

By Senator Klein

28-1259-01

1 A bill to be entitled
2 An act relating to insurance; amending s.
3 631.001, F.S.; providing purpose and
4 legislative intent with respect to part I of
5 chapter 631, F.S., relating to the
6 rehabilitation and liquidation of insolvent
7 insurers; amending s. 631.011, F.S.; revising
8 definitions; creating s. 631.025, F.S.;
9 specifying persons and entities subject to part
10 I of chapter 631, F.S.; creating s. 631.113,
11 F.S.; providing for the tolling of any statute
12 of limitations for a specified period for
13 purposes of a claim on behalf of an insurer,
14 its policyholder, its creditors, or its estate;
15 providing certain limitations with respect to
16 such action during the time the insurer is
17 controlled by parties acting contrary to the
18 insurer's interest; amending s. 631.041, F.S.;
19 conforming provisions to changes made by the
20 act; providing for damages to be awarded
21 pursuant to any injury by a violation of a stay
22 against obtaining or enforcing a judgment;
23 providing for a statute of limitations or
24 defense of laches to be tolled following the
25 filing of a petition for conservation,
26 rehabilitation, or liquidation; amending s.
27 631.141, F.S.; providing powers of the
28 Department of Insurance when acting as a
29 receiver in a delinquency proceeding; amending
30 s. 631.154, F.S.; providing for the department
31 to recover certain costs and expenses when

1 acting as a receiver; creating s. 631.156,
2 F.S.; specifying powers of the department in
3 investigating the causes for an insurer's
4 insolvency and in recovering assets;
5 authorizing certain investigation
6 notwithstanding the commingling of operations
7 and assets; authorizing the department in its
8 capacity as receiver to provide information to
9 its Division of Insurance Fraud or any other
10 state or federal agency; providing for a
11 request for evidence to be reviewed by the
12 court; providing for an order of contempt for
13 failure to produce evidence or testimony;
14 creating s. 631.157, F.S.; providing for a
15 civil action by the department as receiver for
16 the benefit of an insurer's estate, creditors,
17 and policyholders; providing for damages;
18 specifying burden of proof in such action;
19 providing for the department to recover costs,
20 expenses, and attorney's fees; limiting the
21 period for bringing such action; creating s.
22 631.400, F.S.; providing for termination of
23 liquidation proceedings and the closing of an
24 insurer's estate; providing for the court to
25 discharge the department's liability and
26 responsibilities; amending s. 631.54, F.S.;
27 clarifying the exclusion of certain
28 contributions or indemnifications from a
29 covered claim; amending s. 626.9541, F.S.,
30 relating to unfair methods of competition and
31 unfair or deceptive acts or practices;

1 conforming provisions to changes made by the
2 act; creating s. 817.2341, F.S.; specifying
3 penalties for crimes by or affecting persons
4 engaged in the administration of an insurer or
5 entity organized under chapter 624 or chapter
6 641, F.S.; providing an effective date.

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

9
10 Section 1. Section 631.001, Florida Statutes, is
11 amended to read:

12 (Substantial rewording of section. See
13 s. 631.001, F.S., for present text.)
14 631.001 Interpretation, construction, and purpose.--

15 (1) The purpose of this part, which is integral to
16 regulating the business of insurance and of vital public
17 interest and concern, is to:

18 (a) Protect the interests of insureds, claimants,
19 creditors, and the public;

20 (b) Provide a comprehensive scheme for the
21 receivership of insurers;

22 (c) Maximize the uniformity of the insurer
23 receivership laws in all states;

24 (d) Make more efficient the administration of insurer
25 receiverships on an interstate and international basis;

26 (e) Provide prompt correct measures for any
27 potentially dangerous condition in an insurer;

28 (f) Implement improved methods for rehabilitating
29 insurers, which methods involve the cooperation and management
30 expertise of the insurance industry;

31

1 (g) Enhance the efficiency and economy of liquidation
2 through clarification and specification of the law to minimize
3 legal uncertainty and litigation;

4 (h) Lessen the problems of interstate rehabilitation
5 and liquidation of an entity subject to this part by
6 facilitating cooperation between states in the liquidation
7 process and by extending the scope of personal jurisdiction
8 over debtors of the insurer outside this state;

9 (i) Establish a system that equitably apportions any
10 unavoidable loss; and

11 (j) Maximize recovery of assets for the benefit of the
12 insurer, its policyholders, creditors, and estate, without
13 diminution of value occasioned by the expenses of collection
14 and recovery, by shifting such expenses to the parties holding
15 such assets.

