

CHAPTER 97-262

House Bill No. 1933

An act relating to workers' compensation; amending s. 440.49, F.S.; revising procedures and requirements for reimbursement from the fund; providing for barring the filing of a claim for reimbursement under certain circumstances; providing a maximum fund assessment rate; requiring certain fees; requiring the Department of Labor and Employment Security to prepare an annual report; providing a schedule for reimbursements from the fund under certain circumstances; amending s. 625.091, F.S.; providing for accounting for anticipated recoveries under the Special Disability Trust Fund; requiring insurers to identify anticipated recoveries from the fund; providing an appropriation; amending s. 624.4621, F.S.; requiring self-insurance funds to maintain a positive surplus to policyholders; amending s. 624.468, F.S.; requiring self-insurance funds to maintain a positive surplus to policyholders; amending s. 624.470, F.S.; establishing standards for the use of future investment income as an asset for self-insurance funds; amending s. 624.476, F.S.; providing that the Department of Insurance may be appointed receiver for a self-insurance fund under certain circumstances; authorizing the administrative supervision of a self-insurance fund under certain conditions; creating s. 624.477, F.S.; requiring the Department of Insurance to supervise, as receiver, the liquidation, rehabilitation, reorganization, conservation, or dissolution of self-insurance funds; amending s. 624.488, F.S.; applying provisions of the Florida Insurance Code relating to rehabilitation and liquidation of an insurer to self-insurance funds; applying provisions relating to insurer assets, liabilities, and deposits to self-insurance funds; applying a provision relating to assessable mutual insurer annual reports to self-insurance funds; amending s. 628.6014, F.S.; establishing standards for the use of future investment income as an asset for assessable mutual insurers; amending s. 631.021, F.S.; providing for delinquency proceedings, venue, remedies, and appeals; amending s. 631.182, F.S.; providing for claims reports and procedures; amending s. 631.331, F.S.; providing for notice, payment, and collection procedure; amending s. 631.391, F.S.; providing for revocation of insurance-related licenses under certain conditions; amending s. 631.397, F.S.; specifying applicability of provision relating to use of marshaled assets; amending s. 631.52, F.S.; providing scope of direct insurance; amending s. 631.54, F.S.; providing definitions; amending s. 631.55, F.S.; providing for creation of the association; amending s. 631.57, F.S.; providing for powers and duties of the association; creating ss. 631.901, 631.902, 631.903, 631.904, 631.911, 631.912, 631.913, 631.914, 631.916, 631.917, 631.918, 631.919, 631.921, 631.922, 631.923, 631.924, 631.926, and 631.927, F.S.; creating the "Florida Workers' Compensation Insurance Guaranty Association Act"; providing purposes; providing construction; providing definitions; creating the Florida Workers' Compensation Insurance

Guaranty Association, Incorporated, by merging the Florida Self-Insurance Fund Guaranty Association and the workers' compensation insurance account; providing for effect of the merger; providing requirements; providing for a board of directors; providing powers and duties of the corporation; authorizing the board to levy assessments for certain purposes; providing procedures; providing requirements and limitations; authorizing an additional assessment for certain purposes; providing procedures; providing requirements and limitations; requiring the board to prepare a plan of operation; providing requirements; providing powers of the board to prevent insolvencies and impairments; providing for examination of certain insurers by the department for certain purposes; providing immunity from liability; specifying prohibited advertisement of solicitation; providing powers of the Department of Insurance; providing for liability of members of impaired self-insurance funds; providing for effect of paid claims; providing requirements; providing procedures; providing for staying certain proceedings; providing for setting aside certain judgments, orders, decisions, verdicts, or findings under certain circumstances; providing for nonapplication of certain attorney's fees provisions under certain circumstances; providing for assumption of liability by the corporation of certain payments; amending s. 631.996, F.S.; creating the Florida Workers' Compensation Insurance Guaranty Fund Account; amending s. 631.915, F. S.; revising definitions; amending s. 631.935, F.S.; providing for powers and duties of the association; creating s. 631.929, F.S.; providing for election of remedies by injured workers; providing procedures; providing requirements; amending s. 631.997, F.S.; providing for reports and recommendations of the board; amending s. 631.998, F.S.; providing for application of provisions relating to negotiations with an insurer to the corporation; directing that certain provisions not be published in the Florida Statutes; provides for a report; providing an appropriation from the Insurance Commissioner's Regulatory Trust Fund to the Florida Self-Insurance Fund Guaranty Association; providing for disbursement of appropriated funds; repealing ss. 631.90, 631.905, 631.91, 631.915, 631.92, 631.925, 631.93, 631.935, 631.94, 631.945, 631.95, 631.955, 631.96, 631.965, 631.97, 631.975, 631.98, 631.985, 631.99, and 631.995, F.S., relating to the Florida Self-Insurance Fund Guaranty Association; providing an effective date.

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

Section 1. Subsections (7), (9), and (11) of section 440.49, Florida Statutes, 1996 Supplement, are amended to read:

440.49 Limitation of liability for subsequent injury through Special Disability Trust Fund.—

(7) REIMBURSEMENT OF EMPLOYER.—

(a) The right to reimbursement as provided in this section is barred unless written notice of claim of the right to such reimbursement is filed by

the employer or carrier entitled to such reimbursement with the division at Tallahassee within 2 years after the date the employee last reached maximum medical improvement, or within 2 years after the date of the first payment of compensation for permanent total disability, wage loss, or death, whichever is later. The notice of claim must contain such information as the division by rule requires; and the employer or carrier claiming reimbursement shall furnish such evidence in support of the claim as the division reasonably may require.

(b) For notice of claims on the Special Disability Trust Fund filed on or after July 1, 1978, the Special Disability Trust Fund shall, within 120 days after receipt of notice that a carrier has paid, been required to pay, or accepted liability for excess compensation, serve notice of the acceptance of the claim for reimbursement.

(c) A proof of claim must be filed on each notice of claim on file as of June 30, 1997, within 1 year after July 1, 1997, or the right to reimbursement of the claim shall be barred. A notice of claim on file on or before June 30, 1997, may be withdrawn and refiled if, at the time refiled, the notice of claim remains within the limitation period specified in paragraph (a). Such refileing shall not toll, extend, or otherwise alter in any way the limitation period applicable to the withdrawn and subsequently refiled notice of claim. Each proof of claim filed shall be accompanied by a proof-of-claim fee as provided in paragraph (9)(d). The Special Disability Trust Fund shall, within 120 days after receipt of the proof of claim, serve notice of the acceptance of the claim for reimbursement. This paragraph shall apply to all claims notwithstanding the provisions of subsection (12).

