

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
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 conditions in which claims
53 will be late-filed; authorizing a receiver to petition
54 the receivership court to set certain deadlines;
55 requiring a receiver to provide notice of filing a
56 certain petition to certain claimants; amending s.
57 631.191, F.S.; providing definitions; providing
58 applicability; requiring that specified large
59 deductible claims under certain workers' compensation
60 policies must be turned over to the applicable
61 responsible guaranty association for handling;
62 providing for construction relating to payment of
63 deductible claims; authorizing receivers to collect
64 reimbursements owed for certain deductible claims;
65 providing requirements for such collections; providing
66 for construction relating to such collections;
67 requiring receivers to use collateral, when available,
68 to secure certain obligations; providing that a
69 guaranty association is entitled to collateral for a
70 certain purpose; providing for construction relating
71 to certain distributions; requiring receivers to draw
72 down collateral under certain circumstances; providing
73 a procedure for payment of claims; authorizing the
74 return of excess collateral under certain
75 circumstances; providing that a receiver is entitled

76 | to deduct certain expenses from the collateral or
77 | deductible reimbursements; providing for construction;
78 | amending s. 631.192, F.S.; prohibiting specified
79 | claims; amending s. 631.271, F.S.; adding and revising
80 | claims to a list that establishes the priority of
81 | distribution of claims from an insurer's estate;
82 | specifying when interest on claims accrue and the
83 | interest rate calculation; amending s. 631.391, F.S.;
84 | specifying that certain persons in relation to an
85 | insurer who must cooperate with the department or
86 | office in certain proceedings or investigations
87 | include present or former roles; defining the term
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.

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

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

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

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

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

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

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

(3) A delinquency proceeding pursuant to this chapter 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
 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
 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
 190 as a matter of law as an automatic stay applicable to all
 191 persons and entities, other than the receiver and the office,
 192 which 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
 199 an 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
 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 renumbered as subsections (4) through (6) and (8) through (12),
 215 respectively, new subsections (3) and (7) are added to that
 216 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.
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
255 fraudulent conduct against any person may not be the basis of a
256 defense by a third party to the enforcement of a contractual
257 obligation owed to the insurer. This section does not bar a
258 third party from the right to raise a defense that the conduct
259 was 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
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
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
305 or unreported transactions by the receiver against any
306 affiliate, controlled or controlling person, or present or
307 former officer, manager, director, trustee, or shareholder of
308 the insurer.

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

312 631.181 Filing and proof of claim.—

313 (2)

314 (g) Upon application of the receiver:

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

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

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

347 (4) The receiver may petition the receivership court to
348 set a date certain before which all contingent or unliquidated
349 claims are final. In addition to the notice requirements in this
350 section, the receiver shall give notice of filing the petition

351 to all claimants with claims that remain contingent or
352 unliquidated under this section.

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

356 Section 10. Section 631.191, Florida Statutes, is amended
357 to read:

358 631.191 Special deposit claims; ~~and~~ secured claims;
359 administration of workers' compensation large deductible
360 policies and insured collateral.—

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

374 (2) SECURED CLAIMS.—

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

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

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

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

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

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

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

400 1. "Collateral" means cash, a letter of credit, a surety

401 bond, or any other form of security posted by the insured, or by
402 a captive insurer or reinsurer, to secure the insured's
403 obligation under a large deductible policy to pay deductible
404 claims or to reimburse the insurer for deductible claim
405 payments. Collateral may also secure an insured's obligation to
406 reimburse or pay the insurer as may be required for other
407 secured obligations.

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

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

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

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

423 b. The term also includes policies that contain an
424 aggregate limit on the insured's liability for all deductible
425 claims in addition to a per-claim deductible limit. A policy

426 must meet the current guidelines for large deductible workers'
427 compensation filings as defined by the office, including the
428 eligibility standards regarding the minimum standard premium and
429 the minimum deductible to be deemed a large deductible policy.

