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1  
2 An act relating to insurer insolvency; amending s.  
3 631.015, F.S.; adding the Insurer Receivership Model  
4 Act to a list of acts that extend reciprocity in the  
5 treatment of policyholders in receivership if such act  
6 is enacted in other states; amending s. 631.021, F.S.;  
7 adding the Florida Health Maintenance Organization  
8 Consumer Assistance Plan to a list of entities that  
9 must be given reasonable written notice by the  
10 Department of Financial Services of hearings  
11 pertaining to certain insurers; revising the exclusive  
12 jurisdiction of the Circuit Court of Leon County, upon  
13 issuance of specified orders, of an insurer's assets  
14 or property in a delinquency proceeding; providing  
15 construction; amending s. 631.031, F.S.; requiring an  
16 insurer to file its response and defenses to a certain  
17 order within a specified timeframe; requiring that a  
18 hearing to determine whether cause exists to appoint  
19 the department as receiver must be commenced by a  
20 specified time; amending s. 631.041, F.S.; providing  
21 an exception for the Office of Insurance Regulation  
22 from applicability of a certain application or  
23 petition operating as an automatic stay; amending s.  
24 631.141, F.S.; authorizing a receiver to assume or  
25 reject an insurer's executory contract or unexpired

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26 | lease; authorizing the department as domiciliary  
27 | receiver to pay certain expenses or reject certain  
28 | contracts; providing that, under certain  
29 | circumstances, certain persons of an insurer that is  
30 | under liquidation are permanently discharged and have  
31 | no further authority over the affairs or assets of the  
32 | insurer; amending s. 631.152, F.S.; conforming a  
33 | cross-reference; creating s. 631.1521, F.S.;  
34 | prohibiting certain defenses in actions by and against  
35 | a receiver; authorizing certain defenses in actions by  
36 | and against a receiver; specifying that a principal  
37 | under a surety bond or surety undertaking, under  
38 | certain circumstances, is entitled to credit for the  
39 | value of certain property against a reimbursement  
40 | obligation to the receiver; limiting admissibility of  
41 | evidence of fraud in the inducement to evidence  
42 | contained in insurer records; creating s. 631.1522,  
43 | F.S.; prohibiting, in a receiver's proceeding or  
44 | claim, the assertion of defenses or claims by an  
45 | affiliate or certain persons of an insurer except  
46 | under certain circumstances; providing construction;  
47 | amending s. 631.181, F.S.; authorizing a receivership  
48 | court to allow alternative procedures and requirements  
49 | for filing proofs of claim or allowing or proving  
50 | claims; providing construction; prohibiting a

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51 receivership court from waiving certain filing  
52 requirements; providing conditions in which claims  
53 will be late-filed; authorizing a receiver to petition  
54 the receivership court to set certain deadlines;  
55 requiring a receiver to provide notice of filing a  
56 certain petition to certain claimants; amending s.  
57 631.191, F.S.; providing definitions; providing  
58 applicability; requiring that specified large  
59 deductible claims under certain workers' compensation  
60 policies must be turned over to the applicable  
61 responsible guaranty association for handling;  
62 providing for construction relating to payment of  
63 deductible claims; authorizing receivers to collect  
64 reimbursements owed for certain deductible claims;  
65 providing requirements for such collections; providing  
66 for construction relating to such collections;  
67 requiring receivers to use collateral, when available,  
68 to secure certain obligations; providing that a  
69 guaranty association is entitled to collateral for a  
70 certain purpose; providing for construction relating  
71 to certain distributions; requiring receivers to draw  
72 down collateral under certain circumstances; providing  
73 a procedure for payment of claims; authorizing the  
74 return of excess collateral under certain  
75 circumstances; providing that a receiver is entitled

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76 | to deduct certain expenses from the collateral or  
77 | deductible reimbursements; providing for construction;  
78 | amending s. 631.192, F.S.; prohibiting specified  
79 | claims; amending s. 631.271, F.S.; adding and revising  
80 | claims to a list that establishes the priority of  
81 | distribution of claims from an insurer's estate;  
82 | specifying when interest on claims accrue and the  
83 | interest rate calculation; amending s. 631.391, F.S.;  
84 | specifying that certain persons in relation to an  
85 | insurer who must cooperate with the department or  
86 | office in certain proceedings or investigations  
87 | include present or former roles; defining the term  
88 | "person"; amending s. 631.395, F.S.; requiring an  
89 | order of liquidation to authorize the release of  
90 | certain claims files, records, documents, or claims,  
91 | rather than only copies of the claims files, records,  
92 | documents, or claims; amending s. 631.397, F.S.;  
93 | authorizing the department as receiver to apply to the  
94 | court for approval of a specified proposal, rather  
95 | than requiring the department to make such application  
96 | within a specified timeframe; deleting a specified  
97 | notice requirement of the department; deleting a  
98 | provision authorizing the court to take action on the  
99 | application under certain circumstances; providing an  
100 | effective date.

