

By Senator Richter

37-01259A-10

20102232

1                                   A bill to be entitled  
2           An act relating to guaranty associations; amending s.  
3           631.52, F.S.; expanding an exemption from the  
4           applicability of certain provisions of state law to  
5           include workers' compensation claims under employer  
6           liability coverage; amending s. 631.54, F.S.;  
7           conforming the definition of "account" to changes made  
8           by the act; amending s. 631.55, F.S.; revising the  
9           structure of the Florida Insurance Guaranty  
10          Association by combining the auto liability and auto  
11          physical damage accounts; amending s. 631.57, F.S.;  
12          conforming cross-references; providing legislative  
13          intent; deleting provisions relating to classification  
14          and payment of emergency assessments; providing  
15          guidelines for the calculation of recoupment factors;  
16          authorizing an insurer to apply a recalculated  
17          recoupment factor under certain conditions; providing  
18          for the return of excess assessments and recoupment  
19          charges; providing that amounts recouped pursuant to  
20          specified provisions of state law are not premium and  
21          not subject to premium taxes, fees, or commissions;  
22          requiring that insurers treat failure to pay a  
23          recoupment charge as failure to pay the premium;  
24          requiring that an insurer file with the Office of  
25          Insurance Regulation a statement containing certain  
26          information within a specified period before applying  
27          a recoupment factor to any policies; authorizing an  
28          insurer to use a recoupment factor after the  
29          expiration of such period; providing that an insurer

37-01259A-10

20102232

30 need submit only one such statement for all lines of  
31 business; requiring that an insurer file with the  
32 office an accounting report containing certain  
33 information within a specified period after the  
34 completion of the recoupment process; amending s.  
35 631.713, F.S.; expanding the application of certain  
36 provisions of state law to certain residents of other  
37 states who own certain insurance policies; expanding  
38 the list of contracts and policies to which certain  
39 provisions of state law do not apply; amending s.  
40 631.714, F.S.; revising the definition of "insolvent  
41 insurer" to remove the requirement that an order of  
42 liquidation become final by the exhaustion of  
43 appellate review; expanding the definition of  
44 "resident" to account for persons other than  
45 individuals and residents of foreign countries and  
46 United State possessions, territories, and  
47 protectorates; amending s. 631.717, F.S.; limiting a  
48 guaranty association's liability for cash surrender,  
49 net cash withdrawal, and annuity benefits with respect  
50 to life insurance on any one life; authorizing an  
51 association to issue substitute coverage under certain  
52 circumstances; requiring that such alternate policy or  
53 contract meet certain criteria; creating s. 631.7295,  
54 F.S.; authorizing an association to succeed to the  
55 rights of an insolvent insurer arising after an order  
56 of liquidation or rehabilitation with regard to  
57 certain contracts of reinsurance; requiring that such  
58 an association pay all unpaid premiums due under the

37-01259A-10

20102232

59 contract; amending s. 631.735, F.S.; providing that  
60 certain provisions of state law do not prohibit a  
61 licensed insurance agent from explaining the existence  
62 or function of the association to policyholders,  
63 prospects, or applicants for coverage; amending s.  
64 631.904, F.S.; clarifying the definition of "covered  
65 claim" to include unpaid claims under any employer  
66 liability coverage of a workers' compensation policy  
67 limited to the lesser of a specified amount and the  
68 limits of the policy; providing an effective date.

69

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

71

72 Section 1. Section 631.52, Florida Statutes, is amended to  
73 read:

74 631.52 Scope.—This part shall apply to all kinds of direct  
75 insurance, except:

76 (1) Life, annuity, health, or disability insurance;

77 (2) Mortgage guaranty, financial guaranty, or other forms  
78 of insurance offering protection against investment risks;

79 (3) Fidelity or surety bonds, or any other bonding  
80 obligations;

81 (4) Credit insurance, vendors' single interest insurance,  
82 or collateral protection insurance or any similar insurance  
83 protecting the interests of a creditor arising out of a  
84 creditor-debtor transaction;

85 (5) Warranty, including motor vehicle service, home  
86 warranty, or service warranty;

87 (6) Ambulance service, health care service, or preneed

37-01259A-10

20102232

88 funeral merchandise or service;

89 (7) Optometric service plan, pharmaceutical service plan,  
90 or dental service plan;

91 (8) Legal expense;

