

1 A bill to be entitled
2 An act relating to insurance; amending s.
3 624.4072, F.S.; extending the term of the
4 exemption from taxes and assessments on
5 minority-owned property and casualty insurers;
6 postponing the scheduled repeal of the law;
7 amending ss. 624.3161, 626.171, F.S.; directing
8 the department to adopt rules relating to
9 market conduct examinations and license
10 applications; amending s. 626.9541, F.S.;
11 revising provisions relating to unfair
12 competition and deceptive practices; creating
13 s. 626.9552, F.S.; providing standards for
14 single interest insurance; amending s. 627.062,
15 F.S.; providing for filing forms for rate
16 standards; amending s. 627.0625, F.S.;
17 authorizing the department to adopt rules
18 relating to third-party claimants; amending s.
19 627.0651, F.S.; prohibiting motor vehicle
20 insurers from imposing a surcharge or a
21 discount due to certain factors; creating s.
22 627.385, F.S.; providing rules of conduct for
23 residual market board members; creating s.
24 627.4065, F.S.; providing for notice of right
25 to return health insurance policies; creating
26 s. 627.41345, F.S.; prohibiting an insurer or
27 agent from issuing or signing certain
28 certificates of insurance; providing that the
29 terms of the policy control in case of
30 conflict; amending s. 627.7015, F.S.; defining
31 the term "claim" for purposes of alternative

1 procedures for resolving disputed property
2 insurance claims; amending s. 627.7276, F.S.;
3 providing for notice of coverage of automobile
4 policies; creating s. 627.795, F.S.; providing
5 guidelines for title insurance policies;
6 amending s. 627.918, F.S.; directing the
7 department to adopt rules relating to reporting
8 formats; amending s. 641.3108, F.S.; requiring
9 health maintenance organizations to provide
10 certain information to subscriber groups whose
11 contract is not renewed for certain reasons;
12 amending s. 627.7295, F.S.; providing an
13 additional exception to a requirement that a
14 minimum of 2 months' premium be collected to
15 issue a policy or binder for motor vehicle
16 insurance; amending s. 627.901, F.S.;
17 authorizing insurance agents and insurers that
18 finance premiums for certain policies to charge
19 interest or a service charge at a specified
20 rate on unpaid premiums on those policies;
21 creating s. 626.9651, F.S.; directing the
22 department to adopt rules to govern the use of
23 a consumer's nonpublic personal financial and
24 health information by health insurers and
25 health maintenance organizations; providing
26 standards governing the rules; amending s.
27 631.001, F.S.; providing construction and
28 purposes; providing a short title; amending s.
29 631.011, F.S.; providing additional
30 definitions; creating s. 631.025, F.S.;
31 specifying application to certain persons and

1 entities; amending s. 631.041, F.S.; limiting
2 application of certain time restrictions;
3 correcting a cross-reference; creating s.
4 631.113, F.S.; providing for tolling certain
5 time limitations in certain actions; amending
6 s. 631.141, F.S.; vesting the Department of
7 Insurance with certain rights as receiver;
8 amending s. 631.154, F.S.; including certain
9 costs and expenses of the department in costs
10 and expenses entitled to be recovered by the
11 receiver under certain circumstances; creating
12 s. 631.156, F.S.; providing for investigations
13 by the department preliminary or incidental to
14 receivership proceedings; providing department
15 powers; authorizing the department to provide
16 certain information in such investigations;
17 granting the department certain discretionary
18 powers; creating s. 631.157, F.S.; imposing
19 liability on certain persons or entities for
20 certain actions; specifying amounts of damages;
21 providing construction; providing costs and
22 expenses entitled to be recovered by the
23 receiver under certain circumstances; providing
24 a time certain for bringing certain actions;
25 amending s. 631.57, F.S.; clarifying that the
26 association has the same legal defenses
27 available to the insolvent insurer; creating s.
28 631.3995, F.S.; providing procedures and
29 requirements for closing an estate; providing
30 for deposit of certain assets into the Closed
31 Estate Fund Trust Account; providing for uses

1 of such account; providing for reopening
2 certain proceedings; amending s. 631.54, F.S.;
3 revising a definition; creating s. 817.2341,
4 F.S.; providing criminal penalties for certain
5 activities; providing an effective date.
6

7 Be It Enacted by the Legislature of the State of Florida:
8

9 Section 1. Section 624.4072, Florida Statutes, is
10 amended to read:

11 624.4072 Minority-owned property and casualty
12 insurers; limited exemption for taxation and assessments.--

13 (1) A minority business that is at least 51 percent
14 owned by minority persons, as defined in s. 288.703(3),
15 initially issued a certificate of authority in this state as
16 an authorized insurer after May 1, 1998, to write property and
17 casualty insurance shall be exempt, for a period not to exceed
18 10 5 years from the date of receiving its certificate of
19 authority, from the following taxes and assessments:

20 (a) Taxes imposed under ss. 175.101, 185.08, and
21 624.509;

22 (b) Assessments by the Florida Residential Property
23 and Casualty Joint Underwriting Association or by the Florida
24 Windstorm Underwriting Association, as provided under s.
25 627.351, except for emergency assessments collected from
26 policyholders pursuant to s. 627.351(2)(b)2.d.(III) and
27 (6)(b)3.d. Any such insurer shall be a member insurer of the
28 Florida Windstorm Underwriting Association and the Florida
29 Residential Property and Casualty Joint Underwriting
30 Association. The premiums of such insurer shall be included in
31 determining, for the Florida Windstorm Underwriting

1 Association, the aggregate statewide direct written premium
2 for property insurance and in determining, for the Florida
3 Residential Property and Casualty Joint Underwriting
4 Association, the aggregate statewide direct written premium
5 for the subject lines of business for all member insurers.

6 (2) Subsection (1) applies only to personal lines and
7 commercial lines residential property insurance policies as
8 defined in s. 627.4025, and applies only to an insurer that
9 has employees in this state and has a home office or a
10 regional office in this state. With respect to any tax year
11 or assessment year, the exemptions provided by subsection (1)
12 apply only if during the year an average of at least 10
13 percent of the insurer's Florida residential property policies
14 in force covered properties located in enterprise zones
15 designated pursuant to s. 290.0065.

16 (3) The provision of the definition of "minority
17 person" in s. 288.703(3) that requires residency in Florida
18 shall not apply to the term "minority person" as used in this
19 section or s. 627.3511.

20 (4) This section is repealed effective December 31,
21 ~~July 1 2010~~ 2003, and the tax and assessment exemptions
22 authorized by this section shall terminate on such date.

23 Section 2. Subsection (6) is added to section
24 624.3161, Florida Statutes, to read:

25 624.3161 Market conduct examinations.--

26 (6) The department shall adopt rules as necessary to
27 effectuate the market conduct examination process, to assure
28 compliance by the person examined with the applicable
29 provisions of the Insurance Code. Such rules shall not exceed
30 the authority of the statutes involved in the market conduct
31 examination.

1 Section 3. Subsection (8) is added to section 626.171,
2 Florida Statutes, to read:

3 626.171 Application for license.--

4 (8) The department shall adopt rules to effectuate the
5 license application process, including photo identification,
6 background checks and credit reports, prelicensing courses,
7 the impact of criminal and law enforcement history, and other
8 relevant information in an effort to determine an applicant's
9 fitness and trustworthiness to engage in the business of
10 insurance.

