *Post-Assessment Property and Liability Insurance Guaranty Association Model Act.* The National Association of Insurance Commissioners Model Act relating to guaranty associations presently excludes retrospective rating plans from the definition of covered claims and 43 states, including Florida, have adopted the model act or similar legislation.[4] Presently, 36 states exclude retrospective rating plans from their definition of covered claims.[5]

Many of the provisions of this model act are presently incorporated in Part V of chapter 631, F.S. The model act provides that the obligation of a guaranty association is limited to covered claims unpaid prior to insolvency, and to claims arising within thirty days after the insolvency, or until the policy is canceled or replaced by the insured, or it expires, whichever is earlier. This provision is intended to provide policyholders with an orderly transfer to other companies. Also, according to NAIC, this act ameliorates concerns of the insured regarding rapid termination and loss of unearned premium, since unearned premiums are permissible claims, up to $10,000, against a guaranty association. This maximum amount represents the NAIC's concept of practical limitations, but the model act states that each state would want to evaluate the appropriateness of this amount.

The provisions of Part V of chapter 631, F.S., do not specifically include or exclude paying a claimant (insured) for the return of premiums under any retrospective rating plan. The corporation contends that retrospective plans are not covered claims. Legal counsel for the corporation concluded

> A claim for return Retro premium is not an obligation within the coverage of polices issued by the insolvent insurer, nor is it "unearned premium." An insured's decision to obtain workers' compensation policies with a Retro Premium Plan rather than policies with standard premiums (guaranteed cost) involves a financial risk, rather than an insured risk. Thus claims for return Retro premiums are not benefits of an insured within the coverage of the policies. A claim for Retro premium is based solely on a contractual arrangement between the insured and insurer, which is, unrelated to the coverage provisions of the insurance policies. Only claims under policies and unearned premiums are covered claims subject to payment…Retro Premiums are not covered claims.[6]

[4] Post-Assessment Property and Liability Insurance Guaranty Association Model Act, NAIC 1996.
[5] According to the Workers' Compensation Insurance Guaranty Association
[6] July 8, 1998 Memorandum from Don DeCarlo to Anthony Grippa.

The Department of Insurance issued an opinion in 1999 that stated that such retrospective rating premiums should be considered a covered claim and therefore considered an obligation of the guaranty corporation.[7]

III. Effect of Proposed Changes:

Section 1. Amends s. 631.904, F.S., to revise the definition of covered claim to exclude any amount sought as a return of premium under any retrospective rating plan and any return of premium resulting from a policy that was not in force on the date of the final order of liquidation.

The term, "net direct written premiums," is defined to mean direct gross premiums, less return premiums, written in Florida on policies to which this part applies and dividends paid or credited to policyholders on that direct business. Premiums written by any insurer on policies to self-insurers to which this part applies, regardless of whether designated as reinsurance contracts or workers' compensation excess insurance, would be deemed net direct written premiums. Any such premium would be required to be reported as workers' compensation premiums. Premiums on contracts between insurers or reinsurers would be excluded from this definition.

According to the corporation, many insurers are reporting workers' compensation excess premiums under the general liability line on their financial statements; and as a result, the FIGA is receiving the assessment for the guaranty fund although the Florida Workers' Compensation Insurance Guaranty Association is responsible for paying the claim. The intent of this change is to require insurers to report their workers' compensation excess premiums under the definition of workers' compensation net direct written premium and therefore be subject to assessment by the Florida Workers' Compensation Insurance Guaranty Corporation.

Section 2. Amends s. 631.913, F.S., to allow the corporation to satisfy obligations by paying the claimant an amount as follows: 1) the full amount of a covered claim for benefits under a workers compensation insurance coverage; and 2) an amount not exceeding $50,000 per policy for a covered claim for the return of unearned premium. Currently, there is no limitation on the amount of a covered claim for unearned premium.

Section 3. Amends s. 631.929, F.S., to clarify the election of remedies provision by providing that an employee who elects to seek benefits from his or her employer or insolvent self-insurance fund may not then seek payment from the corporation. An employee who was unsuccessful in suing his or her employer could not later seek benefits from the corporation. Currently, s. 631.929, F.S. provides that pre-1994 claimants not receiving benefits, due to an insolvency of a self-insurance fund, are provided an election of remedies to pursue benefits from the corporation or seek benefits directly from the employer (or the insolvent self-insurance fund), as provided in s. 631.929, F.S. No cause of action was created against an employer by this election. The section also provides that an employer who provides payment to an employee under this section would not have a right of subrogation against the corporation.

Section 4. Provides that this act shall take effect upon becoming a law.

[7] June 29, 1999 Letter from Daniel Sumner, General Counsel of the Department of Insurance, to Tony Grippa, Executive Director of the Florida Workers' Compensation Insurance Guaranty Association.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Changes in the criteria for covered claims would result in fewer claimants, particularly employers, being eligible for payment of covered claims; however, this could result in more funds being available to pay the claims of injured workers which may reduce the assessment against member insurers.

Clarifying the assessment base for purposes of the Florida Workers' Compensation Insurance Guaranty Association would result in additional resources for the corporation to pay covered claims for injured workers.

The bill limits the amount that the corporation must pay for a covered claim for the return of unearned premium to $50,000 per policy. Presently, there is no limitation in statute. For the period of 1999-2001, the corporation paid five claims that were for unearned premiums of $50,000 or more. The five claims totaled $426,000.

C. Government Sector Impact:

By clarifying the definition of premiums subject to the Florida Workers' Compensation Insurance Guaranty Association assessment, the corporation anticipates that approximately $3 million in additional annual assessments would be received by the corporation, rather than the Florida Insurance Guaranty Association, for the payment of covered claims.

The changes in the criteria for a covered claim could result in fewer payments by the corporation to employers.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.