16 (2) It is the intent of the Legislature that this part
17 be interpreted wherever possible in such a manner as to make
18 uniform the law of those states that in substance and effect
19 enact the National Association of Insurance Commissioners
20 Insurers Rehabilitation and Liquidation Model Act or the
21 Uniform Insurers Liquidation Act.

22 (3) This part does not limit the powers granted to the
23 department by law or rules other than under this part; does
24 not prevent the department in its capacity as administrator,
25 conservator, rehabilitator, receiver, liquidator, or similar
26 capacity from pursuing claims for damages or other recoveries
27 on behalf of the insurer, its policyholders, creditors, and
28 estate; and does not allow any prior wrongful or negligent
29 actions of company management, or any alleged negligent or
30 erroneous action by the department in its regulatory capacity,
31 to be asserted as a defense to a claim by the department in

1 its representative capacity, under a theory of estoppel,
2 comparative fault, intervening cause, proximate cause, or
3 otherwise.

4 (4) This part shall be liberally construed to effect
5 the purposes stated in subsection (1), and specifically
6 authorizes the department in its capacity as administrator,
7 conservator, rehabilitator, receiver, liquidator, or similar
8 capacity to pursue any action for damages or other recoveries
9 on behalf of the insurer, its policyholders, creditors, and
10 estate.

11 (5) This part shall be cited as the "Insurers
12 Rehabilitation and Liquidation Act."

13 Section 2. Section 631.011, Florida Statutes, is
14 amended to read:

15 631.011 Definitions.--For the purpose of this part,
16 the term:

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

- 20 (a) Equity ownership of voting securities;
21 (b) Common managerial control; or
22 (c) Collusive participation by the management of the
23 insurer and affiliate in the management of the insurer or the
24 affiliate.

25 (2) "Ancillary state" means, any state other than a
26 domiciliary state.

27 (3) "Assets," ~~as used in subsections (8)-(10),~~ means
28 only allowed assets as defined in chapter 625. However, after
29 the entry of an order of conservation, rehabilitation, or
30 liquidation, for the purpose of collection or marshalling by
31 the department under this part, the term is construed

1 liberally and includes, but is not limited to, property of the
2 insurer as defined in this section, funds improperly removed
3 or diverted either directly or indirectly from the insolvent
4 insurer, and any property into which those funds may have been
5 converted even if such property would not otherwise be
6 considered property of the insolvent insurer.

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

16 (5)~~(4)~~ "Court" refers to the circuit court in which
17 the receivership proceeding is pending.

18 (6)~~(5)~~ "Delinquency proceeding" means any proceeding
19 commenced against an insurer pursuant to this chapter for the
20 purpose of liquidating, rehabilitating, reorganizing, or
21 conserving such insurer.

22 (7)~~(6)~~ "Domiciliary state" means the state in which an
23 insurer is incorporated or organized or, in the case of an
24 insurer incorporated or organized in a foreign country, the
25 state in which such insurer, having become authorized to do
26 business in such state, has, at the commencement of a
27 delinquency proceeding, the largest amount of its assets held
28 in trust and assets held on deposit for the benefit of its
29 policyholders or policyholders and creditors in the United
30 States; and any such insurer is deemed to be domiciled in such
31 state.

1 (8) "Fair consideration" means the consideration that
2 is given for property or assets of an insurer when, in
3 exchange for the property or assets, and in good faith,
4 property is conveyed, services are rendered, or an enforceable
5 obligation not invalidated by the receivership proceedings is
6 created, any of which have a value to the insurer of not less
7 than the value of the property or assets given in exchange.