(d) Each notice of claim filed or refiled on or after July 1, 1997, must be accompanied by a notification fee as provided in paragraph (9)(d). A proof of claim must be filed within 1 year after the date the notice of claim is filed or refiled, accompanied by a proof-of-claim fee as provided in paragraph (9)(d), or the claim shall be barred. The notification fee shall be waived if both the notice of claim and proof of claim are submitted together as a single filing. The Special Disability Trust Fund shall, within 180 days after receipt of the proof of claim, serve notice of the acceptance of the claim for reimbursement. This paragraph shall apply to all claims notwithstanding the provisions of subsection (12).

(e) For dates of accident on or after ~~before~~ January 1, 1994, the Special Disability Trust Fund shall, within 120 days of receipt of notice that a carrier has been required to pay, and has paid over \$10,000 in benefits, serve notice of the acceptance of the claim for reimbursement. Failure of the Special Disability Trust Fund to serve notice of acceptance shall give rise to the right to request a hearing on the claim for reimbursement. If the Special Disability Trust Fund through its representative denies or controverts the claim, the right to such reimbursement shall be barred unless an application for a hearing thereon is filed with the division at Tallahassee within 60 days after notice to the employer or carrier of such denial or controversion. When such application for a hearing is timely filed, the claim shall be heard and determined in accordance with the procedure prescribed in s. 440.25, to the extent that such procedure is applicable, and in accordance with the workers' compensation rules of procedure. In such proceeding on a claim for

reimbursement, the Special Disability Trust Fund shall be made the party respondent, and no findings of fact made with respect to the claim of the injured employee or the dependents for compensation, including any finding made or order entered pursuant to s. 440.20(12), shall be res judicata. The Special Disability Trust Fund may not be joined or made a party to any controversy or dispute between an employee and the dependents and the employer or between two or more employers or carriers without the written consent of the fund.

(f) When it has been determined that an employer or carrier is entitled to reimbursement in any amount, the employer or carrier shall be reimbursed annually from the Special Disability Trust Fund for the compensation and medical benefits paid by the employer or carrier for which the employer or carrier is entitled to reimbursement, upon filing request therefor and submitting evidence of such payment in accordance with rules prescribed by the division, which rules may include parameters for annual audits. The Special Disability Trust Fund shall pay the approved reimbursement requests on a first-in, first-out basis reflecting the order in which the reimbursement requests were received.

(9) SPECIAL DISABILITY TRUST FUND.—

(a) There is established in the State Treasury a special fund to be known as the “Special Disability Trust Fund,” which shall be available only for the purposes stated in this section; and the assets thereof may not at any time be appropriated or diverted to any other use or purpose. The Treasurer shall be the custodian of such fund, and all moneys and securities in such fund shall be held in trust by such Treasurer and shall not be the money or property of the state. The Treasurer is authorized to disburse moneys from such fund only when approved by the division and upon the order of the Comptroller. The Treasurer shall deposit any moneys paid into such fund into such depository banks as the division may designate and is authorized to invest any portion of the fund which, in the opinion of the division, is not needed for current requirements, in the same manner and subject to all the provisions of the law with respect to the deposits of state funds by such Treasurer. All interest earned by such portion of the fund as may be invested by the Treasurer shall be collected by him and placed to the credit of such fund.

(b)1. The Special Disability Trust Fund shall be maintained by annual assessments upon the insurance companies writing compensation insurance in the state, the commercial self-insurers under ss. 624.462 and 624.4621, the assessable mutuals under s. 628.601, and the self-insurers under this chapter, which assessments shall become due and be paid quarterly at the same time and in addition to the assessments provided in s. 440.51. The division shall estimate annually in advance the amount necessary for the administration of this subsection and the maintenance of this fund and shall make such assessment in the manner hereinafter provided.

2. The annual assessment shall be calculated to produce during the ensuing fiscal year an amount which, when combined with that part of the balance in the fund on June 30 of the current fiscal year which is in excess of \$100,000, is equal to the average of:

- a. The sum of disbursements from the fund during the immediate past 3 calendar years, and
- b. Two times the disbursements of the most recent calendar year.

Such amount shall be prorated among the insurance companies writing compensation insurance in the state and the self-insurers.

3. The net premiums written by the companies for workers' compensation in this state and the net premium written applicable to the self-insurers in this state are the basis for computing the amount to be assessed as a percentage of net premiums. Such payments shall be made by each insurance company and self-insurer to the division for the Special Disability Trust Fund in accordance with such regulations as the division prescribes.

4. The Treasurer is authorized to receive and credit to such Special Disability Trust Fund any sum or sums that may at any time be contributed to the state by the United States under any Act of Congress, or otherwise, to which the state may be or become entitled by reason of any payments made out of such fund.

(c) Notwithstanding the Special Disability Trust Fund assessment rate calculated pursuant to this section, the rate assessed shall not exceed 4.52 percent provisions of this subsection, in order to implement specific appropriations 1475 and 1748 of the 1996-1997 General Appropriations Act, for fiscal year 1996-1997 only, the workers' compensation Special Disability Trust Fund assessment rate in effect on January 1, 1995, shall remain in effect until June 30, 1997. This paragraph is repealed on July 1, 1997.

(d) The Special Disability Trust Fund shall be supplemented by a \$250 notification fee on each notice of claim filed or refiled after July 1, 1997, and a \$500 fee on each proof of claim filed in accordance with subsection (7). Revenues from the fee shall be deposited into the Special Disability Trust Fund and are exempt from the deduction required by s. 215.20. The fees provided in this paragraph shall not be imposed upon any insurer which is in receivership with the Department of Insurance.

(e) The Department of Labor and Employment Security shall report annually on the status of the Special Disability Trust Fund. The report shall update the projected change in fund liability, change in the total number of notices of claim on file with the fund in addition to the number of newly filed notices of claim, change in the number of proofs of claim processed by the fund, and the fee revenues refunded and revenues applied to pay down the liability of the fund. The department shall submit its initial report to the Governor, the President of the Senate, and the Speaker of the House of Representatives by March 1, 1998, for the period ending February 1, 1998, with additional reports submitted by December 1, 1998, and December 1, 1999.

(11) EFFECTIVE DATES.—This section does not apply to any case in which the accident causing the subsequent injury or death or the disablement or death from a subsequent occupational disease occurred prior to July

1, 1955, or on or after January 1, 1998. In no event shall the Special Disability Trust Fund be liable for, or reimburse employers or carriers for, any case in which the accident causing the subsequent injury or death or the disablement or death from a subsequent occupational disease occurred on or after January 1, 1998. The Special Disability Trust Fund shall continue to reimburse employers or carriers for subsequent injuries occurring prior to January 1, 1998, and the division shall continue to assess for and fund reimbursements as provided in subsection (9) for this purpose.

