



176748

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/19/2017	.	
	.	
	.	
	.	

The Committee on Rules (Passidomo) recommended the following:

Senate Amendment (with directory and title amendments)

Delete lines 325 - 586
and insert:

(3) After the entry of the order of liquidation against a Florida-domiciled insurer, regardless of any prior notice that may have been given to creditors, the receiver shall notify all persons who may have claims against the insurer that they must file such claims with it at a place and within the time specified in the notice, or else such claims will be late-filed ~~forever barred~~. The Florida receiver need not give such notice



176748

12 in ancillary proceedings if the receiver obtains an order from
13 the court authorizing the receiver to not send out such notices,
14 which order the court shall issue upon satisfactory evidence
15 that the domiciliary receiver will be sending out similar
16 notices and will accept and evaluate claims from Florida
17 residents, that Florida residents may have objections to
18 evaluations heard in Florida, and that there are reasonable
19 assurances that Florida policyholders and claimants will be
20 treated fairly and equally as compared to residents of the
21 domicile state. The time specified in the notice shall be as
22 fixed by the court for filing of claims and shall be not less
23 than 6 months after the entry of the order of insolvency. The
24 notice shall be given in such manner and for such reasonable
25 period of time as may be ordered by the court.

26 (4) The receiver may petition the receivership court to set
27 a date certain before which all contingent or unliquidated
28 claims are final. In addition to the notice requirements in this
29 section, the receiver shall give notice of filing the petition
30 to all claimants with claims that remain contingent or
31 unliquidated under this section.

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

35 Section 10. Section 631.191, Florida Statutes, is amended
36 to read:

37 631.191 Special deposit claims; ~~and~~ secured claims;
38 administration of workers' compensation large deductible
39 policies and insured collateral.-

40 (1) SPECIAL DEPOSIT CLAIMS.-The owners of special deposit



176748

41 claims against an insurer against which a liquidation order has
42 been entered in this or any other state shall be given priority
43 against their several special deposits in accordance with the
44 provisions of the statutes governing the creation and
45 maintenance of such deposits. If there is a deficiency in any
46 such deposit so that the claims secured thereby are not fully
47 discharged therefrom, the claimants may share in the general
48 assets, but such sharing shall be deferred until general
49 creditors, and also claimants against other special deposits who
50 have received smaller percentages from their respective special
51 deposits, have been paid percentages of their claims equal to
52 the percentage paid from the special deposit.

53 (2) SECURED CLAIMS.—

54 (a) The owner of a secured claim against an insurer against
55 which a liquidation order has been entered in this or any other
56 state may surrender her or his security and file her or his
57 claim as a general creditor, or the claim may be discharged by
58 resort to the security, in which case the deficiency, if any,
59 shall be treated as a claim against the general assets of the
60 insurer on the same basis as claims of unsecured creditors. If
61 the amount of the deficiency has been adjudicated in ancillary
62 proceedings as provided in this chapter, or if it has been
63 adjudicated by a court of competent jurisdiction in a proceeding
64 in which the domiciliary receiver has had notice and an
65 opportunity to be heard, such amount shall be conclusive;
66 otherwise the amount shall be determined in the delinquency
67 proceeding in the domiciliary state.

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



176748

70 1. Converting the same into money according to the terms of
71 the agreement pursuant to which the security was delivered to
72 such creditor; or

73 2. If no such agreement exists, the court shall determine
74 the value in the event the creditor and the receiver cannot
75 agree upon same.

76 (3) ADMINISTRATION OF WORKERS' COMPENSATION LARGE
77 DEDUCTIBLE POLICIES AND INSURED COLLATERAL.—

78 (a) Definitions.—As used in this subsection, the term:

79 1. "Collateral" means cash, a letter of credit, a surety
80 bond, or any other form of security posted by the insured, or by
81 a captive insurer or reinsurer, to secure the insured's
82 obligation under a large deductible policy to pay deductible
83 claims or to reimburse the insurer for deductible claim
84 payments. "Collateral" may also secure an insured's obligation
85 to reimburse or pay the insurer as may be required for other
86 secured obligations.

87 2. "Deductible claim" means any claim that is within the
88 deductible under a large deductible policy, including a claim
89 for loss and defense and cost containment expense, unless such
90 expense is excluded by the terms of the policy.

91 3.a. "Large deductible policy" means a combination of one
92 or more workers' compensation policies and endorsements issued
93 to an insured, and contracts or security agreements entered into
94 between an insured and the insurer, in which the insured has
95 agreed with the insurer to:

96 (I) Pay directly the initial portion of any claim under the
97 policy up to a specified dollar amount or the expenses related
98 to any claim; or



176748

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

102 b. The term also includes policies that contain an
103 aggregate limit on the insured's liability for all deductible
104 claims in addition to a per-claim deductible limit. A policy
105 must meet the current guidelines for large deductible workers'
106 compensation filings as defined by the office, including the
107 eligibility standards regarding the minimum standard premium and
108 the minimum deductible to be deemed a large deductible policy.

