HOUSE OF REPRESENTATIVES
FINAL BILL ANALYSIS

BILL #:	CS/HB 307	**FINAL HOUSE FLOOR ACTION:**	
SUBJECT/SHORT TITLE	Florida Life and Health Insurance Guaranty Association	119 **Y's** 0 **N's**	
SPONSOR(S):	Insurance & Banking Subcommittee; Drake	**GOVERNOR'S ACTION:**	Approved
COMPANION BILLS:	CS/SB 814		

SUMMARY ANALYSIS

CS/HB 307 passsed the House on April 20, 2017. The bill was amended by the Senate on May 3, 2017. The Senate passed the bill, as amended, on May 5, 2017, and returned the bill to the House. The House concurred in the Senate amendment and passed the bill, as amended, on May 5, 2017.

Florida operates five insurance guaranty funds and associations to ensure policyholders' paid insurance premiums are protected and outstanding claims are settled, up to limits provided by law, if their insurer is liquidated. Generally, a guaranty association is a not-for-profit corporation created by law directed to protect policyholders from financial losses and delays in claim payment and settlement due to the insolvency of an insurance company. A guaranty association accomplishes its mission by assuming responsibility for settling claims and refunding unearned premiums to policyholders. Insurers are required by law to participate in guaranty associations as a condition of transacting business in Florida.

The bill makes changes to one of the five guaranty funds and associations – the Florida Life and Health Insurance Guaranty Association (FLAHIGA), which is the guaranty association for most health and life insurers.

If an insurance company is liquidated, the maximum amount paid by the FLAHIGA for any one person is:

- Life Insurance Death Benefit: $300,000 per insured life.
- Life Insurance Cash Surrender: $100,000 per insured life.
- Health Insurance Claims: $300,000 per insured life.
- Annuity Cash Surrender: $250,000 for deferred annuity contracts per contract owner.
- Annuity in Benefit: $300,000 per contract owner.

The bill expands the FLAHIGA's scope of coverage to include annuities that are part of an individual retirement account and individual retirement annuities. Effective January 1, 2020, the cap on benefits paid by the FLAHIGA for any one person for specified hospital and medical insurance increases from $300,000 to $500,000.

The bill does not appear to have a fiscal impact on state or local government.

The bill was approved by the Governor on June 23, 2017, ch. 2017-131, L.O.F., and will become effective on July 1, 2017.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Insurance Guaranty Associations – Background

Chapter 631, F.S., relating to insurer insolvency and guaranty payments, governs the receivership process for insurance companies in Florida.[1] Federal law specifies that insurance companies cannot file for bankruptcy. Instead, they are either "rehabilitated" or "liquidated" by the state. In Florida, the Division of Rehabilitation and Liquidation of the Department of Financial Services is responsible for rehabilitating or liquidating insurance companies.[2]

Florida operates five insurance guaranty funds and associations to ensure policyholders of liquidated insurers are protected with respect to insurance premiums paid and settlement of outstanding claims, up to limits provided by law.[3] A guaranty association generally is a not-for-profit corporation created by law directed to protect policyholders from financial losses and delays in claim payment and settlement due to the insolvency of an insurance company. A guaranty association accomplishes its mission by assuming responsibility for settling claims and refunding unearned premiums[4] to policyholders. Insurers are required by law to participate in guaranty associations as a condition of transacting business in Florida.