Section 2. Subsection (4) is added to section 625.091, Florida Statutes, to read:

625.091 Losses and loss adjustment expense reserves; liability insurance and workers' compensation insurance.—The reserve liabilities recorded in the insurer's annual statement and financial statements for unpaid losses and loss adjustment expenses shall be the estimated value of its claims when ultimately settled and shall be computed as follows:

(4)(a) Accounting credit for anticipated recoveries from the Special Disability Trust Fund may only be taken in the determination of loss reserves and may not be reflected on the financial statements in any manner other than that allowed pursuant to this subsection.

(b)1. For calendar years 1999-2003, an insurer recording anticipated recoveries from the Special Disability Trust Fund shall limit the aggregate amount to the amount management reasonably expects will be reimbursed or the following amount, whichever is lower:

a. For financial statements filed in 2000, an insurer may take accounting credit in an amount equalling 80% of the amount utilized in calendar year 1996.

b. For financial statements filed in 2001, an insurer may take accounting credit in an amount equalling 60% of the amount utilized in calendar year 1996.

c. For financial statements filed in 2002, an insurer may take accounting credit in an amount equalling 40% of the amount utilized in calendar year 1996.

d. For financial statements filed in 2003, an insurer may take accounting credit in an amount equalling 20% of the amount utilized in calendar year 1996.

2. Subparagraph 1. does not apply to an insurer recording anticipated recoveries from the Special Disability Trust Fund on the basis of:

a. A proof of claim which the Fund has reviewed, determined to be a valid claim and so notified the carrier, and extended a payment offer; or

b. A reimbursement request audited and approved for payment or paid by the Fund;

(c) Beginning with financial statements filed in 2004, an insurer may only take accounting credit for anticipated recoveries from the Special Disability Trust Fund for each proof of claim which the Fund has reviewed, determined to be a valid claim and so notified the carrier, and extended a payment offer; or a reimbursement request audited and approved for payment or paid by the Fund.

(d)1. Beginning in calendar year 1998, each insurer shall separately identify anticipated recoveries from the Special Disability Trust Fund on the annual statement required to be filed pursuant to s. 624.424.

2. For all financial statements filed with the department beginning in calendar year 1998, each insurer shall disclose in the notes to the financial statements of any financial statement required to be filed pursuant to s. 624.424 any credit in loss reserves taken for anticipated recoveries from the Special Disability Trust Fund. That disclosure shall include:

a. The amount of credit taken by the insurer in the determination of its loss reserves for the prior calendar year and the current reporting period on a year-to-date basis.

b. The amount of payments received by the insurer from the Special Disability Trust Fund during the prior calendar year and the year-to-date recoveries for the current year.

c. The amount the insurer was assessed by the Special Disability Trust Fund during the prior calendar year and during the current calendar year.

Section 3. There is hereby appropriated from the Special Disability Trust Fund in the Department of Labor and Employment Security \$2,743,000 for Other Personal Services and \$300,000 for related expenses.

Section 4. Subsection (10) is added to section 624.4621, Florida Statutes, to read:

624.4621 Group self-insurance funds.—

(10) Any self-insurance fund which holds a certificate of authority on or after January 1, 1998, shall maintain surplus to policyholders in a positive amount.

Section 5. Subsection (7) of section 624.468, Florida Statutes, is amended to read:

624.468 Continuing requirements for certificate of authority.—After issuance of its initial certificate of authority a commercial self-insurance fund shall thereafter meet the following requirements as a condition of maintaining its certificate of authority:

(7) Any self-insurance fund which holds a certificate of authority on or after January 1, 1998, shall maintain surplus to policyholders in a positive amount. Maintenance of an aggregate net worth of at least \$500,000 of all fund members, as further specified in s. 624.466(8). A fund shall not be

~~required to provide financial statements of its members evidencing conformity to this requirement after its certificate of authority has been issued, unless required to do so by the department upon a showing of good cause.~~

Section 6. Subsection (1) of section 624.470, Florida Statutes, is amended to read:

624.470 Annual reports.—

(1)(a) Every ~~commercial~~ self-insurance fund shall, annually within 3 months of the end of the fiscal year, file a financial statement of the fund, including its balance sheet and a statement of operations for the preceding year, verified by the oath of a member of the board of trustees or by an administrative executive appointed by the board. An entry for future investment income, reported on or after January 1, 1998, may only be reflected as an aggregate write-in asset on the balance sheet of the annual and quarterly financial statements. Future investment income shall be calculated as the sum of the admitted asset value of Line 1 (Bonds) plus the admitted asset value of Line 6 (Cash and Short-Term Investments) as reported on page 2 in the annual or quarterly financial statement, times the 3-year treasury note yield as of the date of the financial statement, times 3.

(b) For financial statements filed on or after January 1, 1998, future investment income may only be reported as an admitted asset by an Assessable Mutual or Self-Insurance Fund which reported future investment income in financial statements filed with the department prior to January 1, 1998.

Section 7. Section 624.476, Florida Statutes, is amended to read:

624.476 Impaired self-insurance funds.—

(1) If the assets of a self-insurance fund are at any time insufficient to comply with the requirements of law or to discharge its liabilities, other than any liability on account of funds contributed by the trustees or others, and to meet the required conditions of financial soundness, or if a judgment against the fund has remained unsatisfied for 30 days, its trustees shall forthwith make up the deficiency or levy an assessment upon the members for the amount needed to make up the deficiency, but subject to the limitation set forth in the trust agreement or the policy.

(2) If any fund levies an assessment pursuant to subsection (1), the department shall require the fund to consent to administrative supervision under part VI of chapter 624. The department may waive the requirement to consent to administrative supervision for good cause.

~~(3)~~(2) If the trustees fail to make an assessment as required by subsection (1), the department shall order the trustees to do so. If the deficiency is not sufficiently made up within 60 days after the date of the order, the fund shall be deemed insolvent and grounds shall exist to proceed against the fund as provided for in part I of chapter 631.

(4) Notwithstanding the requirement of the fund to make an assessment pursuant to subsection (1) or subsection (3), the department may at any time

request to be appointed receiver for purposes of rehabilitation or liquidation if it is able to demonstrate that any grounds for rehabilitation or liquidation exist pursuant to s. 631.051 or s. 631.061.

~~(3) Subject to this section, any rehabilitation, liquidation, conservation, or dissolution of a self-insurance fund shall be conducted under the supervision of the department, which shall have all power with respect thereto granted to it under part I of chapter 631 governing the rehabilitation, liquidation, conservation, or dissolution of insurers.~~

Section 8. Section 624.477, Florida Statutes, is created to read:

624.477 Liquidation, rehabilitation, reorganization, and conservation.— Any rehabilitation, liquidation, conservation, or dissolution of a self-insurance fund shall be conducted under the supervision of the department, which shall have all power with respect thereto granted to the fund under part I of chapter 631 governing the rehabilitation, liquidation, conservation, or dissolution of insurers and including all grounds for the appointment of a receiver contained in ss. 631.051 and 631.061.

