

By 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
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

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33 cross-reference; creating s. 631.1521, F.S.;

34 prohibiting certain defenses in actions by and against

35 a receiver; authorizing certain defenses in actions by

36 and against a receiver; specifying that a principal

37 under a surety bond or surety undertaking, under

38 certain circumstances, is entitled to credit for the

39 value of certain property against a reimbursement

40 obligation to the receiver; limiting admissibility of

41 evidence of fraud in the inducement to evidence

42 contained in insurer records; creating s. 631.1522,

43 F.S.; prohibiting, in a receiver's proceeding or

44 claim, the assertion of defenses or claims by an

45 affiliate or certain persons of an insurer except

46 under certain circumstances; providing construction;

47 amending s. 631.181, F.S.; authorizing a receivership

48 court to allow alternative procedures and requirements

49 for filing proofs of claim or allowing or proving

50 claims; providing construction; prohibiting a

51 receivership court from waiving certain filing

52 requirements; authorizing a receiver to petition the

53 receivership court to set certain deadlines; requiring

54 a receiver to provide notice of filing a certain

55 petition to certain claimants; amending s. 631.192,

56 F.S.; prohibiting specified claims; amending s.

57 631.271, F.S.; adding and revising claims to a list

58 that establishes the priority of distribution of

59 claims from an insurer's estate; specifying when

60 interest on claims accrue and the interest rate

61 calculation; amending s. 631.391, F.S.; specifying

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62 that certain persons in relation to an insurer who
 63 must cooperate with the department or office in
 64 certain proceedings or investigations include present
 65 or former roles; defining the term "person"; amending
 66 s. 631.395, F.S.; requiring an order of liquidation to
 67 authorize the release of certain claims files,
 68 records, documents, or claims, rather than only copies
 69 of the claims files, records, documents, or claims;
 70 amending s. 631.397, F.S.; authorizing the department
 71 as receiver to apply to the court for approval of a
 72 specified proposal, rather than requiring the
 73 department to make such application within a specified
 74 timeframe; deleting a specified notice requirement of
 75 the department; deleting a provision authorizing the
 76 court to take action on the application under certain
 77 circumstances; providing an effective date.

78
 79 Be It Enacted by the Legislature of the State of Florida:

80
 81 Section 1. Section 631.015, Florida Statutes, is amended to
 82 read:

83 631.015 Reciprocity; treatment of policyholders.—
 84 Reciprocity in the treatment of policyholders in receivership is
 85 extended to those states which, in substance and effect, enact
 86 the National Association of Insurance Commissioners
 87 Rehabilitation and Liquidation Model Act, ~~or~~ the Uniform
 88 Insurers Liquidation Act, or the Insurer Receivership Model Act.

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

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91 631.021 Jurisdiction of delinquency proceeding; venue;
92 change of venue; exclusiveness of remedy; appeal; construction.—

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

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

101 (3) A delinquency proceeding pursuant to this chapter
102 constitutes the sole and exclusive method of liquidating,
103 rehabilitating, reorganizing, or conserving an insurer. A ~~No~~
104 court may not ~~shall~~ entertain a petition for the commencement of
105 such a proceeding unless the petition has been filed in the name
106 of the state on the relation of the department. The Florida
107 Insurance Guaranty Association, Incorporated, the Florida
108 Workers' Compensation Insurance Guaranty Association,
109 Incorporated, the Florida Health Maintenance Organization
110 Consumer Assistance Plan, and the Florida Life and Health
111 Guaranty Association, Incorporated, shall be given reasonable
112 written notice by the department of all hearings that ~~which~~
113 pertain to an adjudication of insolvency of a member insurer.

114 (4) An appeal shall lie to the District Court of Appeal,
115 First District, from an order granting or refusing
116 rehabilitation, liquidation, or conservation and from every
117 order in a delinquency proceeding having the character of a
118 final order as to the particular portion of the proceeding
119 embraced therein.

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120 (5) No service of process against the department in its
121 capacity as receiver shall be effective unless served upon a
122 person designated by the receiver and filed with the circuit
123 court having jurisdiction over the delinquency proceeding. The
124 designated person shall refuse to accept service if acceptance
125 would violate a stay against legal proceedings involving an
126 insurer that is the subject of delinquency proceedings or would
127 violate any orders of the circuit court governing a delinquency
128 proceeding. The person denied service may petition the circuit
129 court having jurisdiction over the delinquency proceeding for
130 relief from the receiver's refusal to accept service. This
131 subsection shall be strictly construed, and any purported
132 service on the receiver or the department that is not in
133 accordance with this subsection shall be null and void.

