

By the Committee on Banking and Insurance; and Senator Montford

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1 A bill to be entitled
2 An act relating to insurer insolvency; amending s.
3 631.152, F.S.; authorizing the Department of Financial
4 Services to request appointment as ancillary receiver
5 if necessary to obtain records to adjudicate covered
6 claims; providing for the reimbursement of specified
7 costs associated with ancillary delinquency
8 proceedings; creating s. 631.2715, F.S.; providing for
9 the State Risk Management Trust Fund to cover
10 specified officers, employees, agents, and other
11 representatives of the Department of Financial
12 Services for liability under specified federal laws
13 relating to receiverships; amending s. 631.391, F.S.;
14 imposing penalties on persons who fail to cooperate in
15 providing records; amending s. 631.54, F.S.; revising
16 the definition of the term "covered claim" to exclude
17 a claim rejected or denied by another state's guaranty
18 fund based upon that state's statutory exclusions;
19 amending s. 631.56, F.S.; providing that a board
20 member of the Florida Insurance Guaranty Association
21 representing an insurer in receivership shall be
22 terminated as a board member; specifying a termination
23 date; amending s. 631.904, F.S.; revising the
24 definition of "covered claim" to exclude a claim
25 rejected or denied by another state's guaranty fund
26 based upon that state's statutory exclusions; amending
27 s. 631.912, F.S.; providing that any board member of
28 the Florida Workers' Compensation Insurance Guaranty
29 Association who is employed by, or has a material

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30 relationship with, an insurer in receivership shall be
31 terminated as a board member; specifying a termination
32 date; providing an effective date.

33
34 Be It Enacted by the Legislature of the State of Florida:

35
36 Section 1. Section 631.152, Florida Statutes, is amended to
37 read:

38 631.152 Conduct of delinquency proceeding; foreign
39 insurers.—

40 (1) If ~~Whenever under this chapter~~ an ancillary receiver is
41 to be appointed under this chapter in a delinquency proceeding
42 for an insurer not domiciled in this state, the court shall
43 appoint the department as ancillary receiver. The department
44 shall file a petition requesting the appointment on the grounds
45 set forth in s. 631.091:

46 (a) If it finds that there are sufficient assets of the
47 insurer located in this state to justify the appointment of an
48 ancillary receiver; ~~or~~

49 (b) If 10 or more persons resident in this state having
50 claims against such insurer file a petition with the department
51 or office requesting the appointment of such ancillary receiver;
52 or—

53 (c) If it finds it is necessary to obtain records to
54 adjudicate the covered claims of policyholders in this state.

55 (2) The domiciliary receiver for the purpose of liquidating
56 an insurer domiciled in a reciprocal state is ~~shall be~~ vested by
57 operation of law with the title to all of the property (except
58 statutory deposits, special statutory deposits, and property

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59 located in this state subject to a security interest),
60 contracts, and rights of action, and all of the books and
61 records of the insurer located in this state, and ~~it~~ shall have
62 the immediate right to recover balances due from local agents
63 and ~~to~~ obtain possession of any books and records of the insurer
64 found in this state. The domiciliary receiver is ~~it shall~~ also
65 ~~be~~ entitled to recover the property subject to a security
66 interest, statutory deposits, and special statutory deposits of
67 the insurer located in this state, except that upon the
68 appointment of an ancillary receiver in this state, the
69 ancillary receiver shall during the ancillary receivership
70 proceeding have the sole right to recover such other assets. The
71 ancillary receiver shall, as soon as practicable, liquidate from
72 their respective securities those special deposit claims and
73 secured claims which are proved and allowed in the ancillary
74 proceeding in this state, and ~~shall~~ pay the necessary expenses
75 of the proceeding. The ancillary receiver shall promptly
76 transfer all remaining assets ~~it shall promptly transfer~~ to the
77 domiciliary receiver. Subject to the foregoing provisions, the
78 ancillary receiver and its agents ~~shall~~ have the same powers and
79 are ~~be~~ subject to the same duties with respect to the
80 administration of such assets as a receiver of an insurer
81 domiciled in this state.

82 (3) The domiciliary receiver of an insurer domiciled in a
83 reciprocal state may sue in this state to recover any assets of
84 such insurer to which it may be entitled under the laws of this
85 state.

86 (4) The provisions of s. 631.141(7)(b) apply to ancillary
87 delinquency proceedings opened for the purpose of obtaining

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88 records necessary to adjudicate the covered claims of
89 policyholders in this state.

90 Section 2. Section 631.2715, Florida Statutes, is created
91 to read:

92 631.2715 Liability under federal priority of claims law.—
93 The State Risk Management Trust Fund shall cover department
94 officers, employees, agents, and other representatives for any
95 liability under the federal act relating to priority of claims,
96 31 U.S.C. s. 3713, for any action taken by them in the
97 performance of their powers and duties under this chapter.

