

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 1470

INTRODUCER: Senator Boyd

SUBJECT: Florida Life and Health Insurance Guaranty Association

DATE: March 15, 2021

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|---------|----------------|-----------|--------------------|
| 1. | Arnold | Knudson | BI | Pre-meeting |
| 2. | | | AEG | |
| 3. | | | AP | |

I. Summary:

SB 1470 makes changes to conform to the Life and Health Insurance Guaranty Association Model Act. An insurance guaranty association ensures that policyholders' paid insurance premiums are protected and outstanding claims are settled, up to limits provided by law, if their insurer is liquidated. The Florida Life and Health Insurance Guaranty Association (FLAHIGA) is the guaranty association for most insurance companies that write life and health insurance or annuities in Florida.

The bill:

- Adds a definition for the term “Moody’s Corporate Bond Yield Average.”
- Amends the definition of “person” to include “limited liability company” and “governmental body or entity.”
- Clarifies that, in dealing with an impaired domestic insurer, FLAHIGA may assume or reissue covered policies, in addition to guaranteeing and reinsuring the policies.
- Expressly provides that the FLAHIGA has the right to appear or intervene before a court or agency in another state.
- Provides that, for purposes of FLAHIGA’s standing to appear before any court in this state, FLAHIGA’s powers and duties include reissuing or modifying covered policies.
- Provides that FLAHIGA may recover payment of improper claims.
- Authorizes FLAHIGA to join an organization of other state guaranty associations to further the purposes and to carry out the powers and duties of FLAHIGA.
- As to Class A assessments, which pay the FLAHIGA’s general administrative expenses, removes the cap of \$250, permits the assessments to be made on a pro rata basis, and allows FLAHIGA’s board to credit the assessments against future assessments related to insurer insolvencies.

- Provides that, if an insurer's assessment is deferred because the assessment would endanger the insurer's financial solvency, the insurer must pay the assessment once it regains financial strength.
- Removes the reduced assessment cap for nonprofit annuity insurers that issue policies to educational groups, thus making such insurers subject to the assessment cap for all other annuity insurers.
- Requires FLAHIGA to establish a procedure for removing a member insurer board member if that member insurer becomes impaired or insolvent and establish policies and procedure to address conflicts of interest.

The bill provides an effective date of July 1, 2021.

II. Present Situation:

Insurer Insolvency

States primarily regulate insurance companies, and the state of domicile serves as the primary regulator for insurers. In Florida, the Office of Insurance Regulation (OIR) licenses and regulates the activities of insurers and other risk-bearing entities.¹ The OIR monitors the solvency of insurers, examines insurers, and takes administrative action, if necessary.

Federal law provides that insurance companies may not file for bankruptcy.² Instead, the state through the Division of Rehabilitation and Liquidation of the Department of Financial Services (DFS) is responsible for rehabilitating or liquidating an insurer.³ If an insurer is found to be insolvent and is ordered to be liquidated by a court, a receiver takes over the insurer under court supervision and processes the assets and liabilities through liquidation. Generally, once an insurance company is liquidated, an insurance guaranty association becomes liable for the policy or contract obligations of the liquidated insurance company. Insurance guaranty funds are designed to protect policyholders of liquidated insurers from financial losses and delays in claim payments, up to limits provided by law. The Florida Legislature has created five guaranty funds.⁴

Florida Life and Health Insurance Guaranty Association

Part III of ch. 631, F.S., governs the powers and duties of the Florida Life and Health Insurance Guaranty Association (association).⁵ The association services covered policies and contracts,

¹ Section 20.121(3), F.S.

² The Bankruptcy Code expressly provides that "a domestic insurance company" may not be the subject of a federal bankruptcy proceeding. 11 U.S.C. s. 109(b)(2). The exclusion of insurers from the federal bankruptcy court process is consistent with federal policy generally allowing states to regulate the business of insurance. *See* 15 U.S.C. ss. 1011- 1012.

³ Sections 631.051 and 631.061, F.S. Chapter 631, F.S., governs the receivership process for insurance companies in Florida.