92 (9) Health maintenance, prepaid health clinic, or  
93 continuing care;

94 (10) Ocean marine or wet marine insurance;

95 (11) Self-insurance and any kind of self-insurance fund,  
96 liability pool, or risk management fund;

97 (12) Title insurance;

98 (13) Surplus lines;

99 (14) Workers' compensation, including claims under employer  
100 liability coverage;

101 (15) Any transaction or combination of transactions between  
102 a person, including affiliates of such person, and an insurer,  
103 including affiliates of such insurer, which involves the  
104 transfer of investment or credit risk unaccompanied by the  
105 transfer of insurance risk; or

106 (16) Any insurance provided by or guaranteed by government.

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

109 631.54 Definitions.—As used in this part:

110 (1) "Account" means ~~any~~ one of the ~~three~~ accounts created  
111 by s. 631.55.

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

114 631.55 Creation of the association.—

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

37-01259A-10

20102232

117 (a) The auto liability and auto physical damage account;  
118 and

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

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

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

124 631.57 Powers and duties of the association.—

125 (3) (a) To the extent necessary to secure the funds for the  
126 respective accounts for the payment of covered claims, to pay  
127 the reasonable costs to administer the same, and to the extent  
128 necessary to secure the funds for the account specified in  
129 s.631.55(2)(b) ~~s. 631.55(2)(e)~~ or to retire indebtedness,  
130 including, without limitation, the principal, redemption  
131 premium, if any, and interest on, and related costs of issuance  
132 of, bonds issued under s. 631.695 and the funding of any  
133 reserves and other payments required under the bond resolution  
134 or trust indenture pursuant to which such bonds have been  
135 issued, the office, upon certification of the board of  
136 directors, shall levy assessments in the proportion that each  
137 insurer's net direct written premiums in this state in the  
138 classes protected by the account bears to the total of said net  
139 direct written premiums received in this state by all such  
140 insurers for the preceding calendar year for the kinds of  
141 insurance included within such account. Assessments shall be  
142 remitted to and administered by the board of directors in the  
143 manner specified by the approved plan. Each insurer so assessed  
144 shall have at least 30 days' written notice as to the date the  
145 assessment is due and payable. Every assessment shall be made as

37-01259A-10

20102232

146 a uniform percentage applicable to the net direct written  
147 premiums of each insurer in the kinds of insurance included  
148 within the account in which the assessment is made. The  
149 assessments levied against any insurer shall not exceed in any  
150 one year more than 2 percent of that insurer's net direct  
151 written premiums in this state for the kinds of insurance  
152 included within such account during the calendar year next  
153 preceding the date of such assessments.

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

160 (c) The Legislature finds and declares that all assessments  
161 paid by an insurer or insurer group as a result of a levy by the  
162 office, including regular and emergency assessments, constitute  
163 advances of funds from the insurer to the association. The  
164 insurer is entitled to fully recoup such advances by applying a  
165 separate recoupment factor to the premium of policies of the  
166 same kind line or type as were considered by the office in  
167 determining the assessment liability of the insurer or insurer  
168 group. Assessments shall be included as an appropriate factor in  
169 the making of rates.

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

172 (e) 1.a. In addition to assessments otherwise authorized in  
173 paragraph (a) and to the extent necessary to secure the funds  
174 for the account specified in s. 631.55(2)(b) ~~s. 631.55(2)(e)~~ for

37-01259A-10

20102232

175 the direct payment of covered claims of insurers rendered  
176 insolvent by the effects of a hurricane and to pay the  
177 reasonable costs to administer such claims, or to retire  
178 indebtedness, including, without limitation, the principal,  
179 redemption premium, if any, and interest on, and related costs  
180 of issuance of, bonds issued under s. 631.695 and the funding of  
181 any reserves and other payments required under the bond  
182 resolution or trust indenture pursuant to which such bonds have  
183 been issued, the office, upon certification of the board of  
184 directors, shall levy emergency assessments upon insurers  
185 holding a certificate of authority. The emergency assessments  
186 payable under this paragraph by any insurer shall not exceed in  
187 any single year more than 2 percent of that insurer's direct  
188 written premiums, net of refunds, in this state during the  
189 preceding calendar year for the kinds of insurance within the  
190 account specified in s. 631.55(2)(b) ~~s. 631.55(2)(c)~~.