Section 9. Section 624.488, Florida Statutes, is amended to read:

624.488 Applicability of related laws.—In addition to other provisions of the code cited in ss. 624.460-624.488:

(1) Sections 624.155, 624.308, 624.414, 624.415, and 624.416(4); ss. 624.418-624.4211, except s. 624.418(2)(f); and s. 624.501;

(2) Parts I, Part II, and III of chapter 625;

(3) Applicable sections of part VI of chapter 626; s. 626.9541(1)(a), (b), (c), (d), (e), (f), (h), (i), (j), (k), (l), (m), (n), (o), (q), (u), (w), and (x); and ss. 626.9561-626.9641;

(4) Sections 627.291, 627.413, 627.4132, 627.416, 627.418, 627.420, 627.421, 627.425, 627.426, 627.4265, 627.427, 627.428, 627.702, and 627.706; part XI of chapter 627; ss. 627.912, 627.913, and 627.918; ~~and~~

(5) Subsection Section 628.361(2) and s. 628.6014; and,

(6) Parts I and V of chapter 631,

apply to self-insurance funds. Only those sections of the code that are expressly and specifically cited in ss. 624.460-~~624.489~~624.488 apply to self-insurance funds.

Section 10. Section 628.6014, Florida Statutes, is amended to read:

628.6014 Annual reports.—

(1) An assessable mutual shall file a financial statement within 90 days of the end of its accounting year. The requirements of s. 624.470 shall apply, except an entry for future investment income, reported on or after January 1, 1998, may only on losses and allocated loss adjustment expense reserves

~~and unallocated loss adjustment expense reserves shall be reflected as an aggregate write-in asset on the balance sheet of the annual and quarterly financial statements statement for assets and policyholder surplus. Future investment income shall be calculated as the sum of the admitted asset value of Line 1 (Bonds) plus the admitted asset value of Line 6 (Cash and Short-Term Investments) as reported on page 2 in the annual or quarterly financial statement, times the 3-year treasury note yield as of the date of the financial statement, times 3. follows:~~

~~A + B + C - D, where~~

~~A = losses and allocated loss adjustment expense reserves,
B = unallocated loss adjustment expense reserves,
C = excess of statutory reserves over statement reserves, and
D = present value of A + B + C.~~

(2) For financial statements filed on or after January 1, 1998, future investment income may only be reported as an admitted asset by an assessable mutual which reported future investment income in financial statements filed with the department prior to December 31, 1996.

Section 11. Subsection (3) of section 631.021, Florida Statutes, is amended to read:

631.021 Jurisdiction of delinquency proceeding; venue; change of venue; exclusiveness of remedy; appeal.—

(3) A delinquency proceeding pursuant to this chapter constitutes the sole and exclusive method of liquidating, rehabilitating, reorganizing, or conserving an insurer. No court shall entertain a petition for the commencement of such a proceeding unless the petition has been filed in the name of the state on the relation of the department. The Florida Insurance Guaranty Association, Incorporated, the Florida Workers' Compensation Insurance Guaranty Association, Incorporated, and the Florida Life and Health Guaranty Association, Incorporated, shall be given reasonable written notice by the department of all hearings which pertain to an adjudication of insolvency of a member insurer.

Section 12. Subsection (2) of section 631.182, Florida Statutes, is amended to read:

631.182 Receiver claims report and claimants objections procedure.—

(2) At the hearing, any interested person is entitled to appear. The hearing shall not be de novo but shall be limited to the record as described in s. 631.181(2), and The court shall enter an order allowing, allowing in part, or disallowing the claim. Any such order is deemed to be an appealable order. In the interests of judicial economy, the court may appoint a special master to resolve objections or to perform any particular service required by the court. This subsection shall apply to receivership proceedings commencing prior to, or subsequent to, July 1, 1997.

Section 13. Paragraph (b) of subsection (4) of section 631.331, Florida Statutes, is amended to read:

631.331 Assessment prima facie correct; notice; payment; proceeding to collect.—

(4) If the subscriber or member after due service of a copy of the order and petition referred to in subsection (3) is made upon him:

(b) Appears in the manner and form required by law in response to the order, the court shall hear and determine the matter and enter a judgment in accordance with its decision. In the interests of judicial economy, the court may appoint a special master to resolve objections or to perform any particular service required by the court. This paragraph shall apply to receivership proceedings commencing prior to, or subsequent to, July 1, 1997.

Section 14. Subsection (5) is added to section 631.391, Florida Statutes, to read:

631.391 Cooperation of officers and employees.—

(5) Refusal by any person referred to in subsection (1) to provide records upon the request of the department is grounds for revocation of any insurance-related license, including, but not limited to, agent and third-party administrator licenses.

Section 15. Subsection (1) of section 631.397, Florida Statutes, is amended to read:

631.397 Use of certain marshaled assets.—

(1) Within 120 days of a final determination of insolvency of an insurer by a court of competent jurisdiction of this state, the department, as receiver, shall apply to the court for approval of a proposal to disburse assets out of such insurer's marshaled assets, as such assets become available, to each association entitled thereto or, if there are no assets available for such disbursement, then for approval of such proposal as the receiver deems appropriate. For the purposes of this section, the term "association" includes the Florida Insurance Guaranty Association, Incorporated, the Florida Workers' Compensation Insurance Guaranty Association, and any entity or person performing a function in another state similar to that performed in this state by the Florida Insurance Guaranty Association, Incorporated, or the Florida Workers' Compensation Insurance Guaranty Association, provided the Florida Insurance Guaranty Association, Incorporated, or the Florida Workers' Compensation Insurance Guaranty Association, is entitled to like payment under the laws of the association's state of domicile in respect to insolvent companies doing business in that state.

Section 16. Subsections (14) and (15) of section 631.52, Florida Statutes, are renumbered as subsections (15) and (16), respectively, and new subsection (14) is added to said section, to read:

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

(14) Workers' compensation;

Section 17. 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 ~~four~~ accounts created by s. 631.55.

Section 18. 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 three ~~four~~ separate accounts:

~~(a) The workers’ compensation insurance account, which includes excess workers’ compensation insurance;~~

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

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

~~(c)(d)~~ The account for all other insurance to which this part applies.

Section 19. Paragraph (a) of subsection (1) of section 631.57, Florida Statutes, is amended to read:

631.57 Powers and duties of the association.—

(1) The association shall:

(a)1. Be obligated to the extent of the covered claims existing:

a. Prior to adjudication of insolvency and arising within 30 days after the determination of insolvency;

b. Before the policy expiration date if less than 30 days after the determination; or

c. Before the insured replaces the policy or causes its cancellation, if he does so within 30 days of the determination.

