

CHAPTER 2010-49

Council Substitute for Council Substitute for Committee Substitute for House Bill No. 159

An act relating to guaranty associations; amending s. 631.52, F.S.; expanding an exemption from the applicability of certain provisions of state law to include workers' compensation claims under employer liability coverage; amending s. 631.54, F.S.; conforming the definition of "account" to changes made by the act; amending s. 631.55, F.S.; revising the separate accounts of the association; amending s. 631.57, F.S.; conforming cross-references; providing a legislative finding and declaration; authorizing insurers to recoup certain assessments levied by the Office of Insurance Regulation by applying certain recoupment factors; deleting provisions relating to classification and payment of emergency assessments; providing guidelines and a methodology for the calculation of recoupment factors for recouping certain assessments; authorizing an insurer to apply a recalculated recoupment factor under certain conditions; providing for the return of excess assessments and recoupment charges; providing that amounts recouped are not premium and not subject to premium taxes, fees, or commissions; requiring that insurers treat failure to pay a recoupment charge as failure to pay the premium; requiring that an insurer file with the office a statement containing certain information within a specified period before applying a recoupment factor to any policies; authorizing an insurer to use a recoupment factor after the expiration of such period; providing that an insurer need submit only one such statement for all lines of business; requiring that an insurer file with the office an accounting report containing certain information within a specified period after the completion of the recoupment process; providing that an insurer need submit only one such report for all lines of business; amending s. 631.713, F.S.; expanding the application of certain provisions of state law to certain residents of other states who own certain insurance policies; expanding the list of contracts and policies to which life and health insurance guaranty of payments provisions do not apply; providing for application to coverage under certain structured settlement annuities under certain circumstances; amending s. 631.714, F.S.; revising certain definitions; amending s. 631.717, F.S.; revising a guaranty association's aggregate liability for life insurance and deferred annuity contracts; authorizing an association to issue alternative policies or contracts to certain policies or contracts under certain circumstances; subjecting such alternative policies or contracts to specified requirements; creating s. 631.7295, F.S.; authorizing an association to succeed to the rights of an insolvent insurer arising after an order of liquidation or rehabilitation with regard to certain contracts of reinsurance; requiring that such an association pay all unpaid premiums due under the contract; amending s. 631.735, F.S.; specifying that certain advertisement prohibitions do not prohibit the furnishing of certain written information in a form prepared by an association upon request;

amending s. 631.904, F.S.; revising the definition of the term “covered claim”; providing an effective date.

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

Section 1. Subsection (14) of section 631.52, Florida Statutes, is amended to read:

631.52 Scope.—This part shall apply to all kinds of direct insurance, except:

(14) Workers’ compensation, including claims under employer liability coverage;

Section 2. Subsection (1) of section 631.54, Florida Statutes, is amended to read:

631.54 Definitions.—As used in this part:

(1) “Account” means ~~any~~ one of the ~~three~~ accounts created by s. 631.55.

Section 3. Subsection (2) of section 631.55, Florida Statutes, is amended to read:

631.55 Creation of the association.—

(2) For the purposes of administration and assessment, the association shall be divided into two ~~three~~ separate accounts:

(a) The auto liability and ~~account;~~

~~(b) The auto physical damage account;~~ ~~and~~

~~(b)(e)~~ The account for all other insurance to which this part applies.

Section 4. Subsection (3) of section 631.57, Florida Statutes, is amended to read:

631.57 Powers and duties of the association.—

(3)(a) To the extent necessary to secure the funds for the respective accounts for the payment of covered claims, to pay the reasonable costs to administer the same, and to the extent necessary to secure the funds for the account specified in s. 631.55(2)~~(b)~~(e) or to retire indebtedness, including, without limitation, the principal, redemption premium, if any, and interest on, and related costs of issuance of, bonds issued under s. 631.695 and the funding of any reserves and other payments required under the bond resolution or trust indenture pursuant to which such bonds have been issued, the office, upon certification of the board of directors, shall levy assessments in the proportion that each insurer’s net direct written premiums in this state in the classes protected by the account bears to the total of said net direct written premiums received in this state by all such insurers for the

preceding calendar year for the kinds of insurance included within such account. Assessments shall be remitted to and administered by the board of directors in the manner specified by the approved plan. Each insurer so assessed shall have at least 30 days' written notice as to the date the assessment is due and payable. Every assessment shall be made as a uniform percentage applicable to the net direct written premiums of each insurer in the kinds of insurance included within the account in which the assessment is made. The assessments levied against any insurer shall not exceed in any one year more than 2 percent of that insurer's net direct written premiums in this state for the kinds of insurance included within such account during the calendar year next preceding the date of such assessments.

