

By the Committee on Banking and Insurance; and Senator Passidomo

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1 A bill to be entitled
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
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

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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
51 receivership court from waiving certain filing
52 requirements; authorizing a receiver to petition the
53 receivership court to set certain deadlines; requiring
54 a receiver to provide notice of filing a certain
55 petition to certain claimants; amending s. 631.191,
56 F.S.; defining terms; providing applicability;
57 requiring that specified large deductible claims under
58 certain workers' compensation policies must be turned

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59 over to the applicable responsible guaranty
60 association for handling; providing for construction
61 relating to payment of deductible claims; authorizing
62 receivers to collect reimbursements owed for certain
63 deductible claims; providing requirements for such
64 collections; providing for construction relating to
65 such collections; requiring receivers to use
66 collateral, when available, to secure certain
67 obligations; providing that a guaranty association is
68 entitled to collateral for a certain purpose;
69 providing for construction relating to certain
70 distributions; requiring receivers to draw down
71 collateral under certain circumstances; providing a
72 procedure for payment of claims; authorizing the
73 return of excess collateral under certain
74 circumstances; providing that a receiver is entitled
75 to deduct certain expenses from the collateral or
76 deductible reimbursements; providing for construction;
77 amending s. 631.192, F.S.; prohibiting claims for
78 postjudgment interest accrued after the date of
79 liquidation; amending s. 631.271, F.S.; adding and
80 revising claims to a list that establishes the
81 priority of distribution of claims from an insurer's
82 estate; specifying when interest on claims accrue and
83 the interest rate calculation; amending s. 631.391,
84 F.S.; specifying that certain persons in relation to
85 an insurer who must cooperate with the department or
86 office in certain proceedings or investigations
87 include present or former roles; defining the term

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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.

101
 102 Be It Enacted by the Legislature of the State of Florida:

103
 104 Section 1. Section 631.015, Florida Statutes, is amended to
 105 read:

106 631.015 Reciprocity; treatment of policyholders.—
 107 Reciprocity in the treatment of policyholders in receivership is
 108 extended to those states which, in substance and effect, enact
 109 the National Association of Insurance Commissioners
 110 Rehabilitation and Liquidation Model Act, ~~or~~ the Uniform
 111 Insurers Liquidation Act, or the Insurer Receivership Model Act.

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

114 631.021 Jurisdiction of delinquency proceeding; venue;
 115 change of venue; exclusiveness of remedy; appeal; construction.—

116 (1) The circuit court shall have original jurisdiction of

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117 any delinquency proceeding under this chapter, and any court
118 with jurisdiction is authorized to make all necessary or proper
119 orders to carry out the purposes of this chapter. Any
120 delinquency proceeding in this chapter is in equity.

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

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

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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
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

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175 proceeding.-

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 as
190 a matter of law as an automatic stay applicable to all persons
191 and entities, other than the receiver and the office, which
192 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 an
199 affiliate obtained either before or after the commencement of
200 the delinquency proceeding;

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

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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 redesignated as subsections (4) through (6) and (8) through
215 (12), respectively, new subsections (3) and (7) are added to
216 that 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
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.

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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.

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 fraudulent
255 conduct against any person may not be the basis of a defense by
256 a third party to the enforcement of a contractual obligation
257 owed to the insurer. This section does not bar a third party
258 from the right to raise a defense that the conduct was
259 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

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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
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

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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

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 or
305 unreported transactions by the receiver against any affiliate,
306 controlled or controlling person, or present or former officer,
307 manager, director, trustee, or shareholder of the insurer.

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

311 631.181 Filing and proof of claim.—

312 (2)

313 (g) Upon application of the receiver:

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

317 2. If the receivership court waives the requirements of
318 filing a proof of claim for a person, class, or group of
319 persons, a timely proof of claim by such person, class, or group

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320 is deemed to be filed for all purposes. However, the
321 receivership court may not waive guaranty association or
322 coverage determination proof of claim filing requirements, to
323 the extent that the guaranty fund statute or filing requirements
324 are inconsistent with the receivership court's waiver of proof.