11 Section 4. Paragraphs (o) and (w) of subsection (1) of
12 section 626.9541, Florida Statutes, are amended to read:

13 626.9541 Unfair methods of competition and unfair or
14 deceptive acts or practices defined.--

15 (1) UNFAIR METHODS OF COMPETITION AND UNFAIR OR
16 DECEPTIVE ACTS.--The following are defined as unfair methods
17 of competition and unfair or deceptive acts or practices:

18 (o) Illegal dealings in premiums; excess or reduced
19 charges for insurance.--

20 1. Knowingly collecting any sum as a premium or charge
21 for insurance, which is not then provided, or is not in due
22 course to be provided, subject to acceptance of the risk by
23 the insurer, by an insurance policy issued by an insurer as
24 permitted by this code.

25 2. Knowingly collecting as a premium or charge for
26 insurance any sum in excess of or less than the premium or
27 charge applicable to such insurance, in accordance with the
28 applicable classifications and rates as filed with and
29 approved by the department, and as specified in the policy;
30 or, in cases when classifications, premiums, or rates are not
31 required by this code to be so filed and approved, premiums

1 and charges in excess of or less than those specified in the
2 policy and as fixed by the insurer. This provision shall not
3 be deemed to prohibit the charging and collection, by surplus
4 lines agents licensed under part VIII of this chapter, of the
5 amount of applicable state and federal taxes, or fees as
6 authorized by s. 626.916(4), in addition to the premium
7 required by the insurer or the charging and collection, by
8 licensed agents, of the exact amount of any discount or other
9 such fee charged by a credit card facility in connection with
10 the use of a credit card, as authorized by subparagraph (q)3.,
11 in addition to the premium required by the insurer. This
12 subparagraph shall not be construed to prohibit collection of
13 a premium for a universal life or a variable or indeterminate
14 value insurance policy made in accordance with the terms of
15 the contract.

16 3.a. Imposing or requesting an additional premium for
17 a policy of motor vehicle liability, personal injury
18 protection, medical payment, or collision insurance or any
19 combination thereof or refusing to renew the policy solely
20 because the insured was involved in a motor vehicle accident
21 unless the insurer's file contains information from which the
22 insurer in good faith determines that the insured was
23 substantially at fault in the accident.

24 b. An insurer which imposes and collects such a
25 surcharge or which refuses to renew such policy shall, in
26 conjunction with the notice of premium due or notice of
27 nonrenewal, notify the named insured that he or she is
28 entitled to reimbursement of such amount or renewal of the
29 policy under the conditions listed below and will subsequently
30 reimburse him or her or renew the policy, if the named insured
31 demonstrates that the operator involved in the accident was:

- 1 (I) Lawfully parked;
- 2 (II) Reimbursed by, or on behalf of, a person
3 responsible for the accident or has a judgment against such
4 person;
- 5 (III) Struck in the rear by another vehicle headed in
6 the same direction and was not convicted of a moving traffic
7 violation in connection with the accident;
- 8 (IV) Hit by a "hit-and-run" driver, if the accident
9 was reported to the proper authorities within 24 hours after
10 discovering the accident;
- 11 (V) Not convicted of a moving traffic violation in
12 connection with the accident, but the operator of the other
13 automobile involved in such accident was convicted of a moving
14 traffic violation;
- 15 (VI) Finally adjudicated not to be liable by a court
16 of competent jurisdiction;
- 17 (VII) In receipt of a traffic citation which was
18 dismissed or nolle prossed; or
- 19 (VIII) Not at fault as evidenced by a written
20 statement from the insured establishing facts demonstrating
21 lack of fault which are not rebutted by information in the
22 insurer's file from which the insurer in good faith determines
23 that the insured was substantially at fault.
- 24 c. In addition to the other provisions of this
25 subparagraph, an insurer may not fail to renew a policy if the
26 insured has had only one accident in which he or she was at
27 fault within the current 3-year period. However, an insurer
28 may nonrenew a policy for reasons other than accidents in
29 accordance with s. 627.728. This subparagraph does not
30 prohibit nonrenewal of a policy under which the insured has
31

1 had three or more accidents, regardless of fault, during the
2 most recent 3-year period.

3 4. Imposing or requesting an additional premium for,
4 or refusing to renew, a policy for motor vehicle insurance
5 solely because the insured committed a noncriminal traffic
6 infraction as described in s. 318.14 unless the infraction is:

7 a. A second infraction committed within an 18-month
8 period, or a third or subsequent infraction committed within a
9 36-month period.

10 b. A violation of s. 316.183, when such violation is a
11 result of exceeding the lawful speed limit by more than 15
12 miles per hour.

13 5. Upon the request of the insured, the insurer and
14 licensed agent shall supply to the insured the complete proof
15 of fault or other criteria which justifies the additional
16 charge or cancellation.

17 6. No insurer shall impose or request an additional
18 premium for motor vehicle insurance, cancel or refuse to issue
19 a policy, or refuse to renew a policy because the insured or
20 the applicant is a handicapped or physically disabled person,
21 so long as such handicap or physical disability does not
22 substantially impair such person's mechanically assisted
23 driving ability.

24 7. No insurer may cancel or otherwise terminate any
25 insurance contract or coverage, or require execution of a
26 consent to rate endorsement, during the stated policy term for
27 the purpose of offering to issue, or issuing, a similar or
28 identical contract or coverage to the same insured with the
29 same exposure at a higher premium rate or continuing an
30 existing contract or coverage with the same exposure at an
31 increased premium.

1 8. No insurer may issue a nonrenewal notice on any
2 insurance contract or coverage, or require execution of a
3 consent to rate endorsement, for the purpose of offering to
4 issue, or issuing, a similar or identical contract or coverage
5 to the same insured at a higher premium rate or continuing an
6 existing contract or coverage at an increased premium without
7 meeting any applicable notice requirements.

8 9. No insurer shall, with respect to premiums charged
9 for motor vehicle insurance, unfairly discriminate solely on
10 the basis of age, sex, marital status, location of the risk,
11 accidents more than 3 years old, or scholastic achievement.

12 10. Imposing or requesting an additional premium for
13 motor vehicle comprehensive or uninsured motorist coverage
14 solely because the insured was involved in a motor vehicle
15 accident or was convicted of a moving traffic violation.

16 11. No insurer shall cancel or issue a nonrenewal
17 notice on any insurance policy or contract without complying
18 with any applicable cancellation or nonrenewal provision
19 required under the Florida Insurance Code.

20 12. No insurer shall impose or request an additional
21 premium, cancel a policy, or issue a nonrenewal notice on any
22 insurance policy or contract because of any traffic infraction
23 when adjudication has been withheld and no points have been
24 assessed pursuant to s. 318.14(9) and (10). However, this
25 subparagraph does not apply to traffic infractions involving
26 accidents in which the insurer has incurred a loss due to the
27 fault of the insured.

28 (w) Soliciting or accepting new or renewal insurance
29 risks by insolvent or impaired insurer prohibited; penalty.--

30 1. Whether or not delinquency proceedings as to the
31 insurer have been or are to be initiated, but while such

1 insolvency or impairment exists, no director or officer of an
2 insurer, except with the written permission of the Department
3 of Insurance, shall authorize or permit the insurer to solicit
4 or accept new or renewal insurance risks in this state after
5 such director or officer knew, or reasonably should have
6 known, that the insurer was insolvent or impaired. "Impaired"
7 includes impairment for capital or surplus, as defined in s.
8 631.011(12)~~(9)~~and(13)~~(10)~~.