191 b. Any emergency assessments authorized under this  
192 paragraph shall be levied by the office upon insurers referred  
193 to in sub-subparagraph a., upon certification as to the need for  
194 such assessments by the board of directors. In the event the  
195 board of directors participates in the issuance of bonds in  
196 accordance with s. 631.695, emergency assessments shall be  
197 levied in each year that bonds issued under s. 631.695 and  
198 secured by such emergency assessments are outstanding, in such  
199 amounts up to such 2-percent limit as required in order to  
200 provide for the full and timely payment of the principal of,  
201 redemption premium, if any, and interest on, and related costs  
202 of issuance of, such bonds. The emergency assessments provided  
203 for in this paragraph are assigned and pledged to the

37-01259A-10

20102232

204 municipality, county, or legal entity issuing bonds under s.  
205 631.695 for the benefit of the holders of such bonds, in order  
206 to enable such municipality, county, or legal entity to provide  
207 for the payment of the principal of, redemption premium, if any,  
208 and interest on such bonds, the cost of issuance of such bonds,  
209 and the funding of any reserves and other payments required  
210 under the bond resolution or trust indenture pursuant to which  
211 such bonds have been issued, without the necessity of any  
212 further action by the association, the office, or any other  
213 party. To the extent bonds are issued under s. 631.695 and the  
214 association determines to secure such bonds by a pledge of  
215 revenues received from the emergency assessments, such bonds,  
216 upon such pledge of revenues, shall be secured by and payable  
217 from the proceeds of such emergency assessments, and the  
218 proceeds of emergency assessments levied under this paragraph  
219 shall be remitted directly to and administered by the trustee or  
220 custodian appointed for such bonds.

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

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

232 e. If emergency assessments are imposed, the references in

37-01259A-10

20102232

233 sub-subparagraph (1)(a)3.b. and s. 631.695(2) and (7) to  
234 assessments levied under paragraph (a) shall include emergency  
235 assessments imposed under this paragraph.

236 ~~2. In order to ensure that insurers paying emergency~~  
237 ~~assessments levied under this paragraph continue to charge rates~~  
238 ~~that are neither inadequate nor excessive, within 90 days after~~  
239 ~~being notified of such assessments, each insurer that is to be~~  
240 ~~assessed pursuant to this paragraph shall submit a rate filing~~  
241 ~~for coverage included within the account specified in s.~~  
242 ~~631.55(2)(c) and for which rates are required to be filed under~~  
243 ~~s. 627.062. If the filing reflects a rate change that, as a~~  
244 ~~percentage, is equal to the difference between the rate of such~~  
245 ~~assessment and the rate of the previous year's assessment under~~  
246 ~~this paragraph, the filing shall consist of a certification so~~  
247 ~~stating and shall be deemed approved when made. Any rate change~~  
248 ~~of a different percentage shall be subject to the standards and~~  
249 ~~procedures of s. 627.062.~~

250 2.3. ~~If In the event~~ the board of directors participates in  
251 the issuance of bonds in accordance with s. 631.695, an annual  
252 assessment under this paragraph shall continue while the bonds  
253 issued with respect to which the assessment was imposed are  
254 outstanding, including any bonds the proceeds of which were used  
255 to refund bonds issued pursuant to s. 631.695, unless adequate  
256 provision has been made for the payment of the bonds in the  
257 documents authorizing the issuance of such bonds.

258 ~~4. Emergency assessments under this paragraph are not~~  
259 ~~premium and are not subject to the premium tax, to any fees, or~~  
260 ~~to any commissions. An insurer is liable for all emergency~~  
261 ~~assessments that the insurer collects and shall treat the~~

37-01259A-10

20102232

262 ~~failure of an insured to pay an emergency assessment as a~~  
263 ~~failure to pay the premium. An insurer is not liable for~~  
264 ~~uncollectible emergency assessments.~~

