HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 639 w/CS Insurance Guaranty Associations
SPONSOR(S): Fields
TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 2070

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Insurance Regulation (Sub)	10 Y, 0 N	Cheek	Cooper
2) Insurance	18 Y, 0 N w/CS	Cheek	Cooper
3)			
4)			
5)			

SUMMARY ANALYSIS

The bill provides that neither the Florida Insurance Guaranty Association (FIGA) or the Florida Workers' Compensation Insurance Guaranty Association (FWCIGA) would provide coverage for an insurance claim against an insolvent insurer if the claim has been rejected by any other state guaranty fund on the grounds that the insured's net worth is greater than that allowed under that state's guaranty fund or liquidation law.

State insurance guaranty funds provide payment for claims of insolvent insurance companies, subject to certain limitations. Most states have imposed net-worth limitations that preclude payment if the insured, such as a large corporation, has a net worth exceeding a certain amount, typically $25 million or $50 million, but as low as $3 million in Georgia. Florida, however, does not have a net-worth limitation for either FIGA, which covers property and casualty insurance, or FWCIGA, which covers workers' compensation insurance. This can result in either association providing payment as the fund that is "next in line" to pay the claim when the state fund that is primary denies the claim due to the net-worth limitation. For FWCIGA, this occurs if a workers' compensation claimant (employee) is a resident of another state with a net-worth limitation and the employer is a multi-state employer with its home office in Florida. For FIGA, this can occur if a third-party claimant is a resident of Florida who has a claim against an insured corporation in another state.

FIGA and FWCIGA are both funded by assessing insurers who, in turn, seek to recoup the assessments in higher premiums to their Florida policyholders. The bill would have a marginal impact on assessments, since the claims affected represent less than 1 percent of claims.

The bill does not appear to have a fiscal impact on state or local government.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

1. Reduce government?	Yes[]	No[]	N/A[x]
2. Lower taxes?	Yes[]	No[]	N/A[x]
3. Expand individual freedom?	Yes[]	No[]	N/A[x]
4. Increase personal responsibility?	Yes[]	No[]	N/A[x]
5. Empower families?	Yes[]	No[]	N/A[x]

For any principle that received a “no” above, please explain:

B. EFFECT OF PROPOSED CHANGES:

Background

Florida Insurance Guaranty Association and Florida Workers’ Compensation Insurance Guaranty Association

In Florida and every other state, when the assets of an insolvent insurer are insufficient to pay claims, the claims for most types of insurance are paid in whole or in part by a guaranty fund. Chapter 631, F.S., creates four different guaranty funds for different types of insurance, two of which are affected by this bill.

The Florida Insurance Guaranty Association (FIGA) pays unpaid property or casualty insurance claims, other than workers’ compensation, of insolvent insurance companies licensed in Florida. FIGA does not cover the first $100 of a claim or amounts in excess of $300,000 per claim. However, with respect to policies covering condominium associations, the obligation is up to $100,000 multiplied by the number of condominium units. FIGA also pays unearned premium claims.

The Florida Workers’ Compensation Insurance Guaranty Association (FWCIGA) pays workers’ compensation claims of insolvent insurers and group self-insurance funds licensed in Florida, as well as unearned premium claims. There is no limit on the coverage for a workers’ compensation claim. Florida is one of only four states that has a separate guaranty fund for workers’ compensation, which was included as a separate account in FIGA. The FWCIGA was created in 1997 by merging the workers’ compensation account in FIGA with the Florida Self-Insurance Fund Guaranty Association. FWCIGA does not pay claims for insolvent self-insured employers, which are covered by a separate guaranty association.

The legislation in 2002 and 2003 that reorganized the former Department of Insurance provided that the Office of Insurance Regulation (OIR) licenses and regulates insurers and self-insurance funds. However, the Department of Financial Services (DFS) is appointed as receiver of an insolvent insurer or fund and has oversight responsibility for the various insurance guaranty associations. The department also administers the workers’ compensation law in chapter 440, F.S.

