

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 Committee on Banking and Insurance

BILL: SB 540

INTRODUCER: Senator Rader

SUBJECT: Insurance Guaranty Associations

DATE: November 8, 2019

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. <u>Arnold</u>	<u>Knudson</u>	<u>BI</u>	Favorable
2. _____	_____	<u>AEG</u>	_____
3. _____	_____	<u>AP</u>	_____

I. Summary:

SB 540 allows for Florida Insurance Guaranty Association (FIGA) employees to adjust losses without a license under certain circumstances. The bill similarly allows FIGA to contract with guaranty association employees of other states who are not licensed for purposes of adjusting losses under certain circumstances.

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.

This bill conforms to workers' compensation industry standards the assessment methods of the Florida Workers' Compensation Insurance Guaranty Association (FWCIGA) that were amended significantly in 2016. 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 has an effective date of July 1, 2020.

II. Present Situation:

Guaranty Associations

Under federal law, insurance companies cannot file for bankruptcy.¹ Instead, they are either rehabilitated or liquidated by their state of domicile. Florida law establishes the system for the treatment of impaired or insolvent insurers² in Florida and sets up guaranty payments where necessary.³ 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.⁴ 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.⁵ Insurers are required to participate in the guaranty associations as a condition of transacting insurance business in Florida. Florida operates four guaranty associations including FIGA⁶ and FWCIGA.⁷

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.⁸ It issues guaranty fund payments and provides related services for all lines of property and casualty insurance with certain exceptions.⁹ 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.¹⁰

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.¹¹ 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

¹ 11 U.S.C. s. 109(b)(2).

² 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.

³ Chapter 631, F.S.

⁴ *Id.*

⁵ See e.g., ss. 631.51 and 631.902, F.S.

⁶ Chapter 631, part II, F.S.

⁷ Chapter 631, part V, F.S.

⁸ Section 631.51, F.S.

⁹ Section 631.52, F.S.

¹⁰ 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.

¹¹ Section 631.57, F.S.

the kinds of insurance included in such account.”¹² Furthermore, each insurer assessed must be provided with at least 30 days’ written notice as to the date the initial assessment payment is due.¹³ 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.¹⁴

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.”¹⁵ Additionally, FIGA has the right to employ the necessary staff to handle claims and perform other duties for the association.¹⁶

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.¹⁷ 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.

Florida Workers’ Compensation Insurance Guaranty Association

FWCIGA “provides a mechanism for the payment of covered claims under chapter 440, F.S., to avoid” delay and financial loss to claimants due to the insolvency of a workers’ compensation insurer.¹⁸ FWCIGA services workers’ compensation claims against insolvent workers’ compensation insurers¹⁹ and self-insurance funds.²⁰ 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

¹² Section 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.

¹³ Section 631.57(3)(a), F.S.

¹⁴ Section 631.57(3)(e)3 and (f)2, F.S.

¹⁵ Section 631.57, F.S.

¹⁶ *Id.*

¹⁷ 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.

¹⁸ Section 631.902, F.S.

¹⁹ “Insurer” means an insurance carrier or self-insurance fund authorized to insure under ch. 440, F.S. For purposes of this act, “insurer” does not include a qualified local government self-insurance fund, as defined in s. 624.4622, F.S., or an individual self-insurer as defined in s. 440.385, F.S.” Section 631.904(5), F.S.

²⁰ “Self-insurance fund” means a group self-insurance fund authorized under s. 624.4621, F.S., a commercial self-insurance fund writing workers’ compensation insurance authorized under s. 624.462, F.S., or an assessable mutual insurer authorized under s. 628.6011, F.S. 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, F.S., 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, F.S., or an individual self-insurer as defined in s. 440.385, F.S.” Section 631.904(6), F.S.

