1971

Session Law 71-970

Florida Senate & House of Representatives

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## LEGISLATIVE SUPPLEMENT "B" - SESSION LAW ABSTRACT

### Bill Information
- **Year**: 1971
- **Session**: 71-970
- **Prime Sponsor**: House Insurance (w/p)
- **Committee**:
  - Senate
  - House Insurance

### Committee Records
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### Senate/House Journals
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<td>HJ 23</td>
<td>12/1/71</td>
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### Tape Recordings
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### Other Documentation
- **Record series title, folder title, etc.**
- **Location Cite**
- **#pp**
H 8 29-D  
(H J 21, 23, 35, 63, 84)  
(5 J 16, 20)

By Hins Cant.

12/1/71 - INTRO, 1st reading (H J 21)  
Amended (H J 23) 2nd read  copy  
Fav. 99-0 (H J 23)

12/2/71 - Senate INTRO, 1st read ref. to  
SEM, W/P from SEM, placed on cal (5 J 16)

12/3/71 - Senate, 2nd read, 3rd read, passed  
44-00 (5 J 20)

12/3/71 - House - in sin. MSs. (H J 35)

12/6/71 - Enrolled (5 J 63)

12/8/71 - signed by Gov. on 12/7/71 (5 J 84)
This law amended 631.60(3) and added 631.60(4) in Section 11, amended 631.67 in Section 18, and added 631.68 in Section 19. This law originated as HB 29-D of the 1971 Special Session (11/29/71-12/9/71). HB 29-D was part of the Governor's call for the special session. Portions of Laws of Florida, Chapter 70-20, the law creating the Florida Insurance Guaranty Association (FIGA), were held to be unconstitutional by the Leon County Circuit Court (FIGA vs. O'Malley & O'Malley vs. FIGA), and as that law provided no severability clause, the entire law was unconstitutional. The Governor and Legislature wanted to correct the constitutional problems with the FIGA act before it went before the Florida Supreme Court. Shortly after this law was passed the Florida Supreme Court reversed the Leon County Circuit Court decision (see O'Malley v. FIGA, etc. 257 So.2d 9 (1972)).

HB 29-D was essentially a re-write of Laws of Florida, Chapter 70-20 with the constitutional problems corrected. Two amendments were proposed for HB 29-D on the House floor, but were rejected as they were determined not to be within the scope of the call for the special session. There was not any formal Senate committee debate on HB 29-D.

The tape recording of the House Insurance Committee meeting of 11/30/71 gives a good summary of the background and intent of this legislation.
Floridal Information Associates
Session Law Abstract, LOF 71-970

DOCUMENTATION CHECKLIST:

NOTE: All documentation obtained from the Florida State Archives is cited by the series and box number, i.e., "FSA S.19/200." "na" indicates that either that particular documentation does not apply or is non-existent.


*** Florida Statutes: (see statute/law comparison)

* History of Legislation: na

* Prime Bill Version(s): na

* Identical/Similar Bills: na


* Senate Journal: na

*** Committee Staff Analyses and Reports:


* Committee Meeting Tapes:

House Insurance Committee, 11/30/71. 1 tape. (FSA S. 414/147).

* Floor Debate Tapes: na

* Other Documentation:

House Insurance Committee, Minutes 11/30/71 with Leon County Circuit Court Opinion, FIGA vs. O'malley, etc., attached.

*** Denotes that material was sent to client.
GENERAL ACTS
RESOLUTIONS AND MEMORIALS
ADOPTED BY THE
SECOND LEGISLATURE OF FLORIDA
UNDER THE CONSTITUTION
AS REVISED IN 1968

During the Period
November 29, 1971
Through April 11, 1972,
Covering the Sessions
Indicated Herein

Volume I
Published by Authority of Law
Under Direction of the
FLORIDA JOINT LEGISLATIVE MANAGEMENT
COMMITTEE
TALLAHASSEE
1972
Be It Enacted by the Legislature of the State of Florida:

Section 1. Title.—This act shall be known and may be cited as the “Florida Property and Casualty Insurance Guaranty Act.”

Section 2. Purposes.—The purposes of this act are to:

(1) Provide a mechanism for the payment of covered claims under certain insurance policies, to avoid excessive delay in pay-

ment, and to avoid financial loss to claimants or policyholders because of the insolvency of an insurer;

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

(3) Provide for the appointment of a governing committee to administer and supervise the plan of operations provided for under this act; and

(4) Provide for the equitable apportionment among member insurers of the cost of operation of such plan.

Section 3. Scope.—This act shall apply to all kinds of direct insurance except life, title, surety, disability, credit, mortgage guaranty, and wet marine insurance. For the purposes of this act, “disability insurance” as used in this act does not include personal injury protection benefits payable under the Florida Automobile Reparations Reform Act.

Section 4. Construction.—This act shall be liberally construed to effect the purposes set forth in Section 2, which shall constitute an aid and guide to interpretation.

Section 5. Definitions.—As used in this act:

(1) “Account” means any one of the four accounts created by Section 6.

(2) “Association” means the Florida Property and Casualty Insurance Guaranty Association.

(3) “Department” means the department of insurance.

(4) “Covered claim” means an unpaid claim, including one of unearned premiums, which was or is within the coverage provided the insured or claimant, and not in excess of, the applicable limits of a contract of insurance to which this act applies, issued by an insurer, which insurer became an insolvent insurer after October 1, 1970, and the claimant or insured was a resident of this state at the time of the insured event, or said claimant or insured is as a result of the insured event receiving, or is entitled to receive benefits under the Florida Automobile Reparations Reform Act, or the insured property was permanently located in this state. “Covered claim” shall not include any
amount due any reinsurer, insurer, insurance pool, or underwriting association, as subrogation recoveries or otherwise.

(5) “Insolvent insurer” means an insurer authorized to transact insurance in this state either at the time the policy was issued or when the insured event occurred and adjudicated to be insolvent by a court of competent jurisdiction.

(6) “Member insurer” means any person who writes any kind of insurance to which this act applies under Section 3, including the exchange of reciprocal or interinsurance contracts, and is licensed to transact insurance in this state.

(7) “Net direct written premiums” means direct gross premiums written in this state on insurance policies to which this act applies, less return premiums thereon and dividends paid or credited to policyholders on such direct business. “Net direct written premiums” does not include premiums on contracts between insurers or reinsurers.

(8) “Person” means individuals, children, firms, associations, joint ventures, partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations, and all other groups or combinations.

Section 6. Organization.—

(1) All insurers defined as member insurers in subsection (6) of Section 5 of this act shall, as a condition of their authority to transact insurance in this state, establish and be members of a non-profit unincorporated association to be known as the “Florida Property and Casualty Insurance Guaranty Association.” The responsibility for organizing such association shall be delegated to an interim governing committee of not less than five nor more than nine representatives of member insurers appointed by the department of insurance. The association shall perform its functions pursuant to a plan of operation established and approved under Section 9 of this act and shall exercise its powers through a governing committee established under Section 7 of this act.

(2) For the purposes of administration and assessment, the funds of the association, except for general administrative expenses, shall be divided into four separate accounts:

(a) The workmen’s compensation insurance account;
(b) The auto liability account;
(c) The auto physical damage account; and
(d) The account for all other insurance to which this act applies.

Section 7. Governing Committee.—

(1) The regular governing committee of the association shall consist of not less than five or more than nine persons serving terms as established in the plan of operation. The department shall approve and appoint to such governing committee persons recommended by the member insurers. In the event the department finds that any recommended person does not meet the qualifications for service on the governing committee, the department shall request the member insurers to recommend another person. Each member shall serve for a four year term and may be reappointed. Vacancies on the governing committee shall be filled for the remaining period of the term in the same manner as initial appointments. If no members are selected within sixty days from the enactment of this act, the department may appoint the initial members of regular governing committee.

(2) In appointing members to the governing committee, the department shall consider among other things whether all areas of insurance covered by this act are fairly represented.

(3) Members of the governing committee may be reimbursed from the assets of the association for expenses incurred by them as members of the governing committee.

Section 8. Powers and duties of the association.—

(1) The association shall:

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

1. Prior to the adjudication of insolvency and arising within thirty days after the determination of insolvency;
2. Before the policy expiration date if less than thirty days after the determination; or
3. Before the insured replaces the policy or causes its cancellation, if he does so within thirty days of the determination, but such obligation shall include only that amount of each covered claim which is in excess of one hundred dollars and is less than three hundred thousand dollars, except that the association shall pay the full amount of any covered claim arising out of a workmen's compensation policy. 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.

(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.

(2) The association may:
(a) Employ or retain such persons as are necessary to handle claims and perform other duties of the association;
(b) Borrow funds necessary to effect the purposes of this act in accord with the plan of operation;
(c) Sue or be sued;
(d) Negotiate and become a party to such contracts as are necessary to carry out the purpose of this act; and
(e) To the extent necessary to secure the funds for the respective accounts for the payment of covered claims and also to pay the reasonable costs to administer the same, levy assessments in the proportion that each insurer's net direct written premiums in this state in the classes protected by the account bears to the total of said net direct written premiums received in this state by all such insurers for the preceding calendar year for the kinds of insurance included within such account. Assessments shall be remitted to and administered by the governing committee in the manner specified by the approved plan.

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

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

(4) The association shall exempt any insurer from an assessment if an assessment would result in such insurer's financial statement reflecting an amount of capital or surplus less than the sum of the minimum amount required by any jurisdiction in which the insurer is authorized to transact insurance.

