

## CHAPTER 2011-226

### Committee Substitute for House Bill No. 1007

An act relating to insurer insolvency; amending s. 215.5595, F.S., relating to the Insurance Capital Build-Up Incentive Program; providing for renegotiation of surplus notes issued before a specified date; providing for an exemption from certain premium-to-surplus ratios in certain circumstances; amending s. 624.610, F.S.; revising surplus requirements for assuming insurers in connection with reinsurance credits; specifying rating agencies that may rate such assuming insurers; creating s. 631.400, F.S.; providing for rehabilitation plans for title insurers; providing that each title insurer doing business in this state is liable for an assessment for claims against title insurers ordered into rehabilitation; providing for an annual assessment upon request of a receiver; providing for emergency assessments in certain circumstances; providing limits on the amount of an assessment; providing that assessments are considered an asset of the estate and subject to specified provisions; providing for use of assessment proceeds; providing for availability of information concerning unpaid claims; specifying circumstances for release of title insurers from rehabilitation; prohibiting a title insurer in rehabilitation from issuing new policies until released from rehabilitation and permission to issue new policies granted; providing that officers, directors, and shareholders of a title insurer who served in that capacity within the 2-year period prior to the date the insurer was ordered into rehabilitation or liquidation may not thereafter serve in that capacity unless the officer, director, and shareholder meets specified criteria; creating s. 631.401, F.S.; providing for surcharges on title insurance policies to collect the amount needed to cover an assessment for an insolvent insurer; providing for a maximum period for a surcharge; providing a maximum for a surcharge; providing for responsibility for payment of a surcharge; providing for collection of surcharges by a title insurer doing business in the state writing no premiums in the prior calendar year; providing for remission and collection of surcharges within a specified period; specifying a limit on the amount in surcharges that may be retained by a title insurer; requiring notification when the collection of an assessment is completed; requiring an accounting of assessments paid and surcharges collected; providing for disposition of surcharges collected in excess of the amount assessed; amending s. 631.152, F.S.; authorizing the Department of Financial Services to request appointment as ancillary receiver if necessary for obtaining records to adjudicate covered claims; providing for the reimbursement of specified costs associated with ancillary delinquency proceedings; creating s. 631.2715, F.S.; providing for State Risk Management Trust Fund coverage for specified officers, employees, agents, and other representatives of the Department of Financial Services for liability under specified federal laws relating to receiverships; amending s. 631.391, F.S.; providing liability to persons who fail to cooperate in the providing of records; amending s. 631.54, F.S.; providing that a covered claim for

purposes of specified guaranty provisions does not include a claim rejected or denied by another state's guaranty fund based upon that state's statutory exclusions; amending s. 631.56, F.S.; providing that any board member of the Florida Insurance Guaranty Association representing an insurer in receivership shall be terminated as a board member; specifying a termination date; amending s. 631.904, F.S.; providing that a covered claim for purposes of specified guaranty provisions does not include a claim rejected or denied by another state's guaranty fund based upon that state's statutory exclusions; amending s. 631.912, F.S.; providing that any board member of the Florida Workers' Compensation Insurance Guaranty Association who is employed by, or has a material relationship with, an insurer in receivership shall be terminated as a board member; specifying a termination date; amending s. 631.717, F.S.; providing that specified provisions relieving the Florida Life and Health Insurance Guaranty Association of liability for certain acts of a member insurer do not relieve the association of liability for valid insurance policy or contract claims if warranted after a specified review; providing an effective date.

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

Section 1. Subsection (11) of section 215.5595, Florida Statutes, is amended to read:

215.5595 Insurance Capital Build-Up Incentive Program.—

(11) For a surplus note issued under this section before January 1, 2011, the insurer may request that the board renegotiate terms of the note as provided in this subsection. The request must be submitted to the board by January 1, 2012. If the insurer agrees to accelerate the payment period of the note by at least 5 years, the board shall agree to exempt the insurer from the premium-to-surplus ratios required under paragraph (2)(d). If the insurer requesting the renegotiation agrees to an acceleration of the payment period of less than 5 years, the board may, after consultation with the Office of Insurance Regulation, agree to an appropriate revision of the premium-to-surplus ratios required under paragraph (2)(d) for the remaining term of the note. However, the revised ratios may not be lower than a minimum writing ratio of net premium to surplus of at least 1:1, and alternatively, a minimum writing ratio of gross premium to surplus of at least 3:1 ~~On January 15, 2009, the State Board of Administration shall transfer to Citizens Property Insurance Corporation any funds that have not been committed or reserved for insurers approved to receive such funds under the program, from the funds that were transferred from Citizens Property Insurance Corporation in 2008-2009 for such purposes.~~