⁴ See parts II-V of ch. 631, F.S. and s. 440.385, F.S. (The Florida Insurance Guaranty Association, Florida Life and Health Insurance Guaranty Association, Florida Health Maintenance Organization Consumer Assistance Plan, Florida Workers' Compensation Insurance Guaranty Association, and the Florida Self-Insurers Guaranty Association, respectively.)

⁵ In 1979, the Florida Legislature enacted provisions of the National Association of Insurance Commissioners' *Life and Health Insurance Guaranty Association Model Act*,⁵ which created FLAHIGA. Ch. 79-189, L.O.F. The National Association of Insurance Commissioners (NAIC) is a voluntary association of insurance regulators from all 50 states. The NAIC coordinates regulation and examination of multistate insurers, provides a forum for addressing major insurance issues, and promotes uniform model laws among the states.

collects premiums, and pays valid claims.⁶ All insurers authorized to write life insurance policies, health insurance policies, supplemental contracts, and annuity contracts (with exceptions) in Florida are required, as a condition of doing business in this state, to be member insurers of the association.⁷ Currently, the association does not provide coverage for or assess health maintenance organizations.⁸

A policy must meet coverage requirements, and association payments are limited for any one person as follows:

- Life Insurance Death Benefit: \$300,000 per insured life.
- Life Insurance Cash Surrender: \$100,000 per insured life.
- Health Insurance Claims: \$300,000 per insured life.
- Annuity Cash Surrender: \$250,000 for deferred annuity contracts per contract owner.
- Annuity in Benefit: \$300,000 per contract owner.⁹

Additionally, the association will only cover a policy or contract to the extent that:

- The interest rate on which the policy or contract is based, averaged over the four-year period immediately preceding the date on which the member insurer becomes impaired or insolvent, is less than the Moody's Corporate Bond Yield (averaged for that same four-year period) minus two percentage points.
- The interest rate on which the policy or contract is based, on and after the date on which the member insurer becomes impaired or insolvent, is less than the Moody's Corporate Bond Yield Average minus three percentage points.¹⁰

The Florida Life and Health Insurance Act does not currently define Moody's Corporate Bond and long-term care insurers are not subject to the interest rate cap.¹¹

Section 631.713(3), F.S., excludes all of the following from coverage by the association:

- any portion or part of a variable life insurance contract or a variable annuity contract that is not guaranteed by a licensed insurer;
- any portion or part of any policy or contract under which the risk is borne by the policyholder;
- any policy or contract or part thereof assumed by the failed insurer under a contract of reinsurance, unless assumption certificates were issued;
- fraternal benefit society products;
- health maintenance insurance;
- dental service plan insurance;
- pharmaceutical service plan insurance;
- optometric service plan insurance;
- ambulance service association insurance;

⁶ See association's website available at <http://www.flahiga.org/aboutus.cfm> (last viewed March. 8, 2021).

⁷ Sections 631.713 and 631.715, F.S.

⁸ Section 631.713(3)(e), F.S.

⁹ Section 631.717(9), F.S., and FLAHIGA, *Frequently Asked Questions*, available at <http://www.flahiga.org/faq.cfm> (last viewed Mar. 1, 2017).

¹⁰ Section 631.713(2)(n), F.S.

¹¹ *Id.*

- preneed funeral merchandise or service contract insurance;
- prepaid health clinic insurance;
- certain federal employees group policies; and
- any annuity contract or group annuity contract that is not issued to and owned by an individual, except to the extent of any annuity benefits guaranteed directly and not through an intermediary to an individual by an insurer under such contract or certificate.

Board of Directors

The board of directors of the association must be composed of not fewer than nine but not more than eleven member insurers.¹² At least one member of the board must be a domestic insurer.¹³ The member insurers elect the members of the board, and the members of the board are subject to the approval of the DFS. In approving or appointing members to the board the DFS must consider whether all member insurers are represented fairly.¹⁴ The members of board have the authority to fill a board vacancy; however, there is no process in law for removing a member of the board when the insurer becomes impaired or insolvent.

Assessments

The association has three operating accounts for purposes of administration and assessments: health insurance, life insurance, and annuity.