98 Section 3. Subsection (6) is added to section 631.391,
99 Florida Statutes, to read:

100 631.391 Cooperation of officers and employees.—

101 (6) Any person referred to in subsection (1) who refuses to
102 cooperate in providing records upon the request of the
103 department or office is liable for any penalties, fines, or
104 other costs assessed against the guaranty association or the
105 receiver which result from the refusal or delay to provide
106 records.

107 Section 4. Subsection (3) of section 631.54, Florida
108 Statutes, is amended to read:

109 631.54 Definitions.—As used in this part:

110 (3) "Covered claim" means an unpaid claim, including one of
111 unearned premiums, which arises out of, and is within the
112 coverage, and not in excess of, the applicable limits of an
113 insurance policy to which this part applies, issued by an
114 insurer, if such insurer becomes an insolvent insurer and the
115 claimant or insured is a resident of this state at the time of
116 the insured event or the property from which the claim arises is

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117 permanently located in this state. For entities other than
118 individuals, the residence of a claimant, insured, or
119 policyholder is the state in which the entity's principal place
120 of business is located at the time of the insured event.

121 "Covered claim" does ~~shall~~ not include:

122 (a) Any amount due any reinsurer, insurer, insurance pool,
123 or underwriting association, sought directly or indirectly
124 through a third party, as subrogation, contribution,
125 indemnification, or otherwise; or

126 (b) Any claim that would otherwise be a covered claim under
127 this part that has been rejected or denied by any other state
128 guaranty fund based upon that state's statutory exclusions,
129 including, but not limited to, those based on coverage, policy
130 type, or an insured's net worth ~~on the grounds that an insured's~~
131 ~~net worth is greater than that allowed under that state's~~
132 ~~guaranty law.~~ Member insurers ~~shall~~ have no right of
133 subrogation, contribution, indemnification, or otherwise, sought
134 directly or indirectly through a third party, against the
135 insured of any insolvent member.

136 Section 5. Subsection (4) is added to section 631.56,
137 Florida Statutes, to read:

138 631.56 Board of directors.—

139 (4) Any board member representing an insurer in
140 receivership shall be terminated as a board member, effective as
141 of the date of the entry of the order of receivership.

142 Section 6. Subsection (2) of section 631.904, Florida
143 Statutes, is amended to read:

144 631.904 Definitions.—As used in this part, the term:

145 (2) "Covered claim" means an unpaid claim, including a

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146 claim for return of unearned premiums, which arises out of, is
147 within the coverage of, and is not in excess of the applicable
148 limits of, an insurance policy to which this part applies, which
149 policy was issued by an insurer and which claim is made on
150 behalf of a claimant or insured who was a resident of this state
151 at the time of the injury. The term ~~"covered claim"~~ includes
152 unpaid claims under any employer liability coverage of a
153 workers' compensation policy limited to the lesser of \$300,000
154 or the limits of the policy. The term ~~"covered claim"~~ does not
155 include any amount sought as a return of premium under any
156 retrospective rating plan; any amount due any reinsurer,
157 insurer, insurance pool, or underwriting association, as
158 subrogation recoveries or otherwise; any claim that would
159 otherwise be a covered claim that has been rejected or denied by
160 any other state guaranty fund based upon that state's statutory
161 exclusions, including, but not limited to, those based on
162 coverage, policy type, or an insured's net worth ~~on the grounds~~
163 ~~that the insured's net worth is greater than that allowed under~~
164 ~~that state's guaranty fund or liquidation law~~, except this
165 exclusion from the definition of covered claim does ~~shall~~ not
166 apply to employers who, before ~~prior to~~ April 30, 2004, entered
167 into an agreement with the corporation preserving the employer's
168 right to seek coverage of claims rejected by another state's
169 guaranty fund; or any return of premium resulting from a policy
170 that was not in force on the date of the final order of
171 liquidation. Member insurers have no right of subrogation
172 against the insured of any insolvent insurer. This provision
173 applies ~~shall be applied~~ retroactively to cover claims of an
174 insolvent self-insurance fund resulting from accidents or losses

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175 incurred before ~~prior to~~ January 1, 1994, regardless of the date
176 the petition in circuit court was filed alleging insolvency and
177 the date the court entered an order appointing a receiver.

178 Section 7. Subsection (3) is added to section 631.912,
179 Florida Statutes, to read:

180 631.912 Board of directors.—

181 (3) Any board member who is employed by, or has a material
182 relationship with, an insurer in receivership shall be
183 terminated as a board member, effective as of the date of the
184 entry of the order of receivership.

185 Section 8. This act shall take effect July 1, 2011.