(5) Any necessary and proper expenses incurred by an insurer in the investigation, adjustment, compromise, settlement, denial, or handling of claims assigned to it shall, upon proper verification of the governing committee, entitle the insurer to reimbursement. Any insurer whose employee serves on the staff of the association may set off from its assessment any necessary and proper expenses incurred by the insurer resulting from said service of its employee. An insurer which ceases to engage in business of writing property or casualty insurance policies in this state shall have no right to a refund of any assessment previously remitted.

Section 9. Plan of operation.—
(1) (a) The association shall submit to the department a proposed plan of operation and any amendments thereto necessary or suitable to assure the fair, reasonable, and equitable adminis-
tration of the association. The plan of operation and any amendments thereto shall become effective upon approval in writing by the department.

(b) If the association fails to submit a suitable proposed plan of operation within ninety days after the enactment of this act, or if at any time thereafter the association fails to submit suitable amendments to the plan, the department shall, after notice and hearing, adopt and promulgate such reasonable rules as are necessary or advisable to effectuate the provisions of this act. Such rules shall continue in force until modified by the department or superseded by a plan submitted by the association and approved by the department.

(2) All member insurers shall comply with the plan of operation.

(3) The plan of operation shall:

(a) Establish the procedures whereby all the powers and duties of the association under Section 8 will be performed;

(b) Establish procedures for handling assets of the association;

(c) Establish the amount and method of reimbursing members of the governing committee under Section 7;

(d) Establish procedures by which claims may be filed with the association and acceptable forms of proof of covered claims. Notice of claims to the receiver or liquidator of the insolvent insurer shall be deemed notice to the association or its agent, and a list of such claims shall be periodically submitted to the association or similar organization in another state by the receiver or liquidator;

(e) Establish regular places and times for meetings of the governing committee;

(f) Establish procedures for records to be kept of all financial transactions of the association, its agents, and the governing committee.

(g) Provide that any member insurer aggrieved by any final action or decision of the association may appeal to the department within thirty days after the action or decision;

(h) Establish the procedures whereby recommendations for the governing committee will be submitted to the department; and

(i) Contain additional provisions necessary or proper for the execution of the powers and duties of the association.

(4) The plan of operation may provide that any or all powers and duties of the association, except those under Section 8 (1) (c) and (2) (b) are delegated to a corporation, association, or other organization which performs or will perform functions similar to those of this association or its equivalent in two or more states. Such a corporation, association, or organization shall be reimbursed as a servicing facility would be reimbursed and shall be paid for its performance of any other functions of the association. A delegation under this subsection shall take effect only with the approval of both the governing committee and the department, and may be made only to a corporation, association, or organization which extends protection not substantially less favorable and effective than that provided by this act.

Section 10. Duties and powers of department of insurance.—

(1) The department shall:

(a) Notify the association of the existence of an insolvent insurer not later than three days after it receives notice of the determination of the insolvency; and

(b) Upon request of the governing committee, provide the association with a statement of the net direct written premiums of each member insurer.

(2) The department may:

(a) Require that the association notify the insureds of the insolvent insurer and any other interested parties of the determination of insolvency and of their rights under this act. Such notification shall be by mail at their last known address, when available, but if sufficient information for notification by mail is not available, notice by publication in a newspaper of general circulation shall be sufficient;
(b) Suspend or revoke, after notice and hearing, the certificate of authority to transact insurance in this state of any member insurer which fails to comply with the plan of operation. As an alternative, the department may levy a fine on any member insurer which fails to comply with the plan of operation. Such fine shall be no less than one hundred dollars nor more than five hundred dollars per month;

(c) Revoke the designation of any servicing facility if it finds claims are being handled unsatisfactorily.

Section 11. Effect of paid claims.—

(1) Any person recovering under this act shall be deemed to have assigned his rights under the policy to the association to the extent of his recovery from the association. Every insured or claimant seeking the protection of this act shall cooperate with the association to the same extent as such person would have been required to cooperate with the insolvent insurer. The association shall have no cause of action against the insured or the insolvent insurer for any sums it has paid out except such cause of action as the insolvent insurer would have had if such sums had been paid by the insolvent insurer. In the case of an insolvent insurer operating on a plan with assessment liability, payments of claims of the association shall not operate to reduce the liability of insureds to the receiver, liquidator, or statutory successor for unpaid assessments.

(2) The receiver, liquidator, or statutory successor of an insolvent insurer shall be bound by settlements of covered claims by the association or a similar organization in another state. 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 act against the assets of the insolvent insurer. The expenses of the association or similar organization in handling claims shall be accorded the same priority as the liquidator’s expenses.

(3) The association shall periodically file with the receiver or liquidator of the insolvent insurer statements of the covered claims paid by the fund and a contingent or unliquidated claim with the receiver of anticipated claims, which shall preserve the rights of the fund against the assets of the insolvent insurer;

such contingent or unliquidated claim shall be filed prior to the deadline for filing claims as set by the court.

(4) (a) Any person having had a covered claim paid under Chapter 70-20, Laws of Florida, shall not be entitled to duplicate recovery under this act.

(b) In the event Chapter 70-20, Laws of Florida, is held to be constitutional, covered claims paid under this act shall not be recoverable under Chapter 70-20, Laws of Florida.

Section 12. Nonduplication of recovery.—

(1) Any person having a claim against an insurer under any provision in an insurance policy other than a policy of an insolvent insurer which is also a covered claim, shall not be required to exhaust first his rights under such a policy. Any amount payable on a covered claim under this act shall be reduced by the amount of any recovery under such insurance policy.

(2) Any person having a claim which may be recovered under more than one insurance guaranty association or its equivalent or residuary of the insurer, except that if it is a first party claim for damage to property with a permanent location, he shall seek recovery first from the association or such settlement with the insured as the court may determine, if the claim is a second party claim, he shall seek recovery first from the association or such settlement with the insured as the court may determine, if it is a workmen’s compensation claim, he shall seek recovery first from the association or the residence of the claimant. Any recovery under this act shall be reduced by the amount of recovery from any other insurance guaranty association or its equivalent.

Section 13. Prevention of insolvencies.—To aid in the detection and prevention of insurer insolvencies:

(1) It shall be the duty of the governing committee, upon majority vote, to notify the department of any information indicating any member insurer may be insolvent or in a financial condition hazardous to the policyholders or the public.

(2) The governing committee may, upon majority vote, request that the department order an examination of any member insurer which the governing committee in good faith believes
may be in a financial condition hazardous to the policyholders or the public. Within thirty days of the receipt of such request, the department shall begin such examination. The examination may be conducted as a National Association of Insurance Commissioners examination or may be conducted by such persons as the department designates. The cost of such examination shall be paid by the association and the examination report shall be treated as are other examination reports. In no event shall such examination report be released to the governing committee prior to its release to the public, but this shall not preclude the department from complying with subsection (3). The department shall notify the governing committee when the examination is completed. The request for an examination shall be kept a file by the department, but it shall not be open to public inspection prior to the release of the examination report to the public.

(3) It shall be the duty of the department to report to the governing committee when it has reasonable cause to believe that any member insurer, examined or being examined at the request of the governing committee, may be insolvent or in a financial condition hazardous to the policyholders or the public.

(4) The governing committee may, upon majority vote, make reports and recommendations to the department upon any matter germane to the solvency, liquidation, rehabilitation, or conservation of any member insurer. Such reports and recommendations shall not be considered public documents.

(5) The governing committee may, upon majority vote, make recommendations to the department for the detection and prevention of insurer insolvencies.

(6) The governing committee shall, at the conclusion of any insurer insolvency in which the association was obligated to pay covered claims, prepare a report on the history and causes of such insolvency, based on the information available to the association, and submit such report to the department.

Section 14. Examination of the association.—The association shall be subject to examination and regulation by the department. The governing committee shall submit, not later than March 30 of each year, a financial report for the preceding calendar year in a form approved by the department.

Section 15. Recognition of assessments in rates.—The rates and premiums charged for insurance policies to which this act applies may include amounts sufficient to recoup a sum equal to the amounts paid to the association by the member insurer less any amounts returned to the member insurer by the association, and such rates shall not be deemed excessive because they contain an amount reasonably calculated to recoup assessments paid by the member insurer.

Section 16. Prohibited advertisement, solicitation, etc.—No person shall make, publish, disseminate, circulate, or place before the public, or cause, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine, or other publication, or in the form of a notice, circular, pamphlet, letter, or poster or over any radio station or television station, or in any other way, any advertisement, announcement, or statement which uses the existence of the insurance guaranty association for the purpose of sales, solicitation, or inducement to purchase any form of insurance covered under this act.

Section 17. Immunity.—There shall be no liability on the part of, and no cause of action of any nature shall arise against, any member insurer, the association, or its agents or employees, the governing committee, or the department or its representatives or employees for any action taken by them in the performance of their powers and duties under this act.

Section 18. Stay of proceedings; reopening of default judgments.—All proceedings in which the insolvent insurer is a party or is obligated to defend a party in any court in this state shall be stayed for up to six months, or such additional period from the date the insolvency is adjudicated, by a court of competent jurisdiction to permit proper defense by the association of all pending causes of action as to any covered claims arising from a judgment under any decision, verdict, or finding based on the default of the insolvent insurer or its failure to defend an insured. The association either on its own behalf or on behalf of such insured may apply to have such judgment, order, decision, verdict, or finding set aside by the same court or administrator that made such judgment, order, decision, verdict, or find-
ing, and shall be permitted to defend against such claim on the merits.

Section 19. Limitation; certain actions.—

Notwithstanding any other provision of this act, a covered claim as defined herein with respect to which settlement is not affected and suit is not instituted against the association within one year after the deadline for filing claims, or any extension thereof, with the receiver of the insolvent insurer shall thenceforth be barred as a claim against the association.