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

Section 1. Section 631.015, Florida Statutes, is amended to read:

631.015 Reciprocity; treatment of policyholders.—  
Reciprocity in the treatment of policyholders in receivership is extended to those states which, in substance and effect, enact the National Association of Insurance Commissioners Rehabilitation and Liquidation Model Act, ~~or~~ the Uniform Insurers Liquidation Act, or the Insurer Receivership Model Act.

Section 2. Section 631.021, Florida Statutes, is amended to read:

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

(1) The circuit court shall have original jurisdiction of any delinquency proceeding under this chapter, and any court with jurisdiction is authorized to make all necessary or proper orders to carry out the purposes of this chapter. Any delinquency proceeding in this chapter is in equity.

(2) The venue of a delinquency proceeding or summary proceeding against a domestic, foreign, or alien insurer shall be in the Circuit Court of Leon County.

(3) A delinquency proceeding pursuant to this chapter constitutes the sole and exclusive method of liquidating,

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126 | rehabilitating, reorganizing, or conserving an insurer. A ~~No~~  
 127 | court may not ~~shall~~ entertain a petition for the commencement of  
 128 | such a proceeding unless the petition has been filed in the name  
 129 | of the state on the relation of the department. The Florida  
 130 | Insurance Guaranty Association, Incorporated, the Florida  
 131 | Workers' Compensation Insurance Guaranty Association,  
 132 | Incorporated, the Florida Health Maintenance Organization  
 133 | Consumer Assistance Plan, and the Florida Life and Health  
 134 | Guaranty Association, Incorporated, shall be given reasonable  
 135 | written notice by the department of all hearings that ~~which~~  
 136 | pertain to an adjudication of insolvency of a member insurer.

137 |         (4) An appeal shall lie to the District Court of Appeal,  
 138 | First District, from an order granting or refusing  
 139 | rehabilitation, liquidation, or conservation and from every  
 140 | order in a delinquency proceeding having the character of a  
 141 | final order as to the particular portion of the proceeding  
 142 | embraced therein.

143 |         (5) No service of process against the department in its  
 144 | capacity as receiver shall be effective unless served upon a  
 145 | person designated by the receiver and filed with the circuit  
 146 | court having jurisdiction over the delinquency proceeding. The  
 147 | designated person shall refuse to accept service if acceptance  
 148 | would violate a stay against legal proceedings involving an  
 149 | insurer that is the subject of delinquency proceedings or would  
 150 | violate any orders of the circuit court governing a delinquency

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151 proceeding. The person denied service may petition the circuit  
 152 court having jurisdiction over the delinquency proceeding for  
 153 relief from the receiver's refusal to accept service. This  
 154 subsection shall be strictly construed, and any purported  
 155 service on the receiver or the department that is not in  
 156 accordance with this subsection shall be null and void.

157 (6) The domiciliary court acquiring jurisdiction over  
 158 persons subject to this chapter may exercise exclusive  
 159 jurisdiction to the exclusion of all other courts, except as  
 160 limited by the provisions of this chapter. Upon the issuance of  
 161 an order of conservation, rehabilitation, or liquidation, the  
 162 Circuit Court of Leon County has ~~shall have~~ exclusive  
 163 jurisdiction over all ~~with respect to~~ assets or property of the  
 164 any insurer, wherever located, including property located  
 165 outside the territorial limits of the state ~~subject to such~~  
 166 ~~proceedings and claims against said insurer's assets or~~  
 167 ~~property.~~

168 (7) This chapter constitutes this state's insurer  
 169 receivership laws, and these laws must be construed as  
 170 consistent with each other. If there is a conflict between this  
 171 chapter and any other law, this chapter prevails.

172 Section 3. Subsections (3) and (4) are added to section  
 173 631.031, Florida Statutes, to read:

174 631.031 Initiation and commencement of delinquency  
 175 proceeding.—

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176       (3) An insurer subject to an order to show cause entered  
 177 pursuant to this chapter must file its written response to the  
 178 order, together with any defenses it may have to the  
 179 department's allegations, no later than 20 days after service of  
 180 the order to show cause, but no less than 15 days before the  
 181 date of the hearing set by the order to show cause.

182       (4) A hearing held pursuant to this chapter to determine  
 183 whether cause exists for the department to be appointed receiver  
 184 must be commenced within 60 days after an order directing an  
 185 insurer to show cause.

