

By the Committees on Rules; and 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; providing that certain claims against an
53 insurer which do not meet specified filing
54 requirements are deemed late-filed rather than forever
55 barred; authorizing a receiver to petition the
56 receivership court to set certain deadlines; requiring
57 a receiver to provide notice of filing a certain
58 petition to certain claimants; amending s. 631.191,

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

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88 persons in relation to an insurer who must cooperate
89 with the department or office in certain proceedings
90 or investigations include present or former roles;
91 defining the term "person"; amending s. 631.395, F.S.;
92 requiring an order of liquidation to authorize the
93 release of certain claims files, records, documents,
94 or claims, rather than only copies of the claims
95 files, records, documents, or claims; amending s.
96 631.397, F.S.; authorizing the department as receiver
97 to apply to the court for approval of a specified
98 proposal, rather than requiring the department to make
99 such application within a specified timeframe;
100 deleting a specified notice requirement of the
101 department; deleting a provision authorizing the court
102 to take action on the application under certain
103 circumstances; providing an effective date.

104
105 Be It Enacted by the Legislature of the State of Florida:

106
107 Section 1. Section 631.015, Florida Statutes, is amended to
108 read:

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

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

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117 631.021 Jurisdiction of delinquency proceeding; venue;
118 change of venue; exclusiveness of remedy; appeal; construction.-

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

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

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

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

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146 (5) No service of process against the department in its
147 capacity as receiver shall be effective unless served upon a
148 person designated by the receiver and filed with the circuit
149 court having jurisdiction over the delinquency proceeding. The
150 designated person shall refuse to accept service if acceptance
151 would violate a stay against legal proceedings involving an
152 insurer that is the subject of delinquency proceedings or would
153 violate any orders of the circuit court governing a delinquency
154 proceeding. The person denied service may petition the circuit
155 court having jurisdiction over the delinquency proceeding for
156 relief from the receiver's refusal to accept service. This
157 subsection shall be strictly construed, and any purported
158 service on the receiver or the department that is not in
159 accordance with this subsection shall be null and void.

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

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

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175 Section 3. Subsections (3) and (4) are added to section
176 631.031, Florida Statutes, to read:

177 631.031 Initiation and commencement of delinquency
178 proceeding.—

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

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

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

191 631.041 Automatic stay; relief from stay; injunctions.—

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

198 (a) The commencement or continuation of judicial,
199 administrative, or other action or proceeding against the
200 insurer or against its assets or any part thereof;

201 (b) The enforcement of a judgment against the insurer or an
202 affiliate obtained either before or after the commencement of
203 the delinquency proceeding;

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204 (c) Any act to obtain possession of property of the
205 insurer;

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

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

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

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

220 631.141 Conduct of delinquency proceeding; domestic and
221 alien insurers.—

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

224 (7) The department as domiciliary receiver may pay any
225 expenses under contracts, leases, employment agreements, or
226 other arrangements entered into by the insurer before
227 receivership as the department deems necessary for the purposes
228 of this chapter. The department is not required to pay any such
229 expenses that it determines are not necessary and may reject any
230 contract pursuant to subsection (3).

231 (10)~~(8)~~ The department as domiciliary receiver may take
232 such action as it deems necessary or appropriate to reform and

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233 revitalize the insurer. The department shall have all the powers
234 of the directors, officers, and managers, whose authority shall
235 be suspended, except as they are redelegated by the receiver.
236 The receiver shall have full power to direct and manage the
237 affairs of the insurer, to hire and discharge employees, and to
238 deal with the property and business of the insurer. In the event
239 of the liquidation of an insurer domiciled in this state, and
240 notwithstanding any provision of chapter 605, chapter 607,
241 chapter 617, chapter 620, or chapter 621, all officers,
242 directors, and managers of the insurer are permanently
243 discharged and have no further authority of any kind over the
244 affairs or assets of the insurer, except as may be redelegated
245 by the department.

