HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 307 Florida Life and Health Insurance Guaranty Association
SPONSOR(S): Insurance & Banking Subcommittee; Drake
TIED BILLS: **IDEN./SIM. BILLS:** SB 814

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	13 Y, 0 N, As CS	Peterson	Luczynski
2) Commerce Committee	26 Y, 0 N	Peterson	Hamon

SUMMARY ANALYSIS

Florida operates five insurance guaranty funds and associations to ensure policyholders' paid insurance premiums are protected and outstanding claims are settled, up to limits provided by law, if their insurer is liquidated. Generally, a guaranty association is a not-for-profit corporation created by law directed to protect policyholders from financial losses and delays in claim payment and settlement due to the insolvency of an insurance company. A guaranty association accomplishes its mission by assuming responsibility for settling claims and refunding unearned premiums 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.

The FLAHIGA was created in 1979 and is governed by a board of directors composed of nine insurance companies and is a nonprofit corporation. 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.

Current law specifies life and health policies and annuity contracts from non-licensed insurers are not covered by the FLAHIGA. The maximum amount paid by the FLAHIGA for any one person is:

- Life Insurance Death Benefit: $300,000 per insured life.
- Life Insurance Cash Surrender: $100,000 per insured life.
- Health Insurance Claims: $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.

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. These assessments are capped at $250 per member per calendar year. Class B assessments are authorized to fund the FLAHIGA's duties related to a specific insolvency.

The bill expands the FLAHIGA's scope of coverage to include annuities that are part of an individual retirement account and individual retirement annuities; increases the maximum amount paid by the FLAHIGA for any one person for specified hospital and medical insurance from $300,000 to $500,000; and raises the cap on Class A assessments from $250 per member per year to $500 per member per year.

The bill does not appear to have a fiscal impact on state or local government.

The bill provides for an effective date of July 1, 2017.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Insurance Guaranty Associations – Background

Chapter 631, F.S., relating to insurer insolvency and guaranty payments, governs the receivership process for insurance companies in Florida.[1] Federal law specifies that insurance companies cannot file for bankruptcy. Instead, they are either "rehabilitated" or "liquidated" by the state. In Florida, the Division of Rehabilitation and Liquidation of the Department of Financial Services is responsible for rehabilitating or liquidating insurance companies.[2]

Florida operates five insurance guaranty funds and associations to ensure policyholders of liquidated insurers are protected with respect to insurance premiums paid and settlement of outstanding claims, up to limits provided by law.[3] A guaranty association generally is a not-for-profit corporation created by law directed to protect policyholders from financial losses and delays in claim payment and settlement due to the insolvency of an insurance company. A guaranty association accomplishes its mission by assuming responsibility for settling claims and refunding unearned premiums[4] 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.

Florida Life and Health Insurance Guaranty Association

Statutory provisions relating to the FLAHIGA, which was created in 1979, are contained in part III of chapter 631, F.S. The FLAHIGA is governed by a board of directors composed of nine insurance companies and is a nonprofit corporation. 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. By law, the FLAHIGA is divided into three accounts:

- The health insurance account;
- The life insurance account; and
- The annuity account.[5]

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

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[1] 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. §§ 1011- 1012 (McCarran-Ferguson Act).

[2] 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.

[3] The Florida Life and Health Insurance Guaranty Association generally is responsible for claims settlement and premium refunds for health and life insurers who are insolvent. The Florida Health Maintenance Organization Consumer Assistance Plan offers assistance to members of insolvent health maintenance organizations, and the Florida Workers' Compensation Insurance Guaranty Association is directed by law to protect policyholders of insolvent workers' compensation insurers. The Florida Self-Insurers Guaranty Association protects policyholders of insolvent individual self-insured employers for workers' compensation claims. The Florida Insurance Guaranty Association 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.

[4] 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.

[5] s. 631.715(2)(a), F.S.

the liquidated insurer owed to its Florida policyholders.[6] 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 the association can transfer to, or substitute the policies with, a new, stable insurer with approval of the Office of Insurance Regulation.

