

Amendment No. 2

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	_____	(Y/N)
ADOPTED AS AMENDED	_____	(Y/N)
ADOPTED W/O OBJECTION	_____	(Y/N)
FAILED TO ADOPT	_____	(Y/N)
WITHDRAWN	_____	(Y/N)
OTHER		

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1 Committee/Subcommittee hearing bill: Insurance & Banking  
 2 Subcommittee

3 Representative Raburn offered the following:

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5 **Amendment (with title amendment)**

6 Between lines 311 and 312, insert:

7 Section 10. Section 631.191, Florida Statutes, is amended  
 8 to read:

9 631.191 Special deposit claims; ~~and~~ secured claims;  
 10 administration of workers' compensation large deductible  
 11 policies and insured collateral.-

12 (1) SPECIAL DEPOSIT CLAIMS.-The owners of special deposit  
 13 claims against an insurer against which a liquidation order has  
 14 been entered in this or any other state shall be given priority  
 15 against their several special deposits in accordance with the  
 16 provisions of the statutes governing the creation and

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17 maintenance of such deposits. If there is a deficiency in any  
18 such deposit so that the claims secured thereby are not fully  
19 discharged therefrom, the claimants may share in the general  
20 assets, but such sharing shall be deferred until general  
21 creditors, and also claimants against other special deposits who  
22 have received smaller percentages from their respective special  
23 deposits, have been paid percentages of their claims equal to  
24 the percentage paid from the special deposit.

25 (2) SECURED CLAIMS.—

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

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

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

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

48 (3) ADMINISTRATION OF WORKERS' COMPENSATION LARGE  
49 DEDUCTIBLE POLICIES AND INSURED COLLATERAL.-

50 (a) Definitions.-As used in this subsection, the term:

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

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

63 3.a. "Large deductible policy" means a combination of one  
64 or more workers' compensation policies and endorsements issued  
65 to an insured, and contracts or security agreements entered into

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66 between an insured and the insurer, in which the insured has  
67 agreed with the insurer to:

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

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

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

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

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

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

96 (b) Applicability.—

97 1. This subsection applies to workers' compensation large  
98 deductible policies issued by an insurer that is subject to  
99 delinquency proceedings under this chapter. This subsection does  
100 not apply to first-party claims, or to covered claims funded by  
101 a guaranty association above the deductible unless paragraph (c)  
102 applies. Large deductible policies must be administered in  
103 accordance with the terms of the policy, except to the extent  
104 such terms conflict with this subsection.

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

107 (c) Handling of large deductible claims.—Unless otherwise  
108 agreed to by the responsible guaranty association, all large  
109 deductible claims that are also covered claims as defined by an  
110 applicable guaranty association law, including those that may  
111 have been funded by an insured before liquidation, must be  
112 turned over to the guaranty association for handling. To the  
113 extent the insured funds or pays the deductible claim pursuant  
114 to an agreement by the guaranty fund or otherwise, the insured's

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115 funding or payment of a deductible claim extinguishes the  
116 obligations, if any, of the receiver and any guaranty  
117 association to pay such claim. A charge may not be made against  
118 the receiver or a guaranty association on the basis of an  
119 insured's funding or payment of a deductible claim.

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

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

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

136 3. This paragraph does not limit any right of the receiver  
137 or a guaranty association which may otherwise exist under  
138 applicable law to obtain reimbursement from insureds for claims

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139 payments made by the guaranty association under policies of the  
140 insurer or for the guaranty association's related expenses.

141 (e) Collections.-

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

149 a. Paid by the insurer before the commencement of  
150 delinquency proceedings;

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

154 c. Paid or allowed by the receiver.

155 2. If the insured or other party does not make payment  
156 within the time specified in the large deductible policy, or, if  
157 no time is specified, within a reasonable time after the date of  
158 billing, the receiver may take reasonable steps to collect any  
159 reimbursements owed.

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

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

168       (f) Collateral.—

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

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

181       a. Perform its funding or payment obligations under any  
182 large deductible policy;

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

186       c. Pay amounts due to the estate for preliquidation  
187 obligations;

188       d. Timely fund any other secured obligation; or



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189 e. Timely pay expenses.

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

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

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

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

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213 guaranty association under policies of the insolvent insurer, or  
214 for related expenses the guaranty association incurs.

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**T I T L E   A M E N D M E N T**

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Remove line 55 and insert:

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petition to certain claimants; amending s. 631.191, F.S.;

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defining terms; providing applicability; requiring that

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specified large deductible claims under certain workers'

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compensation policies must be turned over to the applicable

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responsible guaranty association for handling; providing for

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construction relating to payment of deductible claims;

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authorizing receivers to collect reimbursements owed for certain

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deductible claims; providing requirements for such collections;

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providing for construction relating to such collections;

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requiring receivers to use collateral, when available, to secure

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certain obligations; providing that a guaranty association is

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entitled to collateral for a certain purpose; providing for

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construction relating to certain distributions; requiring

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receivers to draw down collateral under certain circumstances;

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providing a procedure for payment of claims; authorizing the

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return of excess collateral under certain circumstances;

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providing that a receiver is entitled to deduct certain expenses

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237 | from the collateral or deductible reimbursements; providing for  
238 | construction; amending s. 631.192,