134 (6) The domiciliary court acquiring jurisdiction over
135 persons subject to this chapter may exercise exclusive
136 jurisdiction to the exclusion of all other courts, except as
137 limited by the provisions of this chapter. Upon the issuance of
138 an order of conservation, rehabilitation, or liquidation, the
139 Circuit Court of Leon County has ~~shall have~~ exclusive
140 jurisdiction over all with respect to assets or property of the
141 any insurer, wherever located, including property located
142 outside the territorial limits of the state ~~subject to such~~
143 ~~proceedings and claims against said insurer's assets or~~
144 ~~property.~~

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

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149 Section 3. Subsections (3) and (4) are added to section
150 631.031, Florida Statutes, to read:

151 631.031 Initiation and commencement of delinquency
152 proceeding.—

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

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

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

165 631.041 Automatic stay; relief from stay; injunctions.—

166 (1) An application or petition under s. 631.031 operates as
167 a matter of law as an automatic stay applicable to all persons
168 and entities, other than the receiver and the office, which
169 shall be permanent and survive the entry of an order of
170 conservation, rehabilitation, or liquidation, and which shall
171 prohibit:

172 (a) The commencement or continuation of judicial,
173 administrative, or other action or proceeding against the
174 insurer or against its assets or any part thereof;

175 (b) The enforcement of a judgment against the insurer or an
176 affiliate obtained either before or after the commencement of
177 the delinquency proceeding;

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178 (c) Any act to obtain possession of property of the
179 insurer;

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

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

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

189 Section 5. Present subsections (3) through (5) and (6)
190 through (10) of section 631.141, Florida Statutes, are
191 redesignated as subsections (4) through (6) and (8) through
192 (12), respectively, new subsections (3) and (7) are added to
193 that section, and present subsection (8) is amended, to read:

194 631.141 Conduct of delinquency proceeding; domestic and
195 alien insurers.—

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

198 (7) The department as domiciliary receiver may pay any
199 expenses under contracts, leases, employment agreements, or
200 other arrangements entered into by the insurer before
201 receivership as the department deems necessary for the purposes
202 of this chapter. The department is not required to pay any such
203 expenses that it determines are not necessary and may reject any
204 contract pursuant to subsection (3).

205 (10)~~(8)~~ The department as domiciliary receiver may take
206 such action as it deems necessary or appropriate to reform and

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207 revitalize the insurer. The department shall have all the powers
208 of the directors, officers, and managers, whose authority shall
209 be suspended, except as they are redelegated by the receiver.
210 The receiver shall have full power to direct and manage the
211 affairs of the insurer, to hire and discharge employees, and to
212 deal with the property and business of the insurer. In the event
213 of the liquidation of an insurer domiciled in this state, and
214 notwithstanding any provision of chapter 605, chapter 607,
215 chapter 617, chapter 620, or chapter 621, all officers,
216 directors, and managers of the insurer are permanently
217 discharged and have no further authority of any kind over the
218 affairs or assets of the insurer, except as may be redelegated
219 by the department.

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

222 631.152 Conduct of delinquency proceeding; foreign
223 insurers.-

224 (4) Paragraph 631.141(9)(b) ~~Section 631.141(7)(b)~~ applies
225 to ancillary delinquency proceedings opened for the purpose of
226 obtaining records necessary to adjudicate the covered claims of
227 Florida policyholders.

228 Section 7. Section 631.1521, Florida Statutes, is created
229 to read:

230 631.1521 Actions by and against the receiver.-

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

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236 materially and substantially related to the contractual
237 obligation for which enforcement is sought.

238 (2) A prior wrongful or negligent action of any present or
239 former officer, manager, director, trustee, owner, employee, or
240 agent of the insurer may not be asserted as a defense to a claim
241 by the receiver under a theory of estoppel, comparative fault,
242 intervening cause, proximate cause, reliance, mitigation of
243 damages, or otherwise. However, the affirmative defense of fraud
244 in the inducement may be asserted against the receiver in a
245 claim based on a contract; and a principal under a surety bond
246 or a surety undertaking is entitled to credit for the value of
247 any property pledged to secure the reimbursement obligation
248 against any reimbursement obligation to the receiver, to the
249 extent that the receiver has possession or control of the
250 property, or that the insurer or its agents misappropriated such
251 property, which includes, but is not limited to, the comingling
252 of such property. Evidence of fraud in the inducement is
253 admissible only if it is contained in the records of the
254 insurer.