Funding for FIGA and FWCIGA Provided by Assessing Insurers

FIGA is divided into three accounts, and funding is provided by assessments against authorized insurers, as needed, for the payment of covered claims and costs of administration. The maximum annual assessment is 2 percent of net direct written premiums in the state, for the types of insurance in each account. The three accounts are: 1) auto liability, 2) auto physical damage, and 3) all other property and casualty insurance, other than workers’ compensation.

FWCIGA is similarly funded by assessments against all workers' compensation insurers and self-insurance funds licensed in Florida. The association may, as needed, annually assess insurers up to 2 percent, and self-insurance funds up to 1.5 percent, of their annual net direct written premium for workers' compensation policies in Florida. If these assessments are insufficient, upon certification by the FWCIGA board, the department must levy additional assessments of up to 1.5 percent of net direct written premiums against insurers, but not self-insurance funds.

Due to certain large insolvencies, the obligations of FWCIGA have grown significantly over the past few years. Concern regarding the adequacy of the assessment caps led to passage of legislation in 2003 that expanded the assessment base by applying the assessment to the full policy premium value, without taking into account any discount or credit for deductibles. This was similar to legislation enacted in 2000 for calculating assessments to fund the Workers' Compensation Administration Trust Fund.

In general, assessments against insurers may be passed on to their policyholders. Specifically, the laws for both associations provide that the assessments "shall be included as an appropriate factor in the making of rates." This indicates that such costs may be included in the insurer's rate filing, subject to approval by OIR. There is stronger recoupment authority for the extra 1.5-percent assessment that may be levied by FWCIGA. That law provides that a rate filing is deemed approved if it reflects a percentage rate change equal to the difference between the rate of the assessment and the rate of the previous year's assessment.

Impact of Net Worth Limitations of Guaranty Funds in Other States

According to the National Conference of Insurance Guaranty Funds, 30 states plus the District of Columbia have a net-worth limitation in their guaranty fund laws, which provides that claims of employers with a net worth exceeding a certain amount are not covered. Such laws effectively provide that large employers should assume the liability of paying claims of an insolvent insurer to reduce the impact of spreading such costs on all policyholders in the state. The NAIC Model Insurance Guaranty Act (July 2002), provides a $25 million net-worth limitation for this purpose and most of the states with net worth limitation have imposed either a $25-million or $50-million limit. However, another seven states have lower net worth limits, the lowest being $3 million in Georgia.

FWCIGA is required to pay a *covered claim*, which means an unpaid claim. This includes a claim for return of unearned premium, within the coverage and limits of a workers' compensation insurance policy, which is made on behalf of *a claimant or insured who was a resident of this state at the time of the injury*. According to representatives of FWCIGA, *claimant or insured* is interpreted to mean either an injured employee (claimant) or employer (insured) who was a resident of Florida at the time of injury. This can lead to situations where more than one guaranty association may provide coverage, such as a worker in Georgia who is injured, but who is employed by a Florida-based employer operating in multiple states.

According to representatives of both FWCIGA and FIGA, as well as the NAIC Annotated Model Insurance Guaranty Act, if a claim may be recovered under more than one insurance guaranty association, the association of the state of residence of the insured pays first, except for a workers' compensation claim, for which the state of residence of the claimant pays first. The FWCIGA law does not specify how to determine a corporation's state of residence, but FWCIGA generally interprets this as the state where the corporation has its principal place of business, which is consistent with the NAIC model law and with many other state laws.

As a result, if a worker is injured in a state with a net-worth limitation, the guaranty fund of that state will not provide coverage if the employer's net worth exceeds the limit. But if the employer has its principal place of business in Florida, FWCIGA must cover the claim as the "secondary" fund.

Similarly, FIGA is required to pay a *covered claim*, which means an unpaid claim. This includes a claim for return of unearned premium, within the coverage and limits of an insurance policy, if the *claimant or insured is a resident of this state at the time of the insured event or the property from which the claim arises is permanently located in this state*. According to representatives of FIGA, *claimant or insured* includes claims by policyholders (insureds), as well as a third-party liability claims by a *claimant*, if either of whom was a resident of Florida at the time of the insured event. More than one guaranty association may provide coverage, such as a resident of Florida who is injured or otherwise has a claim against an insured corporation in another state. FIGA follows the general rule, cited above, that the association of the state of residence of the insured pays first. The FIGA law does not specify how to determine the state of residence of a corporation, but FIGA's interpretation is that it is the state of incorporation (unlike FWCIGA and the NAIC model that use the principal place of business test).