The association may impose two classes of assessments: Class A for administrative costs and general expenses and Class B to carry out the powers and duties of the association with regard to an impaired or insolvent domestic insurer.¹⁵ Class A assessments are determined by the board, are made on a non-pro rata basis, and may not exceed \$250 per year per member insurer.¹⁶ Class B assessments are calculated based on the premiums collected by each assessed member insurer on policies or contracts covered for each account in proportion to premiums collected by all assessed member insurers for the three most recent years.

Florida law limits assessments on a member insurer to a maximum of 1 percent of the insurer's premiums written in the state regarding business covered by the account received during the 3 calendar years preceding the year in which the assessment is made, divided by 3.¹⁷ For long-term care insurer impairments and insolvencies, the total assessment is limited to 0.5 percent of the insurer's premiums written during any one calendar year, and also imposed upon members of the Florida Health Maintenance Organization Consumer Assistance Plan.¹⁸

¹² Section 631.716(1), F.S.

¹³ See Section 624.06, F.S.

¹⁴ Section 631.716(2), F.S.

¹⁵ Section 631.718(2), F.S.

¹⁶ Section 631.718(2)(a), F.S.

¹⁷ Section 631.718(5)(a), F.S.

¹⁸ *Id.*

Currently, there is a cap on assessment of any member insurer that is a nonprofit insurance company which issues annuity contracts or group annuity contracts pursuant to s. 121.35, F.S., or for the benefit of employees of Florida educational institutions. Such nonprofit insurance companies may not be assessed in any one calendar year more than the greater of:

- The amount which the company paid to this state in the previous year as premium tax and corporate tax on the business to which the FLAHIGA statutes apply; or
- 0.1 percent of written premium on such business in this state.¹⁹

Member insurers of the association may offset the amount of an assessment against the insurance premium tax or corporate income tax.²⁰ The credit may be taken in an amount of 5 percent of the assessments for each of the 20 years following the year in which the assessment was paid.²¹

The FLAHIGA may abate or defer, in whole or in part, the assessment of a member insurer if, in the opinion of the board, payment of the assessment would endanger the ability of the member insurer to fulfill its contractual obligations. In the event an assessment against a member insurer is abated, or deferred in whole or in part, the amount by which such assessment is abated or deferred may be assessed against the other member insurers.²²

Legal Standing and Right of Intervention

The FLAHIGA has standing to appear before any court in this state which has jurisdiction over an impaired or insolvent insurer to which the FLAHIGA is or may become obligated.²³ Such standing extends to all matters germane to the powers and duties of the FLAHIGA, including but not limited to, proposals for reinsuring or guaranteeing the covered policies of the impaired or insolvent insurer and the determination of the covered policies and contractual obligations. While the statute expressly provides the FLAHIGA standing to appear in courts of this state, the statute does not expressly provide the FLAHIGA the right to appear or intervene before a court or agency in another state.

The National Organization of Life and Health Insurance Guaranty Associations

The National Organization of Life and Health Insurance Guaranty Associations (NOLHGA) is a voluntary association comprised of the life and health insurance guaranty associations of all 50 states and the District of Columbia. The NOLHGA assembles a task force of guaranty association officials to address situations where insurers licensed in multiple states are facing insolvency or are declared insolvent. This task force analyzes the companies' policies, ensures that covered claims are paid, and arranges for the transfer of covered policies to another insurer (when possible). This allows the receiver and potential assuming carriers to deal with a single point of contact and contracting instead of having to engage in multiple discussions,

¹⁹ Section 631.718(9), F.S.

²⁰ Section 631.72, F.S.

²¹ Section 631.72(1)(b), F.S.

²² Section 631.718(4), F.S.

²³ Section 631.717(7), F.S.

negotiations, and contracts with a variety of different associations.²⁴ The NOLGHA allocates these expenses²⁵ to affected guaranty associations for payment.²⁶

The National Association of Insurance Commissioners

The National Association of Insurance Commissioners (NAIC) is an association of insurance regulators that coordinates regulation and examination of multistate insurers, provides a forum for addressing major insurance issues, and promotes uniform model laws among the states. In 2017, the NAIC released and updated the Life and Health Insurance Guaranty Association Act.²⁷ The model act is designed to protect policy owners, insureds, beneficiaries, annuitants, payees and assignees against losses (both in terms of payment of claims and continuation of coverage), which might otherwise occur due to an impairment or insolvency of an insurer.

