

HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

BILL #: HB 797 Florida Life and Health Insurance Guaranty Association

SPONSOR(S): Robinson, W.

TIED BILLS: **IDEN./SIM. BILLS:** SB 1470

FINAL HOUSE FLOOR ACTION: 118 Y's 0 N's **GOVERNOR'S ACTION:** Approved

SUMMARY ANALYSIS

HB 797 passed the House on April 15, 2021, and subsequently passed the Senate on April 21, 2021.

An insurance guaranty association ensures that policyholders' paid insurance premiums are protected and outstanding claims are settled, up to limits provided by law, if their insurer is liquidated. The Florida Life and Health Insurance Guaranty Association (FLAHIGA) is the guaranty association for most insurance companies that write life and health insurance or annuities in Florida. The bill makes the following changes to conform to the Life and Health Insurance Guaranty Association Model Act:

- Adds a definition for the term "Moody's Corporate Bond Yield Average".
- Amends the definition of "person" to include "limited liability company" and "governmental body or entity".
- Clarifies that, in dealing with an impaired domestic insurer, the FLAHIGA may assume or reissue covered policies, in addition to guaranteeing and reinsuring the policies.
- Expressly provides that the FLAHIGA has the right to appear or intervene before a court or agency in another state.
- Provides that, for purposes of the FLAHIGA's standing to appear before any court in this state, the FLAHIGA's powers and duties include reissuing or modifying covered policies.
- Provides that the FLAHIGA may recover payment of improper claims.
- Clarifies that the FLAHIGA has the authority to join an organization of other state guaranty associations to further the purposes and to carry out the powers and duties of the FLAHIGA.
- As to Class A assessments, which pay the FLAHIGA's general administrative expenses, removes the annual cap of \$250, permits the assessments to be made on a pro rata basis, and allows the FLAHIGA's board to credit the assessments against future assessments related to insurer insolvencies.
- Provides that, if an insurer's assessment is deferred because the assessment would endanger the insurer's financial solvency, the insurer must pay the assessment once it regains financial strength.
- Removes the reduced assessment cap for nonprofit annuity insurers that issue policies to educational groups, thus making such insurers subject to the assessment cap for all other annuity insurers.
- Directs that the FLAHIGA establish a procedure for removing a board member if that member becomes an impaired or insolvent insurer and establish a policy and procedure to address conflicts of interest.

The bill has no fiscal impact on state or local governments and an indeterminate impact on the private sector.

The bill was approved by the Governor on June 16, 2021, ch. 2021-109, L.O.F., and will become effective on July 1, 2021.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Background

Insurer Insolvency

States primarily regulate insurance companies, and the state of domicile serves as the primary regulator for insurers. In Florida, the Office of Insurance Regulation (OIR) licenses and regulates the activities of insurers and other risk-bearing entities.¹ The OIR monitors the solvency of insurers, examines insurers, and takes administrative action, if necessary.

Chapter 631, F.S., relating to insurer insolvency and guaranty payments, governs the receivership process for insurance companies in Florida. Federal law specifies that insurance companies cannot file for bankruptcy.² Instead, they are either “rehabilitated” or “liquidated” by the state. In Florida, the Division of Rehabilitation and Liquidation of the Department of Financial Services (DFS) is responsible for rehabilitating or liquidating insurance companies.³

Florida operates five insurance guaranty funds and associations⁴ to ensure that policyholders of liquidated insurers are protected with respect to insurance premiums paid and settlement of outstanding claims, up to limits provided by law.⁵ A guaranty association generally is a not-for-profit corporation created by law and is directed to protect policyholders from financial losses and delays in claims payments and settlements due to the insolvency of an insurance company. A guaranty association accomplishes its mission by assuming responsibility for settling claims and refunding unearned premiums⁶ to policyholders. Insurers are required by law to participate in guaranty associations as a condition of transacting business in Florida.

The bill makes changes to one of the five guaranty funds and associations – the Florida Life and Health Insurance Guaranty Association (FLAHIGA), which is the guaranty association for most health and life insurers.

¹ S. 20.121(3), F.S.