9 2. Any such director or officer, upon conviction of a
10 violation of this paragraph, is guilty of a felony of the
11 third degree, punishable as provided in s. 775.082, s.
12 775.083, or s. 775.084.

13 Section 5. Section 626.9552, Florida Statutes, is
14 created to read:

15 626.9552 Single interest insurance.--

16 (1) When single interest insurance is written at the
17 expense of the purchaser or borrower in connection with a
18 finance or loan transaction, a clear and concise statement
19 must be furnished the purchaser or borrower advising the
20 purchaser or borrower that the insurance effected is solely
21 for the interest of the financing entity, and that no
22 protection thereunder exists for the benefit of the purchaser
23 or borrower. When single interest insurance is written, no
24 effort may be made by the insurer to recover the amount of any
25 payment from the borrower. Single interest insurance policies
26 must be clearly stamped or printed on the declarations page,
27 "Single Interest Only---No Subrogation." Single interest
28 insurance is to be placed only after it has been determined
29 that no other kind of insurance can be placed on the risk,
30 except with the consent of the purchaser or borrower. Single
31 interest may be written in cases of inland marine installment

1 sales floater policies. If insurance cannot be obtained for
2 the dual protection of the purchaser or borrower, and the
3 seller or lender or financing entity for all the coverages
4 contemplated, or if obtained, is canceled by the insurer
5 before expiration, the seller or lender or financing entity
6 may obtain insurance to protect his or her interest in the
7 motor vehicle or other personal property, and the purchaser or
8 borrower may be required to pay the cost thereof. In such
9 event the seller or lender or financing entity shall promptly
10 notify the purchaser or borrower that such insurance cannot be
11 obtained, or has been canceled, and credit to the purchaser or
12 borrower the difference between the amount charged for dual
13 protection insurance and the actual cost of such single
14 interest insurance, less, in the event of cancellation, the
15 earned premium on the dual interest insurance for the period
16 it was in force. If the purchaser or borrower procures
17 acceptable dual interest insurance within 30 days after the
18 date of such notice and provides the seller or lender, or
19 finance entity with evidence that the premium therefore has
20 been paid, there is no charge to him or her for the single
21 interest coverage. As used in this section, the term
22 "financing entity" means a finance company, bank, or other
23 lending institution. However, those lenders licensed under the
24 Consumer Finance Act, chapter 516, must provide coverage
25 issued in the name of the borrower containing the customary
26 mortgagee or loss payee clause.

27 (2) If a certificate is issued under a master policy,
28 the same coverage as provided in an individual policy will
29 apply.

30 (3) The provisions of this section do not apply to
31 title insurance as defined in s. 624.608.

1 Section 6. Paragraph (a) of subsection (2) of section
2 627.062, Florida Statutes, is amended to read:

3 627.062 Rate standards.--

4 (2) As to all such classes of insurance:

5 (a) Insurers or rating organizations shall establish
6 and use rates, rating schedules, or rating manuals to allow
7 the insurer a reasonable rate of return on such classes of
8 insurance written in this state. Copies ~~A copy~~ of rates,
9 rating schedules, rating manuals, premium credits or discount
10 schedules, and surcharge schedules, and changes thereto, shall
11 be filed with the department under one of the following
12 procedures:

13 1. If the filing is made at least 90 days before the
14 proposed effective date and the filing is not implemented
15 during the department's review of the filing and any
16 proceeding and judicial review, then such filing shall be
17 considered a "file and use" filing. In such case, the
18 department shall finalize its review by issuance of a notice
19 of intent to approve or a notice of intent to disapprove
20 within 90 days after receipt of the filing. The notice of
21 intent to approve and the notice of intent to disapprove
22 constitute agency action for purposes of the Administrative
23 Procedure Act. Requests for supporting information, requests
24 for mathematical or mechanical corrections, or notification to
25 the insurer by the department of its preliminary findings
26 shall not toll the 90-day period during any such proceedings
27 and subsequent judicial review. The rate shall be deemed
28 approved if the department does not issue a notice of intent
29 to approve or a notice of intent to disapprove within 90 days
30 after receipt of the filing.

31

1 2. If the filing is not made in accordance with the
2 provisions of subparagraph 1., such filing shall be made as
3 soon as practicable, but no later than 30 days after the
4 effective date, and shall be considered a "use and file"
5 filing. An insurer making a "use and file" filing is
6 potentially subject to an order by the department to return to
7 policyholders portions of rates found to be excessive, as
8 provided in paragraph (h).

9 Section 7. Subsection (4) is added to section
10 627.0625, Florida Statutes, to read:

11 627.0625 Commercial property and casualty risk
12 management plans.--

13 (4) Commercial motor vehicle policies that are issued
14 to satisfy mandatory financial responsibility requirements of
15 a state or local government must provide first dollar coverage
16 to third-party claimants without a deductible. With respect to
17 such practices, the department may adopt rules necessary to
18 assure that claims are administered fairly as required by law.

19 Section 8. Subsection (8) of section 627.0651, Florida
20 Statutes, is amended to read:

21 627.0651 Making and use of rates for motor vehicle
22 insurance.--

23 (8) Rates are not unfairly discriminatory if averaged
24 broadly among members of a group; nor are rates unfairly
25 discriminatory even though they are lower than rates for
26 nonmembers of the group. However, such rates are unfairly
27 discriminatory if they are not actuarially measurable and
28 credible and sufficiently related to actual or expected loss
29 and expense experience of the group so as to assure that
30 nonmembers of the group are not unfairly discriminated
31 against. Use of a single United States Postal Service zip code

1 as a rating territory shall be deemed unfairly discriminatory.
2 An insurer may not impose a surcharge or discount for
3 liability coverages based on the type of vehicle without
4 providing acceptable actuarial justification.

5 Section 9. Section 627.385, Florida Statutes, is
6 created to read:

7 627.385 Conduct of residual market board members.--

8 (1)(a) For various insurance coverages, a residual
9 market has been created by legislation to provide a market of
10 last resort for individuals unable to secure coverage in the
11 voluntary market.

12 (b) Each residual market's enabling legislation calls
13 for the establishment of a board of governors or directors
14 that operates subject to a plan of operation. The board, in
15 carrying out its obligations, must engage in business
16 transactions in order to provide and administer the required
17 coverage and maintain adequate funds to support the plan. In
18 order for the board to fully execute its responsibilities
19 required by law, conflict of interest or inappropriate
20 activity by board members, or the appearance thereof, with
21 regard to member insurers or policyholders of the residual
22 market mechanism must be avoided. The Legislature has
23 determined that the provisions set forth in subsection (2) are
24 necessary to protect the public interest by ensuring fair,
25 reasonable, and beneficial board practice and activity.

26 (c) This section applies to the Florida Medical
27 Malpractice Joint Underwriting Association, the Florida
28 Automobile Joint Underwriting Association, the Florida
29 Workers' Compensation Joint Underwriting Association, the
30 Florida Comprehensive Health Association, the Florida
31 Windstorm Underwriting Association, the Florida Property and

1 Casualty Joint Underwriting Association, the Florida
2 Residential Property and Casualty Joint Underwriting
3 Association, and the board members thereof.

4 (2) To ensure that the board is free from potential
5 conflict or inappropriate behavior the following are adopted
6 in the plan of operation of the subject residual market in
7 this state.