186       Section 4. Subsection (1) of section 631.041, Florida  
 187 Statutes, is amended to read:

188       631.041 Automatic stay; relief from stay; injunctions.—

189       (1) An application or petition under s. 631.031 operates  
 190 as a matter of law as an automatic stay applicable to all  
 191 persons and entities, other than the receiver and the office,  
 192 which shall be permanent and survive the entry of an order of  
 193 conservation, rehabilitation, or liquidation, and which shall  
 194 prohibit:

195       (a) The commencement or continuation of judicial,  
 196 administrative, or other action or proceeding against the  
 197 insurer or against its assets or any part thereof;

198       (b) The enforcement of a judgment against the insurer or  
 199 an affiliate obtained either before or after the commencement of  
 200 the delinquency proceeding;



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201 (c) Any act to obtain possession of property of the  
 202 insurer;

203 (d) Any act to create, perfect, or enforce a lien against  
 204 property of the insurer, except that a secured claim as defined  
 205 in s. 631.011(21) may proceed under s. 631.191 after the order  
 206 of liquidation is entered;

207 (e) Any act to collect, assess, or recover a claim against  
 208 the insurer, except claims as provided for under this chapter;  
 209 and

210 (f) The setoff or offset of any debt owing to the insurer,  
 211 except offsets as provided in s. 631.281.

212 Section 5. Present subsections (3) through (5) and (6)  
 213 through (10) of section 631.141, Florida Statutes, are  
 214 renumbered as subsections (4) through (6) and (8) through (12),  
 215 respectively, new subsections (3) and (7) are added to that  
 216 section, and present subsection (8) is amended, to read:

217 631.141 Conduct of delinquency proceeding; domestic and  
 218 alien insurers.—

219 (3) The receiver may assume or reject any executory  
 220 contract or unexpired lease of the insurer.

221 (7) The department as domiciliary receiver may pay any  
 222 expenses under contracts, leases, employment agreements, or  
 223 other arrangements entered into by the insurer before  
 224 receivership as the department deems necessary for the purposes  
 225 of this chapter. The department is not required to pay any such

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226 expenses that it determines are not necessary and may reject any  
 227 contract pursuant to subsection (3).

228 (10)-(8) The department as domiciliary receiver may take  
 229 such action as it deems necessary or appropriate to reform and  
 230 revitalize the insurer. The department shall have all the powers  
 231 of the directors, officers, and managers, whose authority shall  
 232 be suspended, except as they are redelegated by the receiver.  
 233 The receiver shall have full power to direct and manage the  
 234 affairs of the insurer, to hire and discharge employees, and to  
 235 deal with the property and business of the insurer. In the event  
 236 of the liquidation of an insurer domiciled in this state, and  
 237 notwithstanding any provision of chapter 605, chapter 607,  
 238 chapter 617, chapter 620, or chapter 621, all officers,  
 239 directors, and managers of the insurer are permanently  
 240 discharged and have no further authority of any kind over the  
 241 affairs or assets of the insurer, except as may be redelegated  
 242 by the department.

243 Section 6. Subsection (4) of section 631.152, Florida  
 244 Statutes, is amended to read:

245 631.152 Conduct of delinquency proceeding; foreign  
 246 insurers.—

247 (4) Paragraph 631.141(9)(b) ~~Section 631.141(7)(b)~~ applies  
 248 to ancillary delinquency proceedings opened for the purpose of  
 249 obtaining records necessary to adjudicate the covered claims of  
 250 Florida policyholders.

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251 Section 7. Section 631.1521, Florida Statutes, is created  
 252 to read:

253 631.1521 Actions by and against the receiver.-

254 (1) An allegation by the receiver of improper or  
 255 fraudulent conduct against any person may not be the basis of a  
 256 defense by a third party to the enforcement of a contractual  
 257 obligation owed to the insurer. This section does not bar a  
 258 third party from the right to raise a defense that the conduct  
 259 was materially and substantially related to the contractual  
 260 obligation for which enforcement is sought.

261 (2) A prior wrongful or negligent action of any present or  
 262 former officer, manager, director, trustee, owner, employee, or  
 263 agent of the insurer may not be asserted as a defense to a claim  
 264 by the receiver under a theory of estoppel, comparative fault,  
 265 intervening cause, proximate cause, reliance, mitigation of  
 266 damages, or otherwise. However, the affirmative defense of fraud  
 267 in the inducement may be asserted against the receiver in a  
 268 claim based on a contract; and a principal under a surety bond  
 269 or a surety undertaking is entitled to credit for the value of  
 270 any property pledged to secure the reimbursement obligation  
 271 against any reimbursement obligation to the receiver, to the  
 272 extent that the receiver has possession or control of the  
 273 property, or that the insurer or its agents misappropriated such  
 274 property, which includes, but is not limited to, the comingling  
 275 of such property. Evidence of fraud in the inducement is

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276 admissible only if it is contained in the records of the  
 277 insurer.

