

**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.)

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Prepared By: The Professional Staff of the Appropriations Subcommittee on Agriculture, Environment, and General Government

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BILL: CS/SB 496

INTRODUCER: Banking and Insurance Committee and Senator Rader

SUBJECT: Insurance Guaranty Associations

DATE: March 18, 2019

REVISED: 3/19/19

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	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Matiyow</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>Sanders</u>	<u>Betta</u>	<u>AEG</u>	<u>Pre-meeting</u>
3.	<u></u>	<u></u>	<u>AP</u>	<u></u>

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 496 allows employees of the Florida Insurance Guaranty Association to adjust claims so long as they hold, or have held in the past 10 years, licensure in Florida that allows for the adjustment of claims. The bill allows certain employees of guaranty associations established by states whose insurance regulators are members of the National Association of Insurance Commissioners to adjust claims for the Florida Insurance Guaranty Association so long as the employees have experience and training in adjusting claims.

The bill revises the method by which Florida's Workers' Compensation Insurance Guaranty Association assessments are calculated against workers' compensation insurers by the Office of Insurance Regulation. The bill authorizes the Florida's Workers' Compensation Insurance Guaranty Association to audit reconciliation reports from insurers regarding amounts collected from policyholders.

The bill has no fiscal impact on state funds and has an effective date of July 1, 2019.

## II. Present Situation:

### Guaranty Associations

Under federal law, insurance companies cannot file for bankruptcy.<sup>1</sup> Instead, they are either rehabilitated or liquidated by their state of domicile. Florida law establishes the system for the treatment of impaired or insolvent insurers<sup>2</sup> in Florida and sets up guaranty payments where necessary.<sup>3</sup> Florida laws provides for guaranty associations to ensure policyholders of insolvent insurers are protected with respect to insurance premiums paid and settlement of outstanding claims, up to limits provided by law.<sup>4</sup> A guaranty association is a not-for-profit corporation created by law and directed to protect policyholders from financial losses and delays in claims payment and settlements due to the insolvency of an insurer.<sup>5</sup> Insurers are required to participate in the guaranty associations as a condition of transacting insurance business in Florida. Florida operates four guaranty associations, including the Florida Insurance Guaranty Association (FIGA)<sup>6</sup> and the Florida Workers' Compensation Insurance Guaranty Association (FWCIGA)<sup>7</sup>.

### Florida Insurance Guaranty Association (FIGA)

The FIGA provides a “mechanism for the payment of covered claims under certain insurance policies to avoid” delay and financial loss due to the financial insolvency of an insurer.<sup>8</sup> It issues guaranty fund payments and provides related services for all lines of property and casualty insurance with certain exceptions.<sup>9</sup> When a property and casualty insurer becomes insolvent, the FIGA takes over the claims of that insurer and pays the claims of its policyholders, ensuring that policyholders are not left with unpaid claims. The FIGA obtains funds to pay the claims of insolvent insurers located in Florida from the liquidation of the assets of insolvent insurers by the Division of Rehabilitation and Liquidation (the Division) in the Florida Department of Financial Services (DFS) and from the liquidation of assets of insolvent insurers located outside Florida that transact insurance business in Florida.<sup>10</sup> If an insurer’s assets are insufficient to pay all claims, the FIGA can also issue post-insolvency assessments against property and casualty insurers to obtain funds to pay the remaining claims.<sup>11</sup>

When an insolvent insurer is liquidated in Florida, the FIGA assumes the claims and is “deemed the insurer to the extent of its obligation on...covered claims, and,...shall have all rights, duties,

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<sup>1</sup> 11 U.S.C. s. 109(b)(2).

<sup>2</sup> An “insolvent insurer” means an insurer that was authorized to transact insurance in this state, either at the time the policy was issued or when the insured event occurred, and against which an order of liquidation with a finding of insolvency has been entered by a court of competent jurisdiction if such order has become final by the exhaustion of appellate review. s. 631.904(4), F.S.

<sup>3</sup> Chapter 631, F.S.

<sup>4</sup> *Id.*

<sup>5</sup> *See e.g.*, ss. 631.51 and 631.902, F.S.

<sup>6</sup> Chapter 631, part II, F.S.

<sup>7</sup> Chapter 631, part V, F.S.

<sup>8</sup> Section 631.51, F.S.

<sup>9</sup> Section 631.52, F.S.

<sup>10</sup> *See* s. 631.061, F.S. for grounds for liquidation. *See* s. 631.025, F.S., for an overview of persons subject to proceedings initiated by the Division.