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

258 Section 8. Section 631.1522, Florida Statutes, is created
259 to read:

260 631.1522 Unrecorded obligations and defenses and claims of
261 affiliates.-

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

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265 the insurer may not assert any defense unless:

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

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

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

275 (a) The obligations were recorded in the books and records
276 of the insurer at or about the time the obligations were
277 incurred; and

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

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

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

288 631.181 Filing and proof of claim.—

289 (2)

290 (g) Upon application of the receiver:

291 1. The receivership court may allow alternative procedures
292 and requirements for the filing of proofs of claim or for
293 allowing or proving claims.

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294 2. If the receivership court waives the requirements of
295 filing a proof of claim for a person, class, or group of
296 persons, a timely proof of claim by such person, class, or group
297 is deemed to be filed for all purposes. However, the
298 receivership court may not waive guaranty association or
299 coverage determination proof of claim filing requirements, to
300 the extent that the guaranty fund statute or filing requirements
301 are inconsistent with the receivership court's waiver of proof.

302 (4) Notwithstanding any other provision of this chapter,
303 the receiver may petition the receivership court to set a date
304 certain after which no further claims may be filed.

305 (5) The receiver may petition the receivership court to set
306 a date certain before which all contingent or unliquidated
307 claims are final. In addition to the notice requirements in this
308 section, the receiver shall give notice of filing the petition
309 to all claimants with claims that remain contingent or
310 unliquidated under this section.

311 Section 10. Subsections (5) and (6) are added to section
312 631.192, Florida Statutes, to read:

313 631.192 Allowance of certain claims.—

314 (5) A claim under a policy of insurance may not be allowed
315 for an amount in excess of the applicable policy limits.

316 (6) A claim may not be allowed for postjudgment interest
317 accrued after the date of liquidation.

318 Section 11. Paragraphs (a), (b), (f), and (j) of subsection
319 (1) of section 631.271, Florida Statutes, are amended to read:

320 631.271 Priority of claims.—

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

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323 each class of claims is set forth in this subsection. Every
324 claim in each class shall be paid in full or adequate funds
325 shall be retained for such payment before the members of the
326 next class may receive any payment. No subclasses may be
327 established within any class. The order of distribution of
328 claims shall be:

329 (a) *Class 1.*—

330 1. All of the receiver's costs and expenses of
331 administration.

332 2. All of the expenses of a guaranty association or foreign
333 guaranty association in handling claims.

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

337 (b) *Class 2.*—All claims under policies for losses incurred,
338 including third-party claims, all claims against the insurer for
339 liability for bodily injury or for injury to or destruction of
340 tangible property which claims are not under policies, ~~and~~ all
341 claims of a guaranty association or foreign guaranty
342 association, all claims related to a patient's healthcare
343 coverage by physicians, hospitals, and other providers of a
344 health insurer or health maintenance organization, and all
345 claims of residents arising out of a continuing care contract
346 under chapter 651. All claims under life insurance and annuity
347 policies, whether for death proceeds, annuity proceeds, or
348 investment values, shall be treated as loss claims. That portion
349 of any loss, indemnification for which is provided by other
350 benefits or advantages recovered by the claimant, may not be
351 included in this class, other than benefits or advantages

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352 recovered or recoverable in discharge of familial obligations of
353 support or by way of succession at death or as proceeds of life
354 insurance, or as gratuities. No payment by an employer to her or
355 his employee may be treated as a gratuity.

356 (f) *Class 6.*—Claims of general and other unsecured
357 creditors, including claims against the insurer for punitive
358 damages, bad faith, or wrongful settlement practices.

359 (j) *Class 10.*—Interest on allowed claims of Classes 1
360 through 9. The rate of interest payable on an allowed claim must
361 accrue from the date of liquidation until such claims are
362 adjudicated. The interest rate must be calculated in accordance
363 with s. 55.03, according to the terms of a plan to pay interest
364 on allowed claims proposed by the liquidator and approved by the
365 receivership court.

