

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 329 Insurance Guaranty Associations

**SPONSOR(S):** Smith, D.

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 540

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	14 Y, 0 N	Fortenberry	Cooper
2) Government Operations & Technology Appropriations Subcommittee	8 Y, 0 N	Helpling	Topp
3) Commerce Committee			

### SUMMARY ANALYSIS

Florida law provides for guaranty associations to ensure policyholders of insolvent insurers are protected with respect to insurance premiums paid and settlement of outstanding claims. Florida has four guaranty associations including the Florida Insurance Guaranty Association (FIGA) and the Florida Workers' Compensation Insurance Guaranty Association (FWCIGA).

FIGA assumes the rights and duties of insolvent Florida insurers, including claims adjusting. Claims filed with a liquidated foreign insurer are referred to that state's guaranty association for handling. FIGA handles claims involving insolvent Florida insurers and claims on Florida policies issued by liquidated foreign insurers. It may be efficient for the employees of another state's guaranty association to be involved in adjusting a Florida claim. The bill allows those employees to adjust Florida claims without being licensed adjusters, if authorized by the contract between FIGA and the other state's guaranty association. It also allows FIGA employees to adjust claims without being licensed adjusters.

If an insurer's assets are insufficient to pay all claims, FIGA can issue post-insolvency assessments against property and casualty insurers to obtain funds to pay the remaining claims. The bill clarifies that the assessment due from member insurers will be a uniform percentage of premium collected instead of based on a proportion of the total net direct written premium for the prior calendar year. The bill establishes that assessment installment payments made by FIGA members may be made quarterly rather than monthly.

FWCIGA assumes the right and duties of the insolvent Florida workers' compensation insurers or self-insurance funds and pays the claims of its policyholders. FWCIGA is funded through the liquidation of insolvent insurers, potentially including a portion of the estates of insolvent insurers in other states. FWCIGA has the authority to levy assessments on workers' compensation insurers if insolvent insurers' estates are insufficient to pay claims. This bill provides additional changes to the assessment methods that were amended significantly in 2016 to conform them to workers' compensation industry standards.

The bill clarifies the method by which assessments are levied against insurers and collected by FWCIGA related to policy deductibles and to retrospectively rated policies. The bill provides the authority for FWCIGA to audit reports from insurers regarding the payments made to FWCIGA and the amounts collected from policyholders. It provides that assessments paid that are required to be remitted by the insurer prior to surcharging policyholders constitute advances of funds to FWCIGA to allow for proper accounting treatment. The bill also makes other technical and structural changes to the statutes controlling FIGA and FWCIGA.

This bill does not impact local or state government revenues or expenditures. It has positive and negative direct economic impacts on the private sector (See *Fiscal Analysis & Economic Impact Statement*).

This bill has an effective date of July 1, 2020.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **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 law 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 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 Florida property and casualty insurer becomes insolvent, FIGA takes over the claims of that insurer and pays the claims of its policyholders, ensuring that policyholders are not left with unpaid claims. 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, FIGA can also issue post-insolvency assessments against property and casualty insurers to obtain funds to pay the remaining claims.<sup>11</sup> Currently, the Florida statute setting forth FIGA's duties and powers states that assessments on members of FIGA are "initially estimated in the proportion that each insurer's net direct written premiums [in Florida] in the classes protected by the account bears to the total of said net direct written premiums received [in Florida] by all such insurers for the preceding calendar year for the kinds of insurance included in such account."<sup>12</sup> Furthermore, each insurer assessed must be provided with at

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<sup>1</sup> 11 U.S.C. § 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> Ch. 631, F.S.

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

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

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

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

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

<sup>9</sup> S. 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> S. 631.57, F.S.

<sup>12</sup> S. 631.57(3)(a), F.S. Stated differently, an insurer's assessment amount would be estimated by determining its part of the whole of the premium written for the prior year for the kinds of insurance included in a certain account and multiplying that proportion by the entire assessment amount to be collected. For example, if FIGA was assessing its auto insurance account, an auto insurer's assessment would be estimated by determining its share of the entire auto insurance premium written during the prior year and multiplying that by the total assessment amount to be collected.

least 30 days' written notice as to the date the initial assessment payment is due.<sup>13</sup> When FIGA issues an assessment, it has the option to require that member insurers pay the assessment in a single payment or to allow the member insurers to pay assessment payments in monthly installments, with the first installment being due at the end of the month following the levy of an assessment.<sup>14</sup>

When an insolvent insurer is liquidated in Florida, FIGA assumes the claims and is "deemed the insurer to the extent of its obligation on...covered claims, and,...shall have all rights, duties, defenses, and obligations of the insolvent insurer as if the insurer had not become insolvent."<sup>15</sup> Additionally, FIGA has the right to employ the necessary staff to handle claims and perform other duties for the association.<sup>16</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, FIGA handles claims that exist on policies issued in Florida by insolvent foreign insurers.<sup>17</sup> Due to the nature of the claims process and the involvement of more than one state's guaranty association in these claims, it may be appropriate and efficient for an employee of another state's guaranty association to adjust a Florida claim.