325 (4) The receiver may petition the receivership court to set
326 a date certain before which all contingent or unliquidated
327 claims are final. In addition to the notice requirements in this
328 section, the receiver shall give notice of filing the petition
329 to all claimants with claims that remain contingent or
330 unliquidated under this section.

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

334 Section 10. Section 631.191, Florida Statutes, is amended
335 to read:

336 631.191 Special deposit claims; ~~and~~ secured claims;
337 administration of workers' compensation large deductible
338 policies and insured collateral.-

339 (1) SPECIAL DEPOSIT CLAIMS.-The owners of special deposit
340 claims against an insurer against which a liquidation order has
341 been entered in this or any other state shall be given priority
342 against their several special deposits in accordance with the
343 provisions of the statutes governing the creation and
344 maintenance of such deposits. If there is a deficiency in any
345 such deposit so that the claims secured thereby are not fully
346 discharged therefrom, the claimants may share in the general
347 assets, but such sharing shall be deferred until general
348 creditors, and also claimants against other special deposits who

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349 have received smaller percentages from their respective special
350 deposits, have been paid percentages of their claims equal to
351 the percentage paid from the special deposit.

352 (2) SECURED CLAIMS.—

353 (a) The owner of a secured claim against an insurer against
354 which a liquidation order has been entered in this or any other
355 state may surrender her or his security and file her or his
356 claim as a general creditor, or the claim may be discharged by
357 resort to the security, in which case the deficiency, if any,
358 shall be treated as a claim against the general assets of the
359 insurer on the same basis as claims of unsecured creditors. If
360 the amount of the deficiency has been adjudicated in ancillary
361 proceedings as provided in this chapter, or if it has been
362 adjudicated by a court of competent jurisdiction in a proceeding
363 in which the domiciliary receiver has had notice and an
364 opportunity to be heard, such amount shall be conclusive;
365 otherwise the amount shall be determined in the delinquency
366 proceeding in the domiciliary state.

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

369 1. Converting the same into money according to the terms of
370 the agreement pursuant to which the security was delivered to
371 such creditor; or

372 2. If no such agreement exists, the court shall determine
373 the value in the event the creditor and the receiver cannot
374 agree upon same.

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

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

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378 1. "Collateral" means cash, a letter of credit, a surety
379 bond, or any other form of security posted by the insured, or by
380 a captive insurer or reinsurer, to secure the insured's
381 obligation under a large deductible policy to pay deductible
382 claims or to reimburse the insurer for deductible claim
383 payments. "Collateral" may also secure an insured's obligation
384 to reimburse or pay the insurer as may be required for other
385 secured obligations.

386 2. "Deductible claim" means any claim that is within the
387 deductible under a large deductible policy, including a claim
388 for loss and defense and cost containment expense, unless such
389 expense is excluded by the terms of the policy.

390 3.a. "Large deductible policy" means a combination of one
391 or more workers' compensation policies and endorsements issued
392 to an insured, and contracts or security agreements entered into
393 between an insured and the insurer, in which the insured has
394 agreed with the insurer to:

395 (I) Pay directly the initial portion of any claim under the
396 policy up to a specified dollar amount or the expenses related
397 to any claim; or

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

401 b. The term also includes policies that contain an
402 aggregate limit on the insured's liability for all deductible
403 claims in addition to a per-claim deductible limit. A policy
404 must meet the current guidelines for large deductible workers'
405 compensation filings as defined by the office, including the
406 eligibility standards regarding the minimum standard premium and

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407 the minimum deductible to be deemed a large deductible policy.

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

412 d. The term does not include policies that provide for
413 retrospectively rated premium payments by the insured or
414 reinsurance arrangements or agreements, except to the extent
415 such arrangements or agreements assume, secure, or pay the
416 policyholder's large deductible obligations.