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

113 d. The term does not include policies that provide for
114 retrospectively rated premium payments by the insured or
115 reinsurance arrangements or agreements, except to the extent
116 such arrangements or agreements assume, secure, or pay the
117 policyholder's large deductible obligations.

118 4. "Other secured obligations" means obligations of an
119 insured to an insurer other than those under a large deductible
120 policy, such as those under a reinsurance agreement or other
121 agreement involving retrospective premium obligations, the
122 performance of which is secured by collateral that also secures
123 an insured's obligations under a large deductible policy.

124 (b) Applicability.—

125 1. This subsection applies to workers' compensation large
126 deductible policies issued by an insurer that is subject to
127 delinquency proceedings under this chapter. This subsection does



176748

128 not apply to first-party claims, or to covered claims funded by
129 a guaranty association above the deductible unless paragraph (c)
130 applies. Large deductible policies must be administered in
131 accordance with the terms of the policy, except to the extent
132 such terms conflict with this subsection.

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

135 (c) Handling of large deductible claims.—Unless otherwise
136 agreed to by the responsible guaranty association, all large
137 deductible claims that are also covered claims as defined by an
138 applicable guaranty association law, including those that may
139 have been funded by an insured before liquidation, must be
140 turned over to the guaranty association for handling. To the
141 extent the insured funds or pays the deductible claim pursuant
142 to an agreement by the guaranty fund or otherwise, the insured's
143 funding or payment of a deductible claim extinguishes the
144 obligations, if any, of the receiver and any guaranty
145 association to pay such claim. A charge may not be made against
146 the receiver or a guaranty association on the basis of an
147 insured's funding or payment of a deductible claim.

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

149 1. To the extent a guaranty association pays any deductible
150 claim for which an insurer would have been entitled to
151 reimbursement from an insured, a guaranty association is
152 entitled to the amount of reimbursements received or collateral
153 available, subject to paragraph (g). Reimbursements paid to the
154 guaranty association pursuant to this paragraph may not be
155 treated as distributions under s. 631.271 or as early access
156 payments under s. 631.397(1).



176748

157 2. To the extent that a guaranty association pays a
158 deductible claim that is not reimbursed from collateral or by
159 insured payments, or the guaranty association incurred expenses
160 in connection with large deductible policies that are not
161 reimbursed under this subsection, the guaranty association is
162 entitled to assert a claim for those amounts in the delinquency
163 proceeding.

164 3. This paragraph does not limit any right of the receiver
165 or a guaranty association which may otherwise exist under
166 applicable law to obtain reimbursement from insureds for claims
167 payments made by the guaranty association under policies of the
168 insurer or for the guaranty association's related expenses.

169 (e) Collections.-

170 1. The receiver may collect reimbursements owed for
171 deductible claims as provided in this paragraph, and must use
172 reasonable efforts to collect such reimbursements from the
173 insured or the party that is obligated to pay the deductible as
174 specified in the large deductible policy or other agreement. The
175 receiver may bill insureds and others for reimbursement of
176 deductible claims that are:

177 a. Paid by the insurer before the commencement of
178 delinquency proceedings;

179 b. Paid by a guaranty association upon receipt by the
180 receiver of notice from a guaranty association of reimbursable
181 payments; or

182 c. Paid or allowed by the receiver.

183 2. If the insured or other party does not make payment
184 within the time specified in the large deductible policy, or, if
185 no time is specified, within a reasonable time after the date of



176748

186 billing, the receiver may take reasonable steps to collect any
187 reimbursements owed.

188 3. The insolvency of the insurer or its inability to
189 perform any of its obligations under the large deductible policy
190 may not be a defense to the insured's reimbursement obligation
191 under the large deductible policy.

192 4. An allegation of improper handling or payment of a
193 deductible claim by the receiver or a guaranty association may
194 not be a defense to the insured's reimbursement obligations
195 under the large deductible policy.

196 (f) Collateral.-

197 1. Subject to this paragraph, the receiver shall use
198 collateral, when available, to secure the insured's obligation
199 to fund or reimburse deductible claims or other secured
200 obligations or payment obligations. A guaranty association is
201 entitled to collateral as provided for in this paragraph to the
202 extent needed to reimburse a guaranty association for the
203 payment of a deductible claim. Any distributions made to a
204 guaranty association pursuant to this paragraph may not be
205 treated as distributions under s. 631.271 or as early access
206 payments under s. 631.397(1).

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

209 a. Perform its funding or payment obligations under any
210 large deductible policy;

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

214 c. Pay amounts due to the estate for preliquidation



176748

215 obligations;

216 d. Timely fund any other secured obligation; or

217 e. Timely pay expenses.