### *Effect of the Bill*

#### Adjusting

The bill allows employees of FIGA to adjust losses for FIGA if those employees hold a license in Florida that allows them to adjust losses or if they held such a license within the last ten years.<sup>18</sup> It also allows FIGA to authorize employees of any state guaranty association whose insurance regulators are members of the National Association of Insurance Commissioners to adjust Florida claims for FIGA.<sup>19</sup> While the bill does not require that the employee adjusting losses be a licensed insurance adjuster in Florida, the employee must maintain appropriate experience and training to adjust claims, and the authorization for the state guaranty association's employee to adjust losses must be included in the contract between FIGA and the state guaranty association whose employee is doing the adjusting. This provision of the bill will allow FIGA and other states' guaranty associations to efficiently provide continuity of claims handling and adjusting claims within Florida and when claims cross state lines.

#### Assessments

The bill removes the word "net" from "net direct written premium" to use the more common industry terminology of "direct written premium." It also eliminates dividends paid or credited to policyholders from being subtracted from the premium amount when direct written premiums are calculated. To simplify the explanation of the way in which a FIGA member insurer's assessment amount is calculated, the bill eliminates the language from s. 631.57(3)(a), F.S., that requires a determination of each insurer's proportion of net direct written premiums to the total of net direct written premiums received during the preceding calendar year for the kinds of insurance included within an account. Instead, the assessment due will be a uniform percentage of premium collected.

For clarity, the bill moves the portion of s. 631.57(3)(a), F.S., which requires that FIGA provide each insurer with at least 30 days' written notice as to the date the initial assessment payment is due to s. 631.57(3)(f)1.b, F.S. Notice of an initial payment due date would not apply when the assessment is

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<sup>13</sup> S. 631.57(3)(a), F.S.

<sup>14</sup> S. 631.57(3)(e)3 and (f)2, F.S.

<sup>15</sup> S. 631.57, F.S.

<sup>16</sup> *Id.*

<sup>17</sup> A foreign insurer is one formed under the laws of any state, district, territory, or commonwealth of the United States other than Florida. S. 624.06, F.S.

<sup>18</sup> DFS has indicated that the licensure status of the person determining the amount of loss (i.e., adjusting a claim) has no bearing on the contractual obligations of the insurer from a regulatory standpoint. Therefore, an insured whose claim is being handled by FIGA by virtue of an insurer insolvency and whose claim was adjusted by an unlicensed employee of FIGA or another state's guaranty association does not lose any rights or remedies should that insured dispute the amount of loss as determined by the adjuster. Email from Greg Thomas, Director Division of Agents and Agency Services, Department of Financial Services, RE: HB 429 (Feb. 14, 2019).

<sup>19</sup> *Id.*

being paid in a single payment. The bill establishes that when FIGA allows for assessments to be paid in installments, those payments may be made in quarterly, rather than monthly installments. The bill also provides for other technical and structural changes and conforms statutory cross-references as needed.

## Florida Workers' Compensation Insurance Guaranty Association

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>20</sup> FWCIGA services workers’ compensation claims against insolvent workers’ compensation insurers<sup>21</sup> and self-insurance funds.<sup>22</sup> When a workers’ compensation insurer or self-insurance fund becomes insolvent, 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 FIGA, 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, 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>23</sup> FWCIGA levied assessments from its inception in 1998 through 2005.<sup>24</sup> On June 18, 2019, the FWCIGA Board of Directors certified the need for a 1.0% assessment on its member insurers.<sup>25</sup> Subsequently, OIR issued a 1.0% assessment levy on all new and renewal workers’ compensation policies with effective dates beginning January 1, 2020, through December 31, 2020.<sup>26</sup> These assessment payments will be due to FWCIGA quarterly after applying and collecting a 1.0% surcharge to all workers’ compensation and excess workers’ compensation policies.<sup>27</sup>

### Method of Assessment

In 2016, the method of assessment for FWCIGA was amended to be more consistent with the methods used to levy assessments on the other Florida guaranty associations.<sup>28</sup> Since the 2016 amendments, the law has provided for two methods by which FWCIGA can collect assessments from workers’ compensation insurers and self-insurance funds.<sup>29</sup> FWCIGA may choose to fund an assessment by either of the following methods:<sup>30</sup>

- Single payment, subject to true-up (pay and recover)<sup>31</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

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<sup>20</sup> S. 631.902, F.S.