8 (9)~~(7)~~ "Foreign country" means territory not in any
9 state.

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

21 (11) "Good faith," as applied to a transferee or
22 transferor under this part, means honesty in fact and
23 intention, and includes the exercise of reasonable business
24 judgment, together with the absence of information that would
25 lead a reasonable person in the same position to know that the
26 insurer is financially impaired or insolvent and with the
27 absence of knowledge regarding the imminence or pendency of
28 any receivership proceeding against the insurer.

29 (12)~~(9)~~ "Impairment of capital" means that the minimum
30 surplus required to be maintained in s. 624.408 has been
31 dissipated and the insurer is not possessed of assets at least

1 equal to all its liabilities together with its total issued
2 and outstanding capital stock, if a stock insurer, or the
3 minimum surplus or net trust fund required by s. 624.407, if a
4 mutual, reciprocal, or business trust insurer.

5 (13)~~(10)~~ "Impairment of surplus" means that the
6 surplus of a stock insurer, the additional surplus of a mutual
7 or reciprocal insurer, or the additional net trust fund of a
8 business trust insurer does not comply with the requirements
9 of s. 624.408.

10 (14)~~(11)~~ "Insolvency" means that all the assets of the
11 insurer, if made immediately available, would not be
12 sufficient to discharge all its liabilities or that the
13 insurer is unable to pay its debts as they become due in the
14 usual course of business. When the context of any provision of
15 this code so indicates, insolvency also includes and is
16 defined as "impairment of surplus," as defined in subsection
17 ~~(13)~~(9), and "impairment of capital," as defined in
18 subsection~~(12)~~(8).

19 (15)~~(12)~~ "Insurer," in addition to persons so defined
20 under s. 624.03, also includes persons purporting to be
21 insurers or organizing, or holding themselves out as
22 organizing, in this state for the purpose of becoming insurers
23 and all insurers who have insureds resident in this state.

24 (16)~~(13)~~ "Liabilities," as used in subsections~~(12)~~
25 and (14)~~(8)~~~~(10)~~, means all liabilities, including those
26 specifically required in s. 625.041.

27 (17)~~(14)~~ "Person" includes natural persons,
28 corporations, partnerships, trusts, estates, and sole
29 proprietorships.

30 (18) "Property" with respect to an insolvent entity
31 includes all right, title, and interest of the insolvent

1 entity whether legal or equitable, tangible or intangible,
2 choate or inchoate, and includes choses in action, contract
3 rights, and any other interest recognized under the laws of
4 this state. When an order of conservation, rehabilitation, or
5 liquidation is entered, the term also includes entitlements
6 that existed prior to the entry of the order and those that
7 may arise by operation of the provisions of this chapter or
8 other provisions of law allowing the department to avoid prior
9 transfers or otherwise bring property into the receivership
10 estate, whether or not such entitlements could have been
11 asserted by the insolvent entity prior to the order. The term
12 also includes all records and data, however stored, including,
13 but not limited to, claims and claim files, application files,
14 litigation files, premium records, rate books, underwriting
15 manuals, personnel records, financial records, or other
16 information relating to an insolvent insurer within the
17 possession, custody, or control of a managing general agent,
18 third-party administrator, management company, accountant,
19 attorney, affiliate, or other person.

20 (19)~~(15)~~ "Receiver" means a receiver, liquidator,
21 rehabilitator, or conservator, as the context may require.

22 (20)~~(16)~~ "Reciprocal state" means any state other than
23 this state in which in substance and effect the provisions of
24 the Insurers Rehabilitation and Liquidation Act are in force,
25 including the provisions requiring that the commissioner of
26 insurance or equivalent insurance supervisory official be the
27 receiver of a delinquent insurer.