Section 2. Paragraph (e) of subsection (3) of section 624.610, Florida Statutes, is amended to read:

624.610 Reinsurance.—

(3)

(e) If the reinsurance is ceded to an assuming insurer not meeting the requirements of paragraph (a), paragraph (b), paragraph (c), or paragraph (d), the commissioner may allow credit, but only if the assuming insurer holds surplus in excess of \$250 \$100 million and has a secure financial strength rating from at least two nationally recognized statistical rating organizations deemed acceptable by the commissioner as having experience and expertise in rating insurers doing business in Florida, including, but not limited to, Standard & Poor's, Moody's Investors Service, Fitch Ratings, A.M. Best Company, and Demotech. In determining whether credit should be allowed, the commissioner shall consider the following:

1. The domiciliary regulatory jurisdiction of the assuming insurer.
2. The structure and authority of the domiciliary regulator with regard to solvency regulation requirements and the financial surveillance of the reinsurer.
3. The substance of financial and operating standards for reinsurers in the domiciliary jurisdiction.
4. The form and substance of financial reports required to be filed by the reinsurers in the domiciliary jurisdiction or other public financial statements filed in accordance with generally accepted accounting principles.
5. The domiciliary regulator's willingness to cooperate with United States regulators in general and the office in particular.
6. The history of performance by reinsurers in the domiciliary jurisdiction.
7. Any documented evidence of substantial problems with the enforcement of valid United States judgments in the domiciliary jurisdiction.
8. Any other matters deemed relevant by the commissioner. The commissioner shall give appropriate consideration to insurer group ratings that may have been issued. The commissioner may, in lieu of granting full credit under this subsection, reduce the amount required to be held in trust under paragraph (c).

Section 3. Section 631.400, Florida Statutes, is created to read:

631.400 Rehabilitation of title insurer.—

(1) After the entry of an order of rehabilitation, the receiver shall review the condition of the insurer and file a plan of rehabilitation for approval with the court. The plan of rehabilitation shall provide:

(a) That policies on real property in this state issued by the title insurer in rehabilitation shall remain in force unless the receiver determines the assessment capacity provided by this section is insufficient to pay claims in the ordinary course of business.

(b) That policies on real property located outside the this state may be canceled as of a date provided by the receiver and approved by the court if the state in which the property is located does not have statutory provisions to pay future losses on those policies.

(c) A claims filing deadline for policies on real property located outside this state which are canceled under paragraph (b).

(d) A proposed percentage of the remaining estate assets to fund out-of-state claims where policies have been canceled, with any unused funds being returned to the general assets of the estate.

(e) A proposed percentage of the remaining estate assets to fund out-of-state claims where policies remain in force.

(f) That the funds allocated to pay claims on policies located outside of this state shall be based on the pro rata share of premiums written in each state over each of the 5 calendar years preceding the date of an order of rehabilitation.

(2) As a condition of doing business in this state, each title insurer shall be liable for an assessment to pay all unpaid title insurance claims and expenses of administering and settling those claims on real property in this state for any title insurer that is ordered into rehabilitation.

(3) The office shall order an assessment if requested by the receiver on an annual basis in an amount that the receiver deems sufficient for the payment of known claims, loss adjustment expenses, and the cost of administration of the rehabilitation expenses. The receiver shall consider the remaining assets of the insurer in receivership when making its request to the office. Annual assessments may be made until no more policies of the title insurer in rehabilitation are in force or the potential future liability has been satisfied. The office may exempt or limit the assessment of a title insurer if such assessment would result in a reduction to surplus as to policyholders below the minimum required to maintain the insurer's certificate of authority in any state.