8 (a) A board member may not act as a servicing carrier
9 or administering entity for the subject plan, other than a
10 claim adjustment contract open to all members of the plan.

11 (b) A board member or board member representative may
12 not use his or her position to foster or facilitate any
13 special pecuniary gain for himself or herself, his or her
14 member company, or any other entity in which the board member
15 or board member representative or the member company has a
16 substantial financial interest, except as otherwise provided
17 in paragraph (a).

18 (c) A board member or board member representative may
19 not use his or her position on the board to secure or promote
20 any business relationship from which he or she may derive a
21 financial gain.

22 (d) A board member or designee may not receive any
23 gift or gratuity, except as provided in s. 112.3248, other
24 than meals, while acting in his or her capacity as a board
25 member.

26 (3) Board members and board member representatives
27 shall maintain reasonable board expenses based on state travel
28 policy as set forth in s. 112.061. The board shall develop a
29 detailed policy regarding board member travel, which policy
30 must be based on s. 112.061 and is subject to the approval of
31 the department.

1 Section 10. Section 627.4065, Florida Statutes, is
2 created to read:

3 627.4065 Insured's right to return policy; notice.--A
4 health insurance policy issued or issued for delivery in this
5 state must have printed or stamped thereon or attached thereto
6 a notice in a prominent place stating in substance that the
7 policyholder may return the policy to the insurer within 10
8 days after its delivery and may have the premium paid refunded
9 if, after examination of the policy or contract, the
10 policyholder is not satisfied with it for any reason. The
11 notice must provide that if the policyholder, pursuant to such
12 notice, returns the policy or contract to the insurer at its
13 home office or branch office or to the agent through whom it
14 was purchased, it is considered void from the beginning and
15 the parties are in the same position as if no policy or
16 contract had been issued. This section does not apply to group
17 policies, single premium nonrenewable policies or travel
18 accident policies.

19 Section 11. Section 627.41345, Florida Statutes, is
20 created to read:

21 627.41345 Certificate of insurance.--An insurer or
22 agent may not issue or sign a certificate of insurance that
23 contains terms or conditions that differ from those in the
24 policy under which the certificate of insurance is issued. In
25 the event of a conflict, the terms of the policy under which
26 the certificate of insurance is issued shall control.

27 Section 12. Subsection (9) is added to section
28 627.7015, Florida Statutes, to read:

29 627.7015 Alternative procedure for resolution of
30 disputed property insurance claims.--

31

1 (9) For purposes of this section, the term "claim"
2 refers to any dispute between an insurer and an insured
3 relating to a material issue of fact other than a dispute:

4 (a) With respect to which the insurer has a reasonable
5 basis to suspect fraud;

6 (b) Where, based on agreed-upon facts as to the cause
7 of loss, there is no coverage under the policy;

8 (c) With respect to which the insurer has a reasonable
9 basis to believe that the claimant has intentionally made a
10 material misrepresentation of fact which is relevant to the
11 claim, and the entire request for payment of a loss has been
12 denied on the basis of the material misrepresentation; or

13 (d) Where the amount in controversy is less than \$500,
14 unless the parties agree to mediate a dispute involving a
15 lesser amount.

16 Section 13. Section 627.7276, Florida Statutes, is
17 amended to read:

18 627.7276 Notice of limited coverage.--

19 (1) The following notice of limited coverage shall ~~an~~
20 automobile policy that does not contain coverage for bodily
21 injury and property damage must be clearly stamped or printed
22 on any automobile insurance policy that provides coverage only
23 for first-party damage to the insured vehicle, but does not
24 provide coverage for bodily injury liability, property damage
25 liability, or personal injury protection to the effect that
26 such coverage is not included in the policy in the following
27 manner:

28
29 "THIS POLICY DOES NOT PROVIDE BODILY INJURY
30 LIABILITY, AND PROPERTY DAMAGE LIABILITY, OR
31 PERSONAL INJURY PROTECTION INSURANCE OR ANY

1 OTHER COVERAGE FOR WHICH A SPECIFIC PREMIUM
2 CHARGE IS NOT MADE, AND DOES NOT COMPLY WITH
3 ANY FINANCIAL RESPONSIBILITY LAW OR WITH THE
4 FLORIDA MOTOR VEHICLE NO-FAULT LAW."
5

6 (2) This legend must appear on the policy declaration
7 page ~~and on the filing back of the policy~~ and be printed in a
8 contrasting color from that used on the policy and in type
9 larger than the largest type used in the text thereof, as an
10 overprint or by a rubber stamp impression.

11 Section 14. Section 627.795, Florida Statutes, is
12 created to read:

13 627.795 Policy exceptions.--

14 (1) A title insurance commitment must be issued on all
15 real estate closing transactions when a title insurance policy
16 is to be issued, except for multiple conveyances on the same
17 property such as timesharing.

18 (2) A gap exception may not be deleted on a commitment
19 until the time of closing.

20 Section 15. Subsection (1) of section 627.918, Florida
21 Statutes, is amended to read:

22 627.918 Reporting formats.--

23 (1) The department shall require that the reporting
24 provided for in this part be made on forms adopted ~~established~~
25 by the department or in a format compatible with the
26 department's ~~its~~ electronic data processing equipment. The
27 department shall adopt by rule standards for such approval.

28 Section 16. Subsection (3) of section 641.3108,
29 Florida Statutes, is amended to read:

30 641.3108 Notice of cancellation of contract.--
31

1 (3) In the case of a health maintenance contract
2 issued to an employer or person holding the contract on behalf
3 of the subscriber group, the health maintenance organization
4 may make the notification through the employer or group
5 contract holder, and, if the health maintenance organization
6 elects to take this action through the employer or group
7 contract holder, the organization shall be deemed to have
8 complied with the provisions of this section upon notifying
9 the employer or group contract holder of the requirements of
10 this section and requesting the employer or group contract
11 holder to forward to all subscribers the notice required
12 herein. If a subscriber group contract is not renewed due to
13 claim experience, the subscriber group is entitled to receive
14 information concerning its loss ratio. If requested by a
15 subscriber group, a detailed claim experience record may be
16 provided at a reasonable expense. The record shall maintain
17 subscriber confidentiality.

18 Section 17. Subsection (7) of section 627.7295,
19 Florida Statutes, is amended to read:

20 627.7295 Motor vehicle insurance contracts.--

21 (7) A policy of private passenger motor vehicle
22 insurance or a binder for such a policy may be initially
23 issued in this state only if the insurer or agent has
24 collected from the insured an amount equal to 2 months'
25 premium. An insurer, agent, or premium finance company may
26 not directly or indirectly take any action resulting in the
27 insured having paid from the insured's own funds an amount
28 less than the 2 months' premium required by this subsection.
29 This subsection applies without regard to whether the premium
30 is financed by a premium finance company or is paid pursuant
31 to a periodic payment plan of an insurer or an insurance

1 agent. This subsection does not apply if an insured or member
2 of the insured's family is renewing or replacing a policy or a
3 binder for such policy written by the same insurer or a member
4 of the same insurer group. This subsection does not apply to
5 an insurer that issues private passenger motor vehicle
6 coverage primarily to active duty or former military personnel
7 or their dependents. This subsection does not apply if all
8 policy payments are paid pursuant to a payroll deduction plan
9 or an automatic electronic funds transfer payment plan from
10 the policyholder, provided that the first policy payment may
11 be ~~is~~ made by cash, cashier's check, check, or a money order.
12 This subsection and subsection (4) do not apply if all policy
13 payments to an insurer are paid pursuant to an automatic
14 electronic funds transfer payment plan from an agent or a
15 managing general agent, or if the policy is issued pursuant to
16 the transfer of a book of business by an agent from one
17 insurer to another, provided that ~~and if~~ the policy includes,
18 at a minimum, personal injury protection pursuant to ss.
19 627.730-627.7405; motor vehicle property damage liability
20 pursuant to s. 627.7275; and bodily injury liability in at
21 least the amount of \$10,000 because of bodily injury to, or
22 death of, one person in any one accident and in the amount of
23 \$20,000 because of bodily injury to, or death of, two or more
24 persons in any one accident. This subsection and subsection
25 (4) do not apply if an insured has had a policy in effect for
26 at least 6 months, the insured's agent is terminated by the
27 insurer that issued the policy, and the insured obtains
28 coverage on the policy's renewal date with a new company
29 through the terminated agent.