2. The obligation under subparagraph 1. shall include only that amount of each covered claim which is in excess of \$100 and is less than \$300,000, except that:

~~a.—The association shall pay the full amount of any covered claim arising out of a workers’ compensation policy.~~

b. with respect to policies covering condominium associations or homeowners’ associations, which associations have a responsibility to provide insurance coverage on residential units within the association, the obligation shall include that amount of each covered property insurance claim which is less than \$100,000 multiplied by the number of condominium units

or other residential units; however, as to homeowners' associations, this subparagraph applies only to claims for damage or loss to residential units and structures attached to residential units.

3. In no event shall the association be obligated to a policyholder or claimant in an amount in excess of the obligation of the insolvent insurer under the policy from which the claim arises.

The foregoing notwithstanding, the association shall have no obligation to pay covered claims to be paid from the proceeds of bonds issued under s. 166.111(2). However, the association shall cause assessments to be made under paragraph (3)(e) for such covered claims, and such assessments shall be assigned and pledged under paragraph (3)(e) to or on behalf of the issuer of such bonds for the benefit of the holders of such bonds. The association shall administer any such covered claims and present valid covered claims for payment in accordance with the provisions of the assistance program in connection with which such bonds have been issued.

(b) Be deemed the insurer to the extent of its obligation on the covered claims, and, to such extent, shall have all rights, duties, and obligations of the insolvent insurer as if the insurer had not become insolvent. In no event shall the association be liable for any penalties or interest.

Section 20. Sections 631.901, 631.902, 631.903, 631.904, 631.911, 631.912, 631.913, 631.914, 631.916, 631.917, 631.918, 631.919, 631.921, 631.922, 631.923, 631.924, 631.926, and 631.927, Florida Statutes, are created to read:

631.901 Title.—This part may be cited as the “Florida Workers’ Compensation Insurance Guaranty Association Act.”

631.902 Purposes.—The purposes of this part are to:

(1) Create a not-for-profit Florida Workers’ Compensation Insurance Guaranty Association, Incorporated, to provide a mechanism for the payment of covered claims under chapter 440 to avoid excessive delay in payment and to avoid financial loss to claimants because of the insolvency of a member insurer.

(2) Assist in the detection and prevention of insurer insolvencies.

(3) Allocate the cost of such protection among the insurers.

(4) Provide for the prompt payment by the corporation of workers’ compensation claims incurred by insolvent insurers.

631.903 Construction.—The statutes controlling the corporation shall be construed liberally to achieve the purposes stated in s. 631.902. The corporation shall perform its functions under a plan of operation established by its board of directors and approved by the department.

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

(1) “Corporation” means the Florida Workers’ Compensation Insurance Guaranty Association, Incorporated.

(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 does not include any amount due any reinsurer, insurer, insurance pool, or underwriting association, as subrogation recoveries or otherwise. 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 Department of Insurance filed a petition in circuit court alleging insolvency and the date the court entered an order appointing a receiver.

(3) “Department” means the Department of Insurance.

(4) “Insolvency” means that condition in which all of the assets of the insurer, if made immediately available, would not be sufficient to discharge all of its liabilities or that condition in which the insurer is unable to pay its debts as they become due in the usual course of business. When the context of any provision of this part so indicates, insolvency also includes impairment of surplus or impairment of capital.

(5) “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.

(6) “Insurer” means an insurance carrier or self-insurance fund authorized to insure under chapter 440. For purposes of this Act, “insurer” does not include a qualified local government self-insurance fund, as defined in s. 624.4622, or an individual self-insurer as defined in s. 440.385.

(7) “Self-insurance fund” means a group self-insurance fund authorized under s. 624.4621, a commercial self-insurance fund writing workers’ compensation insurance authorized under s. 624.462, or an assessable mutual insurer authorized under s. 628.6011. For purposes of this Act, “self-insurance fund” does not include a qualified local government self-insurance fund, as defined in s. 624.4622, or an individual self-insurer as defined in s. 440.385.

631.911 Creation of the Florida Workers’ Compensation Insurance Guaranty Association, Incorporated; merger; effect of merger.—

(1)(a) The Florida Self-Insurance Fund Guaranty Association established in part V of chapter 631 and the workers’ compensation insurance account, which includes excess workers’ compensation insurance, established in s. 631.55(2)(a) shall be merged, effective October 1, 1997, or as provided in paragraph (b), in accordance with the plan of operation adopted

by the interim board of directors. The successor nonprofit corporation shall be known as the "Florida Workers' Compensation Insurance Guaranty Association, Incorporated."

(b) The merger may be effected prior to October 1, 1997, if:

1. the interim board of directors of the Workers' Compensation Insurance Guaranty Association provides the Department of Insurance with written notice of its intent to effectuate the merger as of a date certain and its functional readiness to initiate operations, such notice setting forth the plan or summary thereof for effecting the merger; and,

2. the department, upon review of the plan or summary thereof, determines the Workers' Compensation Insurance Guaranty Association is functionally ready to initiate operations and so certifies to the interim board of directors.

(c) Prior to the effective date of the merger, the Florida Self-Insurance Fund Guaranty Association shall be the entity responsible for the claims of insolvent self-insurance funds resulting from accidents or losses incurred prior to January 1, 1994, regardless of the date the Department of Insurance filed a petition in circuit court alleging insolvency and the date the court entered an order appointing a receiver.

(d) Upon the effective date of the merger:

1. The Florida Self-Insurance Fund Guaranty Association and the workers' compensation insurance account within the Florida Insurance Guaranty Association cease to exist and are succeeded by the Florida Workers' Compensation Insurance Guaranty Association.

2. Title to all assets of any description, all real estate and other property, or any interest therein, owned by each party to the merger is vested in the successor corporation without reversion or impairment.

3. The successor corporation shall be responsible and liable for all the liabilities and obligations of each party to the merger.

4. Any claim existing or action or proceeding pending by or against any party to the merger may be continued as if the merger did not occur or the successor corporation may be substituted in the proceeding for the corporation or account which ceased existence.

5. Neither the rights of creditors nor any liens upon the property of any party to the merger shall be impaired by such merger.

6. Outstanding assessments levied by the Florida Self-Insurance Guaranty Association or the Florida Insurance Guaranty Association on behalf of the workers' compensation insurance account remain in full force and effect and shall be paid when due.

(2) All insurers must be members of the corporation as a condition of their authority to offer workers' compensation coverage in this state. An insurer must reimburse the corporation for all funds advanced to the insurer

and all claim payments the insurer makes on the insured's behalf if the insurer, having been placed in rehabilitation receivership, is subsequently rehabilitated.