² The Bankruptcy Code expressly provides that “a domestic insurance company” may not be the subject of a federal bankruptcy proceeding. 11 U.S.C. § 109(b)(2). The exclusion of insurers from the federal bankruptcy court process is consistent with federal policy generally allowing states to regulate the business of insurance. See 15 U.S.C. ss. 1011-1012.

³ Typically, insurers are put into liquidation when the company is insolvent whereas insurers are put into rehabilitation for numerous reasons, one of which is an unsound financial condition. The goal of rehabilitation is to return the insurer to a sound financial condition. The goal of liquidation, however, is to dissolve the insurer. See s. 631.051, F.S., for the grounds for rehabilitation and s. 631.061, F.S., for the grounds for liquidation.

⁴ The FLAHIGA (ss. 631.711 – 631.738, F.S.) generally is responsible for claims settlement and premium refunds for health and life insurers who are insolvent. The HMOCAP (ss. 631.811 – 631.828, F.S.) offers assistance to members of insolvent health maintenance organizations, and the Florida Workers’ Compensation Insurance Guaranty Association (ss. 631.901 – 631.932, F.S.) is directed by law to protect policyholders of insolvent workers’ compensation insurers. The Florida Self-Insurers Guaranty Association (ss. 440.385 – 440.386, F.S.) protects policyholders of insolvent individual self-insured employers for workers’ compensation claims. The Florida Insurance Guaranty Association (ss. 631.50 – 631.70, F.S.) is responsible for paying claims for insolvent insurers for most remaining lines of insurance, including residential and commercial property, automobile insurance, and liability insurance, among others.

⁵ “Before the creation of guaranty associations, a typical claimant could have waited for years for payment of a claim and then still receive only a fraction of what was due under the terms of the policy or contract. Guaranty associations, subject to statutory limitations, were created to alleviate these problems and ensure the stability of the insurance market. Specifically, in the event of a life/health insurer liquidation, the guaranty mechanism provides for the continuation of eligible contracts that would otherwise terminate.” National Association of Insurance Commissioners, *Guaranty Associations/Funds*, https://www.naic.org/cipr_topics/topic_guaranty_associations.htm (last visited Feb. 26, 2021).

⁶ The term “unearned premium” refers to that portion of a premium that is paid in advance, typically for six months or one year, and which is still owed on the unexpired portion of the policy.

The FLAHIGA

Statutory provisions relating to the FLAHIGA, which was created in 1979, are contained in ch. 631, part III, F.S. The FLAHIGA is a nonprofit corporation and is governed by a board of directors composed of at least nine but not more than 11 member insurance companies.⁷ All insurance companies (with limited exceptions) licensed to write life and health insurance or annuities in Florida are required, as a condition of doing business in Florida, to be a member of the FLAHIGA.⁸

Plan of Operation

The FLAHIGA's operations are set forth in a plan of operation. Amendments to the plan of operation must be submitted to the DFS for approval and are effective upon written approval by the DFS.⁹ The plan of operation must:¹⁰

- Establish procedures for handling the FLAHIGA's assets.
- Establish the amount and method of reimbursing the FLAHIGA's board members for expenses incurred by them as board members, though board members are not otherwise compensated by the FLAHIGA for their services.¹¹
- Establish regular places and times for meetings of the board of directors.
- Establish procedures for keeping records of all financial transactions of the FLAHIGA, its agents, and the board of directors.
- Establish procedures whereby selections for the board of directors are made and submitted to the DFS.
- Establish any additional procedures for assessments.
- Contain additional provisions necessary or proper for the execution of the powers and duties of the FLAHIGA.

Additionally, the plan of operation may delegate duties of the FLAHIGA, except the power to borrow and to assess its members, to a corporation, association, or other organization which performs or will perform functions similar to those of this association, or its equivalent, in two or more states.¹² This provision contemplates membership in and delegation of duties to the National Organization of Life and Health Insurance Guaranty Associations discussed below.