(4) Assessments shall be based on the total of the direct title insurance premiums written in this state as reported to the office for the most recent calendar year. Each title insurer doing business in this state shall be assessed on a pro rata share basis of the total direct title insurance premiums written in this state.

(5) Assessments shall be paid to the receiver within 90 days after notice of the assessment or pursuant to a quarterly installment plan approved by the receiver. Any insurer that elects to pay an assessment on an installment plan shall also pay a financing charge to be determined by the receiver.

(6) The office shall order an emergency assessment if requested by the receiver. The total of any emergency assessment, when added to any annual

assessment in a single calendar year, may not exceed the limitation in subsection (7).

(7) No title insurer shall be required to pay an assessment in any one year that exceeds 3 percent of its surplus to policyholders as of the end of the previous calendar year or more than 10 percent of its surplus to policyholders over any consecutive 5-year period. The 10 percent limitation shall be calculated as the sum of the percentages of surplus to policyholders assessed in each of those 5 years.

(8) Assessments and emergency assessments once ordered by the office shall be considered assets of the estate and subject to the provisions of s. 631.154.

(9) In an effort to keep in force the policies on real property located in this state issued by the title insurer in rehabilitation, the receiver may use the proceeds of an assessment to acquire reinsurance or otherwise provide for the assumption of policy obligations by another insurer.

(10) The receiver shall make available information regarding unpaid claims on a quarterly basis.

(11) A title insurer in rehabilitation may not be released from rehabilitation until all of the assessed insurers have recovered the amount assessed either through surcharges collected pursuant to s. 631.401 or payments from the insurer in rehabilitation.

(12) A title insurer in rehabilitation for which an assessment has been ordered pursuant to this section may not issue any new policies until released from rehabilitation and it shall have received approval from the office to resume issuing policies.

(13) Officers, directors, and shareholders of a title insurer who served in that capacity within the 2-year period prior to the date the title insurer was ordered into rehabilitation or liquidation may not thereafter serve as an officer, director, or shareholder of an insurer authorized in this state unless the officer, director, or shareholder demonstrates to the office for the 2-year period immediately preceding the receivership that:

(a) His or her personal actions or omissions were not a significant contributing cause to the receivership;

(b) He or she did not willfully violate any order of the office;

(c) He or she did not receive directly or indirectly any distribution of funds from the insurer in excess of amounts authorized in writing by the office;

(d) The financial statements filed with the office were true and correct statements of the title insurer's financial contrition;

(e) He or she did not engage in any business practices which were hazardous to the policyholders, creditors, or the public; and

(f) He or she at all times acted in the best interests of the title insurer.

Section 4. Section 631.401, Florida Statutes, is created to read:

631.401 Recovery of assessments and assumed policy obligations.—

(1) Upon the making of any assessment allowed by s. 631.400, the office shall order a surcharge on each title insurance policy thereafter issued insuring an interest in real property in this state. The office shall set the per transaction surcharge at an amount estimated to generate sufficient funds to recover the amount assessed over a period of not more than 7 years. The amount of the surcharge ordered under this section may not exceed \$25 per transaction for each impaired title insurer. If additional surcharges are occasioned by additional title insurers becoming impaired, the office shall order an increase in the amount of the surcharge to reflect the aggregate surcharge.

(2) The party responsible for payment of title insurance premium, unless otherwise agreed between the parties, shall be responsible for the payment of the surcharge. No surcharge will be due or owing as to any policy of title insurance issued at the simultaneous issue rate. For all other purposes, the surcharge will be considered a governmental assessment to be separately stated on any settlement statement. The surcharge is not subject to premium tax or reserve requirements under chapter 625.

(3) Title insurers doing business in this state writing no premiums in the prior calendar year shall collect the same per transaction surcharge as provided by this section. Such surcharge collected shall be paid to the receiver within 60 days after receipt from the title agent or agency.

(4) Each title insurance agent, agency, or direct title operation shall collect the surcharge as to each title insurance policy written and remit those surcharges along with the policies and premiums within 60 days to the title insurer on whom the policy was written.

(5) A title insurer may not retain more in surcharges for an ordered assessment than the amount of assessment that title insurer paid.