(b) If sufficient funds from such assessments, together with funds previously raised, are not available in any one year in the respective account to make all the payments or reimbursements then owing to insurers, the funds available shall be prorated and the unpaid portion shall be paid as soon thereafter as funds become available.

(c) The Legislature finds and declares that all assessments paid by an insurer or insurer group as a result of a levy by the office, including assessments levied pursuant to paragraph (a) and emergency assessments, constitute advances of funds from the insurer to the association. An insurer may fully recoup such advances by applying a separate recoupment factor to the premium of policies of the same kind or line as were considered by the office in determining the assessment liability of the insurer or insurer group. Assessments shall be included as an appropriate factor in the making of rates.

(d) No state funds of any kind shall be allocated or paid to said association or any of its accounts.

(e)1.a. In addition to assessments otherwise authorized in paragraph (a) and to the extent necessary to secure the funds for the account specified in s. 631.55(2)(b)(e) for the direct payment of covered claims of insurers rendered insolvent by the effects of a hurricane and to pay the reasonable costs to administer such claims, or to retire indebtedness, including, without limitation, the principal, redemption premium, if any, and interest on, and related costs of issuance of, bonds issued under s. 631.695 and the funding of any reserves and other payments required under the bond resolution or trust indenture pursuant to which such bonds have been issued, the office, upon certification of the board of directors, shall levy emergency assessments upon insurers holding a certificate of authority. The emergency assessments payable under this paragraph by any insurer shall not exceed in any single year more than 2 percent of that insurer's direct written premiums, net of refunds, in this state during the preceding calendar year for the kinds of insurance within the account specified in s. 631.55(2)(b)(e).

b. Any emergency assessments authorized under this paragraph shall be levied by the office upon insurers referred to in sub-subparagraph a., upon certification as to the need for such assessments by the board of directors. In

the event the board of directors participates in the issuance of bonds in accordance with s. 631.695, emergency assessments shall be levied in each year that bonds issued under s. 631.695 and secured by such emergency assessments are outstanding, in such amounts up to such 2-percent limit as required in order to provide for the full and timely payment of the principal of, redemption premium, if any, and interest on, and related costs of issuance of, such bonds. The emergency assessments provided for in this paragraph are assigned and pledged to the municipality, county, or legal entity issuing bonds under s. 631.695 for the benefit of the holders of such bonds, in order to enable such municipality, county, or legal entity to provide for the payment of the principal of, redemption premium, if any, and interest on such bonds, the cost of issuance of such bonds, and the funding of any reserves and other payments required under the bond resolution or trust indenture pursuant to which such bonds have been issued, without the necessity of any further action by the association, the office, or any other party. To the extent bonds are issued under s. 631.695 and the association determines to secure such bonds by a pledge of revenues received from the emergency assessments, such bonds, upon such pledge of revenues, shall be secured by and payable from the proceeds of such emergency assessments, and the proceeds of emergency assessments levied under this paragraph shall be remitted directly to and administered by the trustee or custodian appointed for such bonds.

c. Emergency assessments under this paragraph may be payable in a single payment or, at the option of the association, may be payable in 12 monthly installments with the first installment being due and payable at the end of the month after an emergency assessment is levied and subsequent installments being due not later than the end of each succeeding month.

d. If emergency assessments are imposed, the report required by s. 631.695(7) shall include an analysis of the revenues generated from the emergency assessments imposed under this paragraph.

e. If emergency assessments are imposed, the references in sub-subparagraph (1)(a)3.b. and s. 631.695(2) and (7) to assessments levied under paragraph (a) shall include emergency assessments imposed under this paragraph.

