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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/06/2017	.	
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The Committee on Banking and Insurance (Passidomo) recommended the following:

Senate Amendment (with title amendment)

Between lines 466 and 467

insert:

Section 15. Section 631.191, Florida Statutes, is amended to read:

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

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



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11 claims against an insurer against which a liquidation order has
12 been entered in this or any other state shall be given priority
13 against their several special deposits in accordance with the
14 provisions of the statutes governing the creation and
15 maintenance of such deposits. If there is a deficiency in any
16 such deposit so that the claims secured thereby are not fully
17 discharged therefrom, the claimants may share in the general
18 assets, but such sharing shall be deferred until general
19 creditors, and also claimants against other special deposits who
20 have received smaller percentages from their respective special
21 deposits, have been paid percentages of their claims equal to
22 the percentage paid from the special deposit.

23 (2) SECURED CLAIMS.—

24 (a) The owner of a secured claim against an insurer against
25 which a liquidation order has been entered in this or any other
26 state may surrender her or his security and file her or his
27 claim as a general creditor, or the claim may be discharged by
28 resort to the security, in which case the deficiency, if any,
29 shall be treated as a claim against the general assets of the
30 insurer on the same basis as claims of unsecured creditors. If
31 the amount of the deficiency has been adjudicated in ancillary
32 proceedings as provided in this chapter, or if it has been
33 adjudicated by a court of competent jurisdiction in a proceeding
34 in which the domiciliary receiver has had notice and an
35 opportunity to be heard, such amount shall be conclusive;
36 otherwise the amount shall be determined in the delinquency
37 proceeding in the domiciliary state.

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



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40 1. Converting the same into money according to the terms of
41 the agreement pursuant to which the security was delivered to
42 such creditor; or

43 2. If no such agreement exists, the court shall determine
44 the value in the event the creditor and the receiver cannot
45 agree upon same.

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

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

49 1. "Collateral" means cash, a letter of credit, a surety
50 bond, or any other form of security posted by the insured, or by
51 a captive insurer or reinsurer, to secure the insured's
52 obligation under a large deductible policy to pay deductible
53 claims or to reimburse the insurer for deductible claim
54 payments. "Collateral" may also secure an insured's obligation
55 to reimburse or pay the insurer as may be required for other
56 secured obligations.

57 2. "Deductible claim" means any claim that is within the
58 deductible under a large deductible policy, including a claim
59 for loss and defense and cost containment expense, unless such
60 expense is excluded by the terms of the policy.

61 3.a. "Large deductible policy" means a combination of one
62 or more workers' compensation policies and endorsements issued
63 to an insured, and contracts or security agreements entered into
64 between an insured and the insurer, in which the insured has
65 agreed with the insurer to:

66 (I) Pay directly the initial portion of any claim under the
67 policy up to a specified dollar amount or the expenses related
68 to any claim; or



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

72 b. The term also includes policies that contain an
73 aggregate limit on the insured's liability for all deductible
74 claims in addition to a per-claim deductible limit. A policy
75 must meet the current guidelines for large deductible workers'
76 compensation filings as defined by the office, including the
77 eligibility standards regarding the minimum standard premium and
78 the minimum deductible to be deemed a large deductible policy.

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

83 d. The term does not include policies that provide for
84 retrospectively rated premium payments by the insured or
85 reinsurance arrangements or agreements, except to the extent
86 such arrangements or agreements assume, secure, or pay the
87 policyholder's large deductible obligations.

88 4. "Other secured obligations" means obligations of an
89 insured to an insurer other than those under a large deductible
90 policy, such as those under a reinsurance agreement or other
91 agreement involving retrospective premium obligations, the
92 performance of which is secured by collateral that also secures
93 an insured's obligations under a large deductible policy.

94 (b) Applicability.—

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



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

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

105 (c) Handling of large deductible claims.—Unless otherwise
106 agreed to by the responsible guaranty association, all large
107 deductible claims that are also covered claims as defined by an
108 applicable guaranty association law, including those that may
109 have been funded by an insured before liquidation, must be
110 turned over to the guaranty association for handling. To the
111 extent the insured funds or pays the deductible claim pursuant
112 to an agreement by the guaranty fund or otherwise, the insured's
113 funding or payment of a deductible claim extinguishes the
114 obligations, if any, of the receiver and any guaranty
115 association to pay such claim. A charge may not be made against
116 the receiver or a guaranty association on the basis of an
117 insured's funding or payment of a deductible claim.

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

119 1. To the extent a guaranty association pays any deductible
120 claim for which an insurer would have been entitled to
121 reimbursement from an insured, a guaranty association is
122 entitled to the amount of reimbursements received or collateral
123 available, subject to paragraph (g). Reimbursements paid to the
124 guaranty association pursuant to this paragraph may not be
125 treated as distributions under s. 631.271 or as early access
126 payments under s. 631.397(1).