417 4. "Other secured obligations" means obligations of an
418 insured to an insurer other than those under a large deductible
419 policy, such as those under a reinsurance agreement or other
420 agreement involving retrospective premium obligations, the
421 performance of which is secured by collateral that also secures
422 an insured's obligations under a large deductible policy.

423 (b) Applicability.—

424 1. This subsection applies to workers' compensation large
425 deductible policies issued by an insurer that is subject to
426 delinquency proceedings under this chapter. This subsection does
427 not apply to first-party claims, or to covered claims funded by
428 a guaranty association above the deductible unless paragraph (c)
429 applies. Large deductible policies must be administered in
430 accordance with the terms of the policy, except to the extent
431 such terms conflict with this subsection.

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

434 (c) Handling of large deductible claims.—Unless otherwise
435 agreed to by the responsible guaranty association, all large

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436 deductible claims that are also covered claims as defined by an
437 applicable guaranty association law, including those that may
438 have been funded by an insured before liquidation, must be
439 turned over to the guaranty association for handling. To the
440 extent the insured funds or pays the deductible claim pursuant
441 to an agreement by the guaranty fund or otherwise, the insured's
442 funding or payment of a deductible claim extinguishes the
443 obligations, if any, of the receiver and any guaranty
444 association to pay such claim. A charge may not be made against
445 the receiver or a guaranty association on the basis of an
446 insured's funding or payment of a deductible claim.

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

448 1. To the extent a guaranty association pays any deductible
449 claim for which an insurer would have been entitled to
450 reimbursement from an insured, a guaranty association is
451 entitled to the amount of reimbursements received or collateral
452 available, subject to paragraph (g). Reimbursements paid to the
453 guaranty association pursuant to this paragraph may not be
454 treated as distributions under s. 631.271 or as early access
455 payments under s. 631.397(1).

456 2. To the extent that a guaranty association pays a
457 deductible claim that is not reimbursed from collateral or by
458 insured payments, or the guaranty association incurred expenses
459 in connection with large deductible policies that are not
460 reimbursed under this subsection, the guaranty association is
461 entitled to assert a claim for those amounts in the delinquency
462 proceeding.

463 3. This paragraph does not limit any right of the receiver
464 or a guaranty association which may otherwise exist under

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465 applicable law to obtain reimbursement from insureds for claims
466 payments made by the guaranty association under policies of the
467 insurer or for the guaranty association's related expenses.

468 (e) Collections.—

469 1. The receiver may collect reimbursements owed for
470 deductible claims as provided in this paragraph, and must use
471 reasonable efforts to collect such reimbursements from the
472 insured or the party that is obligated to pay the deductible as
473 specified in the large deductible policy or other agreement. The
474 receiver may bill insureds and others for reimbursement of
475 deductible claims that are:

476 a. Paid by the insurer before the commencement of
477 delinquency proceedings;

478 b. Paid by a guaranty association upon receipt by the
479 receiver of notice from a guaranty association of reimbursable
480 payments; or

481 c. Paid or allowed by the receiver.

482 2. If the insured or other party does not make payment
483 within the time specified in the large deductible policy, or, if
484 no time is specified, within a reasonable time after the date of
485 billing, the receiver must take reasonable steps to collect any
486 reimbursements owed.

487 3. The insolvency of the insurer or its inability to
488 perform any of its obligations under the large deductible policy
489 may not be a defense to the insured's reimbursement obligation
490 under the large deductible policy.

491 4. An allegation of improper handling or payment of a
492 deductible claim by the insurer, the receiver, or a guaranty
493 association may not be a defense to the insured's reimbursement

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494 obligations under the large deductible policy.

495 (f) Collateral.—

496 1. Subject to this paragraph, the receiver shall use
497 collateral, when available, to secure the insured's obligation
498 to fund or reimburse deductible claims or other secured
499 obligations or payment obligations. A guaranty association is
500 entitled to collateral as provided for in this paragraph to the
501 extent needed to reimburse a guaranty association for the
502 payment of a deductible claim. Any distributions made to a
503 guaranty association pursuant to this paragraph may not be
504 treated as distributions under s. 631.271 or as early access
505 payments under s. 631.397(1).