~~2.—In order to ensure that insurers paying emergency assessments levied under this paragraph continue to charge rates that are neither inadequate nor excessive, within 90 days after being notified of such assessments, each insurer that is to be assessed pursuant to this paragraph shall submit a rate filing for coverage included within the account specified in s. 631.55(2)(c) and for which rates are required to be filed under s. 627.062. If the filing reflects a rate change that, as a percentage, is equal to the difference between the rate of such assessment and the rate of the previous year's assessment under this paragraph, the filing shall consist of a certification so stating and shall be deemed approved when made. Any rate change of a different percentage shall be subject to the standards and procedures of s. 627.062.~~

~~2.3.~~ ~~If In the event~~ the board of directors participates in the issuance of bonds in accordance with s. 631.695, an annual assessment under this paragraph shall continue while the bonds issued with respect to which the assessment was imposed are outstanding, including any bonds the proceeds of which were used to refund bonds issued pursuant to s. 631.695, unless adequate provision has been made for the payment of the bonds in the documents authorizing the issuance of such bonds.

3.4. Emergency assessments under this paragraph are not premium and are not subject to the premium tax, to any fees, or to any commissions. An insurer is liable for all emergency assessments that the insurer collects and shall treat the failure of an insured to pay an emergency assessment as a failure to pay the premium. An insurer is not liable for uncollectible emergency assessments.

(f) The recoupment factor applied to policies in accordance with paragraph (c) shall be selected by the insurer or insurer group so as to provide for the probable recoupment of both assessments levied pursuant to paragraph (a) and emergency assessments over a period of 12 months, unless the insurer or insurer group, at its option, elects to recoup the assessment over a longer period. The recoupment factor shall apply to all policies of the same kind or line as were considered by the office in determining the assessment liability of the insurer or insurer group issued or renewed during a 12-month period. If the insurer or insurer group does not collect the full amount of the assessment during one 12-month period, the insurer or insurer group may apply recalculated recoupment factors to policies issued or renewed during one or more succeeding 12-month periods. If, at the end of a 12-month period, the insurer or insurer group has collected from the combined kinds or lines of policies subject to assessment more than the total amount of the assessment paid by the insurer or insurer group, the excess amount shall be disbursed as follows:

1. If the excess amount does not exceed 15 percent of the total assessment paid by the insurer or insurer group, the excess amount shall be remitted to the association within 60 days after the end of the 12-month period in which the excess recoupment charges were collected.

2. If the excess amount exceeds 15 percent of the total assessment paid by the insurer or insurer group, the excess amount shall be returned to the insurer's or insurer group's current policyholders by refunds or premium credits. The association shall use any remitted excess recoupment amounts to reduce future assessments.

(g) Amounts recouped pursuant to this subsection for assessments levied under paragraph (a) due to insolvencies on or after July 1, 2010, are considered premium solely for premium tax purposes and are not subject to fees or commissions. However, insurers shall treat the failure of an insured to pay a recoupment charge as a failure to pay the premium.

(h) At least 15 days before applying the recoupment factor to any policies, the insurer or insurer group shall file with the office a statement for informational purposes only setting forth the amount of the recoupment factor and an explanation of how the recoupment factor will be applied. Such statement shall include documentation of the assessment paid by the insurer or insurer group and the arithmetic calculations supporting the recoupment factor. The insurer or insurer group may use the recoupment factor at any time after the expiration of the 15-day period. The insurer or insurer group need submit only one informational statement for all lines of business using the same recoupment factor.

(i) No later than 90 days after the insurer or insurer group has completed the recoupment process, the insurer or insurer group shall file with the office, for information purposes only, a final accounting report documenting the recoupment. The report shall provide the amounts of assessments paid by the insurer or insurer group, the amounts and percentages recouped by year from each affected line of business, and the direct written premium subject to recoupment by year. The insurer or insurer group need submit only one report for all lines of business using the same recoupment factor.