<sup>11</sup> Section 631.57, F.S.

defenses, and obligations of the insolvent insurer as if the insurer had not become insolvent.”<sup>12</sup> Additionally, the FIGA has the right to employ the necessary staff to handle claims and perform other duties for the association.<sup>13</sup>

In general, when an insolvent insurer located in another state is liquidated, the claims in that state are referred to its guaranty association for claims handling. However, the FIGA handles claims that exist on policies issued in Florida by insolvent foreign insurers.<sup>14</sup>

### **Florida Workers’ Compensation Insurance Guaranty Association (FWCIGA)**

The FWCIGA “provides a mechanism for the payment of covered claims under chapter 440 to avoid” delay and financial loss to claimants due to the insolvency of a workers’ compensation insurer.<sup>15</sup> The FWCIGA services workers’ compensation claims against insolvent workers’ compensation insurers<sup>16</sup> and self-insurance funds.<sup>17</sup> When a workers’ compensation insurer or self-insurance fund becomes insolvent, the FWCIGA takes over the claims of that insurer and pays the claims of its policyholders, ensuring that policyholders are not left with unpaid claims. Like the FIGA, the FWCIGA is funded through the liquidation of insolvent insurers, including a portion of the estates of insolvent insurers in other states. If the assets of the liquidated insurer are insufficient to pay claims, the FWCIGA in conjunction with the Office of Insurance Regulation (OIR), may order assessments of workers’ compensation insurers and self-insurance funds writing workers’ compensation coverage in Florida.<sup>18</sup> The FWCIGA levied assessments from its inception in 1998 through 2005.<sup>19</sup> It has not levied any assessments since 2005, but anticipates doing so effective January 1, 2020.<sup>20</sup>

#### ***Method of Assessment***

In 2016, the method of assessment for the FWCIGA was amended to be more consistent with the method used to levy assessments on the other Florida guaranty associations.<sup>21</sup> Since the 2016 amendments, the law has provided for two methods by which the FWCIGA can collect

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<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> A foreign insurer is one formed under the laws of any state, district, territory, or commonwealth of the United States other than Florida. Section 624.06, F.S.

<sup>15</sup> Section 631.902, F.S.

<sup>16</sup> “‘Insurer’ means an insurance carrier or self-insurance fund authorized to insure under chapter 440. For purposes of this act, ‘insurer’ does not include a qualified local government self-insurance fund, as defined in s. 624.4622, or an individual self-insurer as defined in s. 440.385.” S. 631.904(5), F.S.

<sup>17</sup> “‘Self-insurance fund’ means a group self-insurance fund authorized under s. 624.4621, a commercial self-insurance fund writing workers’ compensation insurance authorized under s. 624.462, or an assessable mutual insurer authorized under s. 628.6011. For purposes of this act, the term ‘self-insurance fund’ does not include a qualified local government self-insurance fund, as defined in s. 624.4622, an independent educational institution self-insurance fund as defined in s. 624.4623, an electric cooperative self-insurance fund as described in s. 624.4626, or an individual self-insurer as defined in s. 440.385.” S. 631.904(6), F.S.

<sup>18</sup> Section 631.914, F.S.

<sup>19</sup> Florida Workers’ Compensation Insurance Guaranty Association, *Assessments*, <https://fwciga.org/assessments> (last visited Feb. 27, 2019).

<sup>20</sup> Florida Workers’ Compensation Guaranty Association, *Bulletin 2019-1*, [https://fwciga.org/wp-content/uploads/2019/01/Surcharge-Bulletin\\_sm.pdf](https://fwciga.org/wp-content/uploads/2019/01/Surcharge-Bulletin_sm.pdf) (last visited Feb. 27, 2019). Pursuant to s. 631.914(4)(a), F.S., an insurer may be exempted from an assessment if, in the opinion of OIR, the assessment would impair the solvency of the insurer.

<sup>21</sup> Chapter 16-170, Laws of Fla.

assessments from workers' compensation insurers and self-insurance funds.<sup>22</sup> The FWCIGA may choose to fund an assessment by either of the following methods:<sup>23</sup>

- Single payment, subject to true-up (pay and recover)<sup>24</sup> – under this method, the insurer pays the assessment to the FWCIGA and then recovers its payment from its insureds through policy surcharges. The assessment payment is due and payable no earlier than 30 days following written notice of the assessment order. For accounting purposes, the billed surcharges are a receivable and an asset for the purposes of the National Association of Insurance Commissioners' Statement of Statutory Accounting Principles Number 4<sup>25</sup> and would be recorded separately from the liability for the OIR reports.
- Installment (collect and remit) – under this method, the insurer would bill the insured for the surcharge as policies are written and remit the collected surcharges to the FWCIGA quarterly.<sup>26</sup>