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.²¹ FWCIGA levied assessments from its inception in 1998 through 2005.²² On June 18, 2019, the FWCIGA Board of Directors certified the need for a 1.0 percent assessment on its member insurers.²³ Subsequently, OIR issued a 1.0 percent assessment levy on all new and renewal workers' compensation policies with effective dates beginning January 1, 2020, through December 31, 2020.²⁴ These assessment payments will be due to FWCIGA quarterly after applying and collecting a 1.0 percent surcharge to all workers' compensation and excess workers' compensation policies.²⁵

Method of Assessment

In 2016, the method of assessment for FWCIGA was amended to be more consistent with the methods used to levy assessments by the other Florida guaranty associations.²⁶ 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.²⁷ FWCIGA may choose to fund an assessment by either of the following methods:²⁸

- Single payment, subject to true-up (pay and recover)²⁹ – 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 4³⁰ 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.³¹

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

²¹ Section 631.914, F.S.

²² Florida Workers' Compensation Insurance Guaranty Association, *Assessments*, <https://fwciga.org/assessments> (last visited November 4, 2019).

²³ *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.

²⁴ *Id.*

²⁵ *Id.*

²⁶ Chapter 16-170, L.O.F.

²⁷ See s. 631.914, F.S.

²⁸ See *id.*

²⁹ Section 631.914(1)(d), F.S.

³⁰ 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 (last visited November 4, 2019).

³¹ Section 631.914(1)(d), F.S.

surcharge collected.³² This results in a “true-up” of the actual assessment amount if the initial calculation and payment was too low or too high.³³

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.³⁴ 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.³⁵

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.³⁶ 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.³⁷ 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.³⁸ The reporting must occur within 120 days after the 12-month assessment period and annually thereafter for 3 years.³⁹

III. Effect of Proposed Changes:

Section 1 allows FIGA employees to adjust losses so long as they hold, or have held in the past 10 years, licensure in Florida that allows for the adjustments of losses. The bill allows guaranty association employees of other states whose insurance regulators are members of the National Association of Insurance Regulators to adjust losses for FIGA so long as FIGA contracts with employees who maintain the appropriate experience and training for adjusting such claims.

Section 2 strikes the word “net” from “net direct written premium” to use the more common industry terminology of “direct written premium.” It also strikes the words “dividends paid or credited to policyholders”, removing the offset for policyholder dividends that had previously been applied against the base from which FIGA derives assessments.

Section 3 strikes from s. 631.57(3)(a), F.S., language 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. It also 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

³² Section 631.914(1)(d)3., F.S.

³³ *Id.*

³⁴ Section 631.914(1)(a), F.S.

³⁵ *Id.*

³⁶ *Id.*

³⁷ Section 631.914(1)(c), F.S.

³⁸ Section 631.914(1)(a)d.3., F.S.

³⁹ *Id.*

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 being paid in a single payment. Finally, it allows for quarterly installment payments of assessments, instead of monthly installment payments.

Section 4 conforms assessment installment language contained in s. 625.012(15)(b), F.S., to statutory changes provided by Section 3.

Section 5 conforms the duties of OIR contained in s. 631.59(3), F.S., to statutory changes provided by Section 2.

Section 6 conforms the duties of the FWCIGA's Board of Directors contained in s. 631.912(1), F.S. to statutory changes provided by Section 7.

Section 7 strikes from s. 631.914(1)(a), F.S., language 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 all workers' compensation insurers, and strikes the word "net" from "net direct written premium" to use the more common industry terminology of "direct written premium." It prohibits reducing an insurer's direct written premium by any discount, credit for deductible in a policy, or premium adjustment to a retrospectively rated policy, for the purposes of determining the insurer's assessment or policy surcharge, and it authorizes FWCIGA to conduct audits of premium reports.

It also requires OIR to levy the uniform surcharge percentage on all policies of the same kind or line as it considered in determining the assessment liability of the insurer.

Finally, it provides that assessments paid by worker's compensation insurers to FWCIGA constitute advances of funds under certain circumstances to allow for proper accounting treatment.

Section 8 provides an effective date of July 1, 2020.

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.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Indeterminate. While changing the method by which FWCIGA calculates assessments necessarily changes the based used to determine the assessment, the ultimate changes may be revenue-neutral, as the amount FWCIGA needs to assess would remain unchanged.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 631.54, 631.57, 625.012, 631.59, 631.912, and 631.914.

This bill creates section 626.8621 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.