FLAHIGA Coverage

Generally, direct individual or direct group life and health insurance policies, as well as individual and allocated annuity contracts issued by the FLAHIGA's member insurers, are covered by the FLAHIGA.[7] Current law specifies life and health policies and annuity contracts from non-licensed insurers are not covered by the FLAHIGA.[8] The maximum amount paid by the FLAHIGA for any one person is:[9]

- Life Insurance Death Benefit: $300,000 per insured life.
- Life Insurance Cash Surrender: $100,000 per insured life.
- Health Insurance Claims:[10] $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.

FLAHIGA does not provide coverage for, among other exceptions, an annuity or group annuity contract that is not issued to and owned by an individual, unless the benefits are guaranteed directly to the individual.[11]

FLAHIGA Assessments

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. These assessments are capped at $250 per member per calendar year. Class B assessments are authorized to fund the FLAHIGA's duties related to a specific insolvency. These assessments are based on an insurer's pro rata share of all premiums collected by insurers in the state on policies covered by the account during the three years prior to the assessment.[12] An insurer's assessment for each account may not exceed, in any one calendar year, one percent of the insurer's average premiums during the three-year period on premiums written in the covered account.[13] An insurer may offset any assessment against either its premium tax or corporate income tax liability in five percent increments recovered over a 20-year period.[14] In addition, the board may refund insurers the proportionate amount of their contribution, if the board determines the assessment generated more revenue than was needed for the account.[15]

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

The FLAHIGA is a member of the NOLHGA, which is a voluntary association made up of the life and health insurance guaranty associations of all 50 states. The NOLHGA assists its members by coordinating the administration of claims for an insolvent insurer that is licensed in more than one state.

[6] Generally, 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 FLAHIGA under limited circumstances (s. 631.713(2), F.S.).
[7] Allocated annuity contracts are directly issued to and owned by individuals or annuities that directly guarantee benefits to individuals by the insurer.
[8] s. 631.713, F.S.
[9] s. 631.717(9), F.S.; *see also* FLAHIGA, *Frequently Asked Questions*, http://www.flahiga.org/faq.cfm (last visited Feb. 8, 2017).
[10] This includes, among others, basic hospital, medical, and surgical insurance; major medical insurance; long-term care insurance; and disability insurance.
[11] s. 631.713(3)(l), F.S.
[12] s. 631.718(3)(c), F.S.
[13] s. 631.718(5)(a), F.S.
[14] s. 631.72(1), F.S.
[15] s. 631.718(6), F.S.

In general, the financial, legal, and administrative services required for a multi-state insolvency are provided through the NOLHGA, rather than separately by each state, thereby decreasing the need for each state association to individually provide and fund these services.[16] The expenses, including the state's share of the general administrative overhead, are billed to each state guaranty association in proportion to the state's claims liability for the insolvent insurer.[17]

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

The NAIC is the United States' 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. Through the NAIC, state insurance regulators establish standards and best practices, conduct peer reviews, and coordinate their regulatory oversight.[18] The NAIC has promulgated a model act for use by states in governing their Life and Health Insurance Guaranty Associations. The model act currently recommends a $300 per member/per year Class A assessment (non-pro rata) and a reimbursement limit for basic hospital medical and surgical insurance and major medical insurance of $500,000.[19]

Effect of the Bill on FLAHIGA Coverage

The bill expands the classes of annuities covered by the FLAHIGA to include certain annuities that may be issued or held under 26 U.S.C. § 408(a) & (b), relating to individual retirement accounts (IRA) and individual retirement annuities. An IRA is an account that is established and maintained by an individual, by an employer for the benefit of his employees, or by an employee association for the benefit of its members.[20] An IRA is created as a trust and funds in an IRA are held by a trustee for the exclusive benefit of an individual or his or her beneficiaries. An individual retirement annuity is an annuity contract issued by an insurance company for the exclusive benefit of the participant-owners and their beneficiaries. Each individual who participates in a qualified individual retirement annuity is treated as an owner, and the contract must provide a separate accounting of the benefit allocable to each.[21]

The effect of the bill is to expand the scope of the FLAHIGA's coverage to include individual retirement annuities and annuities issued by an insurer and held in an IRA. The amount of coverage is subject to the limits in current law.

