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 Banking and Insurance Committee

BILL: SB 1568

INTRODUCER: Senator Montford

SUBJECT: Insurance Insolvency

DATE: March 18, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Matiyow	Burgess	BI	**Pre-meeting**
2.			BC	
3.				
4.				
5.				
6.				

I. Summary:

The bill provides for the Insurance Risk Management Trust Fund[1] to cover employees, officers and agents at the Department of Financial Services (DFS) for liability under 31 U.S.C. s. 3713, relating to priority of claims paid by DFS while acting as a receiver.

The bill makes changes to the Florida Insurance Guaranty Association (FIGA) and Florida Workers' Compensation Insurance Guaranty Association (FWCIGA) statutes relating to the definition of "covered claims" rejected by another state's guaranty fund.

The bill amends qualifications of FIGA and FWCIGA board members representing or employed by an insurer in receivership.

The bill further clarifies FIGA and FWCIGA powers to obtain records from third-party administrators.

The bill creates the following section of the Florida Statutes: 631.2715.

The bill amends the following sections of the Florida Statutes: 631.54, 631.56, 631.57, 631.904 and 631.912.

[1] The State Risk Management Trust Fund provides the self-insurance pool for payment of workers' compensation claims, general liability claims, automotive liability claims, federal civil rights claims and court awarded attorney's fees. The revenues for this fund are premiums paid by state agencies from the agency's special appropriation category for risk management insurance.

II. Present Situation:

Chapter 631, F.S., governs the rehabilitation and liquidation process for insurers in Florida. Federal law specifies that insurance companies are exempted from federal bankruptcy jurisdiction and are instead subject to state laws regarding receivership.[2] Insurers are "rehabilitated" or "liquidated" by the state. In Florida, the Division of Rehabilitation and Liquidation in DFS is responsible for rehabilitating or liquidating insurance companies.

Typically, insurers are put into liquidation when the company is or is about to become insolvent;[3] whereas, insurers are placed into rehabilitation[4] for numerous reasons, one of which is that the insurer is impaired or failed to comply with an order of the office to address an impairment of capital or surplus or both. 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 company's debts and outstanding insurance claims.

Under Florida law s. 631.271(1)(d), F.S., debts owed to the federal government by an insurer in receivership are to be paid after: all of the receiver's costs and expenses of administration are paid; all of the expenses of a guaranty association or foreign guaranty association in handling claims are paid; all claims under policies for losses incurred, including third-party claims are paid; and all claims are paid under nonassessable policies for unearned premiums or premium refunds. However, under 31 U.S.C. s. 3713(b), "a representative of a person or an estate (except a trustee acting under title 11) paying any part of a debt of the person or estate before paying a claim of the Government is liable to the extent of the payment for unpaid claims of the Government." As a result s. 631.271(1)(d), F.S., could expose employees, officers and agents at DFS to personal liabilities owed to the federal government while performing their duties as receiver.

Guaranty Associations

In Florida, five insurance guaranty funds have been established to ensure that policyholders of liquidated insurers are protected with respect to insurance premiums paid and settlement of outstanding claims, up to limits provided by law. A guaranty association generally is a nonprofit corporation created by law directed to protect policyholders from financial losses and delays in claim payment and settlement due to the insolvency of an insurance company. Insurers are required by law to participate in guaranty associations as a condition of transacting business in Florida.

Covered Claims

Florida's associations provide coverage for policies written to employees within Florida. Some states' guaranty associations do not provide coverage if the company in that state has a large deductible policy, unless the policyholder (employer) is insolvent.[5] When the guaranty

[2] U.S.C. s. 109(b)(2).
[3] Section 631.061, F.S.
[4] Section 631.051, F.S.
[5] Missouri Law 375.772 2(c)j - Any amount that constitutes a claim under a policy issued by an insolvent insurer with a deductible or self- insured retention of three hundred thousand dollars or more. However, such a claim shall be considered a

association of another state denies coverage, the injured worker (claimant) could possibly look to other states where the employer may also does business. Many national companies have locations in all fifty states including Florida. As a result of other states associations denying claims, Florida's guaranty associations could potentially end up paying claims to injured workers in other states.

Florida Insurance Guaranty Association (FIGA)

Part II of ch. 631, F.S., governs FIGA, which operates under a board of directors as a nonprofit corporation. FIGA is composed of all insurers licensed to sell property and casualty insurance in the state. When a property and casualty insurance company becomes insolvent, FIGA is required by law to assume the claims of the insurer and pay the claims of the company's policyholders. FIGA is responsible for claims on residential and commercial property insurance, automobile insurance, and liability insurance, among others.

The maximum claim amount FIGA will cover is $300,000, but special limits apply to damages relating to the structure and contents on homeowners', condominium, and homeowners' association claims. For damages to structure and contents on homeowners' claims, FIGA covers an additional $200,000, for a total of $500,000. For condominium and homeowners' association claims, FIGA covers the lesser of policy limits or $100,000 multiplied by the number of units in the association. In addition to any deductible in the insurance policy, all claims are subject to a $100 FIGA deductible.

FIGA is divided into three accounts: auto liability, auto physical damage, and all other property and casualty insurance other than workers' compensation.[6] This "all other" account includes property insurance (such as claims resulting from hurricane-related insolvencies), personal liability, commercial liability, commercial multi-peril, professional liability, and all other types of property and casualty insurance other than automobile and workers' compensation.