265 (f) The recoupment factor applied to policies in accordance  
266 with paragraph (c) shall be selected by the insurer or insurer  
267 group so as to provide for the probable recoupment of both  
268 regular and emergency assessments over a period of 12 months,  
269 unless the insurer or insurer group, at its option, elects to  
270 recoup the assessment over a longer period. The recoupment  
271 factor shall apply to all policies of the same kind, line, or  
272 type as were considered by the office in determining the  
273 assessment liability of the insurer or insurer group issued or  
274 renewed during a 12-month period. If the insurer or insurer  
275 group does not collect the full amount of the assessment during  
276 one 12-month period, the insurer or insurer group may apply  
277 recalculated recoupment factors to policies issued or renewed  
278 during one or more succeeding 12-month periods. If, at the end  
279 of a 12-month period, the insurer or insurer group has collected  
280 more than the amount of the assessment, all excess amounts  
281 collected by the insurer or insurer group shall be remitted to  
282 the association. Recoupment charges collected by an insurer or  
283 insurer group in excess of the assessment amount paid to the  
284 association shall be remitted to the association within 60 days  
285 after the end of the calendar year in which the excess  
286 recoupment charges were collected. The association may use such  
287 excess recoupment amounts submitted to reduce future  
288 assessments.

289 (g) Amounts recouped under this subsection are not premium  
290 and are not subject to premium taxes, fees, or commissions.

37-01259A-10

20102232

291 However, insurers shall treat the failure of an insured to pay a  
292 recoupment charge as a failure to pay the premium.

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

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

315 Section 5. Paragraph (b) of subsection (2) of section  
316 631.713, Florida Statutes, is amended, paragraphs (n), (o), and  
317 (p) are added to subsection (3) of that section, and subsection  
318 (5) is added to that section, to read:

319 631.713 Application of part.—

37-01259A-10

20102232

- 320 (2) Coverage under this part shall be provided to:
- 321 (b) Persons who are owners of or certificateholders under
- 322 such policies or contracts, and who:
- 323 1. Are residents of this state; or
- 324 2. Are residents of other states, but only if:
- 325 a. The insurers which issued such policies or contracts are
- 326 domiciled in this state;
- 327 b. Such insurers were not licensed ~~never held a license or~~
- 328 ~~certificate of authority~~ in the states in which such persons
- 329 reside at the time specified in a state's guaranty association
- 330 law as necessary for coverage by that state's association;
- 331 c. Such other states have associations similar to the
- 332 association created by this part; and
- 333 d. Such persons are not eligible for coverage by such
- 334 associations.
- 335 (3) This part does not apply to:
- 336 (n) A portion of a policy or contract, to the extent that
- 337 the rate of interest on which it is based, or the interest rate,
- 338 crediting rate, or similar factor determined by use of an index
- 339 or other external reference stated in the policy or contract
- 340 employed in calculating returns or changes in value:
- 341 1. Averaged over the period of 4 years immediately
- 342 preceding the date on which the member insurer becomes an
- 343 impaired or insolvent insurer under this part, whichever is
- 344 earlier, exceeds the rate of interest determined by subtracting
- 345 2 percentage points from Moody's Corporate Bond Yield Average
- 346 averaged for that same 4-year period or for such lesser period
- 347 if the policy or contract was issued less than 4 years before
- 348 the member insurer becomes an impaired or insolvent insurer

37-01259A-10

20102232

349 under this part, whichever is earlier; and

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

355 (o) A portion of a policy or contract to the extent it  
356 provides for interest or other changes in value to be determined  
357 by the use of an index or other external reference stated in the  
358 policy or contract, but which have not been credited to the  
359 policy or contract, or as to which the policy or contract  
360 owner's rights are subject to forfeiture, as of the date the  
361 member insurer becomes an impaired or insolvent insurer under  
362 this part, whichever is earlier. However, if the interest or  
363 change in value determined by using the procedures defined in  
364 the policy or contract will be credited as if the contractual  
365 date of crediting interest or changing value were the date of  
366 impairment or insolvency, whichever is earlier, and any interest  
367 or change in value shall not be subject to forfeiture.

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

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

377 (a) The payee is a resident of this state, regardless of

37-01259A-10

20102232

378 where the contract owner resides; and

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

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

384 631.714 Definitions.—As used in this part, the term:

385 (6) "Insolvent insurer" means a member insurer authorized  
386 to transact insurance in this state, either at the time the  
387 policy was issued or when the insured event occurred, and  
388 against which an order of liquidation with a finding of  
389 insolvency has been entered by a court of competent  
390 jurisdiction, ~~if such order has become final by the exhaustion~~  
391 ~~of appellate review.~~

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

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

37-01259A-10

20102232

407 631.717 Powers and duties of the association.—

408 (9) The association's liability for the contractual  
409 obligations of the insolvent insurer shall be as great as, but  
410 no greater than, the contractual obligations of the insurer in  
411 the absence of such insolvency, unless such obligations are  
412 reduced as permitted by subsection (4), but the aggregate  
413 liability of the association shall not exceed \$100,000 in net  
414 cash surrender and net cash withdrawal values for life  
415 insurance, \$250,000 in present value of annuity benefits,  
416 including cash surrenders and net cash withdrawals, or \$300,000  
417 for all benefits including cash values, with respect to any one  
418 life. In no event shall the association be liable for any  
419 penalties or interest.

