

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 Appropriations

BILL: PCS/CS/SB 1430 (732288)

INTRODUCER: Appropriations Committee (Recommended by Appropriations Subcommittee on Agriculture, Environment, and General Government); Banking and Insurance Committee; and Senator Burgess

SUBJECT: Insolvent Insurers

DATE: February 25, 2022 **REVISED:** _____

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/CS/SB 1430 amends several provisions of the Florida Insurance Code related to the Office of Insurance Regulation (OIR) and the Florida Insurance Guaranty Association (FIGA), and the Florida Workers' Compensation Insurance Guaranty Association (FWCIGA). The FWCIGA provides a mechanism for the payment of covered workers' compensation claims to avoid delay and financial loss to claimants due to the insolvency of a workers' compensation insurer. The FIGA provides a mechanism for the payment of covered claims under certain lines of property and casualty insurance policies to avoid delay and financial loss due to the financial insolvency of an insurer. Specifically, the bill:

- Provides that past loss experience and prospective loss experience for insolvent insurers must be used in the determination and fixing of workers' compensation rates, and that data previously reported by insolvent insurers may be used to assess the impact on rates;
- Authorizes insurers to make advance assessment payments to the FIGA in quarterly installments;
- Authorizes an insurer to forego recouping advances of assessments to the FIGA;
- Requires insurers electing to not recoup advances of assessments made to the FIGA to either reduce a recorded asset to zero or record as no asset, depending on the levying mechanism prescribed under the statute;
- Clarifies calculation of FIGA quarterly payments for those insurers who elect not to collect from policyholders;

- Requires insurers making assessment payments to the FIGA to file reconciliation reports on a form and schedule adopted by the FIGA regardless of assessment payment method;
- Authorizes the Workers' Compensation Insurance Guaranty Association (WCIGA) to allow an insurer to make advance assessment payments in a single payment or on a quarterly basis based on cash-flow needs;
- Reduces the frequency of annual reconciliation reports subsequently filed with the WCIGA after the assessment year from a period of three years to a period of two years;
- Clarifies that an assessment paid before surcharges are collected is an advance; and
- Makes additional technical and conforming changes.

The bill provides that the officers and directors of an insolvent insurer may thereafter serve as an officer or director of an authorized insurer unless the OIR enters an order under section 624.310, Florida Statutes, demonstrating that the personal actions or omissions of the officer or director were a significant contributing cause to the insolvency.

The bill does not impact state revenues or expenditures.

The bill takes effective July 1, 2022.

II. Present Situation:

Officers and Directors of Insolvent Insurers

In general, Florida law gives the OIR broad authority to deny, suspend, or revoke an insurer's authority to transact insurance in Florida if it finds the insurer's officers and directors to be:

- Incompetent or untrustworthy;
- So lacking in insurance company managerial experience as to make the proposed operation hazardous to the insurance-buying public;
- So lacking in insurance experience, ability, and standing as to jeopardize the reasonable promise of successful operation; or
- Affiliated directly or indirectly through ownership, control, reinsurance transactions, or other insurance or business relations, with any person or persons whose business operations are or have been marked, to the detriment of policyholders, stockholders, investors, creditors, or the public, by manipulation of assets, accounts, or reinsurance or by bad faith.¹

When an insurer becomes insolvent, current law requires the OIR to deny an officer or director of the insolvent insurer from thereafter serving in the same capacity for another insurer if the officer or director served in that capacity within two years preceding the insolvency of the insurer, unless the officer or director demonstrates to the OIR that his or her personal actions or omissions were not a significant contributing cause to the insolvency.²

¹ Section 624.404(3)(a), F.S.

² Section 624.4073, F.S.

Regulation of Property Insurance Rates

Part I of ch. 627, F.S., is the Rating Law³ governing property, casualty, and surety insurance that covers subjects of insurance resident, located, or to be performed in this state.⁴ The Rating Law provides the rates for all classes of insurance it governs may not be excessive, inadequate, or unfairly discriminatory.⁵ Though the terms “rate” and “premium” are often used interchangeably, the rating law specifies “rate” is the unit charge that is multiplied by the measure of exposure or amount of insurance specified in the policy to determine the premium, which is the consideration paid by the consumer.⁶

All insurers or rating organizations must file rates with the OIR either 90 days before the proposed effective date of a new rate, which is considered a “file and use” rate filing, or 30 days after the effective date of a new rate, which is considered a “use and file” rate filing.

Upon receiving a rate filing, the OIR reviews the filing to determine if the rate is excessive, inadequate, or unfairly discriminatory. The OIR makes that determination in accordance with generally acceptable actuarial techniques and, in a property insurance rate filing, considers the following:

- Past and prospective loss experience;
- Past and prospective expenses;
- The degree of competition among insurers for the risk insured;
- Investment income reasonably expected by the insurer;
- The reasonableness of the judgment reflected in the rate filing;
- Dividends, savings, or unabsorbed premium deposits returned to policyholders;
- The adequacy of loss reserves;
- The cost of reinsurance;
- Trend factors, including trends in actual losses per insured unit for the insurer;
- Conflagration and catastrophe hazards;
- Projected hurricane losses;
- Projected flood losses, if the policy covers the risk of flood;
- A reasonable margin for underwriting profit and contingencies; and
- Other relevant factors that affect the frequency or severity of claims or expenses.