28 (21)~~(17)~~ "Secured claim" means any claim secured by
29 mortgage, trust deed, pledge, deposit as security, escrow, or
30 otherwise but does not include a special deposit claim, a
31 claim against general assets, or a claim based on mere

1 possession. The term also includes a claim which more than 4
2 months before the commencement of a delinquency proceeding in
3 the state of the insurer's domicile has become a lien upon
4 specific assets by reason of judicial process.

5 (22) "Single business enterprise" means an insurer
6 that has operated, together with affiliated or related persons
7 or entities, so as to create a structure of controls, debts,
8 obligations, services, or contracts flowing to and from the
9 insurer, in such a way that, in the view of the department,
10 efficient administration of the receivership requires
11 inclusion of the related persons or entities.

12 (23)~~(18)~~ "Special deposit claim" means any claim
13 secured by a deposit made pursuant to statute for the security
14 or benefit of a limited class or classes of persons, but not
15 including any general assets.

16 (24)~~(19)~~ "State" is as defined in s. 624.08.

17 Section 3. Section 631.025, Florida Statutes, is
18 created to read:

19 631.025 Persons and entities subject to this
20 part.--The receivership proceedings authorized by this part
21 may be initiated against, and the receivership court may
22 exercise jurisdiction over, any person who is an insurer and
23 any person whose inclusion is necessary for the purposes of
24 this part, regardless of whether that person would otherwise
25 be an insurer, including, but not limited to:

26 (1) A person who is transacting, or has transacted,
27 insurance business in or from this state, and against whom
28 claims arising from that business may exist now or in the
29 future.

30 (2) A person who purports to transact an insurance
31 business in this state, and any person or entity who acts as

1 an insurer, transacts insurance, or otherwise engages in
2 insurance activities in or from this state, with or without a
3 certificate of authority or proper authority from the
4 department.

5 (3) An insurer who has insureds residing in this
6 state.

7 (4) All other persons organized or in the process of
8 organizing with the intent to transact an insurance business
9 in this state.

10 (5) Affiliates, parent corporations, subsidiary
11 corporations, agents, managing general agents, brokers,
12 premium finance companies, insurers, insurance holding
13 companies, and all other risk-bearing or nonrisk-bearing
14 entities engaged in any aspect of the business of insurance,
15 regardless of whether such entities are licensed to engage in
16 the business of insurance in this state, if such person or
17 entity has done business with or is, at the time of the
18 filing, doing business with an insurer against which a
19 receivership proceeding has been or is being filed under this
20 part.

21 (6) Any corporation that directly or indirectly owns
22 10 percent or more of the stock of a Florida domestic insurer.

23 (7) Any entity forming part of a single business
24 enterprise with the insurer.

25 (8) Any other person or entity that is made subject to
26 the provisions of this part.

27 Section 4. Section 631.113, Florida Statutes, is
28 created to read:

29 631.113 Extension of time.--

30 (1) The running of any statute of limitations as to
31 any claims brought by the administrator, conservator,

1 rehabilitator, receiver, or liquidator or an official or
2 agency exercising powers pursuant to this chapter seeking
3 damages or other recoveries on behalf of an insurer, its
4 policyholders, its creditors, or its estate, shall be tolled
5 for 4 years after the date of entry of an order placing the
6 administrator, conservator, rehabilitator, receiver,
7 liquidator, or similar official or agency over the insurer.
8 However, if the delinquency proceedings brought under this
9 chapter against the insurer terminates in less than 4 years,
10 the tolling shall cease at the time when the proceedings are
11 finally concluded, including all appeals therefrom. Further,
12 the right of action does not accrue and the limitations period
13 for any such action does not run during the time when the
14 insurer is controlled by parties acting contrary to the
15 company's interests or when the facts giving rise to such
16 claim are fraudulently concealed from regulatory authorities
17 or from any members of company management. Chapter 95 shall be
18 construed so as to be consistent with this section. The
19 receiver may institute any action or proceeding on behalf of
20 the estate of the insurer while any statute of limitations is
21 tolled pursuant to this section. The tolling shall be in
22 addition to any other applicable tolling provision.