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

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

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

445 (b) Applicability.—

446 1. This subsection applies to workers' compensation large
447 deductible policies issued by an insurer that is subject to
448 delinquency proceedings under this chapter. This subsection does
449 not apply to first-party claims, or to covered claims funded by
450 a guaranty association above the deductible unless paragraph (c)

451 applies. Large deductible policies must be administered in
452 accordance with the terms of the policy, except to the extent
453 such terms conflict with this subsection.

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

456 (c) Handling of large deductible claims.—Unless otherwise
457 agreed to by the responsible guaranty association, all large
458 deductible claims that are also covered claims as defined by an
459 applicable guaranty association law, including those that may
460 have been funded by an insured before liquidation, must be
461 turned over to the guaranty association for handling. To the
462 extent the insured funds or pays the deductible claim pursuant
463 to an agreement by the guaranty fund or otherwise, the insured's
464 funding or payment of a deductible claim extinguishes the
465 obligations, if any, of the receiver and any guaranty
466 association to pay such claim. A charge may not be made against
467 the receiver or a guaranty association on the basis of an
468 insured's funding or payment of a deductible claim.

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

470 1. To the extent a guaranty association pays any
471 deductible claim for which an insurer would have been entitled
472 to reimbursement from an insured, a guaranty association is
473 entitled to the amount of reimbursements received or collateral
474 available, subject to paragraph (g). Reimbursements paid to the
475 guaranty association pursuant to this paragraph may not be

476 treated as distributions under s. 631.271 or as early access
477 payments under s. 631.397(1).

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

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

490 (e) Collections.-

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

498 a. Paid by the insurer before the commencement of
499 delinquency proceedings;

500 b. Paid by a guaranty association upon receipt by the

501 receiver of notice from a guaranty association of reimbursable
502 payments; or

503 c. Paid or allowed by the receiver.

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

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

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

517 (f) Collateral.—

518 1. Subject to this paragraph, the receiver shall use
519 collateral, when available, to secure the insured's obligation
520 to fund or reimburse deductible claims or other secured
521 obligations or payment obligations. A guaranty association is
522 entitled to collateral as provided for in this paragraph to the
523 extent needed to reimburse a guaranty association for the
524 payment of a deductible claim. Any distributions made to a
525 guaranty association pursuant to this paragraph may not be

526 treated as distributions under s. 631.271 or as early access
527 payments under s. 631.397(1).

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

530 a. Perform its funding or payment obligations under any
531 large deductible policy;

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

535 c. Pay amounts due to the estate for preliquidation
536 obligations;

537 d. Timely fund any other secured obligation; or

538 e. Timely pay expenses.

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

549 4. Excess collateral may be returned to the insured, as
550 determined by the receiver, after a periodic review of claims

551 paid, outstanding case reserves, and a factor for claims that
552 were incurred but not reported.

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

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

564 Section 11. Subsections (5) is added to section 631.192,
565 Florida Statutes, to read:

566 631.192 Allowance of certain claims.—

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

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

572 631.271 Priority of claims.—

573 (1) The priority of distribution of claims from the
574 insurer's estate shall be in accordance with the order in which
575 each class of claims is set forth in this subsection. Every

576 claim in each class shall be paid in full or adequate funds
577 shall be retained for such payment before the members of the
578 next class may receive any payment. No subclasses may be
579 established within any class. The order of distribution of
580 claims shall be:

581 (a) Class 1.—

582 1. All of the receiver's costs and expenses of
583 administration.

584 2. All of the expenses of a guaranty association or
585 foreign guaranty association in handling claims.

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

589 (b) Class 2.—All claims under policies for losses
590 incurred, including third-party claims, all claims against the
591 insurer for liability for bodily injury or for injury to or
592 destruction of tangible property which claims are not under
593 policies, ~~and~~ all claims of a guaranty association or foreign
594 guaranty association, and all claims related to a patient's
595 healthcare coverage by physicians, hospitals, and other
596 providers of a health insurer or health maintenance
597 organization. All claims under life insurance and annuity
598 policies, whether for death proceeds, annuity proceeds, or
599 investment values, shall be treated as loss claims. That portion
600 of any loss, indemnification for which is provided by other

601 benefits or advantages recovered by the claimant, may not be
602 included in this class, other than benefits or advantages
603 recovered or recoverable in discharge of familial obligations of
604 support or by way of succession at death or as proceeds of life
605 insurance, or as gratuities. No payment by an employer to her or
606 his employee may be treated as a gratuity.