Insolvency Process

In the event a member insurer is found to be insolvent and is ordered to be liquidated by a court, a receiver takes over the insurer under court supervision and processes the assets and liabilities through liquidation. Upon liquidation, the FLAHIGA automatically becomes liable for the policy obligations that the liquidated insurer owed to its Florida policyholders.¹³ The FLAHIGA services the policies, collects premiums, and pays valid claims under the policies. The FLAHIGA's rights under the policies are those that applied to the insurer prior to liquidation. The FLAHIGA may cancel the policy if the insurer could have done so, but normally the FLAHIGA continues the policies until it can transfer to, or substitute the policies with, a new, stable insurer with approval of the OIR.

⁷ Ss. 631.715(1) and 631.716(1), F.S.

⁸ S. 631.715(1), F.S.

⁹ S. 631.721(1)(a), F.S.

¹⁰ S. 631.721(3), F.S.

¹¹ S. 631.716(3), F.S.

¹² S. 631.721(4), F.S.

¹³ Generally, the FLAHIGA covers only policyholders and certificate holders that were valid Florida residents on the date that a member insurer is declared insolvent and liquidated. However, non-residents of Florida and beneficiaries of covered persons are covered by the FLAHIGA under limited circumstances. s. 631.713(2), F.S.

The FLAHIGA's aggregate liability with respect to one life may not exceed the following:¹⁴

- Life insurance death benefit: \$300,000 per insured life.
- Life insurance cash surrender: \$100,000 per insured life.
- Health insurance or long-term care insurance: \$300,000 per insured life.
- Annuity cash surrender: \$250,000 for deferred annuity contracts per contract owner.
- Annuity in benefit: \$300,000 per contract owner.
- Basic hospital expense, basic medical-surgical, or major medical expense health insurance policies (other than long-term care insurance policies): \$500,000 per insured life.

Additionally, the FLAHIGA will only cover a policy or contract to the extent that:¹⁵

- The interest rate on which the policy or contract is based, averaged over the four-year period immediately preceding the date on which the member insurer becomes impaired or insolvent, is less than the Moody's Corporate Bond Yield Average (averaged for that same four-year period) minus two percentage points.
- The interest rate on which the policy or contract is based, on and after the date on which the member insurer becomes an impaired or insolvent, is less than the Moody's Corporate Bond Yield Average minus three percentage points.

The FLAHIGA statutes do not currently define the term "Moody's Corporate Bond Yield Average".

Powers and Duties of the FLAHIGA

The FLAHIGA carries out its duties pursuant to authority granted by and directives contained in statute. Among the powers statutorily granted to the FLAHIGA is the authority to:

- Guarantee or reinsure, or cause to be guaranteed, assumed, or reinsured, any or all of the covered policies of an impaired domestic insurer;¹⁶ and
- Take such legal action as may be necessary to avoid payment of improper claims.¹⁷

Additionally, the FLAHIGA has standing to appear before any court in this state which has jurisdiction over an impaired or insolvent insurer to which the FLAHIGA is or may become obligated.¹⁸ Such standing extends to all matters germane to the powers and duties of the FLAHIGA, including but not limited to, proposals for reinsuring or guaranteeing the covered policies of the impaired or insolvent insurer and the determination of the covered policies and contractual obligations.¹⁹ While the statute expressly provides the FLAHIGA standing to appear in courts of this state, the statute does not expressly provide the FLAHIGA the right to appear or intervene before a court or agency in another state.

Assessment of Members

By law, the FLAHIGA is divided into three operating accounts:²⁰

- The health insurance account;
- The life insurance account; and
- The annuity account.

The FLAHIGA is authorized to levy two types of assessments to carry out its responsibilities:

- Class A assessments may be levied for the purpose of covering the FLAHIGA's general administrative costs and for the cost of examining a member insurer that the FLAHIGA's board

¹⁴ S. 631.717(12), F.S.; FLAHIGA, *Frequently Asked Questions*, <https://www.flahiga.org/FAQ> (last visited Feb. 26, 2021).

¹⁵ S. 631.713(3)(n), F.S.

¹⁶ S. 631.717(1)(a), F.S.

¹⁷ S. 631.717(13)(f), F.S.

¹⁸ S. 631.717(7), F.S.

