

1 A bill to be entitled
2 An act relating to insurer insolvency; amending s.
3 631.152, F.S.; authorizing the Department of Financial
4 Services to request appointment as ancillary receiver if
5 necessary for obtaining records to adjudicate covered
6 claims; providing for the reimbursement of specified costs
7 associated with ancillary delinquency proceedings;
8 creating s. 631.2715, F.S.; providing for the State Risk
9 Management Trust Fund coverage for specified officers,
10 employees, agents, and other representatives of the
11 Department of Financial Services for liability under
12 specified federal laws relating to receiverships; amending
13 s. 631.391, F.S., providing liability to persons who fail
14 to cooperate in the providing of records; amending s.
15 631.54, F.S.; providing that a covered claim for purposes
16 of specified guaranty provisions does not include a claim
17 rejected or denied by another state's guaranty fund based
18 upon that state's statutory exclusions; amending s.
19 631.56, F.S.; providing that any board member of the
20 Florida Insurance Guaranty Association representing an
21 insurer in receivership shall be terminated as a board
22 member; specifying a termination date; amending s.
23 631.904, F.S.; providing that a covered claim for purposes
24 of specified guaranty provisions does not include a claim
25 rejected or denied by another state's guaranty fund based
26 upon that state's statutory exclusions; amending s.
27 631.912, F.S.; providing that any board member of the
28 Florida Workers' Compensation Insurance Guaranty

29 Association who is employed by, or has a material
 30 relationship with, an insurer in receivership shall be
 31 terminated as a board member; specifying a termination
 32 date; providing an effective date.

33
 34 Be It Enacted by the Legislature of the State of Florida:

35
 36 Section 1. Section 631.152, Florida Statutes, is amended
 37 to read:

38 631.152 Conduct of delinquency proceeding; foreign
 39 insurers.—

40 (1) Whenever under this chapter an ancillary receiver is
 41 to be appointed in a delinquency proceeding for an insurer not
 42 domiciled in this state, the court shall appoint the department
 43 as ancillary receiver. The department shall file a petition
 44 requesting the appointment on the grounds set forth in s.

45 631.091:

46 (a) If it finds that there are sufficient assets of the
 47 insurer located in this state to justify the appointment of an
 48 ancillary receiver; ~~or~~

49 (b) If 10 or more persons resident in this state having
 50 claims against such insurer file a petition with the department
 51 or office requesting the appointment of such ancillary receiver;
 52 or—

53 (c) If it finds it is necessary to obtain records to
 54 adjudicate the covered claims of Florida policyholders.

55 (2) The domiciliary receiver for the purpose of
 56 liquidating an insurer domiciled in a reciprocal state shall be

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57 | vested by operation of law with the title to all of the property
58 | (except statutory deposits, special statutory deposits, and
59 | property located in this state subject to a security interest),
60 | contracts, and rights of action, and all of the books and
61 | records of the insurer located in this state, and it shall have
62 | the immediate right to recover balances due from local agents
63 | and to obtain possession of any books and records of the insurer
64 | found in this state. It shall also be entitled to recover the
65 | property subject to a security interest, statutory deposits, and
66 | special statutory deposits of the insurer located in this state,
67 | except that upon the appointment of an ancillary receiver in
68 | this state, the ancillary receiver shall during the ancillary
69 | receivership proceeding have the sole right to recover such
70 | other assets. The ancillary receiver shall, as soon as
71 | practicable, liquidate from their respective securities those
72 | special deposit claims and secured claims which are proved and
73 | allowed in the ancillary proceeding in this state, and shall pay
74 | the necessary expenses of the proceeding. All remaining assets
75 | it shall promptly transfer to the domiciliary receiver. Subject
76 | to the foregoing provisions, the ancillary receiver and its
77 | agents shall have the same powers and be subject to the same
78 | duties with respect to the administration of such assets as a
79 | receiver of an insurer domiciled in this state.

80 | (3) The domiciliary receiver of an insurer domiciled in a
81 | reciprocal state may sue in this state to recover any assets of
82 | such insurer to which it may be entitled under the laws of this
83 | state.

84 | (4) The provisions of s. 631.141(7)(b) shall apply to

85 ancillary delinquency proceedings opened for the purpose of
 86 obtaining records necessary to adjudicate the covered claims of
 87 Florida policyholders.

88 Section 2. Section 631.2715, Florida Statutes, is created
 89 to read:

90 631.2715 Liability under federal priority of claims law.-
 91 The State Risk Management Trust Fund shall cover department
 92 officers, employees, agents, and other representatives for any
 93 liability under the federal act relating to priority of claims,
 94 31 U.S.C. s. 3713, for any action taken by them in the
 95 performance of their powers and duties under this chapter.