Workers’ Compensation Reporting Requirements and Rating Factors

Florida law currently requires workers’ compensation insurers to record and report certain loss, expense, and claims experience to aid the OIR in making determinations concerning the adequacy of worker’s compensation experience for ratemaking purposes.⁷ Additionally, insurers are required to provide the following information annually on both Florida experience and nationwide experience separately:

- Payrolls by classification;

³ Section 627.011, F.S.

⁴ Section 627.021, F.S.

⁵ Section 627.062(1), F.S.

⁶ Section 627.041, F.S.

⁷ Section 627.914(1), F.S.

- Manual premiums by classification;
- Standard premiums by classification;
- Losses by classification and injury type; and
- Expenses.⁸

Section 627.072, F.S., in turn governs the admissibility of factors to be used in the determination and fixing of workers' compensation insurance rates. The following factors are used for such purpose:

- The past loss experience and prospective loss experience within and outside Florida;
- The conflagration and catastrophe hazards;
- A reasonable margin for underwriting profit and contingencies;
- Dividends, savings, and unabsorbed premium deposits allowed or returned by insurers to their policyholders, members, or subscribers;
- Investment income on unearned premium reserves and loss reserves;
- Past expenses and prospective expenses, both countrywide and those specifically applicable to Florida; and
- All other relevant factors, including judgment factors, within and outside of Florida.⁹

Insurers satisfy the reporting requirements above by providing their data to the National Council on Compensation Insurance, Inc. (NCCI).¹⁰ When an insurer goes into receivership due to insolvency, it ceases reporting to the NCCI and, therefore, its data is no longer reported to the OIR and not used in the determination and fixing of rates.

Guaranty Associations

Under federal law, insurance companies cannot file for bankruptcy.¹¹ Instead, they are either rehabilitated or liquidated by their state of domicile. Florida law establishes the system for the treatment of impaired or insolvent insurers¹² in Florida and sets up guaranty payments where necessary.¹³ 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.¹⁴ 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.¹⁵ Authorized insurers are required

⁸ Section 627.914(2), F.S.

⁹ Section 627.072(1), F.S.

¹⁰ See Rule 69O-189.0055, F.A.C.

¹¹ 11 U.S.C. s. 109(b)(2).

¹² 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. Section 631.904(4), F.S.

¹³ Chapter 631, F.S.

¹⁴ See *id.*

¹⁵ See *e.g.*, ss. 631.51 and 631.902, F.S.

to participate in the guaranty associations as a condition of transacting insurance business in Florida. Florida operates four guaranty associations including the FIGA¹⁶ and the FWCIGA.¹⁷

Florida Insurance Guaranty Association

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.¹⁸ It issues guaranty fund payments and provides related services for all lines of property and casualty insurance with certain exceptions.¹⁹ When a Florida 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 is funded through the liquidation of insolvent insurers. If an insurer’s assets are insufficient to pay all claims, the FIGA can request, and the OIR can levy post-insolvency assessments against property and casualty insurers to obtain funds to pay the remaining claims.²⁰ All assessments paid by the insurer pursuant to the levied assessment constitute advances of funds from the insurer to the FIGA.²¹ The insurer may then, in turn, recoup the advance by applying the uniform assessment percentage levied by the OIR to all its policies of the same kind or line of business as were considered by the OIR in determining its assessment on the insurer.²²

When the FIGA issues an assessment, it may require each member insurer pay the assessment either in a single payment before policy surcharges are collected (pay and recover), or in quarterly installments after the policy surcharges are collected (collect and remit).²³

Assessments paid before policy surcharges are collected result in a receivable for policy surcharges collected in the future. Insurers under this assessment methods are further required to file a reconciliation report with the FIGA within 90 days of the end of the assessment year that indicates:

- The amount of the initial payment before the assessment year;
- Whether such amount was based on direct written premium contained in a previous calendar year annual statement or a good faith projection;
- The amount actually collected during the assessment year; and
- Such information contained on a form adopted by the FIGA and provided to the insurer in advance.²⁴

¹⁶ Chapter 631, part II, F.S.

¹⁷ Chapter 631, part V, F.S.

¹⁸ Section 631.51, F.S.

¹⁹ Section 631.52, F.S.

²⁰ Section 631.57, F.S.

²¹ Section 631.57(3)(c), F.S.

²² *See id.*

²³ *See id.*

²⁴ Section 631.57(3)(f)1.d., F.S.