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127 2. To the extent that a guaranty association pays a
128 deductible claim that is not reimbursed from collateral or by
129 insured payments, or the guaranty association incurred expenses
130 in connection with large deductible policies that are not
131 reimbursed under this subsection, the guaranty association is
132 entitled to assert a claim for those amounts in the delinquency
133 proceeding.

134 3. This paragraph does not limit any right of the receiver
135 or a guaranty association which may otherwise exist under
136 applicable law to obtain reimbursement from insureds for claims
137 payments made by the guaranty association under policies of the
138 insurer or for the guaranty association's related expenses.

139 (e) Collections.-

140 1. The receiver may collect reimbursements owed for
141 deductible claims as provided in this paragraph, and must use
142 reasonable efforts to collect such reimbursements from the
143 insured or the party that is obligated to pay the deductible as
144 specified in the large deductible policy or other agreement. The
145 receiver may bill insureds and others for reimbursement of
146 deductible claims that are:

147 a. Paid by the insurer before the commencement of
148 delinquency proceedings;

149 b. Paid by a guaranty association upon receipt by the
150 receiver of notice from a guaranty association of reimbursable
151 payments; or

152 c. Paid or allowed by the receiver.

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



156 billing, the receiver must take reasonable steps to collect any
157 reimbursements owed.

158 3. The insolvency of the insurer or its inability to
159 perform any of its obligations under the large deductible policy
160 may not be a defense to the insured's reimbursement obligation
161 under the large deductible policy.

162 4. An allegation of improper handling or payment of a
163 deductible claim by the insurer, the receiver, or a guaranty
164 association may not be a defense to the insured's reimbursement
165 obligations under the large deductible policy.

166 (f) Collateral.-

167 1. Subject to this paragraph, the receiver shall use
168 collateral, when available, to secure the insured's obligation
169 to fund or reimburse deductible claims or other secured
170 obligations or payment obligations. A guaranty association is
171 entitled to collateral as provided for in this paragraph to the
172 extent needed to reimburse a guaranty association for the
173 payment of a deductible claim. Any distributions made to a
174 guaranty association pursuant to this paragraph may not be
175 treated as distributions under s. 631.271 or as early access
176 payments under s. 631.397(1).

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

179 a. Perform its funding or payment obligations under any
180 large deductible policy;

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

184 c. Pay amounts due to the estate for preliquidation



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185 obligations;

186 d. Timely fund any other secured obligation; or

187 e. Timely pay expenses.

188 3. Claims that are validly asserted against the collateral
189 must be satisfied in the order in which such claims are received
190 by the receiver. However, if more than one creditor has a valid
191 claim against the same collateral and the available collateral,
192 along with billing collection efforts and to the extent that the
193 collateral is subject to other known secured obligations, are
194 together insufficient to pay each creditor in full, the receiver
195 must prorate payments to each creditor based upon the
196 relationship the amount of claims each creditor has paid bears
197 to the total of all claims paid by all such creditors.

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

202 (g) Receiver's expenses.—The receiver is entitled to deduct
203 from the collateral or from the deductible reimbursements
204 reasonable and actual expenses incurred in connection with the
205 collection of the collateral and deductible reimbursements as
206 provided pursuant to s. 631.271.

207 (h) Construction.—This subsection does not limit or
208 adversely affect any rights or powers a guaranty association may
209 have under applicable state law to obtain reimbursement from
210 certain classes of policyholders for claims payments made by the
211 guaranty association under policies of the insolvent insurer, or
212 for related expenses the guaranty association incurs.

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214 ===== T I T L E A M E N D M E N T =====

215 And the title is amended as follows:

216 Delete line 55

217 and insert:

218 petition to certain claimants; amending s. 631.191,
219 F.S.; defining terms; providing applicability;
220 requiring that specified large deductible claims under
221 certain workers' compensation policies must be turned
222 over to the applicable responsible guaranty
223 association for handling; providing for construction
224 relating to payment of deductible claims; authorizing
225 receivers to collect reimbursements owed for certain
226 deductible claims; providing requirements for such
227 collections; providing for construction relating to
228 such collections; requiring receivers to use
229 collateral, when available, to secure certain
230 obligations; providing that a guaranty association is
231 entitled to collateral for a certain purpose;
232 providing for construction relating to certain
233 distributions; requiring receivers to draw down
234 collateral under certain circumstances; providing a
235 procedure for payment of claims; authorizing the
236 return of excess collateral under certain
237 circumstances; providing that a receiver is entitled
238 to deduct certain expenses from the collateral or
239 deductible reimbursements; providing for construction;
240 amending s. 631.192,