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Florida Life and Health Insurance Guaranty Association

Statutory provisions relating to the FLAHIGA, which was created in 1979, are contained in part III of chapter 631, F.S. The FLAHIGA is governed by a board of directors composed of nine insurance companies and is a nonprofit corporation. All insurance companies (with limited exceptions) licensed to write life and health insurance or annuities in Florida are required, as a condition of doing business in Florida, to be a member of the FLAHIGA. By law, the FLAHIGA is divided into three accounts:

- The health insurance account;
- The life insurance account; and
- The annuity account.[5]

In the event a member insurer is found to be insolvent and is ordered to be liquidated by a court, a receiver takes over the insurer under court supervision and processes the assets and liabilities through liquidation. Upon liquidation, the FLAHIGA automatically becomes liable for the policy obligations that

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[1] The Bankruptcy Code expressly provides that "a domestic insurance company" may not be the subject of a federal bankruptcy proceeding. 11 U.S.C. § 109(b)(2). The exclusion of insurers from the federal bankruptcy court process is consistent with federal policy generally allowing states to regulate the business of insurance. *See* 15 U.S.C. §§ 1011- 1012 (McCarran-Ferguson Act).

[2] Typically, insurers are put into liquidation when the company is insolvent whereas insurers are put into rehabilitation for numerous reasons, one of which is an unsound financial condition. The goal of rehabilitation is to return the insurer to a sound financial condition. The goal of liquidation, however, is to dissolve the insurer. *See* s. 631.051, F.S., for the grounds for rehabilitation and s. 631.061, F.S., for the grounds for liquidation.

[3] The Florida Life and Health Insurance Guaranty Association generally is responsible for claims settlement and premium refunds for health and life insurers who are insolvent. The Florida Health Maintenance Organization Consumer Assistance Plan offers assistance to members of insolvent health maintenance organizations, and the Florida Workers' Compensation Insurance Guaranty Association is directed by law to protect policyholders of insolvent workers' compensation insurers. The Florida Self-Insurers Guaranty Association protects policyholders of insolvent individual self-insured employers for workers' compensation claims. The Florida Insurance Guaranty Association is responsible for paying claims for insolvent insurers for most remaining lines of insurance, including residential and commercial property, automobile insurance, and liability insurance, among others.

[4] The term "unearned premium" refers to that portion of a premium that is paid in advance, typically for six months or one year, and which is still owed on the unexpired portion of the policy.

[5] s. 631.715(2)(a), F.S.

the liquidated insurer owed to its Florida policyholders.[6] The FLAHIGA services the policies, collects premiums, and pays valid claims under the policies. The FLAHIGA's rights under the policies are those that applied to the insurer prior to liquidation. The FLAHIGA may cancel the policy if the insurer could have done so, but normally the FLAHIGA continues the policies until the association can transfer to, or substitute the policies with, a new, stable insurer with approval of the Office of Insurance Regulation.

FLAHIGA Coverage

Generally, direct individual or direct group life and health insurance policies, as well as individual and allocated annuity contracts issued by the FLAHIGA's member insurers, are covered by the FLAHIGA.[7] Current law specifies life and health policies and annuity contracts from non-licensed insurers are not covered by the FLAHIGA.[8] If an insurance company is liquidated, the maximum amount paid by the FLAHIGA for any one person is:[9]

- Life Insurance Death Benefit: $300,000 per insured life.
- Life Insurance Cash Surrender: $100,000 per insured life.
- Health Insurance Claims:[10] $300,000 per insured life.
- Annuity Cash Surrender: $250,000 for deferred annuity contracts per contract owner.
- Annuity in Benefit: $300,000 per contract owner.

FLAHIGA does not provide coverage for, among other exceptions, an annuity or group annuity contract that is not issued to and owned by an individual, unless the benefits are guaranteed directly to the individual.[11]

The National Association of Insurance Commissioners (NAIC) – Life and Health Guaranty Association Model Act

The NAIC is the United States' standard-setting and regulatory support organization created and governed by the chief insurance regulators from the 50 states, the District of Columbia, and five U.S. territories. Through the NAIC, state insurance regulators establish standards and best practices, conduct peer reviews, and coordinate their regulatory oversight.[12] The NAIC has promulgated a model act for use by states in governing their Life and Health Insurance Guaranty Associations. The model act currently recommends a $300 per member/per year Class A assessment (non-pro rata) and a reimbursement limit for basic hospital medical and surgical insurance and major medical insurance of $500,000.[13]