Section 20. Subsection (4) of section 627.0851, Florida Statutes, is amended to read:

(Substantial rewording of subsection. See section 627.0851, F.S., for present text.)

627.0851 Automobile liability insurance; uninsured vehicle coverage; insolvent insurer protection.—

(4) Any person having a claim against an insolvent insurer under the provisions of this section shall present such claim for payment to the Florida Property and Casualty Insurance Guaranty Association only. In the event of a payment to any person in settlement of a claim arising under the provisions of this section, the association shall not be subrogated or entitled to any recovery against the claimant's insurer. The association shall, however, have the rights of recovery as set forth in chapter 631, Florida Statutes, in the proceeds recoverable from the assets of the insolvent insurer.

Section 21. Severance; constitutionally.—If any provision of this act or the application thereof to any person or circumstances is held unconstitutional, the remainder of this act and the application of such provisions to other persons or circumstances shall not be affected thereby, and it shall be conclusively presumed that the legislature would have enacted the remainder of this act without such invalid or unconstitutional provision.

Section 22. Effective date; duration, assessments credited.—

(1) This act shall take effect immediately upon becoming a law and shall apply to all claims which would have been covered under Chapter 70-20, Laws of Florida.

(2) In the event Chapter 70-20, Laws of Florida, is held constitutional this act, with the exceptions of sections 11(4)(b), 18 and 19, shall no longer be effective. Assessments paid by member insurers under this act shall be credited as assessments made under Chapter 70-20, Laws of Florida, as if they were made under that act.

Approved by the Governor December 7, 1971.

Filed in Office Secretary of State December 8, 1971.

CHAPTER 71-971

Committee Substitute for House Bill No. 7-D

AN ACT relating to outdoor advertising; amending §479.01, Florida Statutes, relating to definitions; amending §479.02, Florida Statutes, pertaining to enforcement of provisions by the department of transportation; creating §479.025, Florida Statutes, providing for execution of agreement and for a construction moratorium; amending §479.03, Florida Statutes, relating to territory to which act applies; amending §479.11(1), Florida Statutes, prohibiting the erection of outdoor signs in certain areas; creating §479.111, Florida Statutes, permitting certain advertising signs; amending §479.16(12), Florida Statutes, excepting certain advertisements; creating §479.23, Florida Statutes, providing for removal of signs; creating §479.24, Florida Statutes, providing for compensation for removal of signs and use of power of eminent domain; providing an effective date.

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

Section 1. Section 479.01, Florida Statutes, is amended to read:

(Substantial rewording of section. See §479.01, F.S., for present text.)

479.01 Definitions.—The following terms, wherever used or referred to in this chapter, shall have the following meanings unless a different meaning clearly appears from the context:
Monday, November 29, 1971


The House of Representatives was called to order at 11:00 a.m. by the Honorable Richard A. Pettigrew, Speaker, pursuant to the following Proclamation of the Governor, which was read by the Clerk:

PROCLAMATION
State of Florida
Office of the Governor
Tallahassee

TO THE HONORABLE MEMBERS OF THE FLORIDA SENATE AND HOUSE OF REPRESENTATIVES:

WHEREAS, on November 2, 1971, the electors of Florida approved an amendment to the Florida Constitution which authorized the State to impose a tax on the net income of corporations and other artificial entities, but continuing the constitutional prohibition against a tax on the income of natural persons, and

WHEREAS, it is necessary that the Legislature of the State of Florida be convened in special session to consider, among other things, legislation to implement said constitutional amendment;

NOW, THEREFORE, I, REUBIN O'D. ASKEW, Governor of the State of Florida, in obedience to my constitutional duty and by virtue of the power and authority vested in me by Section 3, Article III, Florida Constitution (1968), do hereby proclaim as follows:

1. That the Legislature of the State of Florida be and it is hereby convened in special session at the Capitol, Tallahassee, Florida, commencing at approximately 10 o'clock a.m. on Monday, the 29th day of November, 1971, and ending on the 8th day of December, 1971.

2. That the Legislature is convened for the purpose of considering legislation relating to:

(a) Implementation, including necessary appropriations, of a tax on the net income of corporations and other artificial entities;

(b) Elimination of the allowance for compensation of agents affixing cigarette stamps and collecting state tax;

(c) Elimination of the discounts and credits on beverage taxes to wine manufacturers and distributors of malt beverages and beer, and elimination of the allowance to distributors ofspirituous beverages;

(d) Repeal of the dealer's credit for collecting sales tax;

(e) Extension of existing municipal operating millages in excess of the constitutional and statutory 10 mill ad valorem tax limit;

(f) Providing an exemption from state sales and use taxes for sales of utilities to residential households;

(g) Providing an exemption from the state transient rentals tax for rentals of buildings intended primarily for lease or rent to persons as their principal or permanent place of residence;

(h) Repeal of the motor vehicle fuels dealer discounts, reduction of the shrinkage allowance, and elimination of certain special fuels dealer discounts;

(i) Reduction of the occupational license tax imposed pursuant to Chapter 205, F.S., to one-third of the amount presently provided for therein, and imposition of a limit on municipal occupational licenses;

(j) Joint resolution relating to the revision of Article V of the Florida Constitution;

(k) Implementation and funding of a minimum foundation program for local law enforcement;

(l) Regulation of certain outdoor advertising and junkyards and such other matters as may be required to comply with the Highway Beautification Act of 1965 and Title 23, United States Code;

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Florida to be affixed to this Proclamation convening the Legislature in special session, at the Capitol, this 24th day of November, 1971.

REUBIN O'D. ASKEW
Governor

ATTEST:
RICHARD (DICK) STONE
Secretary of State

The following Amendment to the Proclamation was read:

PROCLAMATION
State of Florida
Office of the Governor
Tallahassee

(Amendment to Proclamation dated November 24, 1971)

WHEREAS, on the 24th day of November, 1971, a Proclamation was issued convening a special session of the Florida Legislature commencing on the 29th day of November, 1971, and

WHEREAS, it is necessary and in the best interest of the State to amend the Proclamation dated November 24, 1971, in order to permit the Legislature to take up, consider, and enact other legislative business.

NOW, THEREFORE, I, REUBIN O'D. ASKEW, Governor of the State of Florida, in obedience to my constitutional duty and by virtue of the power and authority vested in me by Section 3, Article III, Constitution of Florida (1968), do hereby proclaim as follows:

1. That Paragraph 2 of the Proclamation of the Governor dated the 24th day of November, 1971, is amended to read as follows:

2. That the Legislature is convened for the sole purpose of considering legislation relating to:

(a) Implementation, including necessary appropriations, of a tax on the net income of corporations and other artificial entities;

(b) Elimination of the allowance for compensation of agents affixing cigarette stamps and collecting state tax;

(c) Elimination of the discounts and credits on beverage taxes to wine manufacturers and distributors of malt beverages and beer, and elimination of the allowance to distributors of spirituous beverages;

(d) Repeal of the dealer's credit for collecting sales tax;

(e) Extension of existing municipal operating millages in excess of the constitutional and statutory 10 mill ad valorem tax limit;

(f) Providing an exemption from state sales and use taxes for sales of utilities to residential households;

(g) Providing an exemption from the state transient rentals tax for rentals of buildings intended primarily for lease or rent to persons as their principal or permanent place of residence;

(h) Repeal of the motor vehicle fuels dealer discounts, reduction of the shrinkage allowance, and elimination of certain special fuels dealer discounts;

(i) Reduction of the occupational license tax imposed pursuant to Chapter 205, F.S., to one-third of the amount presently provided for therein, and imposition of a limit on municipal occupational licenses;

(j) Joint resolution relating to the revision of Article V of the Florida Constitution;

(k) Implementation and funding of a minimum foundation program for local law enforcement;

(l) Regulation of certain outdoor advertising and junkyards and such other matters as may be required to comply with the Highway Beautification Act of 1965 and Title 23, United States Code;
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November 29, 1971

(m) Repeal of ad valorem tax exemption of property leased from governmental units by non-governmental lessees;
(n) An appropriation to the Board of Trustees of the Internal Improvement Fund for a period from January 1, 1972, to June 30, 1972, to pay salaries or other operating expenses and to repay a loan for repairs to the Capitol;
(o) Repeal of Section 372.57(4)(a), Florida Statutes, relating to the cane pole fishing license and exempting, under prescribed conditions, state residents from obtaining fishing licenses;
(p) Correction of alleged constitutional defects of Chapter 70-20, Florida Statutes (Florida Insurance Guaranty Association Act.)

2. Except as amended by this Proclamation, the Proclamation of the Governor dated the 24th day of November, A. D., 1971, is ratified and confirmed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Florida to be affixed to this Proclamation convening the Legislature in special session, at the Capitol, this 29th day of November, 1971.