¹⁹ *Id.*

²⁰ S. 631.715(2)(a), F.S.

believes in good faith may be impaired or insolvent.²¹ These assessments may only be made on a non-pro rata basis up to \$250 per member per calendar year.²² Additionally, Class A assessments may not be credited against future Class B assessments.²³

- Class B assessments are authorized to fund the FLAHIGA's duties related to a specific insolvency.²⁴ Except for assessments related to long-term care insurance insolvencies, Class B assessments are based on an insurer's pro rata share of all premiums collected by insurers in this state on policies covered by the account during the three years prior to the assessment.²⁵ Except for assessments related to long-term care insurance insolvencies, an insurer's assessment for each account may not exceed, in any one calendar year, 1 percent of the insurer's average premiums written in the covered account during the three-year period preceding the year in which the assessment is made.²⁶ An insurer may offset any assessment against either its premium tax or corporate income tax liability in 5 percent increments over the 20-year period following the year in which the assessment was paid.²⁷ When assessments related to insolvencies are imposed, the FLAHIGA must issue a certificate of contribution to each insurer paying such assessment for the amount of the assessment paid.²⁸ A certificate of contribution may be shown by the insurer in its financial statement as an asset in such form and for such amount, if any, and period of time as the OIR approves.²⁹ However, any amount of assessment offset against the insurer's premium tax or corporate income tax liability may not be shown as an asset of the insurer.³⁰

Currently, there is a cap on assessment of any member insurer that is a nonprofit insurance company which issues annuity contracts or group annuity contracts pursuant to s. 121.35, F.S.,³¹ or for the benefit of employees of Florida educational institutions.³² Such nonprofit insurance companies may not be assessed in any one calendar year more than the greater of:³³

- The amount which the company paid to this state in the previous year as premium tax and corporate tax on the business to which the FLAHIGA statutes apply, or
- 0.1 percent of written premium on such business in this state.

The FLAHIGA may abate or defer, in whole or in part, the assessment of a member insurer if, in the opinion of the board, payment of the assessment would endanger the ability of the member insurer to fulfill its contractual obligations.³⁴ In the event an assessment against a member insurer is abated, or deferred in whole or in part, the amount by which such assessment is abated or deferred may be assessed against the other member insurers.³⁵

National Organization of Life and Health Insurance Guaranty Associations (NOLHGA)³⁶

²¹ Ss. 631.718(2)(a) and 631.723(3), F.S.

²² S. 631.718(3)(a), F.S.

²³ *Id.*

²⁴ S. 631.718(2)(b), F.S.

²⁵ S. 631.718(3)(c), F.S.

²⁶ S. 631.718(5)(a), F.S.

²⁷ S. 631.72(1), F.S.

²⁸ S. 631.718(8), F.S.

²⁹ *Id.*

³⁰ *Id.*

³¹ Section 121.35, F.S., requires the Department of Management Services to establish an optional retirement program under which contracts providing retirement and death benefits may be purchased for eligible members of the State University System who elect to participate in the program.

³² S. 631.718(9), F.S.

³³ *Id.*

³⁴ S. 631.718(4), F.S.

³⁵ *Id.*

³⁶ NOLHGA, *About Us*, <https://www.nolhga.com/aboutnolhga/main.cfm/location/whatisnolhga> (last visited Feb. 26, 2021).

NOLHGA is a voluntary membership organization founded in 1983 when state life and health insurance guaranty associations saw the need for a mechanism to help them coordinate their efforts to provide protection to policyholders when a life or health insurance company insolvency affects people in multiple states. Today, NOLHGA membership includes life and health insurance guaranty associations of all 50 states and the District of Columbia.

When an insurer licensed in multiple states is declared insolvent, NOLHGA, on behalf of affected member state guaranty associations, assembles a task force of guaranty association officials. This task force analyzes the company's commitments to policyholders; ensures that covered claims are paid; and, where appropriate, arranges for covered policies to be transferred to a healthy insurer. The task force may also support the efforts of the receiver to dispose of the company's assets in a way that maximizes their value. When there is a shortfall of estate assets needed to pay the claims of covered policyholders, guaranty associations assess the licensed insurers in their states a proportional share of the funds needed.