278 (3) An action or inaction by an insurance regulatory  
 279 authority may not be asserted as a defense to a claim by the  
 280 department.

281 Section 8. Section 631.1522, Florida Statutes, is created  
 282 to read:

283 631.1522 Unrecorded obligations and defenses and claims of  
 284 affiliates.-

285 (1) In any proceeding or claim by the receiver, an  
 286 affiliate, a controlled or controlling person, or a present or  
 287 former officer, manager, director, trustee, or shareholder of  
 288 the insurer may not assert any defense unless:

289 (a) Evidence of the defense was recorded in the books and  
 290 records of the insurer at or about the time the events giving  
 291 rise to the defense occurred; and

292 (b) If required by statutory accounting practices and  
 293 procedures, such events were timely reported on the insurer's  
 294 official financial statements filed with the office.

295 (2) An affiliate, a controlled or controlling person, or a  
 296 present or former officer, manager, director, trustee, or  
 297 shareholder of the insurer may not assert any claim unless:

298 (a) The obligations were recorded in the books and records  
 299 of the insurer at or about the time the obligations were  
 300 incurred; and

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301 (b) If required by statutory accounting practices and  
 302 procedures, the obligations were timely reported on the  
 303 insurer's official financial statements filed with the office.

304 (3) This section does not bar claims based on unrecorded  
 305 or unreported transactions by the receiver against any  
 306 affiliate, controlled or controlling person, or present or  
 307 former officer, manager, director, trustee, or shareholder of  
 308 the insurer.

309 Section 9. Paragraph (g) is added to subsection (2) of  
 310 section 631.181, Florida Statutes, subsection (3) is amended,  
 311 and subsections (4) and (5) are added to that section, to read:

312 631.181 Filing and proof of claim.—

313 (2)

314 (g) Upon application of the receiver:

315 1. The receivership court may allow alternative procedures  
 316 and requirements for the filing of proofs of claim or for  
 317 allowing or proving claims.

318 2. If the receivership court waives the requirements of  
 319 filing a proof of claim for a person, class, or group of  
 320 persons, a timely proof of claim by such person, class, or group  
 321 is deemed to be filed for all purposes. However, the  
 322 receivership court may not waive guaranty association or  
 323 coverage determination proof of claim filing requirements, to  
 324 the extent that the guaranty fund statute or filing requirements  
 325 are inconsistent with the receivership court's waiver of proof.

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326 (3) After the entry of the order of liquidation against a  
327 Florida-domiciled insurer, regardless of any prior notice that  
328 may have been given to creditors, the receiver shall notify all  
329 persons who may have claims against the insurer that they must  
330 file such claims with it at a place and within the time  
331 specified in the notice, or else such claims will be late-filed  
332 ~~forever barred~~. The Florida receiver need not give such notice  
333 in ancillary proceedings if the receiver obtains an order from  
334 the court authorizing the receiver to not send out such notices,  
335 which order the court shall issue upon satisfactory evidence  
336 that the domiciliary receiver will be sending out similar  
337 notices and will accept and evaluate claims from Florida  
338 residents, that Florida residents may have objections to  
339 evaluations heard in Florida, and that there are reasonable  
340 assurances that Florida policyholders and claimants will be  
341 treated fairly and equally as compared to residents of the  
342 domicile state. The time specified in the notice shall be as  
343 fixed by the court for filing of claims and shall be not less  
344 than 6 months after the entry of the order of insolvency. The  
345 notice shall be given in such manner and for such reasonable  
346 period of time as may be ordered by the court.

347 (4) The receiver may petition the receivership court to  
348 set a date certain before which all contingent or unliquidated  
349 claims are final. In addition to the notice requirements in this  
350 section, the receiver shall give notice of filing the petition

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351 to all claimants with claims that remain contingent or  
 352 unliquidated under this section.

353 (5) Notwithstanding any other provision of this chapter,  
 354 the receiver may petition the receivership court to set a date  
 355 certain after which no further claims may be filed.