REUBIN O'D. ASKEW
Governor

ATTEST:
RICHARD (DICK) STONE
Secretary of State

The following Members were recorded present:

Mr. Speaker
Forbes
Matthews, H.
Shaw
Alvarez
Fortune
Matthews, T.
Shreve
Andrews
Fulford
McDonald
Sims
Baker
Gallen
Melvin
Singleton
Baumgartner
Gautier
Miera
Smith
Birchfield
Gilson
Milburn
Spicola
Blackburn
Gillespie
Mixson
Stevens
Brown
Gisson
Mooney
Sweeny
Burke
Gorman
Murphy
Sykes
Caldwell
Grainger
Nease
Thomas
Chapman
Grizzle
Nergard
Tittle
Cherry
Harllee
Nichols
Tobiasen
Clark, David
Harris
Opbel
Trombetta
Clark, Dick
Hartnett
Poole
Tubbs
Clark, J. R.
Hazelton
Foerbaugh
Tucker
Conway
Hector
Powell
Turlington
Crabtree
Hess
Randell
Tyrrell
Craig
Hollingsworth
Redman
Westberry
Crane
Johnson
Reed
Whitson
D'Alembert
Jones
Renick
Whitworth
Dixon
Kennelly
Rish
Williamson
Dubbin
Kershaw
Robinson, A. S.
Wilson
Earle
Lancaster
Robinson, J. W.
Winn
Elmore
Lane
Ryals
Wolfson
Featherstone
Libertore
Santora
Woodward
Firestone
MacKay
Savage
Yancey
Fleece
Martinez
Sessums
Zinkil

Excused: Representatives Culbreath, Dancy, Gustafson, Hodes, Holloway, C. Matthews, Moudry, Reeves, Sackett, Tooman, and Waiker.

A quorum was present.

Prayer

Prayer by Representative James L. Redman:

Our dear Heavenly Father we pray for Thy guidance. Let us never fail to do right. Amen.

Pledge

The Members pledged allegiance to the Flag.

The Journal

The Journal of June 24 was approved.

Standing Committee Assignments

The Speaker announced the following interim changes in committee assignments:

Representative Cherry, from the Committee on Insurance to the Committee on Judiciary;
Representative Harllee, from the Committee on Agriculture & Citrus to the Committee on Manpower & Development;
Representative Hartnett, from the Committee on Elections to the Committee on Community Affairs;
Representative MacKay, from the Committee on Finance & Taxation to the Committee on Business Regulation;
Representative Randell, from the Committee on Health & Rehabilitative Services to the Committee on Natural Resources;
Representative Trombetta, from the Committee on Environmental Pollution Control to the Committee on Business Regulation;
Representative Tucker, from the Committee on Elections to the Committee on Health & Rehabilitative Services;
Representative Whitson, from the Committee on Environmental Pollution Control to the Committee on Education.

Announcement

The Speaker announced the appointment of Representative Carl Ogden as House Majority Leader, succeeding Representative Donald G. Nichols whose resignation is effective December 1, 1971.

The Speaker also announced the appointment of Representative George Firestone as Chairman of the House Select Committee on Legislative Apportionment, and Representative James Lorenzo Waiker as Chairman of the House Select Committee on Congressional Apportionment.

Communication from the Governor

Governor Reubin O'D. Askew advised that he desired to address the Legislature in Joint Session at 11:15 a.m. today.

Introduction of House Concurrent Resolution

On motion by Mr. Dubbin, the rules were waived and—

By Representative Dubbin—

HCR 1-D Org.—A concurrent resolution providing that the House of Representatives and the Senate convene in joint session.

WHEREAS, His Excellency, Governor Reubin O'D. Askew has expressed a desire to address the Legislature in joint session; NOW, THEREFORE,

Be It Resolved by the House of Representatives of the State of Florida, the Senate Concurring:

That the House of Representatives and the Senate convene in joint session in the chamber of the House of Representatives at 11:15 a.m. this day, Monday, November 29, 1971, for the purpose of receiving the message from the Governor.
"It is the opinion of the Chair that the rule raised by Mr. Earle is inappropriate at this time but it would be appropriate during consideration of the order of business of Motions Relating to Committee Reference. We are on the Special Order Calendar and I do not think the rule permits us to interrupt that Special Order to take up a claim of jurisdiction, which properly should be made during the order of business of Motions Relating to Committee Reference. I have agreed with Mr. Craig and others and Mr. Earle that, upon completion of the Special Order Calendar today, we will go ahead, prior to the meeting of the Appropriations Committee, revert to that order of business, take up this issue and dispose of it, since otherwise we are going to have an Appropriations Committee meeting, come back in and have it disposed of at that time."

A bill to be entitled An act relating to insurance — clauses against insolvent insurers; setting forth a purpose and scope; providing definitions; requiring certain insurers to establish and be members of the Florida Property and Casualty Insurance Guaranty Association; providing duties, functions, obligations, and rights of the association; providing for guaranty accounts; providing for assessments of member insurers; providing for a governing committee; providing the membership, powers, duties, and functions of the governing committee; providing duties of the department of insurance relating to the association; providing for payment of certain claims; baring the payment of claims previously paid; providing a method to prevent insolvencies of insurers; providing immunity from certain suits; providing a time limitation for the filing of suits against the association; amending section 627.0851(4), Florida Statutes, providing a method for payment of claims against insolvent insurers arising under the uninsured motorists statute; providing a severability clause; and providing an effective date for the expiration of this act.

was taken up. On motion by Mr. MacKay, the rules were waived and HB 29-D was read the second time by title.

Representative Forbes offered the following amendment:

Amendment 1—On page 11, strike all of line 20, and insert the following: forms of proof of covered claims, provided, however, that any uninsured motorist shall have the option of proceeding against the guaranty fund or against his own uninsured motorist fund. Notice of

Mr. Forbes moved the adoption of the amendment. Pending consideration thereof—

Mr. MacKay raised the point of order that the amendment was not within the purview of the Governor's Call. He said the Call limited consideration to the remedying of Constitutional defects as determined by Circuit Judge Hugh Taylor. The amendment by Mr. Forbes, continued Mr. MacKay, would add substantive material.

The Speaker held the point well taken, stating his reading of the Governor's Proclamation spoke of the correction of such Constitutional defects of Chapter 70-20, the Florida Insurance Guaranty Association Act. The Speaker said it was his understanding that as drafted and presented to the House the pending bill attempted to respond specifically to the defects pointed out in Judge Taylor's opinion. He agreed the Call was very limited in its scope but felt the House would be invited additional Constitutional challenges by adding on something outside the purview of the Call.

Mr. Forbes withdrew his amendment.

Representative Powell offered the following amendment:

Amendment 2—On page 6, line 26, strike the period and insert the following: in accordance with and not exceeding the provisions of Chapter 112.061, Florida Statutes.

Mr. Powell moved the adoption of the amendment.

Mr. Gillespie raised the same point of order against the amendment by Mr. Powell as being outside the Call. The Speaker ruled the point well taken, expressing the hope the Committee on House Administration & Conduct, in its pending consideration of a proposed revision of Article III, would address itself to the constraints placed upon the Legislature by the language relating to consideration of legislation under a call by the Governor.

On motion by Mr. MacKay, the rules were waived and HB 29-D was read the third time by title. On passage, the vote was:

Yeas—99

Mr. Speaker: 
Alvarez: 
Andrews: 
Baker: 
Barnes: 
Barnes: 
Birchfield: 
Blackburn: 
Brown: 
Burke: 
Calderwood: 
Carlacci: 
Chapman: 
Cherry: 
Clark, David: 
Clark, J. R.: 
Conway: 
Craig: 
Craig: 
Crane: 
Dixon: 
Dubbin: 
Earle: 
Eimore: 
Featherstone: 
Fleece: 
Forbes: 
Nays—None

Representatives Crabtree, Firestone, Harris, Reed, Santora, Trombetta, Whitworth, Winn, and Wolfson were recorded as voting Yea.

So the bill passed and was ordered immediately certified to the Senate.

Without objection, the rules were waived and the House reverted to the order of—

Messages from the Senate

The Honorable Richard A. Pettitigrew, Speaker, House of Representatives

December 1, 1971

Sir:

I am directed to inform the House of Representatives that the Senate has passed—

By the Committee on Ways and Means—

CS for SB 8-D—A bill to be entitled An act relating to tax on rentals; amending section 212.03, Florida Statutes, by adding subsection (7) to provide an exemption on rentals of buildings intended primarily for lease or rent to persons as their principal or permanent place of residence; amending sections 212.02 (6) (h), 212.031 (1)(a), and 212.031 (1)(b), Florida Statutes, relative to such exemption on rentals; providing the Department of Revenue with responsibility for certain classifications; providing an effective date.

—and requests the concurrence of the House therein.

Respectfully,

Elmer O. Friday, Jr.
Secretary of the Senate

CS for SB 8-D, contained in the above message, was read the first time by title and referred to the Committee on Finance & Taxation.

The Honorable Richard A. Pettitigrew, Speaker, House of Representatives

December 1, 1971

Sir:

I am directed to inform the House of Representatives that the Senate has passed as amended—
INTER OFFICE MEMO

DATE November 30, 1971

TO: Tom Brown
FROM: R. J. Schramm
RE: Summary of changes in Proposed Guaranty Fund Bill

Dear Tom:

Pursuant to your request of this day I am preparing this summarization of the proposed changes in the Guaranty Fund bill to be introduced during the special session. The substantive changes are as follows:

1. The title of the new bill is now the "Florida Property and Casualty Insurance Guaranty Act."

2. The definition of covered claim has been changed to provide protection to claimants under the Florida Automobile Reparations Reform Act. Only an unpaid claim which was or is within the coverage provided the insured or claimant by an insurer which becomes insolvent is a "Covered claim."

3. All member insurers are required, as a condition of their authority to transact insurance in this state, to establish and be members of a non-profit unincorporated association to be known as the "Florida Property and Casualty Insurance Guaranty Association." The authority for organizing such association is delegated to an interim governing committee. The association is required to perform its functions pursuant to a plan of operation.

4. After the association is organized the management and operation of the association will be handled by a regular governing committee similar to the operation by the former board of directors.

5. Requires the association to make the assessments against the various member insurers.

6. Permits the department to suspend or revoke, after notice and hearing, the certificate of authority to transact insurance in this state of any member insurer which fails to comply with the plan of operation.