30 Section 18. Subsection (1) of section 627.901, Florida
31 Statutes, is amended to read:

1 627.901 Premium financing by an insurance agent or
2 agency.--

3 (1) A general lines agent may make reasonable service
4 charges for financing insurance premiums on policies issued or
5 business produced by such an agent or agency, s. 626.9541
6 notwithstanding. The service charge shall not exceed \$1 per
7 installment, or a \$6 total service charge per year, for any
8 premium balance of \$120 or less. For any premium balance
9 greater than \$120 but not more than \$220, the service charge
10 shall not exceed \$9 per year. The maximum service charge for
11 any premium balance greater than \$220 shall not exceed \$12 per
12 year. In lieu of such service charges, an insurance agent or
13 agency may charge interest or service charges, which may be
14 level amounts and subject to endorsement changes, that in the
15 aggregate do not exceed a rate of interest not to exceed 18
16 percent simple interest per year on the average unpaid balance
17 as billed over the term of the policy.

18 Section 19. Section 626.9651, Florida Statutes, is
19 created to read:

20 626.9651 Privacy.--The department shall adopt rules
21 consistent with other provisions of the Insurance Code to
22 govern the use of a consumer's nonpublic personal financial
23 and health information. These rules shall be based on,
24 consistent with, and not more restrictive than the National
25 Association of Insurance Commissioners' Privacy of Consumer
26 Financial and Health Information Regulation adopted September
27 26, 2000, by the National Association of Insurance
28 Commissioners, provided, however, the rules shall permit the
29 use and disclosure of nonpublic personal health information
30 for scientific, medical, or public policy research in
31 accordance with federal law. In addition, these rules shall

1 be consistent with, and not more restrictive than, the
2 standards contained in Title V of the Gramm-Leach-Bliley Act
3 of 1999 (Pub. L. No. 106-102). Any health insurer or health
4 maintenance organization determined by the department to be in
5 compliance with, or to be actively undertaking compliance
6 with, the consumer privacy protection rules promulgated by the
7 United States Department of Health and Human Services, in
8 conformance with the Health Insurance Portability and
9 Affordability Act, shall be deemed in compliance with this
10 section. This section shall take effect July 1, 2001.

11 Section 20. Section 631.001, Florida Statutes, is
12 amended to read:

13 (Substantial rewording of section.

14 See s. 631.001, F.S., for present text.)

15 631.001 Construction; purposes.--

16 (1) The underlying purposes and policies of the
17 provisions of this part, which are integral elements of the
18 regulation of the business of insurance and are of vital
19 public interest and concern, are to:

20 (a) Protect the interests of insureds, claimants,
21 creditors, and the public.

22 (b) Provide a comprehensive scheme for the
23 receivership of insurers.

24 (c) Establish this state as a reciprocal state in
25 those states which, in substance and effect, enact the
26 National Association of Insurance Commissioners Rehabilitation
27 and Liquidation Model Act or the Uniform Insurers Liquidation
28 Act.

29 (d) Make more efficient the administration of insurer
30 receiverships on an interstate and international basis.

31

1 (e) Provide prompt corrective measures for any
2 potentially dangerous condition in an insurer.

3 (f) Implement improved methods for rehabilitating
4 insurers, which methods involve the cooperation and management
5 expertise of the insurance industry.

6 (g) Enhance the efficiency and economy of liquidation
7 through clarification and specification of the law to minimize
8 legal uncertainty and litigation.

9 (h) Lessen the problems of interstate rehabilitation
10 and liquidation of an entity subject to the provisions of this
11 part by facilitating cooperation between states in the
12 liquidation process and by extension of the scope of personal
13 jurisdiction over debtors of the insurer outside this state.

14 (i) Establish a system which equitably apportions any
15 unavoidable loss.

16 (j) Maximize recovery of assets for the benefit of the
17 insurer and its policyholders, creditors, and estate.

18 (2) This part shall be liberally construed to effect
19 the purposes stated in subsection (1) and shall specifically
20 authorize the department in its capacity as administrator,
21 conservator, rehabilitator, receiver, liquidator, or similar
22 capacity to pursue any actions for damages or other recoveries
23 on behalf of the insurer and its policyholders, creditors, and
24 estate.

25 (3) This part may be cited as the "Insurers
26 Rehabilitation and Liquidation Act."

27 Section 21. Section 631.011, Florida Statutes, is
28 amended to read:

29 631.011 Definitions.--For the purpose of this part,
30 the term:

31

1 (1) "Affiliate" means any entity which exercises
2 control over or is controlled by the insurer, directly or
3 indirectly through:

4 (a) Equity ownership of voting securities;

5 (b) Common managerial control; or

6 (c) Collusive participation by the management of the
7 insurer and affiliate in the management of the insurer or the
8 affiliate.

9 (2) "Ancillary state" means, any state other than a
10 domiciliary state.

11 (3) "Assets," as used in this section ~~subsections~~
12 ~~(8)-(10)~~, means only allowed assets as defined in chapter 625.

13 (4) "Bona fide holder for value" means a holder who,
14 while not possessing information that would lead a reasonable
15 person in the holder's position to believe that the insurer is
16 financially impaired, and while unaware of the imminence or
17 pendency of any receivership proceeding against the insurer,
18 has, in the exercise of reasonable business judgment,
19 exchanged his or her own funds, assets, or property for funds,
20 assets, or property of the insurer having an equivalent market
21 value.

22 (5)~~(4)~~ "Court" refers to the circuit court in which
23 the receivership proceeding is pending.

24 (6)~~(5)~~ "Delinquency proceeding" means any proceeding
25 commenced against an insurer pursuant to this chapter for the
26 purpose of liquidating, rehabilitating, reorganizing, or
27 conserving such insurer.

28 (7)~~(6)~~ "Domiciliary state" means the state in which an
29 insurer is incorporated or organized or, in the case of an
30 insurer incorporated or organized in a foreign country, the
31 state in which such insurer, having become authorized to do

1 business in such state, has, at the commencement of a
2 delinquency proceeding, the largest amount of its assets held
3 in trust and assets held on deposit for the benefit of its
4 policyholders or policyholders and creditors in the United
5 States; and any such insurer is deemed to be domiciled in such
6 state.

7 (8) "Fair consideration" means that consideration
8 which is given for property or assets of an insurer when, in
9 exchange for the property or assets and in good faith,
10 property is conveyed, services are rendered, or an enforceable
11 obligation not invalidated by the receivership proceedings is
12 created, having a value to the insurer of not less than the
13 value of the property or assets given in exchange.