607 (j) Class 10.—Interest on allowed claims of Classes 1
608 through 9. The rate of interest payable on an allowed claim must
609 accrue from the date the court enters the order of liquidation
610 until such time as the receivership court approves the
611 distribution. The interest rate must be calculated in accordance
612 with s. 55.03, ~~according to the terms of a plan to pay interest~~
613 ~~on allowed claims proposed by the liquidator and approved by the~~
614 ~~receivership court.~~

615 Section 13. Section 631.391, Florida Statutes, is amended
616 to read:

617 631.391 Cooperation of officers and employees.—

618 (1) Any present or former officer, director, manager,
619 trustee, agent, adjuster, employee, or independent contractor of
620 any insurer or affiliate and any other person who possesses any
621 executive authority over, or who exercises any control over, any
622 segment of the affairs of the insurer or affiliate shall fully
623 cooperate with the department and office in any proceeding under
624 this chapter or any investigation preliminary or incidental to
625 the proceeding. An order of rehabilitation or liquidation which

626 results in the discharge or suspension of any of the persons
627 listed above does not operate to release such person from the
628 duty to cooperate with the department and office as set out
629 herein. As used in this section, the term "person" includes any
630 person who directly or indirectly exercises control over
631 activities of the insurer through any holding company or other
632 affiliate of the insurer. The term ~~To~~ "cooperate" includes, but
633 is not limited to, the following:

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

636 (b) Promptly to make available and deliver to the
637 department or office any books, accounts, documents, other
638 records, information, data processing software, or property of
639 or pertaining to the insurer and in her or his possession,
640 custody, or control; or

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

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

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

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

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

663 (6) Any person referred to in subsection (1) who refuses
664 to cooperate in providing records upon the request of the
665 department or office is liable for any penalties, fines, or
666 other costs assessed against the guaranty association or the
667 receiver that result from the refusal or delay to provide
668 records.

669 Section 14. Section 631.395, Florida Statutes, is amended
670 to read:

671 631.395 Guaranty fund; orders of court.—Any order of
672 liquidation issued pursuant to s. 631.111 or s. 631.131 must
673 ~~shall~~ authorize and direct the department as receiver to
674 coordinate the operation of the receivership with the operation
675 of any insurance guaranty fund authorized to operate in this

676 state and may authorize the department to provide data
677 processing services for any appropriate guaranty fund. Such
678 authorization must ~~shall~~ include, but not be limited to, release
679 ~~of copies~~ of any of the following:

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

682 (2) Insurance claims filed with the receiver.

683 Section 15. Subsections (1), (4), and (5) of section
684 631.397, Florida Statutes, are amended to read:

685 631.397 Use of certain marshaled assets.—

686 (1) ~~Within 120 days of a final determination of insolvency~~
687 ~~of an insurer by a court of competent jurisdiction of this~~
688 ~~state,~~ The department, as receiver, may ~~shall~~ apply to the court
689 for approval of a proposal to disburse assets out of such
690 insurer's marshaled assets, as such assets become available, to
691 each association entitled thereto or, if there are no assets
692 available for such disbursement, then for approval of such
693 proposal as the receiver deems appropriate. For the purposes of
694 this section, the term "association" includes the Florida
695 Insurance Guaranty Association, Incorporated, the Florida
696 Workers' Compensation Insurance Guaranty Association, and any
697 entity or person performing a function in another state similar
698 to that performed in this state by the Florida Insurance
699 Guaranty Association, Incorporated, or the Florida Workers'
700 Compensation Insurance Guaranty Association, provided the

701 Florida Insurance Guaranty Association, Incorporated, or the
702 Florida Workers' Compensation Insurance Guaranty Association, is
703 entitled to like payment under the laws of the association's
704 state of domicile in respect to insolvent companies doing
705 business in that state.

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

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

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