96 Section 3. Subsection (6) is added to section 631.391,
 97 Florida Statutes, to read:

98 631.391 Cooperation of officers and employees.-

99 (6) Any person referred to in subsection (1) that refuses
 100 to cooperate in providing records upon the request of the
 101 department or office shall be liable for any penalties, fines or
 102 other costs assessed against the guaranty association or the
 103 receiver that result from the refusal or delay to provide
 104 records.

105 Section 4. Subsection (3) of section 631.54, Florida
 106 Statutes, is amended to read:

107 631.54 Definitions.-As used in this part:

108 (3) "Covered claim" means an unpaid claim, including one
 109 of unearned premiums, which arises out of, and is within the
 110 coverage, and not in excess of, the applicable limits of an
 111 insurance policy to which this part applies, issued by an
 112 insurer, if such insurer becomes an insolvent insurer and the

113 claimant or insured is a resident of this state at the time of
 114 the insured event or the property from which the claim arises is
 115 permanently located in this state. For entities other than
 116 individuals, the residence of a claimant, insured, or
 117 policyholder is the state in which the entity's principal place
 118 of business is located at the time of the insured event.

119 "Covered claim" does ~~shall~~ not include:

120 (a) Any amount due any reinsurer, insurer, insurance pool,
 121 or underwriting association, sought directly or indirectly
 122 through a third party, as subrogation, contribution,
 123 indemnification, or otherwise; or

124 (b) Any claim that would otherwise be a covered claim
 125 under this part that has been rejected or denied by any other
 126 state guaranty fund based upon that state's statutory exclusions
 127 including but not limited to those based on coverage, policy
 128 type, or an insured's net worth on the grounds that an insured's
 129 net worth is greater than that allowed under that state's
 130 guaranty law. Member insurers ~~shall~~ have no right of
 131 subrogation, contribution, indemnification, or otherwise, sought
 132 directly or indirectly through a third party, against the
 133 insured of any insolvent member.

134 Section 5. Subsection (4) is added to section 631.56,
 135 Florida Statutes, to read:

136 631.56 Board of directors.—

137 (4) Any board member representing an insurer in
 138 receivership shall be terminated as a board member, effective as
 139 of the date of the entry of the order of receivership.

140 Section 6. Subsection (2) of section 631.904, Florida
 141 Statutes, is amended to read:
 142 631.904 Definitions.—As used in this part, the term:
 143 (2) "Covered claim" means an unpaid claim, including a
 144 claim for return of unearned premiums, which arises out of, is
 145 within the coverage of, and is not in excess of the applicable
 146 limits of, an insurance policy to which this part applies, which
 147 policy was issued by an insurer and which claim is made on
 148 behalf of a claimant or insured who was a resident of this state
 149 at the time of the injury. The term "covered claim" includes
 150 unpaid claims under any employer liability coverage of a
 151 workers' compensation policy limited to the lesser of \$300,000
 152 or the limits of the policy. The term "covered claim" does not
 153 include any amount sought as a return of premium under any
 154 retrospective rating plan; any amount due any reinsurer,
 155 insurer, insurance pool, or underwriting association, as
 156 subrogation recoveries or otherwise; any claim that would
 157 otherwise be a covered claim that has been rejected or denied by
 158 any other state guaranty fund based upon that state's statutory
 159 exclusions including but not limited to those based on coverage,
 160 policy type, or an insured's net worth ~~on the grounds that the~~
 161 ~~insured's net worth is greater than that allowed under that~~
 162 ~~state's guaranty fund or liquidation law,~~ except this exclusion
 163 from the definition of covered claim does ~~shall~~ not apply to
 164 employers who, prior to April 30, 2004, entered into an
 165 agreement with the corporation preserving the employer's right
 166 to seek coverage of claims rejected by another state's guaranty
 167 fund; or any return of premium resulting from a policy that was

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168 | not in force on the date of the final order of liquidation.
169 | Member insurers have no right of subrogation against the insured
170 | of any insolvent insurer. This provision applies ~~shall be~~
171 | ~~applied~~ retroactively to cover claims of an insolvent self-
172 | insurance fund resulting from accidents or losses incurred prior
173 | to January 1, 1994, regardless of the date the petition in
174 | circuit court was filed alleging insolvency and the date the
175 | court entered an order appointing a receiver.

176 | Section 7. Subsection (3) is added to section 631.912,
177 | Florida Statutes, to read:

178 | 631.912 Board of directors.—

179 | (3) Any board member who is employed by, or has a material
180 | relationship with, an insurer in receivership shall be
181 | terminated as a board member, effective as of the date of the
182 | entry of the order of receivership.

183 | Section 8. This act shall take effect July 1, 2011.