As a result, if a third-party claimant who is a resident of Florida has a claim against an insured corporation in another state, the guaranty fund of that state will not provide coverage if the employer's net worth exceeds the limit. But, FIGA must cover the claim as the "secondary" fund.

The costs of assuming claims of workers injured in other states, like all covered claims, must be recovered by the association by assessing Florida carriers who, in turn, pass on such costs to Florida employers in increased workers' compensation premiums. The board of FWCIGA decided not to pursue legislation that would impose a net-worth limit in Florida as adopted in most other states. Instead, the board opted to pursue legislation that more narrowly addresses this situation, as described.

Major Changes to Current Law

The bill provides that neither FIGA)or FWCIGA would provide coverage for an insurance claim against an insolvent insurer if the claim has been rejected by any other state guaranty fund on the grounds that the insured's net worth is greater than that allowed under that state's guaranty fund or liquidation law.

Therefore, FIGA would not pay a claim if a resident of Florida has a third-party claim against a corporation headquartered or incorporated in another state if that state's guaranty fund rejects the claim because the corporation has a net worth in excess of that state's limit. The claimant would have to seek recovery from the corporation itself.

Similarly, FWCIGA would not pay a claim against a corporation that is headquartered in Florida for a workers' compensation claimant who is a resident of another state, if the other state rejected the claim because the corporation had a net worth in excess of its limit. The claimant would have to seek recovery from the corporation itself.

C. SECTION DIRECTORY:

<u>Section 1</u>: Amends s. 631.54, F.S., relating to *Definitions*.

<u>Section 2</u>: Amends s. 631.904, F.S. relating to *Definitions.*

<u>Section 3</u>: Provides an effective date of upon becoming law.

<u>II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT</u>

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   Governmental entities that purchase insurance would not be subject to the increased premium costs passed on by their insurer due to assessments by FIGA or FWCIGA for the situation described.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

A multi-state employer based in Florida whose workers' compensation insurer goes insolvent would not have its workers' compensation claims covered by FWCIGA for employees who are residents in other states that have a net-worth limitation less than the employer's net worth. Residents of Florida who have liability claims against corporations headquartered or incorporated in another state would not have their claims covered by FIGA if the corporation's insurer is insolvent and the corporation's net worth exceeds that state's net-worth limitation. However, such affected persons are likely to obtain recovery from the corporation itself.

Insurance companies and workers' compensation self-insurance funds licensed in Florida would no longer be assessed for the costs of claims by non-resident claimants or non-resident insureds for the situations described. As such, such costs would no longer be passed on to the Florida policyholders in increased premiums. According to FWCIGA, as of December 31, 2003, it had reserved approximately $1 million for claims from other states due to the net-worth limitations in other states, as compared to its total reserves of approximately $440 million. According to a rough estimate by FIGA, about 50 claims out of more than 40,000 total claims would have been rejected in 2003 if this bill had been law.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   The bill does not require cities or counties to expend funds.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

Not Applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

The bill as originally filed amends s. 627.4615, F.S., relating to interest payable on death claim payments, to change the interest rate insurers will pay holders of life insurance policies on funds held between the time a death claim is received until benefits are paid. Specifically, the bill replaces the specified Moody interest rate with the greater of either the current short-term rate under 1274 (d) of the Internal Revenue Code of 1986, the rate for funds left on deposit, or the settlement option rate applicable to the policy. In addition, the bill as originally filed deletes obsolete language requiring a minimum 8-percent payout if the method of calculating the Moody's Index was substantially changed from the process of calculation in use on January 1, 1993.

On March 25, 2004, the Committee on Insurance adopted a strike-all amendment by Rep. Fields. The amendment removes everything from the bill and revises the definition of "covered claim" for the Florida Worker's Compensation Insurance Guaranty Association (FWCIGA) and the Florida Insurance Guaranty Association (FIGA) to exclude claims that have been rejected in another state because the insured's net worth is greater than that allowed under the law of the other state.