7. Prohibits any person having a covered claim paid under Chapter 70-20, Laws of Florida, from being entitled to duplicate recovery under this act.

8. Prohibits persons from recovering under this act from duplicate recovery under Chapter 70-20, Laws of Florida, if that act is held constitutional.
9. Permits the association to seek a stay of proceedings in each suit of up to six months, or such additional period of time from the date the insolvency is adjudicated, by a court of competent jurisdiction to permit proper defense of such suit by the association.

10. Any covered claim which is not settled and suit is not brought against the association within one year after the deadline for filing claims or any extension thereof shall be barred as a claim against the association.

11. Provides a severability clause.

12. The act shall take effect upon becoming a law and shall apply to all claims which would have been covered under Chapter 70-20, Laws of Florida. Provides that if Chapter 70-20, Laws of Florida, is held constitutional, this act with the exception of sections 11(4)(b), 18, and 19 shall no longer be effective.

13. Assessments paid by member insurers under this act shall be credited as assessments made under Chapter 70-20, Laws of Florida.

This is a brief summary of all the major changes.

Regards,

P. S. This memo was prepared before the change was made concerning the uninsured motorist provision.

This change provides that a person having a claim against an insolvent insurer under the provisions of Section 627.0851 shall present his claim to the Florida Property and Casualty Guaranty Association.

RJS:jb
The House Committee on Insurance met in Room 201, Holland Building on November 30, 1971, at 5:00 P.M. for the purpose of taking up the Insurance Guaranty Association bill which was a part of the Governor's call.

Representative Bill Gillespie, Chairman, called the meeting to order and the following members were present:

Rep. Gillespie, Chairman
Rep. MacKay, Vice Chairman
Rep. Andrews
Rep. Birchfield
Rep. Featherstone
Rep. Hartnett
Rep. Hess
Rep. Kennelly
Rep. Miers
Rep. Sims
Rep. Sykes
Rep. Tittle

Members excused were:

Rep. Craig
Rep. McDonald
Rep. Williamson
Rep. Shaw
Rep. Whitson

Chairman Gillespie informed the committee members that a part of the insurance guaranty fund law apparently has been found unconstitutional and it is incumbent upon this committee to take up some legislation regarding this law. The Insurance Department and representatives of the fund have prepared a proposal for the committee to consider as a possible committee vehicle.
Mr. Tom Brown, Assistant Insurance Commissioner, gave a background report on the bill and Mr. Steve Martin, Florida Association of Insurance Companies, Inc., made some comments on the problems and possible solutions. Mr. Brown explained the areas involved. Mr. Martin explained that the case brought before the court was brought initially to seek a determination of the obligations of the guaranty association with respect to claims that existed prior to October 1, 1970. He said this was the major issue of the lawsuit. The companies did not challenge constitutionality; the department did not challenge constitutionality and both the department and the Florida Insurance Guaranty Association supported and alleged that the act was constitutional. He also stated that the board of the Florida Insurance Guaranty Association agreed not to contest Judge Taylor's decision. (Copy of Judge Taylor's opinion was presented to all committee members and is attached hereto as an official part of these minutes.)

Chairman Gillespie asked if any member objected to adopting this bill as a committee vehicle. There being no objection, it was adopted unanimously. Following a general discussion, the committee reported the bill favorable with no amendments.

Meeting adjourned.
IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT, IN AND FOR LEON COUNTY, FLORIDA

FLORIDA INSURANCE GUARANTY ASSOCIATION, A non-profit corporation,

Plaintiff,

vs.

THOMAS D. O'MALLEY, as Treasurer and ex-officio Insurance Commissioner of the State of Florida,

Defendant,

-and-

THOMAS D. O'MALLEY, as Treasurer and ex-officio Insurance Commissioner of the State of Florida, as Receiver of First American Insurance Company,

Plaintiff,

vs.

FLORIDA INSURANCE GUARANTY ASSOCIATION, a non-profit corporation,

Defendant.

DECLARATORY JUDGMENT

In each of these cases the plaintiff seeks a declaratory judgment.

The cases have been consolidated for hearing and this order will cover all questions to be answered in either suit although some may not be common to both.

The purpose of this litigation is to determine the constitutional validity of Chapter 70-20, Laws of Florida, as a whole, and
if it be valid, the proper construction of several of its provisions. In considering the validity of the statute no effort will be made to pass upon every portion of the act as it may apply to every possible situation. A failure of this order to discuss any constitutional question is not an adjudication of that question.

As regards the construction of the statute, many questions have been raised, some of which are presently ripe for adjudication by way of declaratory judgment and others are not. Only those as to which there is a showing of need for present determination(1) and with respect to which necessary parties are before the Court will be considered.

The Court has reluctantly reached the conclusion that Chapter 70-20, Laws of Florida, is invalid in its entirety because its essential purpose cannot be accomplished in the manner attempted without doing violence to the State Constitution, and its language is not reasonably susceptible to a construction which would render it constitutional.

The arguments supporting the abstract desirability of the ends sought to be accomplished by the statute may be conceded. Insurance, particularly automobile insurance and workmen's compensation insurance, are practical necessities of a large percentage of the citizens of the State. Such insurance can be sold in the state only by those duly licensed by the State. Unfortunately all insurers are not operated in the most efficient manner and despite State supervision some companies become insolvent. Experience has taught that the marshaling of the assets of insolvent insurers and their distribution among the policyholders and

(1) If the statute as a whole be valid.
other creditors is both a lengthy and an expensive process. Litigation involving major assets (or liabilities) may consume years. Almost always there are several and frequently there are many states in which the insurer did business, thus requiring numerous ancillary proceedings with the incident problems and delays.

The object intended to be accomplished by Chapter 70-20 is basically simple. It recognizes that public interests are involved because of the large number of persons who suffer losses when an insurance company becomes insolvent - policyholders who have relied upon the insurance for protection, injured persons who look to the insurance as a source of compensation for their injuries, and others who have rendered services or extended credit with the promise or expectation of being paid from the proceeds of the insurance. Chapter 70-20 would shift the burden of these losses to the insuring public generally by requiring the solvent insurers in the state to become members of the Association and, through the Association, assume the initial responsibility for the payment of covered claims of the insolvent insurer and then permit them to recoup the cost by increasing their premiums charged to the insuring public generally in future years. One of the desirable features of the plan is that the actual adjustment and settlement of claims by the Association can be more efficiently accomplished by member insurers through their existing organizations assisting the Association in the settlement of claims. While the overall scheme has a slight tint of socialism (as do the post office, public school and highway systems), in view of the great public interest in and need for insurance, there is no constitutional objection to the plan as such.

(1) Only some of the obligations of insolvent insurers thus protected.
But the most desirable goals must be accomplished by constitutional means or constitutional government will be destroyed.

The first question presented is, therefore, the constitutional validity of Chapter 70-20, Florida Statutes, when examined in the light of Section 11(12) of Article III of the State Constitution:

"There shall be no special law or general law of local application pertaining to:

(12) private incorporation or grant of privilege to a private corporation."

Chapter 70-20, by its terms, creates a "nonprofit corporation to be known as Florida Insurance Guaranty Association, Incorporated". The Association so created has all of the attributes of a corporation. It is expressly endowed with "all those powers granted or permitted nonprofit corporations, as provided in Chapter 617," and it has other enumerated powers. The existence and functioning of this corporation is the key to the execution of the legislative purpose in enacting the statute.

Is Chapter 70-20 a special law as it relates to the creation of Florida Insurance Guaranty Association, Incorporated? Clearly it is. It creates a single corporation. It fixed the name, prescribes the government, powers and duties, and determines the membership of that corporation. There can be no other corporation exercising the same powers or performing the same functions.

The discussions in the opinions of the Supreme Court in the cases of Brash v. State Tuberculosis Board, 167 So. 827 (on petition for rehearing, Page 831), Thursby v. Stewart, 138 So. 742 and State v. Bryan, 39 So. 929 clearly indicate that a statute creating a single corporation, defining its powers and duties and regulating the conduct of its business is a special act, whether it be a public or private corporation. Of course, the Constitution does not prohibit special laws relating to public
corporations.

Is Florida Insurance Guaranty Association, Incorporated, a private corporation within the purview of Article III, Section 11 of the Constitution?

In order to properly determine this question it is necessary to ascertain from the act as written the legislative intent and the scheme devised by the Legislature to put its intent into operation.

The obvious purpose of the act is to provide a means whereby the economic impact of insolvency of insurance companies may be reduced to a minimum and the major part of the losses be initially paid by the solvent members of the industry in proportion to their volume of premiums in this state and ultimately passed on to the insuring public in the form of higher premiums.

In order to effectuate this basic intent the statute creates a corporation named Florida Insurance Guaranty Association, of which each insurer, as a condition precedent to doing business in Florida, must be a member.

The Association is given all the powers of non-profit corporations under Chapter 617, Florida Statutes, and other powers, specifically the unlimited power to borrow money and the unrestricted power to sue and be sued. The Association exercises none of the powers of government. It is composed entirely of insurers authorized to do business in Florida. The Association is to be managed by a board of not less than five nor more than nine directors chosen by the members of the corporation and then "approved" and "appointed" by the Department of Insurance.

The only basis in the statute upon which the Department of

(1) Only some classes of insurance are within the statute, and those included are divided into four categories and each category considered separately for many purposes, but the classifications are entirely reasonable and present no constitutional problems.