(6) Each title insurer collecting surcharges shall promptly notify the office when it has collected surcharges equal to the amount of the assessment paid pursuant to s. 631.400. The office shall notify all companies, including those collecting surcharges as required by subsection (3), to cease collecting surcharges when notified that all assessments have been recovered.

(7) In conjunction with the filing of each quarterly financial statement, each title insurer shall provide the office with an accounting of assessments paid and surcharges collected during the period. Any surcharges collected in

excess of the amount assessed shall be paid to the Insurance Regulatory Trust Fund.

Section 5. Section 631.152, Florida Statutes, is amended to read:

631.152 Conduct of delinquency proceeding; foreign insurers.—

(1) Whenever under this chapter an ancillary receiver is to be appointed in a delinquency proceeding for an insurer not domiciled in this state, the court shall appoint the department as ancillary receiver. The department shall file a petition requesting the appointment on the grounds set forth in s. 631.091:

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

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

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

(2) The domiciliary receiver for the purpose of liquidating an insurer domiciled in a reciprocal state shall be vested by operation of law with the title to all of the property (except statutory deposits, special statutory deposits, and property located in this state subject to a security interest), contracts, and rights of action, and all of the books and records of the insurer located in this state, and it shall have the immediate right to recover balances due from local agents and to obtain possession of any books and records of the insurer found in this state. It shall also be entitled to recover the property subject to a security interest, statutory deposits, and special statutory deposits of the insurer located in this state, except that upon the appointment of an ancillary receiver in this state, the ancillary receiver shall during the ancillary receivership proceeding have the sole right to recover such other assets. The ancillary receiver shall, as soon as practicable, liquidate from their respective securities those special deposit claims and secured claims which are proved and allowed in the ancillary proceeding in this state, and shall pay the necessary expenses of the proceeding. All remaining assets it shall promptly transfer to the domiciliary receiver. Subject to the foregoing provisions, the ancillary receiver and its agents shall have the same powers and be subject to the same duties with respect to the administration of such assets as a receiver of an insurer domiciled in this state.

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

(4) Section 631.141(7)(b) applies to ancillary delinquency proceedings opened for the purpose of obtaining records necessary to adjudicate the covered claims of Florida policyholders.

Section 6. Section 631.2715, Florida Statutes, is created to read:

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

Section 7. Subsection (6) is added to section 631.391, Florida Statutes, to read:

631.391 Cooperation of officers and employees.—

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

Section 8. Subsection (3) of section 631.54, Florida Statutes, is amended to read:

631.54 Definitions.—As used in this part:

(3) “Covered claim” means an unpaid claim, including one of unearned premiums, which arises out of, and is within the coverage, and not in excess of, the applicable limits of an insurance policy to which this part applies, issued by an insurer, if such insurer becomes an insolvent insurer and the claimant or insured is a resident of this state at the time of the insured event or the property from which the claim arises is permanently located in this state. For entities other than individuals, the residence of a claimant, insured, or policyholder is the state in which the entity’s principal place of business is located at the time of the insured event. “Covered claim” does ~~shall~~ not include:

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

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



Section 9. Subsection (4) is added to section 631.56, Florida Statutes, to read:

631.56 Board of directors.—

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

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 or denied by any other state guaranty fund based upon that state’s statutory exclusions, including, but not limited to, those based on coverage, policy type, or an insured’s net worth 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 does 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 applies 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. Subsection (3) is added to section 631.912, Florida Statutes, to read:

631.912 Board of directors.—

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

Section 12. Subsection (11) of section 631.717, Florida Statutes, is amended to read:

631.717 Powers and duties of the association.—

(11) The association shall not be liable for any civil action under s. 624.155 arising from any acts alleged to have been committed by a member insurer prior to its liquidation. This subsection does not affect the association's obligation to pay valid insurance policy or contract claims if warranted after its independent de novo review of the policies, contracts, and claims presented to it, whether domestic or foreign, after a Florida domestic rehabilitation or a liquidation ; ~~however, this subsection does not affect the association's obligation to pay valid claims presented to it.~~

Section 13. This act shall take effect July 1, 2011.

Approved by the Governor June 24, 2011.

Filed in Office Secretary of State June 24, 2011.