356 Section 10. Section 631.191, Florida Statutes, is amended  
 357 to read:

358 631.191 Special deposit claims; ~~and~~ secured claims;  
 359 administration of workers' compensation large deductible  
 360 policies and insured collateral.—

361 (1) SPECIAL DEPOSIT CLAIMS.—The owners of special deposit  
 362 claims against an insurer against which a liquidation order has  
 363 been entered in this or any other state shall be given priority  
 364 against their several special deposits in accordance with the  
 365 provisions of the statutes governing the creation and  
 366 maintenance of such deposits. If there is a deficiency in any  
 367 such deposit so that the claims secured thereby are not fully  
 368 discharged therefrom, the claimants may share in the general  
 369 assets, but such sharing shall be deferred until general  
 370 creditors, and also claimants against other special deposits who  
 371 have received smaller percentages from their respective special  
 372 deposits, have been paid percentages of their claims equal to  
 373 the percentage paid from the special deposit.

374 (2) SECURED CLAIMS.—

375 (a) The owner of a secured claim against an insurer

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376 | against which a liquidation order has been entered in this or  
 377 | any other state may surrender her or his security and file her  
 378 | or his claim as a general creditor, or the claim may be  
 379 | discharged by resort to the security, in which case the  
 380 | deficiency, if any, shall be treated as a claim against the  
 381 | general assets of the insurer on the same basis as claims of  
 382 | unsecured creditors. If the amount of the deficiency has been  
 383 | adjudicated in ancillary proceedings as provided in this  
 384 | chapter, or if it has been adjudicated by a court of competent  
 385 | jurisdiction in a proceeding in which the domiciliary receiver  
 386 | has had notice and an opportunity to be heard, such amount shall  
 387 | be conclusive; otherwise the amount shall be determined in the  
 388 | delinquency proceeding in the domiciliary state.

389 |       (b) The value of any security held by a secured creditor  
 390 | shall be determined under supervision of the court by:

391 |           1. Converting the same into money according to the terms  
 392 | of the agreement pursuant to which the security was delivered to  
 393 | such creditor; or

394 |           2. If no such agreement exists, the court shall determine  
 395 | the value in the event the creditor and the receiver cannot  
 396 | agree upon same.

397 |       (3) ADMINISTRATION OF WORKERS' COMPENSATION LARGE  
 398 | DEDUCTIBLE POLICIES AND INSURED COLLATERAL.-

399 |       (a) Definitions.-As used in this subsection, the term:

400 |           1. "Collateral" means cash, a letter of credit, a surety



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401 bond, or any other form of security posted by the insured, or by  
402 a captive insurer or reinsurer, to secure the insured's  
403 obligation under a large deductible policy to pay deductible  
404 claims or to reimburse the insurer for deductible claim  
405 payments. Collateral may also secure an insured's obligation to  
406 reimburse or pay the insurer as may be required for other  
407 secured obligations.

408 2. "Deductible claim" means any claim that is within the  
409 deductible under a large deductible policy, including a claim  
410 for loss and defense and cost containment expense, unless such  
411 expense is excluded by the terms of the policy.

412 3.a. "Large deductible policy" means a combination of one  
413 or more workers' compensation policies and endorsements issued  
414 to an insured, and contracts or security agreements entered into  
415 between an insured and the insurer, in which the insured has  
416 agreed with the insurer to:

417 (I) Pay directly the initial portion of any claim under  
418 the policy up to a specified dollar amount or the expenses  
419 related to any claim; or

420 (II) Reimburse the insurer for its payment of any claim or  
421 related expenses under the policy up to the specified dollar  
422 amount of the deductible.

423 b. The term also includes policies that contain an  
424 aggregate limit on the insured's liability for all deductible  
425 claims in addition to a per-claim deductible limit. A policy

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426 must meet the current guidelines for large deductible workers'  
 427 compensation filings as defined by the office, including the  
 428 eligibility standards regarding the minimum standard premium and  
 429 the minimum deductible to be deemed a large deductible policy.

430 c. The term does not include policies, endorsements, or  
 431 agreements providing that the initial portion of any covered  
 432 claim must be self-insured and that the insurer has no payment  
 433 obligation within the self-insured retention.

434 d. The term does not include policies that provide for  
 435 retrospectively rated premium payments by the insured or  
 436 reinsurance arrangements or agreements, except to the extent  
 437 such arrangements or agreements assume, secure, or pay the  
 438 policyholder's large deductible obligations.

439 4. "Other secured obligations" means obligations of an  
 440 insured to an insurer other than those under a large deductible  
 441 policy, such as those under a reinsurance agreement or other  
 442 agreement involving retrospective premium obligations, the  
 443 performance of which is secured by collateral that also secures  
 444 an insured's obligations under a large deductible policy.