Funding is provided by assessments against authorized insurers, as needed for the payment of covered claims and costs of administration. The maximum annual assessment against each insurer is 2 percent of the insurer's net direct written premiums in the state in the prior year, for the types of insurance in each account. FIGA may also impose annual emergency assessments on insurers of up to 2 percent of written premium if necessary to fund revenue bonds issued by a municipality or county to pay claims of an insurer rendered insolvent due to a hurricane. FIGA also obtains funds from the liquidation of assets of insolvent insurers domiciled in other states but having claims in Florida.

Insurers pay the assessment to FIGA and submit a rate filing with the Office of Insurance Regulation (office) to recoup the assessment from their policyholders.[7] Pursuant to s. 631.64, F.S., the rates and premiums charged for insurance policies may include amounts sufficient to recoup a sum equal to the amounts paid to FIGA by the member insurer, less any amounts

covered claim, if, as of the deadline set forth for the filing of claims against the insolvent insurer or its liquidator, the insured is a debtor under 11 U.S.C. Section 701, et seq.;

[6] Section 631.55, F.S.

[7] Section 631.57(3)(a), F.S.

returned to the member insurer by FIGA, and such rates shall not be deemed excessive because they contain an amount reasonably calculated to recoup assessments paid by the member insurer.

Section 631.56, F.S., establish requirements for selecting members to the FIGA board. The board shall consist of not less than five or more than nine members. Each board member serves for a 4-year term and may be reappointed. DFS approves and appoints each member recommended by the member insurers (all companies writing licensed business in that state). In the event DFS finds a candidate does not meet the qualifications for service on the board, DFS shall request the member insurers to recommend another candidate. Vacancies on the board are filled for the remaining term and are handled in the same manner as initial appointments. Currently members on the board representing an insurer in receivership are not required to step down.

Section 631.57(2), F.S., enumerates the powers and duties of FIGA necessary to carry out their legislative mandate. Access to the records of an insurer in receivership is a vital component for the association to properly complete its duties. Currently many insurance companies utilize third-party administrators (TPA) to handle some of their administrative functions such as claims processing. Given that a TPA is a separate entity apart for the insurance company, some argue that FIGA lacks the legal authority to bring action against any TPA who refuses to furnish records of an insurance company in receivership that the TPA was contracted to provide services for.

Florida Workers' Compensation Insurance Guaranty Association (FWCIGA)

The FWCIGA pays workers’ compensation claims of insolvent insurers and group self-insurance funds authorized in Florida, as well as unearned premium claims. FWCIGA does not have a coverage limit for workers’ compensation claims of insolvent insurers. When FWCIGA was created, the responsibility for handling insolvent workers’ compensation claims was transferred from FIGA to FWCIGA. However, claims under the employer's liability part of a workers' compensation insurance policy continue to be covered by FIGA. According to representatives of FIGA, FIGA experiences difficulties in the administration of employer liability claims if FIGA is required to assess workers’ compensation carriers for a portion of their workers’ compensation premium. A workers' compensation insurance policy is divided into Part A and Part B. Part A provides workers' compensation coverage to cover medical expenses, lost income wages, rehabilitation costs and, if needed, death benefits for employees who sustain an injury or illness as a result of their employment. Part B provides employer's liability coverage to cover the employer in the event the injured employee elects not to accept the coverage offered under Part A of the policy. In such case, the employee exercises his or her right to sue the employer and part B defends and protects the employer's interests.

Section 631.912, F.S., establishes requirements for selecting members to the FWCIGA board. The board shall consist of 11 persons, 1 of whom is the insurance consumer advocate appointed under s. 627.0613, F.S., and 1 of whom is designated by the Chief Financial Officer (CFO). DFS shall appoint to the board 6 persons selected by private carriers from among the 20 workers’ compensation insurers with the largest amount of net direct written premium as determined by DFS, and 3 persons selected by the self-insurance funds. At least two of the private carriers shall be foreign carriers authorized to do business in this state. The board shall elect a chairperson from among its members. The CFO may remove any board member for cause. Each board member shall serve for a 4-year term and may be reappointed. A vacancy on the board shall be filled for the remaining term and in the same manner by which the original appointment was made. Currently members on the board who have material relationships with or are employed by an insurer in receivership are not required to step down.

Section 631.913(3), F.S., enumerates the powers and duties of FWCIGA necessary to carry out their legislative mandate. Access to the records of an insurer in receivership is a vital component for the association to properly complete its duties. Currently many insurance companies utilize third-party administrators (TPA) to handle some of their administrative functions such as claims processing. Given that a TPA is a separate entity apart for the insurance company, some argue that FWCIGA lacks the legal authority to bring action against any TPA who refuses to furnish records of an insurance company in receivership that the TPA was contracted to provide services for.

III. Effect of Proposed Changes:

By extending coverage of the Insurance Risk Management Trust Fund to protect DFS employees, the bill provides state employees personal protection against actions brought by the federal government while they are performing DFS's duties as the receiver of an insolvent insurance company.

The bill provides that a claim will not be covered by FIGA or FWCIGA if that claim had already been rejected by another state's guaranty fund. This provision will protect the associations and Florida polictholders from having to pay claims for workers of companies domiciled in other states.

The bill requires that a board member of FIGA or FWCIGA must immediately step down if the company the member represents goes into receivership\

The bill specifically allows FIGA and FWCIGA to bring a suit against a third party administer who fails to turn over requested records. This provision assures that the associations have a legal remedy to insure all records of an insolvent insurance company are provided to the associations.

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:

None.

B. Private Sector Impact:

Third-party administrators could be sued for failing to turn over records to a guaranty association.

C. Government Sector Impact:

DFS employees will be covered by the Insurance Risk Management Trust Fund for potential liability to the federal government while performing their duties as receiver of an insolvent insurance company.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

None.

B. Amendments:

None.