III. Effect of Proposed Changes:

Section 1 amends s. 631.714, F.S., relating to definitions, by defining “Moody’s Corporate Bond Yield Average” to mean the monthly average corporates as published by Moody’s Investors Service, Inc., or similar successor organization. Currently the term is used in s. 631.713(3)(n), F.S., which specifies the types of insurance and portions of insurance contracts to which the chapter does not apply.

The bill expands the current definition of “person” to mean any individual, corporation, limited liability company, partnership, association, governmental body or entity, or voluntary organization.

Section 2 amends s. 631.717, F.S. relating to the powers and duties of the association, to provide FLAHIGA with the right to appear or intervene before a court or agency in another state which has jurisdiction over an impaired or insolvent insurer for which FLAHIGA is or may become obligated, or with any person or property against whom FLAHIGA may rights through subrogation or otherwise. This essentially authorizes FLAHIGA to attempt to intervene in and appear before courts and agencies in other states, but the Florida Statutes do not govern the courts of agencies of other states and thus this statutory change will not ensure that FLAHIGA is able to appear or intervene before such entities.

For purposes of the FLAHIGA’s standing to appear before any court in Florida, the bill expands standing to FLAHIGA’s powers and duties include reissuing or modifying covered policies.

The bill provides FLAHIGA with the authority to assume or reissue, or cause to be reissued, any or all of the covered policies of an impaired domestic insurer.

The bill further provides FLAHIGA with authority to join an organization of state guaranty associations to further the purposes and to carry out the powers and duties of FLAHIGA.

²⁴ <https://www.nolhga.com/aboutnolhga/main.cfm/location/whatisnolhga> (last viewed March 8, 2021).

²⁵ Id.

²⁶ Section 631.721, F.S.

²⁷ NAIC, *Life and Health Insurance Guaranty Association Model Act 520-1* (1st Quarter 2018) available at: <https://content.naic.org/sites/default/files/inline-files/MDL-520.pdf> (last viewed March 8, 2021).

Section 3 amends s. 631.718, F.S., relating to assessments, to provide that Class A assessments may be made on a pro rata basis. Class A assessments made on a pro rata basis may be credited against future Class B assessments, as determined by the board of directors. The bill removes the \$250 cap on Class A assessments.

The bill removes the cap on assessment of any member insurer that is a nonprofit insurance company which issues annuity contracts or group annuity contracts pursuant to s. 121.35, F.S., or for the benefit of employees of Florida educational institutions. Currently, assessments may not exceed the greater of insurer's premium tax and corporate tax payments on insurance subject to ch. 631, F.S., or 0.1 percent of the insurer's written premium on such business in this state. Such companies would still be subject to assessment caps applicable to all member insurers, and the FLAHIGA maintains its ability to abate or defer the assessment of a member insurer if payment of the assessment would put the member insure at risk of becoming impaired or insolvent.

The bill provides that a member insurer must pay all deferred assessments once the conditions that caused a deferral have been removed or rectified.

Section 4 amends s. 631.721, F.S., relating to FLAHIGA's plan of operation, to provide FLAHIGA with the authority to establish a procedure for removing a member of the board in the event the member insurer becomes impaired or insolvent.

The bill requires FLAHIGA's board of directors to establish policies and procedures for addressing conflicts of interest.

Section 5 provides an effective date of July 1, 2021.

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:

The bill removes the \$250 per year limit on Class A assessments against a member insurer, which are used to meet FLAHIGA's administrative costs, general expenses, and expenses related to certain examinations of member insurer that are not impaired or insolvent.

The bill also removes the limit on assessment of any member insurer that is a nonprofit insurance company which issues annuity contracts or group annuity contracts pursuant to s. 121.35, F.S., or for the benefit of employees of Florida educational institutions. Such companies would still be subject to assessment caps applicable to all member insurers.

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: 631.714, 631.717, 631.718, and 631.721.

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.