445 (b) Applicability.—

446 1. This subsection applies to workers' compensation large  
 447 deductible policies issued by an insurer that is subject to  
 448 delinquency proceedings under this chapter. This subsection does  
 449 not apply to first-party claims, or to covered claims funded by  
 450 a guaranty association above the deductible unless paragraph (c)

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451 applies. Large deductible policies must be administered in  
 452 accordance with the terms of the policy, except to the extent  
 453 such terms conflict with this subsection.

454 2. This subsection applies to all delinquency proceedings  
 455 that commence on or after July 1, 2017.

456 (c) Handling of large deductible claims.—Unless otherwise  
 457 agreed to by the responsible guaranty association, all large  
 458 deductible claims that are also covered claims as defined by an  
 459 applicable guaranty association law, including those that may  
 460 have been funded by an insured before liquidation, must be  
 461 turned over to the guaranty association for handling. To the  
 462 extent the insured funds or pays the deductible claim pursuant  
 463 to an agreement by the guaranty fund or otherwise, the insured's  
 464 funding or payment of a deductible claim extinguishes the  
 465 obligations, if any, of the receiver and any guaranty  
 466 association to pay such claim. A charge may not be made against  
 467 the receiver or a guaranty association on the basis of an  
 468 insured's funding or payment of a deductible claim.

469 (d) Deductible claims paid by a guaranty association.—

470 1. To the extent a guaranty association pays any  
 471 deductible claim for which an insurer would have been entitled  
 472 to reimbursement from an insured, a guaranty association is  
 473 entitled to the amount of reimbursements received or collateral  
 474 available, subject to paragraph (g). Reimbursements paid to the  
 475 guaranty association pursuant to this paragraph may not be

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476 treated as distributions under s. 631.271 or as early access  
 477 payments under s. 631.397(1).

478 2. To the extent that a guaranty association pays a  
 479 deductible claim that is not reimbursed from collateral or by  
 480 insured payments, or the guaranty association incurred expenses  
 481 in connection with large deductible policies that are not  
 482 reimbursed under this subsection, the guaranty association is  
 483 entitled to assert a claim for those amounts in the delinquency  
 484 proceeding.

485 3. This paragraph does not limit any right of the receiver  
 486 or a guaranty association which may otherwise exist under  
 487 applicable law to obtain reimbursement from insureds for claims  
 488 payments made by the guaranty association under policies of the  
 489 insurer or for the guaranty association's related expenses.

490 (e) Collections.-

491 1. The receiver may collect reimbursements owed for  
 492 deductible claims as provided in this paragraph, and must use  
 493 reasonable efforts to collect such reimbursements from the  
 494 insured or the party that is obligated to pay the deductible as  
 495 specified in the large deductible policy or other agreement. The  
 496 receiver may bill insureds and others for reimbursement of  
 497 deductible claims that are:

498 a. Paid by the insurer before the commencement of  
 499 delinquency proceedings;

500 b. Paid by a guaranty association upon receipt by the

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501 receiver of notice from a guaranty association of reimbursable  
 502 payments; or  
 503 c. Paid or allowed by the receiver.  
 504 2. If the insured or other party does not make payment  
 505 within the time specified in the large deductible policy, or, if  
 506 no time is specified, within a reasonable time after the date of  
 507 billing, the receiver may take reasonable steps to collect any  
 508 reimbursements owed.  
 509 3. The insolvency of the insurer or its inability to  
 510 perform any of its obligations under the large deductible policy  
 511 may not be a defense to the insured's reimbursement obligation  
 512 under the large deductible policy.  
 513 4. An allegation of improper handling or payment of a  
 514 deductible claim by the receiver or a guaranty association may  
 515 not be a defense to the insured's reimbursement obligations  
 516 under the large deductible policy.  
 517 (f) Collateral.—  
 518 1. Subject to this paragraph, the receiver shall use  
 519 collateral, when available, to secure the insured's obligation  
 520 to fund or reimburse deductible claims or other secured  
 521 obligations or payment obligations. A guaranty association is  
 522 entitled to collateral as provided for in this paragraph to the  
 523 extent needed to reimburse a guaranty association for the  
 524 payment of a deductible claim. Any distributions made to a  
 525 guaranty association pursuant to this paragraph may not be

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526 treated as distributions under s. 631.271 or as early access  
 527 payments under s. 631.397(1).

528 2. The receiver shall draw down collateral to the extent  
 529 necessary in the event the insured fails to:

530 a. Perform its funding or payment obligations under any  
 531 large deductible policy;

532 b. Pay deductible claim reimbursements within the time  
 533 specified in the large deductible policy, or, if no time is  
 534 specified, within 60 days after the date of the billing;

535 c. Pay amounts due to the estate for preliquidation  
 536 obligations;

537 d. Timely fund any other secured obligation; or

538 e. Timely pay expenses.