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

248 631.152 Conduct of delinquency proceeding; foreign
249 insurers.—

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

254 Section 7. Section 631.1521, Florida Statutes, is created
255 to read:

256 631.1521 Actions by and against the receiver.—

257 (1) An allegation by the receiver of improper or fraudulent
258 conduct against any person may not be the basis of a defense by
259 a third party to the enforcement of a contractual obligation
260 owed to the insurer. This section does not bar a third party
261 from the right to raise a defense that the conduct was

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262 materially and substantially related to the contractual
263 obligation for which enforcement is sought.

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

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

284 Section 8. Section 631.1522, Florida Statutes, is created
285 to read:

286 631.1522 Unrecorded obligations and defenses and claims of
287 affiliates.-

288 (1) In any proceeding or claim by the receiver, an
289 affiliate, a controlled or controlling person, or a present or
290 former officer, manager, director, trustee, or shareholder of

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291 the insurer may not assert any defense unless:

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

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

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

301 (a) The obligations were recorded in the books and records
302 of the insurer at or about the time the obligations were
303 incurred; and

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

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

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

314 631.181 Filing and proof of claim.—

315 (2)

316 (g) Upon application of the receiver:

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

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

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

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349 (4) The receiver may petition the receivership court to set
350 a date certain before which all contingent or unliquidated
351 claims are final. In addition to the notice requirements in this
352 section, the receiver shall give notice of filing the petition
353 to all claimants with claims that remain contingent or
354 unliquidated under this section.

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

358 Section 10. Section 631.191, Florida Statutes, is amended
359 to read:

360 631.191 Special deposit claims; ~~and~~ secured claims;
361 administration of workers' compensation large deductible
362 policies and insured collateral.-

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

376 (2) SECURED CLAIMS.-

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

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

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

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

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

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

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

402 1. "Collateral" means cash, a letter of credit, a surety
 403 bond, or any other form of security posted by the insured, or by
 404 a captive insurer or reinsurer, to secure the insured's
 405 obligation under a large deductible policy to pay deductible
 406 claims or to reimburse the insurer for deductible claim

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407 payments. "Collateral" may also secure an insured's obligation
408 to reimburse or pay the insurer as may be required for other
409 secured obligations.

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

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

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

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

425 b. The term also includes policies that contain an
426 aggregate limit on the insured's liability for all deductible
427 claims in addition to a per-claim deductible limit. A policy
428 must meet the current guidelines for large deductible workers'
429 compensation filings as defined by the office, including the
430 eligibility standards regarding the minimum standard premium and
431 the minimum deductible to be deemed a large deductible policy.

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

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

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

447 (b) Applicability.—

448 1. This subsection applies to workers' compensation large
449 deductible policies issued by an insurer that is subject to
450 delinquency proceedings under this chapter. This subsection does
451 not apply to first-party claims, or to covered claims funded by
452 a guaranty association above the deductible unless paragraph (c)
453 applies. Large deductible policies must be administered in
454 accordance with the terms of the policy, except to the extent
455 such terms conflict with this subsection.

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

458 (c) Handling of large deductible claims.—Unless otherwise
459 agreed to by the responsible guaranty association, all large
460 deductible claims that are also covered claims as defined by an
461 applicable guaranty association law, including those that may
462 have been funded by an insured before liquidation, must be
463 turned over to the guaranty association for handling. To the
464 extent the insured funds or pays the deductible claim pursuant

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465 to an agreement by the guaranty fund or otherwise, the insured's
466 funding or payment of a deductible claim extinguishes the
467 obligations, if any, of the receiver and any guaranty
468 association to pay such claim. A charge may not be made against
469 the receiver or a guaranty association on the basis of an
470 insured's funding or payment of a deductible claim.