NOLHGA's coordination of the workout of a multi-state insolvency significantly reduces costs to guaranty associations because the NOLHGA task force avoids the need for each state guaranty association to hire its own legal and financial experts. This coordination of effort also helps reduce the length of time a receiver may require to develop a plan of rehabilitation or otherwise resolve a multi-state insolvency.

The National Association of Insurance Commissioners (NAIC) – Life and Health Guaranty Association Model Act

The NAIC is the U.S. standard-setting and regulatory support organization created and governed by the chief insurance regulators from the 50 states, the District of Columbia, and five U.S. territories.³⁷ Through the NAIC, state insurance regulators establish standards and best practices, conduct peer reviews, and coordinate their regulatory oversight.³⁸ OIR Commissioner David Altmaier currently serves as the NAIC President.³⁹

The NAIC has promulgated and periodically updates a model act for use by states in governing their Life and Health Insurance Guaranty Associations.⁴⁰ Below are pertinent provisions in the most recent model act. Italicized words indicate portions of the model act that the bill adds to the FLAHIGA statutes.

- Definitions:
 - *“Moody’s Corporate Bond Yield Average” means the monthly average corporates as published by Moody’s Investors Service, Inc., or any successor thereto.*⁴¹
 - *“Person” means an individual, corporation, limited liability company, partnership, association, governmental body or entity, or voluntary organization.*⁴²
- Powers of the guaranty association state that the association may guarantee, *assume, reissue,* or reinsure, or cause to be guaranteed, assumed, *reissued,* or reinsured, any or all of the policies or contracts of the impaired insurer.⁴³
- The guaranty association’s standing to appear or intervene before a court or agency in this state extends to all matters germane to the powers and duties of the association, including, but not limited to, proposals for reinsuring, *reissuing, modifying,* or guaranteeing the policies or contracts of the impaired or insolvent insurer and the determination of the policies or contracts and contractual obligations.⁴⁴ *The guaranty association shall also have the right to appear or*

³⁷ NAIC, *About the NAIC*, https://www.naic.org/index_about.htm (last visited Feb. 26, 2021).

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ NAIC, *Life and Health Insurance Guaranty Association Model Act*, 2018, <http://www.naic.org/store/free/MDL-520.pdf> (last visited Feb. 26, 2021).

⁴¹ *Id.* at 9 and 37.

⁴² *Id.* at 9 and 38.

⁴³ *Id.* at 12.

⁴⁴ *Id.* at 15.

*intervene before a court or agency in another state with jurisdiction over an impaired or insolvent insurer for which the association is or may become obligated or with jurisdiction over any person or property against whom the association may have rights through subrogation or otherwise.*⁴⁵ These provisions enable the guaranty association to protect its interest and the best interests of the policyholders, contract owners, certificate holders, or enrollees in the handling of an impairment or insolvency by providing that the association's standing to appear in courts with jurisdiction over an insolvent insurer will extend to any matters concerning the duties of the association.⁴⁶

- The guaranty association may take such legal action as may be necessary or appropriate to avoid or recover payment of improper claims.⁴⁷
- *The guaranty association may join an organization of one or more other state associations of similar purposes, to further the purposes and administer the powers and duties of the association.*⁴⁸ This provision is intended to explicitly recognize that prompt and efficient discharge of the guaranty association's obligations will be greatly facilitated, especially in multistate insolvencies, by acting in concert through NOLHGA to develop and, where appropriate, carry out coordinated plans.⁴⁹
- The amount of a Class A assessment shall be determined by the board and may be authorized and called on a *pro rata* or non-*pro rata* basis. *If pro rata, the board may provide that it be credited against future Class B assessments.*⁵⁰
- The guaranty association may abate or defer, in whole or in part, the assessment of a member insurer if, in the opinion of the board, payment of the assessment would endanger the ability of the member insurer to fulfill its contractual obligations. In the event an assessment against a member insurer is abated, or deferred in whole or in part, the amount by which the assessment is abated or deferred may be assessed against the other member insurers in a manner consistent with the basis for assessments set forth in this section. *Once the conditions that caused a deferral have been removed or rectified, the member insurer shall pay all assessments that were deferred pursuant to a repayment plan approved by the Association.*⁵¹
- The plan of operation shall:
 - *Establish procedures whereby a director may be removed for cause, including in the case where a member insurer director becomes an impaired or insolvent insurer.*⁵²
 - *Require the board of directors to establish a policy and procedures for addressing conflicts of interest.*⁵³

Effect of the Bill

Definitions

In conformity with the NAIC model act, the bill:

- Adds a definition for “Moody’s Corporate Bond Yield Average” and defines the term as meaning the monthly average corporate bond yields published by Moody’s Investor Services, Inc., or any successor thereto.⁵⁴
- Adds “limited liability company” and “governmental body or entity” to the definition of “person”.