539 3. Claims that are validly asserted against the collateral  
 540 must be satisfied in the order in which such claims are received  
 541 by the receiver. However, if more than one creditor has a valid  
 542 claim against the same collateral and the available collateral,  
 543 along with billing collection efforts and to the extent that the  
 544 collateral is subject to other known secured obligations, are  
 545 together insufficient to pay each creditor in full, the receiver  
 546 may prorate payments based on the ratio of the amount of claims  
 547 each creditor has to the total claims paid by all such  
 548 creditors.

549 4. Excess collateral may be returned to the insured, as  
 550 determined by the receiver, after a periodic review of claims

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551 paid, outstanding case reserves, and a factor for claims that  
 552 were incurred but not reported.

553 (g) Receiver's expenses.—The receiver is entitled to  
 554 deduct from the collateral or from the deductible reimbursements  
 555 reasonable and actual expenses incurred in connection with the  
 556 collection of the collateral and deductible reimbursements as  
 557 provided pursuant to s. 631.271.

558 (h) Construction.—This subsection does not limit or  
 559 adversely affect any rights or powers a guaranty association may  
 560 have under applicable state law to obtain reimbursement from  
 561 certain classes of policyholders for claims payments made by the  
 562 guaranty association under policies of the insolvent insurer, or  
 563 for related expenses the guaranty association incurs.

564 Section 11. Subsections (5) is added to section 631.192,  
 565 Florida Statutes, to read:

566 631.192 Allowance of certain claims.—

567 (5) A claim may not be allowed for postjudgment interest  
 568 accrued after the date the court enters the order of  
 569 liquidation.

570 Section 12. Paragraphs (a), (b), and (j) of subsection (1)  
 571 of section 631.271, Florida Statutes, are amended to read:

572 631.271 Priority of claims.—

573 (1) The priority of distribution of claims from the  
 574 insurer's estate shall be in accordance with the order in which  
 575 each class of claims is set forth in this subsection. Every

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576 claim in each class shall be paid in full or adequate funds  
 577 shall be retained for such payment before the members of the  
 578 next class may receive any payment. No subclasses may be  
 579 established within any class. The order of distribution of  
 580 claims shall be:

581 (a) Class 1.—

582 1. All of the receiver's costs and expenses of  
 583 administration.

584 2. All of the expenses of a guaranty association or  
 585 foreign guaranty association in handling claims.

586 3. All of the deputy supervisor's costs and expenses of  
 587 administration incurred as a result of administrative  
 588 supervision under part VI of chapter 624.

589 (b) Class 2.—All claims under policies for losses  
 590 incurred, including third-party claims, all claims against the  
 591 insurer for liability for bodily injury or for injury to or  
 592 destruction of tangible property which claims are not under  
 593 policies, ~~and~~ all claims of a guaranty association or foreign  
 594 guaranty association, and all claims related to a patient's  
 595 healthcare coverage by physicians, hospitals, and other  
 596 providers of a health insurer or health maintenance  
 597 organization. All claims under life insurance and annuity  
 598 policies, whether for death proceeds, annuity proceeds, or  
 599 investment values, shall be treated as loss claims. That portion  
 600 of any loss, indemnification for which is provided by other



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601 benefits or advantages recovered by the claimant, may not be  
 602 included in this class, other than benefits or advantages  
 603 recovered or recoverable in discharge of familial obligations of  
 604 support or by way of succession at death or as proceeds of life  
 605 insurance, or as gratuities. No payment by an employer to her or  
 606 his employee may be treated as a gratuity.

607 (j) Class 10.—Interest on allowed claims of Classes 1  
 608 through 9. The rate of interest payable on an allowed claim must  
 609 accrue from the date the court enters the order of liquidation  
 610 until such time as the receivership court approves the  
 611 distribution. The interest rate must be calculated in accordance  
 612 with s. 55.03, ~~according to the terms of a plan to pay interest~~  
 613 ~~on allowed claims proposed by the liquidator and approved by the~~  
 614 ~~receivership court.~~

615 Section 13. Section 631.391, Florida Statutes, is amended  
 616 to read:

617 631.391 Cooperation of officers and employees.—

618 (1) Any present or former officer, director, manager,  
 619 trustee, agent, adjuster, employee, or independent contractor of  
 620 any insurer or affiliate and any other person who possesses any  
 621 executive authority over, or who exercises any control over, any  
 622 segment of the affairs of the insurer or affiliate shall fully  
 623 cooperate with the department and office in any proceeding under  
 624 this chapter or any investigation preliminary or incidental to  
 625 the proceeding. An order of rehabilitation or liquidation which