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

508 a. Perform its funding or payment obligations under any
509 large deductible policy;

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

513 c. Pay amounts due to the estate for preliquidation
514 obligations;

515 d. Timely fund any other secured obligation; or

516 e. Timely pay expenses.

517 3. Claims that are validly asserted against the collateral
518 must be satisfied in the order in which such claims are received
519 by the receiver. However, if more than one creditor has a valid
520 claim against the same collateral and the available collateral,
521 along with billing collection efforts and to the extent that the
522 collateral is subject to other known secured obligations, are

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523 together insufficient to pay each creditor in full, the receiver
524 must prorate payments to each creditor based upon the
525 relationship the amount of claims each creditor has paid bears
526 to the total of all claims paid by all such creditors.

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

531 (g) Receiver's expenses.—The receiver is entitled to deduct
532 from the collateral or from the deductible reimbursements
533 reasonable and actual expenses incurred in connection with the
534 collection of the collateral and deductible reimbursements as
535 provided pursuant to s. 631.271.

536 (h) Construction.—This subsection does not limit or
537 adversely affect any rights or powers a guaranty association may
538 have under applicable state law to obtain reimbursement from
539 certain classes of policyholders for claims payments made by the
540 guaranty association under policies of the insolvent insurer, or
541 for related expenses the guaranty association incurs.

542 Section 11. Subsection (5) is added to section 631.192,
543 Florida Statutes, to read:

544 631.192 Allowance of certain claims.—

545 (5) A claim may not be allowed for postjudgment interest
546 accrued after the date of liquidation.

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

549 631.271 Priority of claims.—

550 (1) The priority of distribution of claims from the
551 insurer's estate shall be in accordance with the order in which

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552 each class of claims is set forth in this subsection. Every
553 claim in each class shall be paid in full or adequate funds
554 shall be retained for such payment before the members of the
555 next class may receive any payment. No subclasses may be
556 established within any class. The order of distribution of
557 claims shall be:

558 (a) *Class 1.*—

559 1. All of the receiver's costs and expenses of
560 administration.

561 2. All of the expenses of a guaranty association or foreign
562 guaranty association in handling claims.

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

566 (b) *Class 2.*—All claims under policies for losses incurred,
567 including third-party claims, all claims against the insurer for
568 liability for bodily injury or for injury to or destruction of
569 tangible property which claims are not under policies, ~~and~~ all
570 claims of a guaranty association or foreign guaranty
571 association, and all claims related to a patient's healthcare
572 coverage by physicians, hospitals, and other providers of a
573 health insurer or health maintenance organization. All claims
574 under life insurance and annuity policies, whether for death
575 proceeds, annuity proceeds, or investment values, shall be
576 treated as loss claims. That portion of any loss,
577 indemnification for which is provided by other benefits or
578 advantages recovered by the claimant, may not be included in
579 this class, other than benefits or advantages recovered or
580 recoverable in discharge of familial obligations of support or

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581 by way of succession at death or as proceeds of life insurance,
582 or as gratuities. No payment by an employer to her or his
583 employee may be treated as a gratuity.

584 (j) *Class 10.*—Interest on allowed claims of Classes 1
585 through 9. The rate of interest payable on an allowed claim must
586 accrue from the date of liquidation until such time as the
587 receivership court approves the distribution. The interest rate
588 must be calculated in accordance with s. 55.03, ~~according to the~~
589 ~~terms of a plan to pay interest on allowed claims proposed by~~
590 ~~the liquidator and approved by the receivership court.~~