Effect of the Bill on FLAHIGA Coverage

The bill expands the classes of annuities covered by the FLAHIGA to include certain annuities that may be issued or held under 26 U.S.C. § 408(a) & (b), relating to individual retirement accounts (IRA) and individual retirement annuities. An IRA is an account that is established and maintained by an individual, by an employer for the benefit of his employees, or by an employee association for the benefit of its members.[14] An IRA is created as a trust and funds in an IRA are held by a trustee for the exclusive benefit of an individual or his or her beneficiaries. An individual retirement annuity is an

[6] Generally, FLAHIGA covers only policyholders and certificate holders that were valid Florida residents on the date that a member insurer is declared insolvent and liquidated. However, non-residents of Florida and beneficiaries of covered persons are covered by FLAHIGA under limited circumstances. s. 631.713(2), F.S.
[7] Allocated annuity contracts are directly issued to and owned by individuals or annuities that directly guarantee benefits to individuals by the insurer.
[8] s. 631.713, F.S.
[9] s. 631.717(9), F.S.; *see also* FLAHIGA, *Frequently Asked Questions*, http://www.flahiga.org/faq.cfm (last visited Feb. 8, 2017).
[10] This includes, among others, basic hospital, medical, and surgical insurance; major medical insurance; long-term care insurance; and disability insurance.
[11] s. 631.713(3)(l), F.S.
[12] NAIC, *ABOUT THE NAIC*, http://www.naic.org/index_about.htm (last visited Feb. 17, 2017).
[13] NAIC, *Life and Health Insurance Guaranty Association Model Act*, 2017, *available at* http://www.naic.org/store/free/MDL-520.pdf.
[14] 26 U.S.C. § 408(a); 26 C.F.R. § 1.408-2(a).

annuity contract issued by an insurance company for the exclusive benefit of the participant-owners and their beneficiaries. Each individual who participates in a qualified individual retirement annuity is treated as an owner, and the contract must provide a separate accounting of the benefit allocable to each.[15]

The effect of the bill is to expand the scope of the FLAHIGA's coverage to include individual retirement annuities and annuities issued by an insurer and held in an IRA. The amount of coverage is subject to the limits in current law.

Effect of the Bill on FLAHIGA Reimbursement

Effective January 1, 2020, the bill increases the maximum amount paid by the FLAHIGA for any one person for hospital expense, basic medical-surgical, or major medical expense health insurance policies from $300,000 to $500,000. This revision is based on the model act of the NAIC with respect to basic and major medical coverage. Currently, Florida is one of only four states that have not adopted the model act standard.[16] The bill expressly excludes long term care insurance from the higher reimbursement amount. It will continue to be reimbursed under the $300,000 cap.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

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[15] 26 U.S.C. § 408(b); 26 C.F.R. § 1.408-3(a).

[16] The Life & Health Insurance Guaranty Association System, *The National's Safety Net*, NOLHGA, 2016 Edition, *available at* http://www.nolhga.com/resource/code/file.cfm?ID=2515 (last visited Feb. 17, 2017).

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Private insurers may be assessed more often or in higher amounts as a result of the broader coverage for annuities and the increase in the reimbursement limit for specified hospital and medical insurance. These assessments would still be subject to the current one percent cap, which is not changed by the bill. However, this cap is an annual cap, not an aggregate cap, so it is possible that both the expanded annuity coverage and the higher reimbursement limit could result in assessments over a longer period of time than would occur under current law. The risk, with respect to the expanded annuity coverage, is not known. The risk, with respect to the higher reimbursement limit for specified hospital and medical insurance, may be very low, since it is probably unlikely that any single health insurer would have a large number of insureds who are likely to use $500,000 in coverage during the period when the FLAHIGA is liable for the policy. The $500,000 coverage limit also defines a maximum, and could be less depending on the specific terms of any covered policy, since the FLAHIGA does not reimburse more than policy limits.

D. FISCAL COMMENTS:

None.