(2) The officers of many corporations (such as race tracks, for example) must be approved by state officers as possessing certain qualities and/or abilities.
Insurance may disapprove an appointment is that all areas of insurance covered by the act are not fairly represented. The corporation must function under a plan of operation prepared by its members and approved by the Insurance Department. Such a plan has already been adopted and approved. This plan of operation can be amended only by action of the Association approved by the Department of Insurance.

Immediately upon an adjudication of insolvency of an insurer authorized to do business in Florida the Association, by operation of the statute, becomes the insurer of all persons holding policies issued by that insurer as to all covered claims until the insurance is terminated and the claims settled.

It is the duty of the Association to assume the position of the insolvent insurer with respect to all pending suits. To facilitate this duty pending litigation is stayed for 60 days.

The Association is authorized to settle any and all covered claims or litigate them as it may determine best.

The only ways provided in the statute by which the Association may acquire funds (other than borrowing) are:

1. Assessments against members. Upon certification of need by the Board of Directors it is the nondiscretionary duty of the Department of Insurance to assess against each insurer an amount fixed by the Board of Directors, not to exceed 1% of its premiums income in Florida during the preceding year, which is its proportionate share, based upon premium receipts for the preceding year, of the costs of operation of the Association and the payment of claims.

2. Claims against the receiver of insolvent insurers. All claims against an insolvent insurer which are paid by the Association automatically, by assignment or subrogation, become claims

(1) The term "covered claim" is defined in the statute, but a detailed analysis of this term is not necessary here.
in the hands of the Association, to be paid pro rata from assets in the hands of the receiver of the insolvent insurer.

If the receipts of the Association in any year are insufficient to pay its debts, assessments up to the amount of 1% per annum of the previous year's premiums can be made in succeeding years until all debts are paid.

The receiver of an insolvent insurer is bound by the amount of any settlement made by the Association. Expenses of the Association in handling claims are preferred claims against the receiver equal in dignity to the receiver's expenses.

Reference to the decisions produces many judicial definitions of the phrase "private corporation", each deemed sufficient to meet the needs of the case there under consideration. These definitions are not completely harmonious. Words and Phrases, Volume 33A, Page 401.

It would seem to be axiomatic that corporations are basically two kinds - public and private. A public corporation is one which is created to be employed in the administration of government. It is a repository of some of the power of government. Its affairs are conducted by public officers. Its funds are public property. Its obligations are public debts. Private corporations may, as may individuals, engage in businesses which are so fraught with a public interest that they are sometimes referred to as being quasi-public in nature and are subject to a large degree of public control and even granted some of the attributes of government, such as the power of eminent domain, but they remain essentially private corporations. Public corporations, such as municipalities, sometimes engage in activities which are essentially proprietary in nature, such as the operation of utilities, but they remain public corporations, subject
to the constitutional restraints upon the action of public bodies. Public agencies are sometimes given some corporate powers and these may be referred to as public-quasi corporations.

The leading decision on the essential differences between public and private corporations is the Dartmouth College case (1) in which Chief Justice Marshall pointed out that all corporations are created to serve a purpose which government wishes to promote and that the fact that a corporation was created to serve an eleemosynary purpose, even one so greatly in the public interest as an institution of learning, did not cause it to lose its character as a private corporation even though its members did not and could not gain any direct monetary profit from its operation, so long as it was by its charter under the control of private citizens, as distinguished from public officers, and its funds were private property and not a part of the public assets.

Applying that decision the conclusion is inescapable that the Association is a private corporation. The Court has before it not only the statute, but the plan of operation of the Association. The statute provides for the government of the Association by a board of not less than five or more than nine directors, the exact number to be fixed in a plan of operation adopted by the members of the Association.

Section 7 provides:

"The Department of Insurance shall approve and appoint to the board persons recommended by the member insurers. In the event the Department finds that any recommended person does not meet the qualifications for service on the Board, the Department shall request the member insurers to recommend another person. *** In appointing members to the Board, the Department of Insurance shall consider among other things whether all areas of insurance covered by this act are fairly represented."

This clearly gives the insurance industry control of the (1) Association. The only reason under the statute that can justify the Department refusing to appoint a board member recommended by the industry is lack of proper representation of the different segments of the industry. Use of the phrase "among other things" in the foregoing quotation adds nothing to the power of the Department under the thoroughly established rule that unlimited discretion to make decisions affecting the rights of citizens cannot be delegated to executive officers without guidelines for its exercise.

The statute expressly provides that "No State funds of any kind shall be allocated or paid to the Association or any of its accounts." Section 8(3). All funds of the Association must, therefore, be private assets.

Most of the funds of the Association will come from assessments made upon its members. The only theory upon which these funds can be regarded as private funds is that each insurer has voluntarily become a member of the Association and thereby agreed to pay assessments which are fixed by the Association. Of course, all insurers are required to join the Association if they do business in Florida. But, no insurer is required by law to do business in Florida. So in a strictly legal sense membership in the Association is voluntary on the part of each insurer. This may be strained reasoning, but upon what other theory can the assessments be regarded as anything but State funds?

It is suggested that the phrase "private corporation" as used in the Constitution should be given a meaning which would permit the conclusion that the Association is not a public corporation so as to be strictly an arm of the State, but that

(1) The plan of operation of the Association, which has been validated by the approval of the Department and which can now be changed only by action of the Association, approved by the Department, specifies how the directors of the Association shall be chosen and only one of the nine directors is actually selected by any state officer or department.
neither is it a strictly private corporation so as to be within the meaning of Section 11, Article III. This idea of writing into the Constitution an exception to its actual meaning in order to sustain the validity of legislation which appears in the public interest was considered and denounced in the Dartmouth College case. Its adoption here would create a most hazardous situation. Admittedly the idea of the Insurance Guaranty Fund is new and the legislation largely experimental in nature. If the Dartmouth College case is still the law, and it has not so far been repudiated by the Supreme Court of the United States, then in contemplation of the Federal Constitution, the Association is a private corporation and its charter (the statute and "plan of operation") is a contract beyond the power of the Legislature to change because of being protected by the Federal Constitution. Should Chapter 70-20 in actual operation be found unsatisfactory to the public it could not be charged or repealed by the Legislature without the consent of the Association which might be arbitrarily withheld.

As a contract, Chapter 70-20 would guarantee to every insurance company that should it become insolvent the remaining solvent companies would assume the major portion of its obligations. Once an insurance company has paid one assessment, it has paid a consideration for its right as a member of the Association to have other companies assume its debts upon its becoming insolvent.

Only the most naive in the observation of the legislative processes can fail to grasp at first glance the fundamental character of Chapter 70-20. The burden of the insolvent insurer is placed upon the solvent insurers. This burden is made more bearable by treating the Association as a private corporation and
in the hands of and putting it under the control of the solvent insurers, thus removing the Association and its funds from state domination. This may be a good thing, but it is a thing the Constitution does not permit.

No defect in Chapter 70-20 could ever be corrected by the Legislature. If experience should prove that, in an inflated economic era, assessments of 1% of the premium receipts of solvent insurers is insufficient to meet the obligations of the Association for covered claims, or that the definition of covered claims should be changed the Legislature would be powerless. It could not change the charter of the Association. Nor could it abolish the Association and devise a new plan of dealing with insolvent insurers. The Association would continue as a corporation, accumulating more debts with each insolvency and with a backlog of claims which could only be paid pro rata each year. That would very effectively destroy the chief advantage hoped to flow for the enactment of Chapter 70-20, the speedy evaluation and payment of claims. Should the Court close its eyes to the obvious, distort the true distinctions between public and private corporations, and say that the Association is a public corporation, created to perform a public function and the assessments made upon insurers are public funds it would not only do violence to the statute as written and the readily apparent legislative intent. It would render the statute violative of several other provisions of the Constitution.

The statute requires that assessments be paid to and administered by the directors of the Association. State funds must be kept in the hands of the treasurer. Const. Section 3, Article IV.

(1) There is great difference between the parties as to the meaning of the present definition of this term.
The statute authorizes the settlement and payment by the directors of the Association of accounts against it. The Constitution requires that accounts against the State be settled by the Comptroller (Section 3, Article IV), and that moneys be paid out of the treasury only pursuant to appropriations made by law. (Section 1, Article VII)

The Constitution strictly limits the incurring of public debts. (Section 11, Article VII) The statute authorizes the Association to borrow money without limit as to amount, rate of interest or terms of repayment.

Even more important, the Constitution prohibits the State from loaning its taxing power or credit/aid any corporation or person. (Section 10, Article VII)

The statute requires that upon the adjudication of insolvency of an insurer the Association immediately becomes the insurer of all covered claims against that insurer. By assuming the liabilities of the insolvent insurer, the Association is lending its credit to that corporation and to those whose liability it has insured. So, should the Court hold that the Association is a public corporation - a state agency - the State would be loaning its credit and, probably, its taxing power, in violation of the Constitution.

There is no possible way to disregard the invalid portions of Chapter 70-20 and sustain the remainder of the statute. The entire statute must be held to be invalid.

The holding/the statute as a whole is invalid renders moot any and all other questions presented. However, this case presents an unusual and quite acute problem of administration of the affairs of insolvent insurers. While this Court is convinced of the soundness of its conclusion that Chapter 70-20 is w. lly
invalid, there have been occasions upon which the judgments of this Court have been found by higher authority to be in error. Should that occur in this case, the necessity for a declaration upon many phases of the statute would be absolutely necessary and the delay incident to another hearing on those questions and another appeal would be most unfortunate in its effect upon the rights of many people. In view of this situation, the Court will follow a course which is not technically appropriate and which would, in ordinary circumstances, be quite improper. It will make a declaration of the construction and application of the statute based upon the hypothesis that the Court is wrong in holding the entire statute invalid. In doing this there will be no attempt to answer all of the questions argued. The present declaration will relate only to those questions which must be answered as a preliminary to an orderly procedure under the statute if it be valid.