366 Section 12. Section 631.391, Florida Statutes, is amended
367 to read:

368 631.391 Cooperation of officers and employees.—

369 (1) Any present or former officer, director, manager,
370 trustee, agent, adjuster, employee, or independent contractor of
371 any insurer or affiliate and any other person who possesses any
372 executive authority over, or who exercises any control over, any
373 segment of the affairs of the insurer or affiliate shall fully
374 cooperate with the department and office in any proceeding under
375 this chapter or any investigation preliminary or incidental to
376 the proceeding. An order of rehabilitation or liquidation which
377 results in the discharge or suspension of any of the persons
378 listed above does not operate to release such person from the
379 duty to cooperate with the department and office as set out
380 herein. As used in this section, the term "person" includes any

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381 person who directly or indirectly exercises control over
382 activities of the insurer through any holding company or other
383 affiliate of the insurer. The term ~~to~~ "cooperate" includes, but
384 is not limited to, the following:

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

387 (b) Promptly to make available and deliver to the
388 department or office any books, accounts, documents, other
389 records, information, data processing software, or property of
390 or pertaining to the insurer and in her or his possession,
391 custody, or control; or

392 (c) Promptly to provide access to all data processing
393 records in hard copy and in electronic form and to data
394 processing facilities and services.

395 (2) No person shall obstruct or interfere with the
396 department or office in the conduct of any delinquency
397 proceeding or any investigation preliminary or incidental
398 thereto.

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

402 (4) Any person referred to in subsection (1) who fails to
403 cooperate with the department or office, or any other person who
404 obstructs or interferes with the department or office, in the
405 conduct of any delinquency proceeding or any investigation
406 preliminary or incidental thereto, is guilty of a misdemeanor of
407 the first degree, punishable as provided in s. 775.082 or by
408 fine of not more than \$10,000.

409 (5) Refusal by any person referred to in subsection (1) to

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410 provide records upon the request of the department or office is
 411 grounds for revocation of any insurance-related license,
 412 including, but not limited to, agent and third-party
 413 administrator licenses.

414 (6) Any person referred to in subsection (1) who refuses to
 415 cooperate in providing records upon the request of the
 416 department or office is liable for any penalties, fines, or
 417 other costs assessed against the guaranty association or the
 418 receiver that result from the refusal or delay to provide
 419 records.

420 Section 13. Section 631.395, Florida Statutes, is amended
 421 to read:

422 631.395 Guaranty fund; orders of court.—Any order of
 423 liquidation issued pursuant to s. 631.111 or s. 631.131 must
 424 ~~shall~~ authorize and direct the department as receiver to
 425 coordinate the operation of the receivership with the operation
 426 of any insurance guaranty fund authorized to operate in this
 427 state and may authorize the department to provide data
 428 processing services for any appropriate guaranty fund. Such
 429 authorization must ~~shall~~ include, but not be limited to, release
 430 ~~of copies~~ of any of the following:

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

433 (2) Insurance claims filed with the receiver.

434 Section 14. Subsections (1), (4), and (5) of section
 435 631.397, Florida Statutes, are amended to read:

436 631.397 Use of certain marshaled assets.—

437 (1) ~~Within 120 days of a final determination of insolvency~~
 438 ~~of an insurer by a court of competent jurisdiction of this~~

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439 ~~state,~~ The department, as receiver, may ~~shall~~ apply to the court
440 for approval of a proposal to disburse assets out of such
441 insurer's marshaled assets, as such assets become available, to
442 each association entitled thereto or, if there are no assets
443 available for such disbursement, then for approval of such
444 proposal as the receiver deems appropriate. For the purposes of
445 this section, the term "association" includes the Florida
446 Insurance Guaranty Association, Incorporated, the Florida
447 Workers' Compensation Insurance Guaranty Association, and any
448 entity or person performing a function in another state similar
449 to that performed in this state by the Florida Insurance
450 Guaranty Association, Incorporated, or the Florida Workers'
451 Compensation Insurance Guaranty Association, provided the
452 Florida Insurance Guaranty Association, Incorporated, or the
453 Florida Workers' Compensation Insurance Guaranty Association, is
454 entitled to like payment under the laws of the association's
455 state of domicile in respect to insolvent companies doing
456 business in that state.

457 ~~(4) Notice of such application shall be given by the~~
458 ~~department to the associations in, and to the commissioners of~~
459 ~~insurance of, each of the states to which disbursement may be~~
460 ~~made. Such notice shall be made by certified mail, first-class~~
461 ~~postage prepaid, at least 15 days prior to submission of such~~
462 ~~application to the court. Such notice shall be deemed to have~~
463 ~~been made when deposited in the mail.~~

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

467 Section 15. This act shall take effect July 1, 2017.