471 (d) Deductible claims paid by a guaranty association.-

472 1. To the extent a guaranty association pays any deductible
473 claim for which an insurer would have been entitled to
474 reimbursement from an insured, a guaranty association is
475 entitled to the amount of reimbursements received or collateral
476 available, subject to paragraph (g). Reimbursements paid to the
477 guaranty association pursuant to this paragraph may not be
478 treated as distributions under s. 631.271 or as early access
479 payments under s. 631.397(1).

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

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

492 (e) Collections.-

493 1. The receiver may collect reimbursements owed for

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

500 a. Paid by the insurer before the commencement of
501 delinquency proceedings;

502 b. Paid by a guaranty association upon receipt by the
503 receiver of notice from a guaranty association of reimbursable
504 payments; or

505 c. Paid or allowed by the receiver.

506 2. If the insured or other party does not make payment
507 within the time specified in the large deductible policy, or, if
508 no time is specified, within a reasonable time after the date of
509 billing, the receiver may take reasonable steps to collect any
510 reimbursements owed.

511 3. The insolvency of the insurer or its inability to
512 perform any of its obligations under the large deductible policy
513 may not be a defense to the insured's reimbursement obligation
514 under the large deductible policy.

515 4. An allegation of improper handling or payment of a
516 deductible claim by the receiver or a guaranty association may
517 not be a defense to the insured's reimbursement obligations
518 under the large deductible policy.

519 (f) Collateral.—

520 1. Subject to this paragraph, the receiver shall use
521 collateral, when available, to secure the insured's obligation
522 to fund or reimburse deductible claims or other secured

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523 obligations or payment obligations. A guaranty association is
524 entitled to collateral as provided for in this paragraph to the
525 extent needed to reimburse a guaranty association for the
526 payment of a deductible claim. Any distributions made to a
527 guaranty association pursuant to this paragraph may not be
528 treated as distributions under s. 631.271 or as early access
529 payments under s. 631.397(1).

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

532 a. Perform its funding or payment obligations under any
533 large deductible policy;

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

537 c. Pay amounts due to the estate for preliquidation
538 obligations;

539 d. Timely fund any other secured obligation; or

540 e. Timely pay expenses.

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

551 4. Excess collateral may be returned to the insured, as

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552 determined by the receiver, after a periodic review of claims
553 paid, outstanding case reserves, and a factor for claims that
554 were incurred but not reported.

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

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

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

568 631.192 Allowance of certain claims.—

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

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

574 631.271 Priority of claims.—

575 (1) The priority of distribution of claims from the
576 insurer's estate shall be in accordance with the order in which
577 each class of claims is set forth in this subsection. Every
578 claim in each class shall be paid in full or adequate funds
579 shall be retained for such payment before the members of the
580 next class may receive any payment. No subclasses may be

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581 established within any class. The order of distribution of
582 claims shall be:

583 (a) *Class 1.*—

584 1. All of the receiver's costs and expenses of
585 administration.

586 2. All of the expenses of a guaranty association or foreign
587 guaranty association in handling claims.

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

591 (b) *Class 2.*—All claims under policies for losses incurred,
592 including third-party claims, all claims against the insurer for
593 liability for bodily injury or for injury to or destruction of
594 tangible property which claims are not under policies, ~~and~~ all
595 claims of a guaranty association or foreign guaranty
596 association, and all claims related to a patient's healthcare
597 coverage by physicians, hospitals, and other providers of a
598 health insurer or health maintenance organization. All claims
599 under life insurance and annuity policies, whether for death
600 proceeds, annuity proceeds, or investment values, shall be
601 treated as loss claims. That portion of any loss,
602 indemnification for which is provided by other benefits or
603 advantages recovered by the claimant, may not be included in
604 this class, other than benefits or advantages recovered or
605 recoverable in discharge of familial obligations of support or
606 by way of succession at death or as proceeds of life insurance,
607 or as gratuities. No payment by an employer to her or his
608 employee may be treated as a gratuity.