591 Section 13. Section 631.391, Florida Statutes, is amended
592 to read:

593 631.391 Cooperation of officers and employees.—

594 (1) Any present or former officer, director, manager,
595 trustee, agent, adjuster, employee, or independent contractor of
596 any insurer or affiliate and any other person who possesses any
597 executive authority over, or who exercises any control over, any
598 segment of the affairs of the insurer or affiliate shall fully
599 cooperate with the department and office in any proceeding under
600 this chapter or any investigation preliminary or incidental to
601 the proceeding. An order of rehabilitation or liquidation which
602 results in the discharge or suspension of any of the persons
603 listed above does not operate to release such person from the
604 duty to cooperate with the department and office as set out
605 herein. As used in this section, the term "person" includes any
606 person who directly or indirectly exercises control over
607 activities of the insurer through any holding company or other
608 affiliate of the insurer. The term ~~to~~ "cooperate" includes, but
609 is not limited to, the following:

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

612 (b) Promptly to make available and deliver to the
613 department or office any books, accounts, documents, other
614 records, information, data processing software, or property of
615 or pertaining to the insurer and in her or his possession,
616 custody, or control; or

617 (c) Promptly to provide access to all data processing
618 records in hard copy and in electronic form and to data
619 processing facilities and services.

620 (2) No person shall obstruct or interfere with the
621 department or office in the conduct of any delinquency
622 proceeding or any investigation preliminary or incidental
623 thereto.

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

627 (4) Any person referred to in subsection (1) who fails to
628 cooperate with the department or office, or any other person who
629 obstructs or interferes with the department or office, in the
630 conduct of any delinquency proceeding or any investigation
631 preliminary or incidental thereto, is guilty of a misdemeanor of
632 the first degree, punishable as provided in s. 775.082 or by
633 fine of not more than \$10,000.

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

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639 (6) Any person referred to in subsection (1) who refuses to
640 cooperate in providing records upon the request of the
641 department or office is liable for any penalties, fines, or
642 other costs assessed against the guaranty association or the
643 receiver that result from the refusal or delay to provide
644 records.

645 Section 14. Section 631.395, Florida Statutes, is amended
646 to read:

647 631.395 Guaranty fund; orders of court.—Any order of
648 liquidation issued pursuant to s. 631.111 or s. 631.131 must
649 ~~shall~~ authorize and direct the department as receiver to
650 coordinate the operation of the receivership with the operation
651 of any insurance guaranty fund authorized to operate in this
652 state and may authorize the department to provide data
653 processing services for any appropriate guaranty fund. Such
654 authorization must ~~shall~~ include, but not be limited to, release
655 ~~of copies~~ of any of the following:

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

658 (2) Insurance claims filed with the receiver.

659 Section 15. Subsections (1), (4), and (5) of section
660 631.397, Florida Statutes, are amended to read:

661 631.397 Use of certain marshaled assets.—

662 (1) ~~Within 120 days of a final determination of insolvency~~
663 ~~of an insurer by a court of competent jurisdiction of this~~
664 ~~state,~~ The department, as receiver, may ~~shall~~ apply to the court
665 for approval of a proposal to disburse assets out of such
666 insurer's marshaled assets, as such assets become available, to
667 each association entitled thereto or, if there are no assets

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668 available for such disbursement, then for approval of such
669 proposal as the receiver deems appropriate. For the purposes of
670 this section, the term "association" includes the Florida
671 Insurance Guaranty Association, Incorporated, the Florida
672 Workers' Compensation Insurance Guaranty Association, and any
673 entity or person performing a function in another state similar
674 to that performed in this state by the Florida Insurance
675 Guaranty Association, Incorporated, or the Florida Workers'
676 Compensation Insurance Guaranty Association, provided the
677 Florida Insurance Guaranty Association, Incorporated, or the
678 Florida Workers' Compensation Insurance Guaranty Association, is
679 entitled to like payment under the laws of the association's
680 state of domicile in respect to insolvent companies doing
681 business in that state.

682 ~~(4) Notice of such application shall be given by the~~
683 ~~department to the associations in, and to the commissioners of~~
684 ~~insurance of, each of the states to which disbursement may be~~
685 ~~made. Such notice shall be made by certified mail, first-class~~
686 ~~postage prepaid, at least 15 days prior to submission of such~~
687 ~~application to the court. Such notice shall be deemed to have~~
688 ~~been made when deposited in the mail.~~

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

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