14 (9)~~(7)~~ "Foreign country" means territory not in any
15 state.

16 (10)~~(8)~~ "General assets" means all property, real,
17 personal, or otherwise, not specifically mortgaged, pledged,
18 deposited, or otherwise encumbered for the security or benefit
19 of specified persons or a limited class or classes of persons,
20 and as to such specifically encumbered property the term
21 includes all such property or its proceeds in excess of the
22 amount necessary to discharge the sum or sums secured thereby.
23 Assets held in trust and assets held on deposit for the
24 security or benefit of all policyholders or all policyholders
25 and creditors in the United States shall be deemed general
26 assets.

27 (11) "Good faith," as applied to a transferee or
28 transferor under this part, means honesty in fact and
29 intention and includes the exercise of reasonable business
30 judgment, together with the absence of information that would
31 lead a reasonable person in the same position to know that the

1 insurer is financially impaired or insolvent and together with
2 the absence of knowledge regarding the imminence or pendency
3 of any receivership proceeding against the insurer.

4 (12)~~(9)~~ "Impairment of capital" means that the minimum
5 surplus required to be maintained in s. 624.408 has been
6 dissipated and the insurer is not possessed of assets at least
7 equal to all its liabilities together with its total issued
8 and outstanding capital stock, if a stock insurer, or the
9 minimum surplus or net trust fund required by s. 624.407, if a
10 mutual, reciprocal, or business trust insurer.

11 (13)~~(10)~~ "Impairment of surplus" means that the
12 surplus of a stock insurer, the additional surplus of a mutual
13 or reciprocal insurer, or the additional net trust fund of a
14 business trust insurer does not comply with the requirements
15 of s. 624.408.

16 (14)~~(11)~~ "Insolvency" means that all the assets of the
17 insurer, if made immediately available, would not be
18 sufficient to discharge all its liabilities or that the
19 insurer is unable to pay its debts as they become due in the
20 usual course of business. When the context of any provision of
21 this code so indicates, insolvency also includes and is
22 defined as "impairment of surplus," as defined in subsection
23 (13)~~(9)~~, and "impairment of capital," as defined in subsection
24 (12)~~(8)~~.

25 (15)~~(12)~~ "Insurer," in addition to persons so defined
26 under s. 624.03, also includes persons purporting to be
27 insurers or organizing, or holding themselves out as
28 organizing, in this state for the purpose of becoming insurers
29 and all insurers who have insureds resident in this state.

30
31

1 ~~(16)(13)~~ "Liabilities," as used in subsections (12)
2 and (14)(8)-(10), means all liabilities, including those
3 specifically required in s. 625.041.

4 ~~(17)(14)~~ "Person" includes natural persons,
5 corporations, partnerships, trusts, estates, and sole
6 proprietorships.

7 (18) "Property," with respect to an insolvent entity,
8 includes all right, title, and interest of the insolvent
9 entity whether legal or equitable, tangible or intangible, or
10 choate or inchoate and includes choses in action, contract
11 rights, and any other interest recognized under the laws of
12 this state. When an order of conservation, rehabilitation, or
13 liquidation is entered, the term also includes entitlements
14 that existed prior to the entry of the order and those that
15 may arise by operation of the provisions of this chapter or
16 other provisions of law allowing the department to avoid prior
17 transfers or assert other rights in its capacity as receiver.
18 The term also includes all records and data that are otherwise
19 the property of the insolvent insurer, however stored,
20 including, but not limited to, claims and claim files,
21 application files, litigation files, premium records, rate
22 books, underwriting manuals, personnel records, or financial
23 records, or similar records within the possession, custody, or
24 control of a managing general agent, third-party
25 administrator, management company, accountant, attorney,
26 affiliate, or other person. The term does not include
27 privileged or confidential documents of an insolvent insurer
28 generated by a third party.

29 ~~(19)(15)~~ "Receiver" means a receiver, liquidator,
30 rehabilitator, or conservator, as the context may require.
31

1 ~~(20)(16)~~ "Reciprocal state" means any state other than
2 this state in which in substance and effect the provisions of
3 the Insurers Rehabilitation and Liquidation Act are in force,
4 including the provisions requiring that the commissioner of
5 insurance or equivalent insurance supervisory official be the
6 receiver of a delinquent insurer.

7 ~~(21)(17)~~ "Secured claim" means any claim secured by
8 mortgage, trust deed, pledge, deposit as security, escrow, or
9 otherwise but does not include a special deposit claim, a
10 claim against general assets, or a claim based on mere
11 possession. The term also includes a claim which more than 4
12 months before the commencement of a delinquency proceeding in
13 the state of the insurer's domicile has become a lien upon
14 specific assets by reason of judicial process.

15 ~~(22)(18)~~ "Special deposit claim" means any claim
16 secured by a deposit made pursuant to statute for the security
17 or benefit of a limited class or classes of persons, but not
18 including any general assets.

19 ~~(23)(19)~~ "State" is as defined in s. 624.08.

20 Section 22. Section 631.025, Florida Statutes, is
21 created to read:

22 631.025 Persons and entities subject to this
23 part.--Delinquency proceedings authorized by this part may be
24 initiated against any insurer as defined in s. 631.011(15) if
25 the statutory grounds are present as to that insurer, and the
26 receivership court may exercise jurisdiction over any person
27 required to cooperate with the department pursuant to s.
28 631.391 and over all persons made subject to the court's
29 jurisdiction by other provisions of law. Such persons include,
30 but are not limited to:

31

1 (1) A person who is transacting or has transacted
2 insurance business in or from this state and against whom
3 claims arising from that business exist or may exist in the
4 future.

5 (2) A person who purports to transact an insurance
6 business in this state, and any person or entity who acts as
7 an insurer, transacts insurance, or otherwise engages in
8 insurance activities in or from this state, with or without a
9 certificate of authority or proper authority from the
10 department.

11 (3) An insurer who has insureds residing in this
12 state.

13 (4) All other persons organized or in the process of
14 organizing with the intent to transact an insurance business
15 in this state.

16 Section 23. Paragraph (d) of subsection (1) of section
17 631.041, Florida Statutes, is amended, and subsection (6) is
18 added to that section, to read:

19 631.041 Automatic stay; relief from stay;
20 injunctions.--

21 (1) An application or petition under s. 631.031
22 operates as a matter of law as an automatic stay applicable to
23 all persons and entities, other than the receiver, which shall
24 be permanent and survive the entry of an order of
25 conservation, rehabilitation, or liquidation, and which shall
26 prohibit:

27 (d) Any act to create, perfect, or enforce a lien
28 against property of the insurer, except that a secured claim
29 as defined in s. 631.011~~(21)~~~~(17)~~ may proceed under s. 631.191
30 after the order of liquidation is entered;

31

1 (6) No statute of limitations or defense of laches
2 shall run with respect to any action by or against an insurer
3 between the filing of a petition for conservation,
4 rehabilitation, or liquidation against an insurer and the
5 order granting or denying that petition. If the petition is
6 denied, any action against the insurer that might have been
7 commenced when the petition was filed may be commenced for at
8 least 60 days after the order denying such relief.