Chapter 70-20 is not invalid as a retroactive or ex post facto law. It applies to all insurers adjudged insolvent after the act became a law. Solvent insurers, unwilling to become members of the Association and become liable for assessment may withdraw from doing business in Florida. Since it does not appear that any insurer is unwilling to become a member of the Association, it is not necessary at this time to consider what action is necessary to indicate that fact and withdraw from Florida and, at the same time perform its contracts previously entered into.

Chapter 70-20 applies to and the Association becomes liable for all covered claims against insurers adjudged insolvent after it became effective, including judgments, liquidated but unpaid claims and unliquidated claims. It makes no difference whether
the event giving rise to the liability of the insolvent insurer
occurred before or after the effective date of the statute.
Since the act giving rise to the liability of the Association
occurs after the effective date of the statute, it is not
invalid or ex post facto as regards their claims.

The phrase "determination of insolvency", as used in Sec­tion 3 and the phrase "become an insolvent insurer", as used in
Section 20, Chapter 70-20, mean an adjudication of insolvency
by a Court of competent jurisdiction in Florida or the domicili­
ary state of a foreign corporation. No adjudication is presently
needed, or made, with respect to an adjudication if insolvency
in another state not the domicile of the insolvent insurer.

Upon an adjudication of insolvency of an insurer the Assoc­
iation becomes liable for covered claims to exactly the same extent
and subject to exactly the same defenses as the insolvent insurer,
subject, of course, to the rights of the Association to the tem­
porary stay of pending proceedings provided in Section 18. This
right to stay proceedings applies likewise to suits begun after
the adjudication, but the absolute right to a stay under this
section shall not extend beyond the 60th day after the adjudica­
tion.

It is the duty of the Association to defend, adjust and
settle suits and claims against those insured by the insolvent
insurer to exactly the same extent as that obligation would have
been upon the insolvent insurer had it remained solvent.

The right of the Association to participate in the assets of
an insolvent insurer in the hands of a receiver are the same with
respect to claims settled after judgment as to those settled by
negotiation and payment. But no claim arises against a receiver
and, in favor of the Association except with respect to money
actually disbursed by the Association. This paragraph does not
relate to the status or priorities of adjustment costs or attorneys' fees whether incurred before or after adjudication of insolvency.

Expenses incurred by the Association which are in the nature of overhead operating expenses or home office expenses are priority claims equal in dignity to receiver's expenses. Expenses of the association which are in effect services rendered to the insured in the investigation, settlement or litigation of claims are policy claims on an equal basis with payment of losses and are covered claims but not priority claims.

The applicable statutes of limitations apply to claims against the Association exactly as they would have applied to an action against the insolvent insurer. A claim would exist until, or be barred at, the same instant of time regardless of the insolvency of the insurer.

A claim for unearned premium arises at the same instant of time that the coverage afforded by the policy terminates, whether termination of coverage results from act of the insurer, act of the insured, order of court or operation of the statute. Of course, there is no claim for unearned premium when a policy coverage terminates by expiration of the term of the insurance.

The statute in no way reduces or changes the scope of liability of the insolvent insurer under its valid contracts. Consequently, the claims of policyholders for the first $1,000 of each claim and for the excess of each claim over $300,000 are claims which may be proved against the receiver. Whether a claimant may reject the act and assert his full claim against the receiver (a most unlikely occurrence) is not a question presently for decision because no such situation is shown to exist or be imminent.
For the purpose of applying the $100.00 minimum and the $300,000.00 maximum liability of the Association, all demands of a single individual arising from a single occurrence should be regarded as a single claim. The rights of different individuals, even though arising from the same occurrence, should be treated as separate claims. For example: Let us assume that A negligently operates a fully-insured motor vehicle so that a collision occurs with another vehicle owned by B, operated by C and in which B is a passenger. The term of A's policy extended more than 30 days beyond the adjudication of insolvency of A's insurer. Both vehicles are demolished. C is fatally injured and dies a week later. A is injured. The following claims exist for the application of the statutory deduction:

A has one claim for collision damage and his own medical expenses; if he alone presents a claim for damages to the other persons and settlement is made with him, there is still only one deduction because all claims against the insurer are by one person and arise from the same accident. A also has a claim for return premium, which arose from a different event - cancellation of the policy - and this claim carries a new deduction.

B has a separate claim for his property damage.

The administrator of C has a claim for C's loss of earnings, medical expenses and pain and suffering, and possibly a claim for wrongful death. These would all be treated as a single claim. If C is survived by a widow or minor children, there is no administrator's claim for wrongful death, but a separate claim subject to a full $100.00 deduction.
If B, C's executor and C's widow all present claim, or if the Association settles with them on behalf of A, the general deductions are allowed, but if A settles the various claims and makes a single demand upon or settlement with the Association, then there is only one deduction for the accident.

The books and records of an insolvent insurer become the property of the receiver and the receiver is under no duty to deliver them to the Association, but the receiver must, upon demand, furnish copies to the Association. Cost of such copies must ultimately be paid from the general assets of the insolvent insurer whether the copies be furnished free or whether paid for by the Association and then the cost made the basis of a preferred claim by the Association against the receiver.

A proper respect for their several obligations to each other and to those they serve should impel the receiver and the Association to work out a harmonious plan under which both may make the most use of the original records and require a minimum of copying.

It is, therefore,

ADJUDGED that Chapter 70-20, Laws of Florida, is null and void, and

ADJUDGED that, if valid, it be construed as hereinabove set forth.

DONE at Tallahassee, Florida this 34th day of November, 1971.

Hugh M. Taylor
Judge

Copies will be mailed by the Rehabilitation & Liquidation Department.
Thomas D. O'MALLEY, etc., Appellant, v. The FLORIDA INSURANCE GUARANTY ASSOCIATION, Inc., etc., et al., Appellee.

The FLORIDA INSURANCE GUARANTY ASSOCIATION, Inc., etc., Appellant, v. Thomas D. O'MALLEY, etc., et al., Appellee.

No. 41732.

Supreme Court of Florida.


Appeal by State Insurance Guaranty Association and by treasurer and ex officio insurance commissioner from a decision of the Circuit Court, Leon County, Hugh M. Taylor, J., invalidating Insurance Guaranty Association Act which created the Association, a nonprofit corporation, as mechanism for payment of covered claims under specified classes of policies of insolvent insurers. The Supreme Court, Ervin, J., held that the Association is not a special "private corporation," within meaning of constitutional prohibition against any special law or general law of local application pertaining to a private corporation or granting any privilege to a private corporation, but rather is a public corporation of statewide authority created for public purposes relevantly connected with administration of government. F.S.A. Const. art. 3, § 11 (a) (12); F.S.A. §§ 631.50—631.67.

See publication Words and Phrases for other judicial constructions and definitions.

1. Statutes (79(2)

State Insurance Guaranty Association, a nonprofit corporation created pursuant to Insurance Guaranty Association Act, is not a special "private corporation," within meaning of constitutional prohibition against any special law or general law of local application pertaining to a private corporation or granting any privilege to a private corporation, but rather is a public corporation of statewide authority created for public purposes relevantly connected with administration of government. F.S.A. Const. art. 3, § 11(a) (12); F.S.A. §§ 631.50—631.67.

2. Statutes (79(2)

"Private corporations," within meaning of constitutional prohibition against any special law or general law of general application pertaining to a private corporation or granting any privilege to a private corporation, are corporations which have no official duties or concern with affairs of government, are voluntarily organized and not bound to perform any act solely for government benefit but rather have primary object of personal emolument of its stockholders. F.S.A. Const. art. 3, § 11(a) (12).

3. Statutes (79(2)

Insurance Guaranty Association Act is, for purpose of constitutional prohibition against any special law or general law of local application pertaining to a private corporation or granting any privilege to a private corporation, a general law of statewide application in its operative effects and is not a "local law" or "special law"; and thus, even though under such Act a public corporation has been created and functions as such, notice of intention to seek its en-
We here consider an appeal from a decision of the Circuit Court of Leon County, Florida, invalidating Ch. 70-20, Laws of Florida 1970, which appears as F.S. Sections 631.50 to 631.67 F.S.A., inclusive, 1970 Supplement to the Florida Statutes, 1969. Ch. 70-20 created the Florida Insurance Guaranty Association, Inc., a non-profit corporation, as the mechanism for the payment of covered claims under certain classes of insurance policies of insurers which have become insolvent.

To raise the funds necessary to administer and pay covered claims and other expenses, the statute provides for an assessment on certain casualty insurers doing business in the state and selling the class of insurance policies involved.

First American Insurance Company, pursuant to order of the Circuit Court of the Eleventh Judicial Circuit in and for Dade County, Florida, dated February 23, 1971, was adjudicated insolvent and the Insurance Commissioner of Florida as Receiver was directed to liquidate the assets of said insurer.

Pursuant to the aforesaid adjudication, and the provisions of Chapter 70-20, an assessment was made on all insurers doing business in Florida and writing the classes of business written by the said First American Insurance Company.

Some affected insurers failed to pay the said assessment while others made payment alleging the unconstitutionality of the Act pursuant to which the assessment was made. A dispute arose between the Receiver and the Guaranty Association as to what constituted a covered claim as well as other questions involving the interpretation of the provisions of Chapter 70-20.