Section 5. Paragraph (b) of subsection (2) of section 631.713, Florida Statutes, is amended, paragraphs (n), (o), and (p) are added to subsection (3) of that section, and subsection (5) is added to that section, to read:

631.713 Application of part.—

(2) Coverage under this part shall be provided to:

(b) Persons who are owners of or certificateholders under such policies or contracts, and who:

1. Are residents of this state; or

2. Are residents of other states, but only if:

a. The insurers which issued such policies or contracts are domiciled in this state;

b. ~~Such insurers were not licensed never held a license or certificate of authority in the states in which such persons reside at the time specified in a state's guaranty association law as necessary for coverage by that state's association;~~

c. Such other states have associations similar to the association created by this part; and

d. Such persons are not eligible for coverage by such associations.

(3) This part does not apply to:

(n) A portion of a policy or contract, to the extent that the rate of interest on which the policy or contract is based, or the interest rate, crediting rate, or similar factor determined by use of an index or other external reference stated in the policy or contract employed in calculating returns or changes in value:

1. Averaged over the period of 4 years immediately preceding the date on which the member insurer becomes an impaired or insolvent insurer under this part, whichever is earlier, exceeds the rate of interest determined by subtracting 2 percentage points from Moody's Corporate Bond Yield Average averaged for that same 4-year period or for such lesser period if the policy or contract was issued less than 4 years before the member insurer becomes an impaired or insolvent insurer under this part, whichever is earlier; and

2. On and after the date on which the member insurer becomes an impaired or insolvent insurer under this part, whichever is earlier, exceeds the rate of interest determined by subtracting 3 percentage points from the most current version of Moody's Corporate Bond Yield Average.

(o) A portion of a policy or contract to the extent the policy or contract provides for interest or other changes in value to be determined by the use of an index or other external reference stated in the policy or contract, but which has not been credited to the policy or contract, or as to which the policy or contract owner's rights are subject to forfeiture, as of the date the member insurer becomes an impaired or insolvent insurer under this part. However, if the interest or change in value is credited less frequently than annually as determined by using the procedures defined in the policy or contract, interest or change in value shall be credited by using the procedure defined in the policy or contract as if the contractual date of crediting interest or changing values was the date of impairment or insolvency, whichever is earlier, and shall not be subject to forfeiture.

(p) A policy or contract providing any hospital, medical, prescription drug, or other health care benefits pursuant to Medicare Part C or Part D or any regulations issued pursuant to Medicare Part C or Part D.

(5) Notwithstanding any other provisions of this part, this part applies to coverage of a person who is a payee under a structured settlement annuity, or a beneficiary if the payee is deceased, with a coverage limit of \$300,000 by the association, if:

(a) The payee is a resident of this state, regardless of where the contract owner resides.

(b) Neither the payee, the beneficiary, nor the contract owner is eligible for coverage by the association of the state in which the contract owner resides.

Section 6. Subsections (6) and (10) of section 631.714, Florida Statutes, are amended to read:

631.714 Definitions.—As used in this part, the term:

(6) “Insolvent insurer” means a member insurer 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.~~

(10) “Resident” means any person who resides in this state at the time a member insurer is determined to be an impaired or insolvent insurer and to whom contractual obligations are owed by such impaired or insolvent member insurer. A person may be a resident of only one state, which in the case of a person other than an individual shall be the person’s principal place of business. Citizens of the United States who are residents of foreign countries or United States possessions, territories, or protectorates that do not have an association similar to the guaranty association created by this part shall be deemed residents of the state of domicile of the insurer issuing the policies or contracts.

Section 7. Subsection (9) of section 631.717, Florida Statutes, is amended, and paragraph (g) is added to subsection (12) of that section, to read:

631.717 Powers and duties of the association.—

(9) The association’s liability for the contractual obligations of the insolvent insurer shall be as great as, but no greater than, the contractual obligations of the insurer in the absence of such insolvency, unless such obligations are reduced as permitted by subsection (4), but the aggregate liability of the association shall not exceed \$100,000 in net cash surrender and net cash withdrawal values for life insurance, \$250,000 in net cash surrender and net cash withdrawal values for deferred annuity contracts, or \$300,000 for all benefits including cash values, with respect to any one life. In no event shall the association be liable for any penalties or interest.