(3) The corporation shall perform its functions under a plan of operation and shall exercise its powers through a board of directors. Upon adoption of a plan of operation for the corporation, the board shall manage the Florida Workers' Compensation Insurance account.

(4) The corporation has all powers granted or allowed to not-for-profit corporations under chapter 617, in addition to other powers granted in this section.

631.912 Board of directors.—

(1) The board of directors of the corporation shall consist of 11 persons, one of whom is the Insurance Consumer Advocate appointed under s. 627.0613 or designee and one of whom is designated by the Insurance Commissioner. The department shall appoint to the board six persons selected by private carriers from among the 20 workers' compensation insurers with the largest amount of net direct written premium as determined by the department, and three persons selected by the self-insurance funds. At least two of the private carriers shall be foreign carriers authorized to do business in this state. The board shall elect a chairperson from among its members. The commissioner may remove any board member for cause. Each board member shall serve for a 4-year term and may be reappointed, except that four members of the initial board shall have 2-year terms so as to stagger the periods of service. A vacancy on the board shall be filled for the remaining period of the term in the same manner by which the original appointment was made.

(2) Members of the board may be reimbursed from the assets of the corporation for actual and reasonable out-of-pocket expenses incurred by them as members of the board of directors, however, members of the board may not otherwise be compensated by the corporation for their services.

(3) Effective upon this act becoming a law, the persons on the board of directors created pursuant to s. 627.311(4)(a) who evidence a willingness to serve in writing, shall serve as an interim board of directors of the corporation until the initial board of directors has been appointed for the corporation in accordance with the provisions of subsection (1). The interim board of directors shall serve for a period not to exceed 6 months. The initial meeting shall be called by the commissioner within 30 days after this act becomes a law. The interim board of directors shall establish a process for the selection of persons to serve on the board of the Florida Workers' Compensation Insurance Guaranty Association in accordance with the terms of subsection (1). The board of directors shall adopt an interim plan of operation to effect the merger in s. 631.911 and avoid any interruption of benefit payments to injured workers. When necessary and upon approval of the chairs of their respective board of directors, the Florida Self-Insurance Fund Guaranty Association and the Florida Insurance Guaranty Association shall provide staff support to the interim board of directors. The board shall

submit the interim plan to the commissioner, who shall approve or disapprove the plan within 30 days after receipt.

631.913 Powers and duties of the corporation.—

(1) The corporation is obligated to the extent of the full amount of the covered claims:

(a) Existing before the adjudication of insolvency and arising within 30 days after the determination of insolvency;

(b) Existing before the policy expiration date if less than 30 days after the determination of insolvency; or

(c) Existing before the insured replaces the policy or causes its cancellation, if the insured does so within 30 days after the determination of insolvency.

The corporation is not obligated to a policyholder or claimant in an amount in excess of the obligation of the insolvent insurer under the policy from which the claim arises.

(2) The corporation is considered to be the insurer to the extent of its obligation on the covered claims, and, to such extent, has all rights, duties, and obligations of the insolvent insurer as if the insurer had not become insolvent. The corporation is not liable for any penalties or interest.

(3) The corporation may:

(a) Employ or retain such persons as are necessary to handle claims and perform other duties of the corporation.

(b) Borrow funds necessary to effect the purposes of this part in accordance with the plan of operation.

(c) Sue or be sued. Service of process in such legal actions must be made upon the person registered with the department as agent for the receipt of service of process.

(d) Enter into such contracts as are necessary to carry out the purpose of this part.

(4) The corporation may assist and advise the department, when appropriate, concerning rehabilitation, payment of claims, continuance of coverage, or the performance of other contractual obligations of any impaired or insolvent insurer. The corporation may also assist and advise departments of insurance of other states; other guaranty associations; and conservators, rehabilitators, and receivers appointed or acting in regard to any member insured wherever located, for the purpose of developing plans to coordinate protection of policyholders. Costs of such activities may be charged against the Florida Workers' Compensation Insurance Guaranty Association Account at the discretion of the board of directors, notwithstanding any other provision of this act.

(5) The corporation shall have standing to appear before any court in this state which has jurisdiction over an impaired or insolvent insurer to which the corporation is or may become obligated under this act. Such standing shall extend to all matters germane to the powers and duties of the corporation, 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.

(6) State funds may not be allocated or paid to the corporation.

631.914 Assessments.—

(1)(a) To the extent necessary to secure the funds for the payment of covered claims, and also to pay the reasonable costs to administer the same, the department, upon certification by the board, shall levy assessments on each insurer in the proportion that the insurer's net direct written premiums in this state bears to the total of said net direct written premiums received in this state by all such workers' compensation insurers for the preceding calendar year. Assessments shall be remitted to and administered by the board of directors in the manner specified by the approved plan of operation. The board shall give each insurer so assessed at least 30 days' written notice of the date the assessment is due and payable. Each assessment shall be a uniform percentage applicable to the net direct written premiums of each insurer writing workers' compensation insurance.

1. Beginning July 1, 1997, assessments levied against insurers, other than self-insurance funds, shall not exceed in any calendar year more than 2 percent of that insurer's net direct written premiums in this state for workers' compensation insurance during the calendar year next preceding the date of such assessments.

2. Beginning July 1, 1997, assessments levied against self-insurance funds shall not exceed in any calendar year more than 1.50 percent of that self-insurance fund's net direct written premiums in this state for workers' compensation insurance during the calendar year next preceding the date of such assessments.

(b) Assessments shall be included as an appropriate factor in the making of rates.

(c)1. Effective July 1, 1999, if assessments otherwise authorized in paragraph (a) are insufficient to make all payments on reimbursements then owing to claimants in a calendar year, then upon certification by the board, the department shall levy additional assessments of up to 1.5 percent of the insurer's net direct written premiums in this state during calendar year next preceding the date of such assessments against insurers to secure the necessary funds.

2. To assure that insurers paying assessments levied under this paragraph continue to charge rates that are neither inadequate nor excessive, each insurer that is to be assessed pursuant to this paragraph, or a licensed rating organization to which the insurer subscribes, may make, within 90 days after being notified of such assessments, a rate filing for workers'

compensation coverage pursuant to ss. 627.072 and 627.091. If the filing reflects a percentage rate change 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 ss. 627.072 and 627.091.

(2)(a) The board may exempt any insurer from an assessment if, in the opinion of the department, an assessment would result in such insurer's financial statement reflecting an amount of capital or surplus less than the minimum amount required by any jurisdiction in which the insurer is authorized to transact insurance.

(b) The board may temporarily defer, in whole or in part, assessments against an insurer if, in the opinion of the department, payment of the assessment would endanger the ability of the insurer to fulfill its contractual obligations. In the case of a self-insurance fund, the trustees of the fund determined to be endangered must immediately levy an assessment upon the members of that self-insurance fund in an amount sufficient to pay the assessments to the corporation.