Effect of the Bill on FLAHIGA Reimbursement

The bill increases the maximum amount paid by the FLAHIGA for any one person for hospital expense, basic medical-surgical, or major medical expense health insurance policies from $300,000 to $500,000. This conforms Florida law to the model act of the NAIC with respect to basic and major medical coverage. Currently, Florida is one of only four states that have not adopted the model act standard.[22]

Effect of the Bill on FLAHIGA Assessments

The bill raises the cap on Class A assessments from $250 per member per year to $500 per member per year. Currently, the FLAHIGA has 597 members. Thus, the current assessment generates a maximum of $149,250 per year. The effect of the bill is to double the maximum rate that may be

[16] NOLHGA, *What is NOLHGA*, https://www.nolhga.com/aboutnolhga/main.cfm/location/whatisnolhga (last visited Feb. 12, 2017).
[17] Conversation with William Falck, Executive Director and General Counsel, FLAHIGA (Feb. 3, 2017).
[18] NAIC, *ABOUT THE NAIC*, http://www.naic.org/index_about.htm (last visited Feb. 17, 2017).
[19] NAIC, *Life and Health Insurance Guaranty Association Model Act*, 2017, *available at* http://www.naic.org/store/free/MDL-520.pdf.
[20] 26 U.S.C. § 408(a); 26 C.F.R. § 1.408-2(a).
[21] 26 U.S.C. § 408(b); 26 C.F.R. § 1.408-3(a).
[22] The Life & Health Insurance Guaranty Association System, *The National's Safety Net*, NOLHGA, 2016 Edition, *available at* http://www.nolhga.com/resource/code/file.cfm?ID=2515 (last visited Feb. 17, 2017).

assessed under the Class A assessment to permit a maximum assessment, based on the FLAHIGA's current membership, of $298,500 annually. The Legislature last increased the FLAHIGA's Class A assessment authority in 1989 when it increased the cap from $50 per member per calendar year to the current cap of $250 per member per calendar year. The FLAHIGA's membership at its inception in 1979 is estimated at 1,000 and its membership in 1989, when the cap was raised to its current level of $250, is estimated at 800.[23] Thus, the cap in 1989 when the cap was last increased would have generated an estimated maximum of $200,000 annually.

B. SECTION DIRECTORY:

Section 1: Amends s. 631.713, F.S., relating to application of part.
Section 2: Amends s. 631.717, F.S., relating to powers and duties of the association.
Section 3: Amends s. 631.718, F.S., relating to assessments.
Section 4: Provides an effective date of July 1, 2017.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Private insurers may be assessed a higher amount as a result of the increase in the Class A assessment authority. Private insurers may be assessed more often or in higher amounts as a result of the broader coverage for annuities and the increase in the reimbursement limit for specified hospital and medical insurance. These assessments would still be subject to the current one percent cap, which is not changed by the bill. However, this cap is an annual cap, not an aggregate cap, so it is possible that both the expanded annuity coverage and the higher reimbursement limit could result in assessments over a longer period of time than would occur under current law. The risk, with respect to the expanded annuity coverage, is not known. The risk, with respect to the higher reimbursement limit for specified hospital and medical insurance, may be very low, since it is probably unlikely that any single health insurer would have a large number of insureds who are likely to use $500,000 in coverage during the period when the FLAHIGA is liable for the policy. The $500,000 coverage limit also defines a maximum, and could be less depending on the specific terms of any covered policy, since the FLAHIGA does not reimburse more than policy limits.

[23] Conversation with William Falck, Executive Director and General Counsel, FLAHIGA (Feb. 13, 2017).

Individuals who own annuities that are part of their IRA or issued as an individual retirement annuity will benefit from the FLAHIGA coverage in the event the issuing insurer becomes insolvent. Individuals who incur catastrophic health care expenses would benefit from the higher limit and the potential to receive coverage that more closely approximates their policy limits.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 22, 2017, the Insurance & Banking Subcommittee considered and adopted two amendments and reported the bill favorably as a committee substitute. The amendments expanded the FLAHIGA's coverage to include coverage for individual retirement annuities and annuities issued by an insurer and held in an IRA, and limited the increase in the maximum liability for health insurance to specified hospital and medical insurance policies.

This analysis is drafted to the committee substitute as passed by the Insurance & Banking Subcommittee.