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626 results in the discharge or suspension of any of the persons  
 627 listed above does not operate to release such person from the  
 628 duty to cooperate with the department and office as set out  
 629 herein. As used in this section, the term "person" includes any  
 630 person who directly or indirectly exercises control over  
 631 activities of the insurer through any holding company or other  
 632 affiliate of the insurer. The term ~~To~~ "cooperate" includes, but  
 633 is not limited to, the following:

634 (a) To reply promptly in writing to any inquiry from the  
 635 department or office requesting such a reply;

636 (b) Promptly to make available and deliver to the  
 637 department or office any books, accounts, documents, other  
 638 records, information, data processing software, or property of  
 639 or pertaining to the insurer and in her or his possession,  
 640 custody, or control; or

641 (c) Promptly to provide access to all data processing  
 642 records in hard copy and in electronic form and to data  
 643 processing facilities and services.

644 (2) No person shall obstruct or interfere with the  
 645 department or office in the conduct of any delinquency  
 646 proceeding or any investigation preliminary or incidental  
 647 thereto.

648 (3) This section does not prohibit any person from seeking  
 649 legal relief from a court when aggrieved by the petition for  
 650 liquidation or other delinquency proceeding or by other orders.

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651 (4) Any person referred to in subsection (1) who fails to  
 652 cooperate with the department or office, or any other person who  
 653 obstructs or interferes with the department or office, in the  
 654 conduct of any delinquency proceeding or any investigation  
 655 preliminary or incidental thereto, is guilty of a misdemeanor of  
 656 the first degree, punishable as provided in s. 775.082 or by  
 657 fine of not more than \$10,000.

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

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

669 Section 14. Section 631.395, Florida Statutes, is amended  
 670 to read:

671 631.395 Guaranty fund; orders of court.—Any order of  
 672 liquidation issued pursuant to s. 631.111 or s. 631.131 must  
 673 ~~shall~~ authorize and direct the department as receiver to  
 674 coordinate the operation of the receivership with the operation  
 675 of any insurance guaranty fund authorized to operate in this

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676 | state and may authorize the department to provide data  
 677 | processing services for any appropriate guaranty fund. Such  
 678 | authorization must ~~shall~~ include, but not be limited to, release  
 679 | ~~of copies~~ of any of the following:

680 |       (1) Claims files, records, or documents pertaining to  
 681 | claims on file with the insolvent insurer; and

682 |       (2) Insurance claims filed with the receiver.

683 |       Section 15. Subsections (1), (4), and (5) of section  
 684 | 631.397, Florida Statutes, are amended to read:

685 |       631.397 Use of certain marshaled assets.—

686 |       (1) ~~Within 120 days of a final determination of insolvency~~  
 687 | ~~of an insurer by a court of competent jurisdiction of this~~  
 688 | ~~state,~~ The department, as receiver, may ~~shall~~ apply to the court  
 689 | for approval of a proposal to disburse assets out of such  
 690 | insurer's marshaled assets, as such assets become available, to  
 691 | each association entitled thereto or, if there are no assets  
 692 | available for such disbursement, then for approval of such  
 693 | proposal as the receiver deems appropriate. For the purposes of  
 694 | this section, the term "association" includes the Florida  
 695 | Insurance Guaranty Association, Incorporated, the Florida  
 696 | Workers' Compensation Insurance Guaranty Association, and any  
 697 | entity or person performing a function in another state similar  
 698 | to that performed in this state by the Florida Insurance  
 699 | Guaranty Association, Incorporated, or the Florida Workers'  
 700 | Compensation Insurance Guaranty Association, provided the

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701 Florida Insurance Guaranty Association, Incorporated, or the  
702 Florida Workers' Compensation Insurance Guaranty Association, is  
703 entitled to like payment under the laws of the association's  
704 state of domicile in respect to insolvent companies doing  
705 business in that state.

706 ~~(4) Notice of such application shall be given by the~~  
707 ~~department to the associations in, and to the commissioners of~~  
708 ~~insurance of, each of the states to which disbursement may be~~  
709 ~~made. Such notice shall be made by certified mail, first-class~~  
710 ~~postage prepaid, at least 15 days prior to submission of such~~  
711 ~~application to the court. Such notice shall be deemed to have~~  
712 ~~been made when deposited in the mail.~~

713 ~~(5) Action on the application may be taken by the court if~~  
714 ~~notice has been given pursuant to subsection (4) and the~~  
715 ~~department's proposal complies with subsection (2).~~

716 Section 16. This act shall take effect July 1, 2017.