Florida Workers' Compensation Insurance Guaranty Association

The 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.²⁵ The FWCIGA services workers’ compensation claims against insolvent workers’ compensation insurers²⁶ and self-insurance funds.²⁷ 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 OIR, may order assessments of workers’ compensation insurers and self-insurance funds writing workers’ compensation coverage in Florida.²⁸

In 2016, the method of assessment for the FWCIGA was amended to be more consistent with the methods used to levy assessments by the other Florida guaranty associations.²⁹ Since the 2016 amendments, the law has provided for two methods by which the FWCIGA can collect assessments from workers’ compensation insurers and self-insurance funds.³⁰ The FWCIGA may choose to fund an assessment by either of the following methods:³¹

- Single payment, subject to true-up (pay and recover)³² – 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 4³³ and would be recorded separately from the liability for the OIR reports; or

²⁵ Section 631.902, F.S.

²⁶ “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.

²⁷ “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, F.S., 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.

²⁸ Section 631.914, F.S.

²⁹ Chapter 16-170, L.O.F.

³⁰ See s. 631.914, F.S.

³¹ See *id.*

³² Section 631.914(1)(d), F.S.

³³ 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 Nov. 4, 2019).

- Installment (collect and remit or pass-through) – 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.³⁴

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.³⁵ This results in a “true-up” of the actual assessment amount if the initial calculation and payment was too low or too high.³⁶

III. Effect of Proposed Changes:

Section 1 amends s. 624.4073, F.S., related to officers and directors of insolvent insurers, to require the OIR to enter an order pursuant to s. 624.310, F.S., demonstrating the personal actions or omissions of the officer or director of an insolvent insurer were a significant contributing cause of the insolvency, in order to prevent the officer or director from serving in the same capacity for another insurer. The bill thus eliminates an automatic prohibition against a person serving as an officer or director of an authorized insurer, or having direct or indirect control over selecting or appointing an officer or director, if such person was an officer or director of an insolvent insurer in the two years prior to the insolvency. That prohibition under current law does not apply if the officer or director can demonstrate to the OIR that his or her personal actions or omissions were not a significant contributing cause to the insolvency.

Section 2 amends s. 627.072, F.S., to provide factors used in the determination and fixing of workers’ compensation rates must include past loss experience and prospective loss experience for insolvent insurers. The prior reported data for such insurers and other relevant information may be used to assess the impact on rates.

Section 3 amends s. 631.57, F.S., related to the powers and duties of the Florida Insurance Guaranty Association (FIGA), to authorize the association to request the OIR’s assessment order authorize insurers to make advance assessment payments in quarterly installments.

The bill provides an insurer discretion to forego recouping advances of assessments made to the association. The bill requires insurers electing to not recoup advances of assessments made to the FIGA to either reduce a recorded asset to zero or record as no asset, depending on the levying mechanism prescribed under the statute. Furthermore, the bill clarifies calculation of FIGA quarterly payments for those insurers who elect not to collect from policyholders.

The bill specifies insurers, regardless of the required assessment payment method, must file one or more reconciliation reports with the association. Each reconciliation report must indicate the amount actually collected during the assessment year and such other information using a form and schedule adopted by the association and provided to the insurer in advance.

The bill makes additional technical changes specific to surcharges.

³⁴ Section 631.914(1)(d), F.S.

³⁵ Section 631.914(1)(d)3., F.S.

³⁶ *See id.*

Section 4 amends s. 631.914, F.S., related to Workers' Compensation Insurance Guaranty Association (association) assessments, to provide the association with discretion to authorize an insurer that is required to pay an assessment before surcharges are collected, to pay the assessment either in a single payment or on a quarterly basis based on cash-flow needs.

The bill reduces the frequency of annual reconciliation reports subsequently filed after the assessment year from a period of three years to a period of two years.

The bill clarifies an assessment paid before surcharges are collected is an advance.

The bill provides technical changes by replacing the term "installment method" with "pass-through method" to reflect current operational terminology of the association.

The bill makes additional conforming changes.

Section 5 provides an effective date of July 1, 2022.

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:

None.

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: 624.4073, 627.072, 631.57, and 631.914.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

PCS 732288 by Appropriations Committee (Recommended CS by Appropriations Subcommittee on Agriculture, Environment, and General Government):

The committee substitute:

- Requires insurers electing not to recoup assessments made to the Florida Insurance Guaranty Association (FIGA) to either reduce a recorded asset to zero or record as no asset, depending on the levying mechanism prescribed under the statute; and
- Clarifies calculation of FIGA quarterly payments for those insurers who elect not to collect from policyholders.

CS by Banking and Insurance on January 18, 2022:

The committee substitute:

- Amends s. 624.4073, F.S., related to officers and directors of insolvent insurers, shifts the burden for demonstrating the personal actions or omissions of the officer or director of an insolvent insurer were a significant contributing cause of the insolvency to the OIR, rather than on the officer or director to demonstrate his or her personal actions or omissions were not a significant contributing cause of the insolvency.

B. Amendments:

None.