The failure of the insurers to pay the assessment and the dispute between the Receiver and the Guaranty Association culminated in an action for declaratory judgment being filed by both parties.
Thomas D. O'Malley, as Treasurer and ex-officio Insurance Commissioner of the State of Florida and as Receiver of First American Insurance Company, together with The Florida Insurance Guaranty Association, Inc., a non-profit corporation, as appellants, on appeal here seek reversal of the Circuit Court judgment invalidating Ch. 70–20.

We reverse for the reasons hereinafter set forth.

The Circuit Court held Ch. 70–20 unconstitutional for several reasons, first, because Section 11(a) (12) of Article III of the State Constitution, F.S.A., provides there shall be no special law or general law of local application pertaining to a private corporation or granting any privilege to a private corporation.


[2] Private corporations are those which have no official duties or concern with the affairs of government, are voluntarily organized and are not bound to perform any act solely for government benefit, but the primary object of which is the personal emolument of its stockholders. See McKim v. Odum (Md.) 3 Bland. 407, 418. Duval County v. Charleston Lumber Co., 45 Fla. 256, 33 So. 531.

Examples of public corporations in Florida are: the rural electrical cooperatives, city housing authorities, The Inter-American Cultural and Trade Center Authority, the Soil and Water Conservation Districts, and the Jacksonville Expressway Authority. Their business ordinarily is stipulated by the Legislature to fill a public need without private profit to any organizers or stockholders. Their function is to promote the public welfare and often they implement governmental regulations within the state's police power. In a word, they are organized for the benefit of the public.

The Guaranty Association considered here falls within the category just described. It is a public or quasi-public corporation. It is a legislatively declared "mechanism" to aid and benefit numerous citizens many of whom comply with state requirements in obtaining casualty and other insurance coverage for themselves and have suffered loss of the insurance protection they obtained because of the insolvency of their insurers.

[3] Chapter 70–20 by reason of its described nature and purpose is a general law of statewide application in its operative effects and is not a local or special law. Compare State ex rel. Buford v. Shepard, 84 Fla. 206, 93 So. 667; State ex rel. Landis v. Harris, 120 Fla. 555, 163 So. 237; and Milk Commission v. Dade County Dairies, 11-5 Fla. 519, 200 So. 83. Being a general law for a statewide purpose although under it a public corporation has been created and functions as such, notice of intention to seek its enactment was not required by Sections 10 and 11(b) of Article III of the State Constitution since it has general and not limited application affecting only a particular locality.

[4] The Circuit Court appears to have found Ch. 70–20 violative of several other specific provisions of the State Constitution, i.e. (1) Section 4(d) and (e) of Article IV which provides the comptroller as the state's fiscal officer shall settle and approve accounts against the state; and the treasurer shall keep all state funds and disburse the same only upon order of the
Fla. comptroller countersigned by the governor;
(2) Section 1(c) and (d) of Article VII which provides no money shall be drawn from the treasury except in pursuance of appropriations made by law and that provision shall be made by law for raising sufficient revenue to defray the expenses of the state for each fiscal period; (3) Section 11 of Article VII which prohibits the issuance of state bonds pledging the full faith and credit of the state, except upon expressly stated conditions and prerequisites therein, and (4) Section 10 of Article VII which prohibits the state and any of its subdivisions, units or agencies from becoming a joint owner or stockholder of, or give, lend or use its taxing power or credit to any corporation, association or person, with certain expressly stated exceptions.

We do not find that Ch. 70-20 violates any of the constitutional provisions referred to in the foregoing paragraph.

It is true the funds derived by the Guaranty Association to pay insolvent claims of insured come from assessment of solvent insurers or from claims paid to the association by receivers of insolvent insurers. These funds are not required by Ch. 70-20 to be deposited in the state treasury and paid out in the same manner and by the same constitutional officers as are state tax funds. But such funds are not in the class of state tax revenue or general funds and do not come within the ambit of the constitutional provisions that govern the deposit and disbursement of state tax or general revenue funds. Compare State v. Florida State Improvement Commission, 1947, 158 Fla. 743, 30 So.2d 97. In that case assessments originally collected from self-insurer employers and employer workmen's compensation insurance carriers and paid into the administrative fund of the state workmen's compensation division of the Florida Industrial Commission were pledged and used to liquidate revenue certificates issued to finance the building in which the W. C. Division was housed. Such funds were held in that case not to be state tax funds nor the property of the state but were administered by the Industrial Commission, the State Treasurer being the mere custodian of them for that purpose. They were thus analogized to be trust funds not state funds and the cases of Lainhart v. Catts, 73 Fla. 735, 75 So. 47, relating to funds administered by the Board of Commissioners of the Everglades Drainage District, and State ex rel. Watson v. Caldwell (Fla.1945), 156 Fla. 618, 23 So.2d 855, relating to funds administered by the Florida Improvement Commission, were cited in support.

[5] We find nothing unconstitutional in the provisions of the Act authorizing the Guaranty Association to borrow money within the limitations and for the purposes provided in Ch. 70-20. In any event, the Constitution prohibits any borrowing to be accomplished by the Association in the name or on the credit of the State. No state tax revenues or funds can be pledged to repay the same. For that matter, the statute expressly provides no state funds of any kind shall be allocated or paid to said association. Sec. 631.57(e) (d). Section 631.241 F.S. 1969, F.S.A., prior to the enactment of Ch. 70-20 empowered the State Insurance Department to borrow money and to secure its repayment by mortgage, pledge or otherwise of the property of an insolvent insurer. It is to be remembered that the dominant purpose of Ch. 70-20 is to avoid delay and to settle as soon as possible claims of insolvent insurers which are ripe for payment. Borrowing funds for this purpose within the strict limitations of the statute appears to be a legitimate legislative objection not violative of the Constitution.

[6] In conclusion, we note we have carefully scrutinized all the provisions embraced in Section 631.50 to 631.67 F.S. (derived from Chapter 70-20 and Chapter 70-439) 1970 supplement and the restructuring corrective measure House Bill 29-D, Ch. 71-970 of the Special Legislative Ses-
Citation held in November and December, 1971. We find nothing therein contrary to the Constitution. These provisions are regulations applicable to certain casualty and other insurers doing business in the State and appear within the Legislature's province to exercise under the police power for the benefit of the public. The utilization of a public corporation as a means of implementing the objectives of the legislation appears in no wise to violate the State Constitution. The assessment requirements are similar in nature to those levied upon self-insurers and insurance carriers in the area of workmen's compensation. It has never been doubted that the Legislature could legally require assessment against stockholders of defaulting banks. See 4 Fla. Jur. Banks and Trust Companies § 88 and Bedenbaugh v. Lawrence (1940) 141 Fla. 341, 193 So. 74; 90 A.L.R. 1063.

The Constitution limits the Legislature in certain particulars in respect to the appropriation, use and disbursement of all state revenues which are not treated and dealt with as specific trust funds. Here there is no question but that the funds to pay claims of insureds of insolvent insurers are not state revenues but are treated throughout as trust funds separate and apart from general tax funds or other state revenue.

Adequate safeguards appear to be provided in the statute for the collection and use of the trust funds as far as it is humanly possible by law to safeguard their collection and use. There appears to be conferred in the State Insurance Commissioner adequate supervisory authority over the organization and operation of the Guaranty Association to protect the public interest.

The decision of the Circuit Court is reversed and the cause remanded for further proceedings in accordance herewith.

ROBERTS, C. J., and CARLTON, ADKINS, BOYD, McCAIN and DEKLE, JJ., concur.
This law amended 631.60(3) and added 631.60(4) in Section 11, amended 631.67 in Section 18, and added 631.68 in Section 19. This law originated as HB 29-D of the 1971 Special Session (11/29/71-12/9/71). HB 29-D was part of the Governor's call for the special session. Portions of Laws of Florida, Chapter 70-20, the law creating the Florida Insurance Guaranty Association (FIGA), were held to be unconstitutional by the Leon County Circuit Court (FIGA vs. O'Malley & O'Malley vs. FIGA), and as that law provided no severability clause, the entire law was unconstitutional. The Governor and Legislature wanted to correct the constitutional problems with the FIGA act before it went before the Florida Supreme Court. Shortly after this law was passed the Florida Supreme Court reversed the Leon County Circuit Court decision (see O'Malley v. FIGA, etc. 257 So.2d 9 (1972)).

HB 29-D was essentially a re-write of Laws of Florida, Chapter 70-20 with the constitutional problems corrected. Two amendments were proposed for HB 29-D on the House floor, but were rejected as they were determined not to be within the scope of the call for the special session. There was not any formal Senate committee debate on HB 29-D.

The tape recording of the House Insurance Committee meeting of 11/30/71 gives a good summary of the background and intent of this legislation.
DOCUMENTATION CHECKLIST:

NOTE: All documentation obtained from the Florida State Archives is cited by the series and box number, i.e., "FSA S.19/200." "na" indicates that either that particular documentation does not apply or is non-existent.

Laws of Florida: Chapter 71-970, Sections 11, 18-19.

Florida Statutes: (see statute/law comparison)

History of Legislation: na

Prime Bill Version(s): na

Identical/Similar Bills: na


Senate Journal: na

Committee Staff Analyses and Reports:


Committee Meeting Tapes:

House Insurance Committee, 11/30/71. 1 tape. (FSA S. 414/147).

Floor Debate Tapes: na

Other Documentation:

House Insurance Committee, Minutes 11/30/71 with Leon County Circuit Court Opinion, FIGA vs. O'malley, etc., attached.
**FLORIDA SESSION LAW HISTORY/DOCUMENTATION ABSTRACT**

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House Insurance Committee, Minutes 11/30/71 with Leon County Circuit Court Opinion, FIGA vs. O'malley, etc., attached.

*** Denotes that material was sent to client on 9/7/80.