The insurer is required to submit a reconciliation report within 120 days following the end of the 12-month assessment recovery period showing the amount initially paid and the amount of the surcharge collected.<sup>27</sup> This results in a "true-up" of the actual assessment amount if the initial calculation and payment was too low or too high.<sup>28</sup>

### ***Calculation of Insurer Assessment Amount***

The OIR, upon certification of need by the FWCIGA, levies assessments on each insurer "initially estimated in the proportion that the insurer's net direct written premiums" in Florida "bears to the total net direct premiums received" in Florida by all workers' compensation insurers during the previous calendar year.<sup>29</sup> The assessments levied against insurers and self-insurance funds are computed based upon the net direct written premium amounts set forth in Florida for workers' compensation insurance without consideration for any discount in premium or credit for deductibles.<sup>30</sup>

The assessment is limited to two percent of an insurer's or self-insurance fund's net direct written premium in any given calendar year.<sup>31</sup> If the assessment is insufficient to meet the FWCIGA's funding need for payments owing to claimants in a calendar year, then, upon certification by the FWCIGA, the OIR shall levy assessments of up to an additional one and one-half percent of the insurer's net direct written premiums in Florida.<sup>32</sup> Insurers and self-insurance funds must report to the FWCIGA the amount of initial payment or installment payments made

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<sup>22</sup> See s. 631.914, F.S.

<sup>23</sup> See *id.*

<sup>24</sup> Section 631.914(1)(d), F.S.

<sup>25</sup> National Association of Insurance Commissioners & The Center for Insurance Policy and Research, *Statutory Accounting Principles*, [http://www.naic.org/cipr\\_topics/topic\\_statutory\\_accounting\\_principles.htm](http://www.naic.org/cipr_topics/topic_statutory_accounting_principles.htm) (last visited Feb. 27, 2015).

<sup>26</sup> Section 631.914(1)(d), F.S.

<sup>27</sup> Section 631.914(1)(d)3., F.S.

<sup>28</sup> *Id.*

<sup>29</sup> Section 631.914(1)(a), F.S.

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> Section 631.914(1)(c), F.S.

to the FWCIGA and the amount collected from policyholders.<sup>33</sup> The reporting must occur within 120 days after the 12-month assessment period and annually thereafter for three years.<sup>34</sup>

### III. Effect of Proposed Changes:

**Section 1** creates s. 626.8621, F.S., to allow employees of the Florida Insurance Guaranty Association to adjust claims so long as they hold, or have held in the past 10 years, licensure in Florida that allows for the adjustment of claims. The bill also allows employees of guaranty association established by states whose insurance regulators are members of the National Association of Insurance Commissioners to adjust claims for Florida Insurance Guaranty Association so long as the employees have experience and training in adjusting claims.

**Section 2** amends s 631.914, F.S., relating to the method by which assessments are levied against insurers and collected by the Florida Workers' Compensation Insurance Guaranty Association (FWCIGA). The bill provides that an insurer shall fully recoup assessments by applying a uniform surcharge percentage levied by the Office of Insurance Regulation (OIR) to all policies of the same kind or line as were considered by the OIR in determining the assessment liability of the insurer.

The bill provides the authority for the FWCIGA to audit the reports from insurers regarding the payments made to the FWCIGA and the amounts collected from policyholders.

Additionally, the bill provides that assessments paid by workers' compensation insurers constitute advances of funds to the FWCIGA under certain circumstances to allow for proper accounting treatment. The bill removes the word "net" from "net direct written premium" to use the more common workers' compensation industry terminology of "direct written premium."

**Section 3** provides an effective date of July 1, 2019.

### IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

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<sup>33</sup> Section 631.914(1)(a)d.3., F.S.

<sup>34</sup> *Id.*

E. Other Constitutional Issues:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Changes how insurers must remit assessments to FWCIGA and allows the FWCIGA to specify whether assessments must be paid by the insurer upfront or may be passed through to policyholders by a surcharge. However, the total amount of any assessment will not change.

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 631.914 of the Florida Statutes.

This bill creates section 626.8621 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 by Banking and Insurance on March 4, 2019:**

The CS:

- Allows employees of the FIGA to adjust claims so long as they hold or have held in the past 10 years licensure in Florida that allows for the adjustment of claims.
- Requires out of state guaranty association employees contracted to adjust claims for the FIGA must reside in states whose insurance regulators are members of the NAIC and such employees must have experience and training in adjusting claims.

- Removes “large” deductibles and retrospectively rated policies from being excluded for discount and states that no policy shall be discounted when calculating the assessment amount.
- Reverts to current law that insurers must submit to the FWCIGA assessment reconciliation reports annually for three years.
- Makes other cross referencing and technical changes.

B. Amendments:

None.