9 Section 24. Section 631.113, Florida Statutes, is
10 created to read:

11 631.113 Extension of time.--

12 (1) The running of any unexpired statute of
13 limitations as to any claims brought by the administrator,
14 conservator, rehabilitator, receiver, or liquidator, or an
15 official or agency exercising powers pursuant to this chapter
16 seeking damages or other recoveries on behalf of an insurer,
17 its policyholders, its creditors, or its estate, shall be
18 tolled for a period of 4 years from the entry of an order
19 placing the administrator, conservator, rehabilitator,
20 receiver, liquidator, or similar official or agency over the
21 insurer, provided, if the delinquency proceedings brought
22 pursuant to this chapter against the insurer terminate in less
23 than 4 years, such tolling shall cease at the time when the
24 proceedings are finally concluded, including all appeals
25 therefrom. Further, the right of action does not accrue and
26 the limitations period for any such action does not run during
27 the time when the insurer is controlled by parties acting
28 contrary to the company's interests or when the facts giving
29 rise to such claim are fraudulently concealed from regulatory
30 authorities or from any members of company management. The
31 provisions of chapter 95 shall be construed so as to be

1 consistent with the provisions of this section. The receiver
2 may institute any action or proceeding on behalf of the estate
3 of the insurer while any statute of limitation is tolled
4 pursuant to this section. The tolling shall be in addition to
5 any other applicable tolling provision.

6 (2) For actions not covered by subsection (1), if any
7 unexpired time period is fixed, by any agreement or in any
8 proceeding, for doing any act for the benefit of the estate,
9 the receiver shall have 180 days, or such longer period as the
10 receivership court may allow for good cause shown, from the
11 entry of the order of rehabilitation or liquidation to perform
12 the act.

13 Section 25. Present subsections (6) through (9) of
14 section 631.141, Florida Statutes, are renumbered as
15 subsections (7) through (10), respectively, and a new
16 subsection (6) is added to that section to read:

17 631.141 Conduct of delinquency proceeding; domestic
18 and alien insurers.--

19 (6) The department as receiver is vested with and may
20 assert all rights belonging to policyholders, creditors, and
21 the estate as well as all rights of the entity or entities in
22 receivership, except to the extent that an individual claim is
23 personal and unique to that claimant and recovery thereon
24 could not inure to the benefit of the estate or to other
25 claimants.

26 Section 26. Paragraph (d) of subsection (6) of section
27 631.154, Florida Statutes, is amended to read:

28 631.154 Funds or other property in the possession of
29 third person.--

30
31

1 (6) Should the receiver be successful in establishing
2 its claim or any part thereof, the receiver shall be entitled
3 to recover judgment for the following:

4 (d) All costs, investigative and other expenses, which
5 include the department's in-house staff and staff attorney's
6 expenses, costs, and salaries, expended in ~~necessary to~~ the
7 recovery of the property or funds, and reasonable attorney's
8 fees.

9 Section 27. Section 631.156, Florida Statutes, is
10 created to read:

11 631.156 Investigation by the department.--

12 (1) Preliminary or incidental to a petition for
13 receivership proceedings, the department may, and if appointed
14 receiver shall, undertake a full investigation to determine
15 the causes and reasons for the insolvency, the discovery and
16 location of assets to be recovered, the recovery of such
17 assets, whether the filing of false statements with the
18 department contributed to the insolvency, and, in conjunction
19 with the department's Division of Insurance Fraud or any other
20 appropriate agency of state or federal government, whether any
21 law of this state, any other state, or the Federal Government
22 relating to the solvency of the insurer has been violated. In
23 the furtherance of such investigation, the department may:

24 (a) Examine and review any and all documents that are
25 reasonably calculated to disclose or lead to the disclosure of
26 the causes and reasons for the insolvency, the discovery and
27 location of assets to be recovered, the recovery of such
28 assets, the truth or falsity of statements filed with the
29 department, and whether any law of this state, any other
30 state, or the Federal Government has been violated.

31

1 (b) Take statements or depositions under oath of any
2 person whose testimony is reasonably calculated to disclose or
3 lead to the disclosure of the causes and reasons for the
4 insolvency, the discovery of and location of assets to be
5 recovered, the recovery of such assets, the truth or falsity
6 of statements filed with the department, and whether any law
7 of this state, any other state, or the Federal Government has
8 been violated.

9 (c) Request the court having jurisdiction over the
10 receivership proceedings to issue any necessary subpoenas.

11 (d) Examine and review the books, records, and
12 documents of any affiliate, controlling person, officer,
13 director, manager, trustee, agent, adjuster, employee, or
14 independent contractor of any insurer or affiliate and any
15 other person who possesses any executive authority over, or
16 who exercises or has exercised any control over, any segment
17 of the affairs of the insurer or affiliate, to the extent such
18 examination is reasonably calculated to disclose or lead to
19 the disclosure of the causes and reasons for the insolvency,
20 the discovery and location of assets to be recovered, the
21 recovery of such assets, the truth or falsity of statements
22 filed with the department, and whether any law of this state,
23 any other state, or the Federal Government has been violated.

24 (2) In its capacity as receiver, the department may
25 provide documents, books and records, other investigative
26 products, work product, and analysis, including copies of any
27 or all of the foregoing items, to the Division of Insurance
28 Fraud or any other appropriate agency of state or federal
29 government. The sharing of information, investigative
30 products, or analysis shall not waive any work product or
31

1 other privilege that would otherwise apply under common law,
2 chapter 119, or any other law.

3 (3) The department, as the court's receiver, is
4 granted the discretion to determine what books, records,
5 documents, or testimony would be reasonably calculated to
6 disclose or lead to the disclosure of the causes and reasons
7 for the insolvency, the discovery and location of assets to be
8 recovered, the recovery of the assets, the truth or falsity of
9 statements filed with the department, and whether any law of
10 this state or of the United States has been violated, subject
11 to the court's power to review such determination or appoint a
12 general master to review such determination. A party
13 asserting that any documents requested by the department under
14 this section are not subject to review, or that any particular
15 testimony may not be obtained, shall present such contention
16 by written motion to the receivership court within 20 days
17 after receipt of the request and shall be fully responsible
18 for the loss of any evidence which occurs after the department
19 first informs said party of its request therefor. The court
20 shall, as expeditiously as possible, determine whether the
21 department has abused its discretion in seeking such evidence
22 or testimony, with the objecting party having the burden of
23 proof. A party who fails to produce the requested evidence or
24 testimony without filing a proper timely objection, or who
25 having unsuccessfully asserted such objection fails thereafter
26 to furnish the evidence or testimony, within the time provided
27 by the court or the department, shall be subject to the
28 contempt powers of the court, in addition to any other
29 applicable penalties which may be provided in the Florida
30 Insurance Code or other law.

31

1 Section 28. Section 631.157, Florida Statutes, is
2 created to read:

3 631.157 Civil action by the receiver.--

4 (1) Any person who is engaged in the business of
5 insurance or who acts as or is an officer, director, agent, or
6 employee of any person engaged in the business of insurance,
7 or is involved, other than as an insured or beneficiary under
8 a policy of insurance, in a transaction relating to the
9 conduct of affairs of such a business, and who willfully
10 obtains or uses, as defined in s. 812.012(2), any asset or
11 property, including, but not limited to, moneys, funds,
12 premiums, credits, or other property of an insurer, shall be
13 liable to the department as receiver for the use and benefit
14 of an insolvent insurer's estate, creditors, and
15 policyholders, as follows:

16 (a) If such obtaining or using did not jeopardize the
17 safety and soundness of an insurer and was not a significant
18 cause of such insurer's being placed in conservation,
19 rehabilitation, or liquidation, such person shall be liable
20 only for the full amount of any asset obtained or used, plus
21 prejudgment interest provided by law.