23 (2) For actions not covered by subsection (1), where
24 any unexpired time period is fixed, by any agreement or in any
25 proceeding, for doing any act for the benefit of the estate,
26 the receiver has 180 days or a longer period allowed by the
27 receivership court for good cause shown, following the date of
28 the entry of the order of rehabilitation or liquidation to
29 perform the act.

30
31

1 Section 5. Subsection (1) of section 631.041, Florida
2 Statutes, is amended, and subsections (6) and (7) are added to
3 that section, to read:

4 631.041 Automatic stay; relief from stay;
5 injunctions.--

6 (1) An application or petition under s. 631.031
7 operates as a matter of law as an automatic stay applicable to
8 all persons and entities, other than the receiver, which shall
9 be permanent and survive the entry of an order of
10 conservation, rehabilitation, or liquidation, and which shall
11 prohibit:

12 (a) The commencement or continuation of judicial,
13 administrative, or other action or proceeding against the
14 insurer or against its assets or any part thereof;

15 (b) The enforcement of a judgment against the insurer
16 or an affiliate obtained either before or after the
17 commencement of the delinquency proceeding;

18 (c) Any act to obtain possession of property of the
19 insurer;

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

24 (e) Any act to collect, assess, or recover a claim
25 against the insurer, except claims as provided for under this
26 chapter;

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

29 (6) The estate of an insurer that is injured by any
30 willful violation of a stay provided by this section is
31 entitled to actual damages, including costs and attorney's

1 fees and, in appropriate circumstances, the receivership court
2 may impose additional sanctions.

3 (7) A statute of limitations or defense of laches does
4 not run with respect to any action by or against an insurer
5 between the date of the filing of a petition for conservation,
6 rehabilitation, or liquidation against an insurer and the
7 order granting or denying that petition. If the petition is
8 denied, any action against the insurer which might have been
9 commenced when the petition was filed may be commenced for at
10 least 60 days after the order denying such relief.

11 Section 6. Section 631.141, Florida Statutes, is
12 amended to read:

13 631.141 Conduct of delinquency proceeding; domestic
14 and alien insurers.--

15 (1) Whenever under this chapter a receiver is to be
16 appointed in a delinquency proceeding for a domestic or alien
17 insurer, the court shall appoint the department as such
18 receiver. The court shall order the department forthwith to
19 take possession of the assets of the insurer and to administer
20 the same under the orders of the court.

21 (2) As a domiciliary receiver, the department is
22 vested by operation of law with the title to all of the
23 property, contracts, and rights of action, and all of the
24 books and records, of the insurer, wherever located, as of the
25 date of entry of the order directing it to rehabilitate or
26 liquidate a domestic insurer or to liquidate the United States
27 branch of an alien insurer domiciled in this state; and it
28 shall have the right to recover the same and reduce the same
29 to possession; except that ancillary receivers in reciprocal
30 states shall have, as to assets located in their respective
31 states, the rights and powers which are herein prescribed for

1 ancillary receivers appointed in this state as to assets
2 located in this state.

3 (3) The filing or recording of the order directing
4 possession to be taken, or a certified copy thereof, in any
5 office where instruments affecting title to property are
6 required to be filed or recorded imparts the same notice as
7 would be imparted by a deed, bill of sale, or other evidence
8 of title duly filed or recorded.

9 (4) The department as domiciliary receiver is
10 responsible for the proper administration of all assets coming
11 into its possession or control. The court may at any time
12 require a bond from it or its agents if deemed desirable for
13 the protection of such assets.

14 (5) Upon taking possession of the assets of an
15 insurer, the domiciliary receiver shall, subject to the
16 direction of the court, immediately proceed to conduct the
17 business of the insurer or to take such steps as are
18 authorized by this chapter for the purpose of rehabilitating,
19 liquidating, or conserving the affairs or assets of the
20 insurer.