(c) The board may allow an insurer to pay an assessment on a quarterly basis.

631.916 Plan of operation.—The board of directors shall prepare and submit to the department a plan of operation and any amendments to the plan which are necessary or suitable to assure the fair, reasonable, and equitable administration of the corporation. The plan of operation and any amendments to the plan shall become effective unless disapproved in writing by the department within 30 days after receipt. If the corporation fails to submit a plan of operation within 90 days after the appointment of the new board, the department shall implement a plan of operation which will be effective until the board submits a plan of operation. The plan of operation prepared by the board is subject to periodic review by the department. All member insurers shall comply with the approved plan of operation. The plan of operation must, in addition to the requirements enumerated elsewhere in this part:

(1) Establish procedures for handling the assets of the corporation.

(2) Establish regular places and times for meetings of the board of directors.

(3) Establish procedures for keeping records of all financial transactions of the corporation, its agents, and the board of directors.

(4) Establish procedures for levying and collecting assessments and deficiency surcharges.

(5) Establish procedures to allow injured workers to make claims and to adjust and pay such claims.

(6) Establish additional provisions necessary or proper for executing the powers and duties of the association.

631.917 Prevention of insolvencies.—To aid in the detection and prevention of insolvencies or impairments:

(1)(a) The board may make reasonable and lawful investigation into the practices of any third-party administrator or service company for a self-insurance fund declared insolvent by the court.

(b) If the results of an investigation reasonably lead to a finding that certain actions taken or not taken by those handling, processing, or preparing covered claims for payment or other benefit pursuant to any workers' compensation insurance policy, contributed to the insolvency of an insurer, such information may, in the discretion of the board, be provided to the department in an expedited manner.

(2) The board of directors may make reports and recommendations to the department upon any matter germane to the solvency, liquidation, rehabilitation, or conservation of any member insurer or germane to the solvency of any insurer seeking to do insurance business in this state.

(3) The board of directors, in its discretion, may notify the department of any information indicating that any member insurer may be an impaired or insolvent insurer.

(4) The board of directors, in its discretion, may request that the department order an examination of any member insurer which the board in good faith believes may be an impaired or insolvent insurer. Within 30 days after receipt of such a request, the department shall begin such an examination. The examination may be conducted as a National Association of Insurance Commissioners examination or may be conducted by such persons as the Insurance Commissioner designates. The cost of such examination shall be paid by the corporation and the examination report shall be treated in a manner similar to other examination reports pursuant to s. 624.319. In no event may such examination report be released to the board of directors before its release to the public, but this requirement does not preclude the department from complying with s. 631.398(2). The department shall notify the board of directors when the examination is completed. The request for an examination shall be kept on file by the department.

(5) The board is authorized to assist and aid the department, in any manner consistent with existing laws and this chapter, in the department's investigation or referral for prosecution of those whose action or inaction may have contributed to the impairment or insolvency of the insurer.

(6) The board may make recommendations to the department for the detection and prevention of insurer insolvencies.

631.918 Immunity.—There is no liability on the part of, and a cause of action may not arise against, the corporation, its agents or employees, or members of its board of directors, or the department or its agents or employees, for any action taken by them in the performance of their powers and duties under this section, unless such action is found to be a violation of antitrust laws, was in bad faith, or was undertaken with malicious purpose

or in a manner exhibiting wanton and willful disregard of human rights, safety, or property.

631.919 Prohibited advertisement of solicitation.—A person may not make, publish, disseminate, advertise, circulate, or place before the public, or cause, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in any print, television, or broadcast media, or in any circular, letter, pamphlet, or publication of any kind, a statement or announcement that uses the existence of the Florida Workers' Compensation Insurance Guaranty Association, Incorporated, to induce an employer to purchase membership in or insurance from a member insurer.

631.921 Department powers.—The corporation shall be subject to examination by the department. By March 1 of each year, the board of directors shall cause a financial report to be filed with the department for the immediately preceding calendar year in a form approved by the department.

631.922 Liability of members of an impaired self-insurance fund for unpaid claims.—This act may not be construed to reduce the liability of a member of an impaired self-insurance fund for the member's liability under s. 624.4621 or s. 624.476.

631.923 Effect of paid claims.—

(1) Any person who recovers under this part is considered to have assigned his or her rights under the policy to the corporation to the extent of his or her recovery from the corporation. Every insured or claimant seeking the protection of this part shall cooperate with the corporation to the same extent as the insured or claimant would have been required to cooperate with the insolvent insurer. The corporation has no cause of action against the insured of the insolvent insurer for any sums the insured has paid out except such causes of action as the insolvent insurer would have had if the sums had been paid by the insolvent insurer.

(2) The receiver, liquidator, or statutory successor of an insolvent insurer is bound by settlements of covered claims by the corporation. The court having jurisdiction shall grant such claims priority equal to that to which the claimant would have been entitled, in the absence of this part, against the assets of the insolvent insurer. The expenses of the association or similar organization in handling claims must be accorded the same priority as the liquidator's expenses.

(3) The corporation shall periodically file with the receiver or liquidator of the insolvent insurer statements of the covered claims paid by the corporation and estimates of anticipated claims on the corporation, which shall preserve the rights of the corporation against the assets of the insolvent insurer.

(4) Any release of the corporation and its insured must clearly state whether or not any claim filed with the receiver in excess of the liability of the corporation under s. 631.57 is waived.

631.924 Stay of proceedings; reopening of default judgments.—All proceedings in which the insolvent self-insurance fund is a party or is obligated

to defend a party in any court or before any quasi-judicial body or administrative board in this state must be stayed for 6 months, or such additional period from the date the insolvency is adjudicated, by a court of competent jurisdiction to allow proper defense by the association of all pending causes of action as to any covered claims. The stay may be extended for a period of time greater than 6 months upon proper application to a court of competent jurisdiction. The association, either on its own behalf or on behalf of the insured, may apply to have any judgment, order, decision, verdict, or finding based on the default of the insolvent self-insurance fund or its failure to defend an insured set aside by the same court or administrator that made the judgment, order, decision, verdict, or finding and may defend against the claim on the merits. If the association so requests, the stay of proceedings may be shortened or waived.

631.926 Attorney's fees.—The provisions of s. 627.428 providing for an attorney's fee are inapplicable to any claim presented to the corporation under this part, unless the corporation denies, by affirmative action other than delay, a covered claim or a portion thereof.

631.927 Assumption of liability.—Notwithstanding s. 631.913, the corporation shall assume the liability for the payment of the workers' compensation indemnity and medical benefits that are due to claimants covered by the Certified Pulpwood Dealers Self-Insurers Fund. The corporation shall assess the former members of the Certified Pulpwood Dealers Self-Insurers Fund pursuant to the provisions of this act.