22 (b) If such obtaining or using jeopardized the safety
23 and soundness of an insurer or was a significant cause of such
24 insurer's being placed in conservation, rehabilitation, or
25 liquidation, such person shall be liable for triple the full
26 amount of any asset obtained or used, plus prejudgment
27 interest provided by law on the original amount.

28 (2) Any person who is engaged in the business of
29 insurance or who acts as or is an officer, director, agent, or
30 employee of any person engaged in the business of insurance,
31 or is involved, other than as an insured or beneficiary under

1 a policy of insurance, in a transaction relating to the
2 conduct of affairs of such a business, and who, while having
3 actual knowledge or such constructive knowledge as should have
4 been obtained through reasonable inquiry by a person in such
5 position, if such person knowingly misreports, or knowingly
6 makes any false entry of, a material fact in any book, report,
7 or statement of an insurer with the intent to deceive such
8 insurer, including any officer, employee, or agent of such
9 insurer, the department, or any agent or examiner appointed by
10 the department to examine the affairs of such person or of the
11 insurer, concerning the financial condition or solvency of
12 such business, shall be liable to the department as receiver
13 for the use and benefit of an insolvent insurer's estate,
14 creditors, and policyholders, as follows:

15 (a) If such misreporting did not jeopardize the safety
16 and soundness of an insurer and was not a significant cause of
17 such insurer's being placed in conservation, rehabilitation,
18 or liquidation, such person shall be liable only for the full
19 amount of any asset misreported.

20 (b) If such misreporting jeopardized the safety and
21 soundness of an insurer or was a significant cause of such
22 insurer's being placed in conservation, rehabilitation, or
23 liquidation, such person shall be liable for triple the full
24 amount of any asset misreported.

25 (3) If the asset or property that has been obtained or
26 used was reported to the department as being available to the
27 insurer as an admitted asset and such asset is unavailable to
28 the receiver for payment of the obligations of the insurer at
29 the time when a receivership proceeding is instituted, the
30 obtaining or using shall be presumed to have jeopardized the
31 safety and soundness of the insurer and to have been a

1 significant cause of such insurer's being placed in
2 conservation, rehabilitation, or liquidation, with the burden
3 of proof on the defendants to show otherwise.

4 (4) If the receiver is successful in establishing a
5 claim under this section, the receiver shall be entitled to
6 recover all of its costs, investigative and other expenses,
7 which shall include the department's in-house staff and staff
8 attorney's expenses, costs, and salaries, expended in the
9 prosecution of the action, and reasonable attorney's fees.

10 The receiver shall be exempt from the provisions of s. 57.111.

11 (5) An action under this section may be brought at any
12 time before the expiration of 4 years after the entry of the
13 initial order of rehabilitation or liquidation under this part
14 but shall be filed before the time the receivership proceeding
15 is closed or dismissed.

16 Section 29. Paragraph (b) of subsection (1) of section
17 631.57, Florida Statutes, is amended to read:

18 631.57 Powers and duties of the association.--

19 (1) The association shall:

20 (b) Be deemed the insurer to the extent of its
21 obligation on the covered claims, and, to such extent, shall
22 have all rights, duties, defenses, and obligations of the
23 insolvent insurer as if the insurer had not become insolvent.
24 In no event shall the association be liable for any penalties
25 or interest.

26 Section 30. Section 631.3995, Florida Statutes, is
27 created to read:

28 631.3995 Closing of estate; Closed Estate Fund Trust
29 Account.--

30 (1) When all assets justifying the expense of
31 collection and distribution have been marshaled and

1 distributed under this part, the department shall petition the
2 court to terminate the liquidation proceedings and to close
3 the estate. The court may grant such other relief as may be
4 appropriate, including, but not limited to, a full discharge
5 of all liability and responsibility of the liquidator, the
6 reservation of assets for administrative expenses incurred in
7 the closing of the estate, and any other actions the
8 department feels necessary or appropriate for closing the
9 estate.

10 (2) Any remaining reserved assets that are provided
11 for in subsection (1) and that may not be practicably or
12 economically distributed to claimants shall be deposited into
13 a segregated account to be known as the Closed Estate Fund
14 Trust Account, if created by law. The department may use
15 moneys held in the account for paying the administrative
16 expenses of companies subject to this part that lack
17 sufficient assets to allow the department to perform its
18 duties and obligations under this part. An annual audit of the
19 Closed Estate Fund Trust Account shall be performed regardless
20 of its balance.

21 (3) The department may petition the court to reopen
22 the proceedings for good cause shown, including the marshaling
23 of additional assets, and the court may enter such other
24 orders as may be deemed appropriate.

25 Section 31. Subsection (3) of section 631.54, Florida
26 Statutes, is amended to read:

27 631.54 Definitions.--As used in this part:

28 (3) "Covered claim" means an unpaid claim, including
29 one of unearned premiums, which arises out of, and is within
30 the coverage, and not in excess of, the applicable limits of
31 an insurance policy to which this part applies, issued by an

1 insurer, if such insurer becomes an insolvent insurer after
2 October 1, 1970, and the claimant or insured is a resident of
3 this state at the time of the insured event or the property
4 from which the claim arises is permanently located in this
5 state. "Covered claim" shall not include any amount due any
6 reinsurer, insurer, insurance pool, or underwriting
7 association, as subrogation, contribution, indemnification,
8 ~~recoveries~~ or otherwise. Member insurers shall have no right
9 of subrogation against the insured of any insolvent member.

10 Section 32. Section 817.2341, Florida Statutes, is
11 created to read:

12 817.2341 Crimes by or affecting persons engaged in the
13 administration of any insurer or entity organized pursuant to
14 chapter 624 or chapter 641.--

15 (1)(a) Any person who makes a false entry of a
16 material fact in any book, report, or statement relating to a
17 transaction of an insurer or entity organized pursuant to
18 chapter 624 or chapter 641, intending thereby to deceive any
19 person about the financial condition or solvency of such
20 insurer or entity, commits a felony of the third degree,
21 punishable as provided in s. 775.082, s. 775.083, or s.
22 775.084.

23 (b) If such false entry of a material fact is made
24 with the intent to deceive any person as to the impairment of
25 capital, as defined in s. 631.011(12), of such insurer or
26 entity or is the significant cause of such insurer or entity
27 being placed in conservation, rehabilitation, or liquidation
28 by a court, the offense is a felony of the first degree,
29 punishable as provided in s. 775.082, s. 775.083, or s.
30 775.084.

31

1 (2)(a) Any person who knowingly makes a material false
2 statement or report to the department or any agent of the
3 department, or who knowingly and materially overvalues any
4 property in any document or report prepared to be presented to
5 the department or any agent of the department, commits a
6 felony of the third degree, punishable as provided in s.
7 775.082, s. 775.083, or s. 775.084.

8 (b) If such material false statement or report or such
9 material overvaluation is made with the intent to deceive any
10 person as to the impairment of capital, as defined in s.
11 631.011(12), of an insurer or entity organized pursuant to
12 chapter 624 or chapter 641, or is the significant cause of
13 such insurer or entity being placed in conservation,
14 rehabilitation, or liquidation by a court, the offense is a
15 felony of the first degree, punishable as provided in s.
16 775.082, s. 775.083, or s. 775.084.

17 Section 33. This act shall take effect July 1, 2001.