(12)

(g) In carrying out its duties in connection with guaranteeing, assuming, or reinsuring policies or contracts under subsections (2) and (3), the association may, subject to approval of the receivership court, issue substitute coverage for a policy or contract that provides an interest rate, crediting rate, or similar factor determined by use of an index or other external reference stated in the policy or contract employed in calculating returns or changes in value by issuing an alternative policy or contract. In lieu of the index or other external reference provided for in the original policy or contract, the alternative policy or contract must provide for a fixed interest rate, payment of dividends with minimum guarantees, or a different method for calculating interest or changes in value. In such case:

1. There is no requirement for evidence of insurability, waiting period, or other exclusion that would not have applied under the replaced policy or contract.

2. The alternative policy or contract shall be substantially similar to the replaced policy or contract in all other material terms.

Section 8. Section 631.7295, Florida Statutes, is created to read:

631.7295 Reinsurance.—With respect to covered policies for which the association becomes obligated after an entry of an order of liquidation or rehabilitation, the association may elect to succeed to the rights of the insolvent insurer arising after the order of liquidation or rehabilitation under any contract of reinsurance to which the insolvent insurer was a party, to the extent such contract provides coverage for losses occurring after the date of the order of liquidation or rehabilitation. As a condition to making such election, the association must pay all unpaid premiums due under the contract for coverage relating to periods before and after the date on which the order of liquidation or rehabilitation was entered.

Section 9. Section 631.735, Florida Statutes, is amended to read:

631.735 Prohibited advertisement of Florida Life and Health Insurance Guaranty Association Act in sale of insurance.—A No person may not shall make, publish, disseminate, circulate, or place before the public, or cause directly or indirectly to be made, published, disseminated, circulated, or placed before the public, in any newspaper, magazine, or other publication, or in the form of a notice, circular, pamphlet, letter, or poster, or over any radio station or television station, or in any other way, any advertisement, announcement, or statement which uses the existence of the Insurance Guaranty Association of this state for the purpose of sales, solicitation, or inducement to purchase any form of insurance covered by the Florida Life and Health Insurance Guaranty Association Act. However, this section does shall not apply to the Florida Life and Health Insurance Guaranty Association or any other entity that which does not sell or solicit insurance. This section also does not prohibit the furnishing of written information that is in a form prepared by the association, that summarizes the claim, cash value, and annuity cash value limits of the association, upon request of the policyholder or applicant for insurance.

Section 10. Subsection (2) of section 631.904, Florida Statutes, is amended to read:

631.904 Definitions.—As used in this part, the term:

(2) “Covered claim” means an unpaid claim, including a claim for return of unearned premiums, which arises out of, is within the coverage of, and is not in excess of the applicable limits of, an insurance policy to which this part applies, which policy was issued by an insurer and which claim is made on behalf of a claimant or insured who was a resident of this state at the time of

the injury. The term “covered claim” includes unpaid claims under any employer liability coverage of a workers’ compensation policy limited to the lesser of \$300,000 or the limits of the policy. The term “covered claim” does not include any amount sought as a return of premium under any retrospective rating plan; any amount due any reinsurer, insurer, insurance pool, or underwriting association, as subrogation recoveries or otherwise; any claim that would otherwise be a covered claim that has been rejected by any other state guaranty fund on the grounds that the insured’s net worth is greater than that allowed under that state’s guaranty fund or liquidation law, except this exclusion from the definition of covered claim shall not apply to employers who, prior to April 30, 2004, entered into an agreement with the corporation preserving the employer’s right to seek coverage of claims rejected by another state’s guaranty fund; or any return of premium resulting from a policy that was not in force on the date of the final order of liquidation. Member insurers have no right of subrogation against the insured of any insolvent insurer. This provision shall be applied retroactively to cover claims of an insolvent self-insurance fund resulting from accidents or losses incurred prior to January 1, 1994, regardless of the date the petition in circuit court was filed alleging insolvency and the date the court entered an order appointing a receiver.

Section 11. This act shall take effect July 1, 2010.

Approved by the Governor May 11, 2010.

Filed in Office Secretary of State May 11, 2010.