218 3. Claims that are validly asserted against the collateral
219 must be satisfied in the order in which such claims are received
220 by the receiver. However, if more than one creditor has a valid
221 claim against the same collateral and the available collateral,
222 along with billing collection efforts and to the extent that the
223 collateral is subject to other known secured obligations, are
224 together insufficient to pay each creditor in full, the receiver
225 may prorate payments to each creditor based upon the ratio of
226 the amount of claims each creditor has to the total claims paid
227 by all such creditors.

228 4. Excess collateral may be returned to the insured, as
229 determined by the receiver, after a periodic review of claims
230 paid, outstanding case reserves, and a factor for claims that
231 were incurred but not reported.

232 (g) Receiver's expenses.—The receiver is entitled to deduct
233 from the collateral or from the deductible reimbursements
234 reasonable and actual expenses incurred in connection with the
235 collection of the collateral and deductible reimbursements as
236 provided pursuant to s. 631.271.

237 (h) Construction.—This subsection does not limit or
238 adversely affect any rights or powers a guaranty association may
239 have under applicable state law to obtain reimbursement from
240 certain classes of policyholders for claims payments made by the
241 guaranty association under policies of the insolvent insurer, or
242 for related expenses the guaranty association incurs.

243 Section 11. Subsection (5) is added to section 631.192,



176748

244 Florida Statutes, to read:

245 631.192 Allowance of certain claims.—

246 (5) A claim may not be allowed for postjudgment interest
247 accrued after the date the court enters the order of
248 liquidation.

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

251 631.271 Priority of claims.—

252 (1) The priority of distribution of claims from the
253 insurer's estate shall be in accordance with the order in which
254 each class of claims is set forth in this subsection. Every
255 claim in each class shall be paid in full or adequate funds
256 shall be retained for such payment before the members of the
257 next class may receive any payment. No subclasses may be
258 established within any class. The order of distribution of
259 claims shall be:

260 (a) *Class 1.*—

261 1. All of the receiver's costs and expenses of
262 administration.

263 2. All of the expenses of a guaranty association or foreign
264 guaranty association in handling claims.

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

268 (b) *Class 2.*—All claims under policies for losses incurred,
269 including third-party claims, all claims against the insurer for
270 liability for bodily injury or for injury to or destruction of
271 tangible property which claims are not under policies, ~~and~~ all
272 claims of a guaranty association or foreign guaranty



176748

273 association, and all claims related to a patient's healthcare
274 coverage by physicians, hospitals, and other providers of a
275 health insurer or health maintenance organization. All claims
276 under life insurance and annuity policies, whether for death
277 proceeds, annuity proceeds, or investment values, shall be
278 treated as loss claims. That portion of any loss,
279 indemnification for which is provided by other benefits or
280 advantages recovered by the claimant, may not be included in
281 this class, other than benefits or advantages recovered or
282 recoverable in discharge of familial obligations of support or
283 by way of succession at death or as proceeds of life insurance,
284 or as gratuities. No payment by an employer to her or his
285 employee may be treated as a gratuity.

286 (j) Class 10.—Interest on allowed claims of Classes 1
287 through 9. The rate of interest payable on an allowed claim must
288 accrue from the date the court enters the order of liquidation
289 until such time as the

290
291 ===== D I R E C T O R Y C L A U S E A M E N D M E N T =====

292 And the directory clause is amended as follows:

293 Delete lines 308 - 309

294 and insert:

295 Section 9. Subsection (3) of section 631.181, Florida
296 Statutes, is amended, and paragraph (g) of subsection (2) and
297 subsections (4) and (5) are added to that section, to

298
299 ===== T I T L E A M E N D M E N T =====

300 And the title is amended as follows:

301 Delete lines 52 - 78



176748

302 and insert:
303 requirements; providing that certain claims against an
304 insurer which do not meet specified filing
305 requirements are deemed late-filed rather than forever
306 barred; authorizing a receiver to petition the
307 receivership court to set certain deadlines; requiring
308 a receiver to provide notice of filing a certain
309 petition to certain claimants; amending s. 631.191,
310 F.S.; defining terms; providing applicability;
311 requiring that specified large deductible claims under
312 certain workers' compensation policies must be turned
313 over to the applicable responsible guaranty
314 association for handling; providing for construction
315 relating to payment of deductible claims; authorizing
316 receivers to collect reimbursements owed for certain
317 deductible claims; providing requirements for such
318 collections; providing for construction relating to
319 such collections; requiring receivers to use
320 collateral, when available, to secure certain
321 obligations; providing that a guaranty association is
322 entitled to collateral for a certain purpose;
323 providing for construction relating to certain
324 distributions; requiring receivers to draw down
325 collateral under certain circumstances; providing a
326 procedure for payment of claims; authorizing the
327 return of excess collateral under certain
328 circumstances; providing that a receiver is entitled
329 to deduct certain expenses from the collateral or
330 deductible reimbursements; providing for construction;



176748

331 amending s. 631.192, F.S.; prohibiting claims for
332 postjudgment interest accrued after the date the court
333 enters the order of