<sup>21</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>22</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>23</sup> S. 631.914, F.S.

<sup>24</sup> Florida Workers’ Compensation Insurance Guaranty Association, *Assessments*, <https://fwciga.org/assessments> (last visited Oct. 30, 2019).

<sup>25</sup> *Id.* 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>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> Ch. 16-170, Laws of Fla.

<sup>29</sup> *See* s. 631.914, F.S.

<sup>30</sup> *See id.*

<sup>31</sup> S. 631.914(1)(d), F.S.

Commissioners' Statement of Statutory Accounting Principles Number 4<sup>32</sup> and would be recorded separately from the liability for 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>33</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>34</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>35</sup>

### Calculation of Insurer Assessment Amount

OIR, upon certification of need by FWCIGA, levies assessments on each insurer “initially estimated in the proportion that the insurer’s net direct written premiums” in Florida bear to the total net direct premiums received in Florida by all workers’ compensation insurers during the previous calendar year.<sup>36</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>37</sup>

The assessment is limited to 2 percent of an insurer’s or self-insurance fund’s net direct written premium in any given calendar year.<sup>38</sup> If the assessment is insufficient to meet FWCIGA’s funding need for payments owing to claimants in a calendar year, then, upon certification by FWCIGA, OIR shall levy assessments of up to an additional 1.5 percent of the insurer’s net direct written premiums in Florida.<sup>39</sup> Insurers and self-insurance funds must report to FWCIGA the amount of initial payment or installment payments made to FWCIGA and the amount collected from policyholders.<sup>40</sup> The reporting must occur within 120 days after the 12-month assessment period and annually thereafter for 3 years.<sup>41</sup>

### *Effect of the Bill*

The bill clarifies the method by which assessments are levied against insurers and collected by FWCIGA, by providing that OIR shall levy the uniform surcharge percentage on all policies of the same kind or line as it considered in determining an insurer’s assessment liability, along with an insurer using this method to fully recoup assessments from policyholders.

The bill clarifies that no insurer’s direct written premium calculated for the purposes of determining its premium subject to surcharge will be reduced by any discount or credit for deductibles in any policy. It also does not reduce an insurer’s direct written premium calculated for the purposes of determining the insurer’s premium subject to surcharge for any premium adjustment on retrospectively rated policies.<sup>42</sup>

The bill provides the authority for FWCIGA to audit the reports from insurers regarding the payments made to FWCIGA and the amounts collected from policyholders. It provides that assessments paid by workers’ compensation insurers constitute advances of funds to FWCIGA under certain circumstances to allow for proper accounting treatment.

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<sup>32</sup>See 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 Oct. 30, 2019).

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

<sup>34</sup> S. 631.914(1)(d)3., F.S.

<sup>35</sup> *Id.*

<sup>36</sup> S. 631.914(1)(a), F.S.

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> S. 631.914(1)(c), F.S.

<sup>40</sup> S. 631.914(1)(a)d.3., F.S.

<sup>41</sup> *Id.*

<sup>42</sup> A retrospectively rated policy in one with a rating plan that adjusts the premium to reflect current loss experience of an insured. IRMI, *Retrospective Rating*, <https://www.irmi.com/term/insurance-definitions/retrospective-rating> (last visited Oct. 30, 2019).

The bill removes the word “net” from “net direct written premium” to use the more common industry terminology of “direct written premium.” The bill provides for other technical and structural changes and conforms statutory cross-references as needed.

**B. SECTION DIRECTORY:**

**Section 1.** Creates s. 626.8621, F.S., relating to adjustments by guaranty association employees.

**Section 2.** Amends s. 631.54, F.S., relating to definitions.

**Section 3.** Amends s. 631.57, F.S., relating to powers and duties of the association.

**Section 4.** Amends s. 625.012, F.S., relating to “assets” defined.

**Section 5.** Amends s. 631.59, F.S., relating to duties and powers of department and office.

**Section 6.** Amends s. 631.59, F.S., relating to board of directors.

**Section 7.** Amends s. 631.914, F.S., relating to assessments.

**Section 8.** Provides an effective date of July 1, 2020.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

None.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

Changing the method by which FWCIGA calculates assessments may increase costs for certain employers and decrease costs for others based on the changes to treatment of premium discounts and credits, or premium adjustments in calculating assessments. However, the modification to the calculation does not change the total amount assessed by FWCIGA.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill neither authorizes nor requires administrative rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**