420 (12)

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

435 1. There is no requirement for evidence of insurability,

37-01259A-10

20102232

436 waiting period, or other exclusion that would not have applied  
437 under the replaced policy or contract; and

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

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

443 631.7295 Reinsurance.—With respect to covered policies for  
444 which the association becomes obligated after an entry of an  
445 order of liquidation or rehabilitation, the association may  
446 elect to succeed to the rights of the insolvent insurer arising  
447 after the order of liquidation or rehabilitation under any  
448 contract of reinsurance to which the insolvent insurer was a  
449 party, to the extent that such contract provides coverage for  
450 losses occurring after the date of the order of liquidation or  
451 rehabilitation. As a condition to making such election, the  
452 association must pay all unpaid premiums due under the contract  
453 for coverage relating to periods before and after the date on  
454 which the order of liquidation or rehabilitation was entered.

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

457 631.735 Prohibited advertisement of Florida Life and Health  
458 Insurance Guaranty Association Act in sale of insurance.—No  
459 person shall make, publish, disseminate, circulate, or place  
460 before the public, or cause directly or indirectly to be made,  
461 published, disseminated, circulated, or placed before the  
462 public, in any newspaper, magazine, or other publication, or in  
463 the form of a notice, circular, pamphlet, letter, or poster, or  
464 over any radio station or television station, or in any other

37-01259A-10

20102232

465 way, any advertisement, announcement, or statement which uses  
466 the existence of the Insurance Guaranty Association of this  
467 state for the purpose of sales, solicitation, or inducement to  
468 purchase any form of insurance covered by the Florida Life and  
469 Health Insurance Guaranty Association Act. However, this section  
470 does ~~shall~~ not apply to the Florida Life and Health Insurance  
471 Guaranty Association or any other entity that ~~which~~ does not  
472 sell or solicit insurance, and does not prohibit a duly licensed  
473 insurance agent from explaining the existence or function of the  
474 association to policyholders, prospects, or applicants for  
475 coverage.

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

478 631.904 Definitions.—As used in this part, the term:

479 (2) "Covered claim" means an unpaid claim, including a  
480 claim for return of unearned premiums, which arises out of, is  
481 within the coverage of, and is not in excess of the applicable  
482 limits of, an insurance policy to which this part applies, which  
483 policy was issued by an insurer and which claim is made on  
484 behalf of a claimant or insured who was a resident of this state  
485 at the time of the injury. The term "covered claim" includes  
486 unpaid claims under any employer liability coverage of a  
487 workers' compensation policy limited to the lesser of \$300,000  
488 and the limits of the policy. The term "covered claim" does not  
489 include any amount sought as a return of premium under any  
490 retrospective rating plan; any amount due any reinsurer,  
491 insurer, insurance pool, or underwriting association, as  
492 subrogation recoveries or otherwise; any claim that would  
493 otherwise be a covered claim that has been rejected by any other

37-01259A-10

20102232\_\_

494 state guaranty fund on the grounds that the insured's net worth  
495 is greater than that allowed under that state's guaranty fund or  
496 liquidation law, except this exclusion from the definition of  
497 covered claim shall not apply to employers who, prior to April  
498 30, 2004, entered into an agreement with the corporation  
499 preserving the employer's right to seek coverage of claims  
500 rejected by another state's guaranty fund; or any return of  
501 premium resulting from a policy that was not in force on the  
502 date of the final order of liquidation. Member insurers have no  
503 right of subrogation against the insured of any insolvent  
504 insurer. This provision shall be applied retroactively to cover  
505 claims of an insolvent self-insurance fund resulting from  
506 accidents or losses incurred prior to January 1, 1994,  
507 regardless of the date the petition in circuit court was filed  
508 alleging insolvency and the date the court entered an order  
509 appointing a receiver.

510 Section 11. This act shall take effect upon becoming a law.