Section 21. Subsection (3) of section 631.915, Florida Statutes, is amended to read:

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

(3) "Covered claim" means an unpaid claim, including one 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, issued by a self-insurer's fund, which claim is made on behalf of a claimant or insured who is a resident of this state at the time of the injury. ~~The term does not include any claims resulting from dates of accidents or losses incurred by a member self-insurance fund before January 1, 1994, or any amount due any reinsurer, insurer, insurance pool, or underwriting association, as subrogation recoveries or otherwise. Member self-insurer's funds have no right of subrogation against the insured of any insolvent self-insurance fund. This provision shall be applied retroactively to cover all claims on accidents or losses incurred prior to January 1, 1994, regardless of the date the Department of Insurance filed a petition in the circuit court alleging insolvency and the court entered an order appointing a receiver.~~

Section 22. Subsection (4) of section 631.935, Florida Statutes, is amended to read:

631.935 Powers and duties of the association.—

~~(4) State funds may not be allocated or paid to the association.~~

Section 23. Section 631.996, Florida Statutes, is renumbered as section 631.928, Florida Statutes, and is amended to read:

~~631.928 631.996~~ Florida Workers' Compensation Insurance Guaranty Association Group Self-Insurance Fund Account.—Notwithstanding the provisions of s. 215.3207, the Florida Workers' Compensation Insurance Guaranty Association Group Self-Insurance Fund Account is hereby created, to be managed by the Florida Workers' Compensation Insurance Group Self-Insurance Fund Guaranty Association. Funds shall be credited to the fund as provided in chapter 93-415, Laws of Florida, or similar legislation, to be used for the purposes set forth therein.

Section 24. Section 631.929, Florida Statutes, is created to read:

631.929 Election of remedies.—An injured worker who has a date of accident which occurred before January 1, 1994, and is not receiving benefits due under chapter 440 due to the insolvency of a self-insurance fund or its successors, regardless of the date declared insolvent by the court, may elect to seek medical care, treatment, and attendance, and compensation required under ss. 440.15 and 440.16 from the corporation and forego the remedy to seek benefits from his employer or the insolvent self-insurance fund. An employee who so elects may be required to obtain medical care, treatment, and attendance through a managed care plan comporting with the requirement of s. 440.134 if the plan of operation so provides. An injured worker has 60 days to seek benefits from the corporation upon ratification by the corporation of his right to elect a remedy under this part. If the injured worker elects to pursue his remedy under the provisions of this part, the corporation may, with the agreement of the injured employee, pay a lump-sum payment in exchange for the corporation's and employer's release from liability for future medical and compensation expenses, as well as any other benefit provided under chapter 440. However, there shall be no entitlement to attorney's fees, penalties, interest, or costs to be paid on any claim presented to the corporation under this part. This section shall not create any cause of action against any employer who purchased workers' compensation insurance coverage pursuant to s. 440.38.

Section 25. Section 631.997, Florida Statutes, 1996 Supplement, is renumbered as section 631.931, Florida Statutes, and subsection (1) of said section is amended to read:

~~631.931 631.997~~ Reports and recommendations by board; public records exemption.—

(1) Reports and recommendations made by the Board of Directors of the Florida Workers' Compensation Insurance Self-Insurance Fund Guaranty Association to the Department of Insurance under s. ~~631.917~~ 631.95 upon any matter germane to the solvency, liquidation, rehabilitation, or conservation of any member insurer self-insurance fund are confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution until the termination of a delinquency proceeding.

Section 26. Section 631.998, Florida Statutes, 1996 Supplement, is renumbered as section 631.932, Florida Statutes, and subsection (1) of said section is amended to read:

631.932 631.998 Negotiations; public meetings and records exemptions.—

(1) ~~Negotiations held between an insurer a self-insurance fund and the Florida Workers' Compensation Insurance Self-Insurance Fund Guaranty Association are exempt from the provisions of s. 286.011 and s. 24(b), Art. I of the State Constitution. Documents related to such negotiations that reveal identifiable payroll and loss and individual claim information are confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution.~~

Section 27. The Division of Statutory Revision of the Joint Legislative Management Committee shall omit from the next edition of the official Florida Statutes subsection (2) of section 631.997, Florida Statutes (renumbered as section 631.931, Florida Statutes, by this act), and subsection (2) of section 631.998, Florida Statutes (renumbered as section 631.932, Florida Statutes, by this act). Subsection (2) of section 1 of chapter 93-423, Laws of Florida, and subsection (2) of section 2 of chapter 93-423, Laws of Florida, shall remain valid in the form enacted by that chapter.

Section 28. Report by the Department of Insurance.—The Department of Insurance shall conduct a study and report on the feasibility of:

(1) Enabling the self-insurance funds and assessable mutual insurers to transition to fully capitalized insurers over a five year period;

(2) Establishing alternative methodologies by which self-insurance funds and assessable mutual insurers may satisfy payment obligations other than capital and surplus requirements; and

(3) Permitting captive insurers to be utilized by businesses in the same trade or business.

The department shall submit its report to the Governor, the President of the Senate and the Speaker of the House of Representatives by December 1, 1997.

Section 29. Notwithstanding s. 631.913, Florida Statutes, there is hereby appropriated \$5 million from the Insurance Commissioner's Regulatory Trust Fund to the Florida Self-Insurance Fund Guaranty Association, Incorporated, or successor corporation resulting from the merger effected in s. 631.911. Of the amount appropriated, the board of directors of the Florida Self-Insurance Fund Guaranty Association may disburse funds to the interim board of directors of the Florida Workers' Compensation Insurance Guaranty Association as necessary for the purpose of carrying out the duties and responsibilities of said interim board under the Florida Workers' Compensation Insurance Guaranty Association Act.

Section 30. Sections 631.90, 631.905, 631.91, 631.915, 631.92, 631.925, 631.93, 631.935, 631.94, 631.945, 631.95, 631.955, 631.96, 631.965, 631.97, 631.975, 631.98, 631.985, 631.99, and 631.995, Florida Statutes, are hereby repealed effective October 1, 1997, or the effective date of the merger pursu-

ant to section 631.911, Florida Statutes, as certified by the Department of Insurance, whichever occurs first.

Section 31. This act shall take effect upon becoming a law, except that the amendments to sections 631.52, 631.54, 631.55, 631.57, and 631.997, Florida Statutes, shall take effect October 1, 1997, or the effective date of the merger pursuant to section 631.911, Florida Statutes, as certified by the Department of Insurance, whichever occurs first.

Became a law without the Governor's approval May 30, 1997.

Filed in Office Secretary of State May 29, 1997.