609 (j) *Class 10.*—Interest on allowed claims of Classes 1

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610 through 9. The rate of interest payable on an allowed claim must
611 accrue from the date the court enters the order of liquidation
612 until such time as the receivership court approves the
613 distribution. The interest rate must be calculated in accordance
614 with s. 55.03, ~~according to the terms of a plan to pay interest~~
615 ~~on allowed claims proposed by the liquidator and approved by the~~
616 ~~receivership court.~~

617 Section 13. Section 631.391, Florida Statutes, is amended
618 to read:

619 631.391 Cooperation of officers and employees.—

620 (1) Any present or former officer, director, manager,
621 trustee, agent, adjuster, employee, or independent contractor of
622 any insurer or affiliate and any other person who possesses any
623 executive authority over, or who exercises any control over, any
624 segment of the affairs of the insurer or affiliate shall fully
625 cooperate with the department and office in any proceeding under
626 this chapter or any investigation preliminary or incidental to
627 the proceeding. An order of rehabilitation or liquidation which
628 results in the discharge or suspension of any of the persons
629 listed above does not operate to release such person from the
630 duty to cooperate with the department and office as set out
631 herein. As used in this section, the term "person" includes any
632 person who directly or indirectly exercises control over
633 activities of the insurer through any holding company or other
634 affiliate of the insurer. The term ~~to~~ "cooperate" includes, but
635 is not limited to, the following:

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

638 (b) Promptly to make available and deliver to the

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639 department or office any books, accounts, documents, other
640 records, information, data processing software, or property of
641 or pertaining to the insurer and in her or his possession,
642 custody, or control; or

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

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

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

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

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

665 (6) Any person referred to in subsection (1) who refuses to
666 cooperate in providing records upon the request of the
667 department or office is liable for any penalties, fines, or

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668 other costs assessed against the guaranty association or the
669 receiver that result from the refusal or delay to provide
670 records.

671 Section 14. Section 631.395, Florida Statutes, is amended
672 to read:

673 631.395 Guaranty fund; orders of court.—Any order of
674 liquidation issued pursuant to s. 631.111 or s. 631.131 must
675 ~~shall~~ authorize and direct the department as receiver to
676 coordinate the operation of the receivership with the operation
677 of any insurance guaranty fund authorized to operate in this
678 state and may authorize the department to provide data
679 processing services for any appropriate guaranty fund. Such
680 authorization must ~~shall~~ include, but not be limited to, release
681 ~~of copies~~ of any of the following:

- 682 (1) Claims files, records, or documents pertaining to
683 claims on file with the insolvent insurer; and
684 (2) Insurance claims filed with the receiver.

685 Section 15. Subsections (1), (4), and (5) of section
686 631.397, Florida Statutes, are amended to read:

687 631.397 Use of certain marshaled assets.—

688 (1) ~~Within 120 days of a final determination of insolvency~~
689 ~~of an insurer by a court of competent jurisdiction of this~~
690 ~~state,~~ The department, as receiver, may ~~shall~~ apply to the court
691 for approval of a proposal to disburse assets out of such
692 insurer's marshaled assets, as such assets become available, to
693 each association entitled thereto or, if there are no assets
694 available for such disbursement, then for approval of such
695 proposal as the receiver deems appropriate. For the purposes of
696 this section, the term "association" includes the Florida

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697 Insurance Guaranty Association, Incorporated, the Florida
698 Workers' Compensation Insurance Guaranty Association, and any
699 entity or person performing a function in another state similar
700 to that performed in this state by the Florida Insurance
701 Guaranty Association, Incorporated, or the Florida Workers'
702 Compensation Insurance Guaranty Association, provided the
703 Florida Insurance Guaranty Association, Incorporated, or the
704 Florida Workers' Compensation Insurance Guaranty Association, is
705 entitled to like payment under the laws of the association's
706 state of domicile in respect to insolvent companies doing
707 business in that state.

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

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

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