⁴⁵ *Id.*

⁴⁶ *Id.* at 20.

⁴⁷ *Id.* at 16.

⁴⁸ *Id.*

⁴⁹ *Id.* at 20.

⁵⁰ *Id.* at 21.

⁵¹ *Id.* at 22.

⁵² *Id.* at 24.

⁵³ *Id.*

⁵⁴ The term “Moody’s Corporate Bond Yield Average” is used in the context of an interest rate cap on FLAHIGA’s coverage of policies or contracts of the impaired or insolvent insurer.

Powers and Duties of the FLAHIGA

In conformity with the NAIC model act, the bill adds that:

- The FLAHIGA has authority to assume or reissue, or cause to be reissued, any or all of the covered policies of an impaired domestic insurer.
- The FLAHIGA has right to appear or intervene before a court or agency in another state which has jurisdiction over:
 - An impaired or insolvent insurer for which the FLAHIGA is or may become obligated; or
 - A person or property against whom the FLAHIGA may have rights through subrogation or otherwise.
- For purposes of the FLAHIGA's standing to appear before any court in this state, the FLAHIGA's powers and duties include reissuing or modifying covered policies.
- The FLAHIGA has the power to take such legal action as may be necessary to recover payment of improper claims.
- The FLAHIGA has the power to join an organization of other state guaranty associations to further the purposes and to carry out the powers and duties of the FLAHIGA (i.e., membership in NOLHGA).⁵⁵

Assessments

In conformity with the NAIC model act, the bill removes the annual cap of \$250 on Class A assessments, permits Class A assessments to be made on either a pro rata or non-pro rata basis, and allows the FLAHIGA's board to credit Class A assessments against future Class B assessments. The ability to credit Class A assessments against future Class B assessments provides budget flexibility. However, since Class A assessments are much smaller than Class B assessments, this change may not significantly decrease liability for Class B assessments.

The bill removes the cap on assessment of any member insurer that is a nonprofit insurance company which issues annuity contracts or group annuity contracts pursuant to s. 121.35, F.S., or for the benefit of employees of Florida educational institutions. Such companies would still be subject to assessment caps applicable to all member insurers, and the FLAHIGA maintains its ability to abate or defer the assessment of a member insurer if payment of the assessment would put the member insurer at risk of becoming impaired or insolvent.

Also in conformity with the NAIC model act, the bill adds a provision that would cause a member insurer to pay all assessments that were deferred, once the conditions that caused a deferral have been removed or rectified.

Plan of Operation

In conformity with the NAIC model act, the bill directs that the FLAHIGA's plan of operation must:

- Establish a procedure for removing a member of the board of directors when that member becomes an impaired or insolvent insurer.
- Require the board of directors to establish a policy and procedures for addressing conflicts of interest.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

⁵⁵ The FLAHIGA is already a member of NOLHGA, and the FLAHIGA's plan of operation is already permitted to delegate many of the FLAHIGA's duties to NOLHGA.

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The fiscal impact on the private sector is indeterminate. The bill may result in increased costs to some insurance companies, because it removes the reduced assessment cap for nonprofit annuity insurers that issue policies to educational groups, provides that a member insurer must pay all assessments that were deferred once the insurer regains financial strength, removes the annual cap on Class A assessments, and allows Class A assessments to be made on a pro rata basis. However, for these same reasons, the bill may equally result in decreased costs to other insurance companies. Overall, the bill may lead to better financial strength of the FLAHIGA, the safety net for insurance companies that write life and health insurance or annuities in Florida.

D. FISCAL COMMENTS:

None.