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

28 (7)~~(6)~~ In connection with a delinquency proceeding,
29 the department may appoint one or more special agents to act
30 for it, and it may employ such counsel, clerks, and assistants
31 as it deems necessary. The compensation of the special

1 agents, counsel, clerks, or assistants and all expenses of
2 taking possession of the insurer and of conducting the
3 proceeding shall be fixed by the receiver, subject to the
4 approval of the court, and shall be paid out of the funds or
5 assets of the insurer. Within the limits of duties imposed
6 upon them, special agents shall possess all the powers given
7 to and, in the exercise of those powers, shall be subject to
8 all duties imposed upon the receiver with respect to such
9 proceeding.

10 (8)~~(7)~~ The department as domiciliary receiver may take
11 such action as it deems necessary or appropriate to reform and
12 revitalize the insurer. The department shall have all the
13 powers of the directors, officers, and managers, whose
14 authority shall be suspended, except as they are redelegated
15 by the receiver. The receiver shall have full power to direct
16 and manage the affairs of the insurer, to hire and discharge
17 employees, and to deal with the property and business of the
18 insurer.

19 (9)~~(8)~~ If the department as domiciliary receiver
20 determines that reorganization, consolidation, conversion,
21 reinsurance, merger, or other transformation of the insurer is
22 appropriate, it shall prepare a plan to effect such changes.
23 Upon application of the receiver for approval of the plan, and
24 after such notice and hearings as the court may prescribe, the
25 court may either approve or disapprove the plan proposed or
26 may modify it and approve it as modified. Any plan approved
27 under this section must be, in the judgment of the court, fair
28 and equitable to all parties concerned. If the plan is
29 approved, the receiver shall carry out the plan.

30 (10)~~(9)~~ Records created by the entity in receivership
31 shall be disposed of in accordance with the order of the court

1 at such time as the receiver determines that the records are
2 not needed for the administration of the estate.

3 Section 7. Subsection (6) of section 631.154, Florida
4 Statutes, is amended to read:

5 631.154 Funds or other property in the possession of
6 third person.--

7 (6) If ~~Should~~ the receiver is ~~be~~ successful in
8 establishing its claim or any part thereof, the receiver is
9 ~~shall be~~ entitled to recover judgment for the following:

10 (a) The property or its cash value as of the date of
11 the order of conservation, rehabilitation, or liquidation,
12 whichever is applicable.

13 (b) Rental for the use of the property to run from the
14 date of the order of conservation, rehabilitation, or
15 liquidation, whichever is applicable, to the date the property
16 is delivered to the receiver.

17 (c) In the case of funds, interest at the statutory
18 rate to run from the date of the order of conservation,
19 rehabilitation, or liquidation, whichever is applicable, to
20 the date the funds are delivered to the receiver.

21 (d) All costs, investigative expenses, and other
22 expenses, including expenses, costs, and salaries of the
23 department's in-house staff and attorneys, expended in
24 ~~necessary~~ to the recovery of the property or funds, and
25 reasonable attorney's fees.

26
27 It is the intent of this section that a person found to be
28 holding receivership assets fully reimburse the receiver for
29 any and all efforts made to recover those assets.

30 Section 8. Section 631.156, Florida Statutes, is
31 created to read:

1 631.156 Investigation by the department.--
2 (1) Preliminary or incidental to a petition for
3 receivership proceedings, the department may, and if appointed
4 receiver shall, undertake a full investigation to determine
5 the causes and reasons for the insolvency, the discovery of
6 and location of assets to be recovered, the recovery of such
7 assets, whether the filing of false statements with the
8 department contributed to the insolvency and, in conjunction
9 with the department's Division of Insurance Fraud or any other
10 appropriate agency of state or Federal Government, determine
11 whether any law of this state, any other state, or the Federal
12 Government relating to the solvency of the insurer has been
13 violated. In the furtherance of such investigation, the
14 department may:
15 (a) Examine and review any and all documents that are
16 reasonably calculated to disclose or lead to the disclosure of
17 the causes and reasons for the insolvency, the discovery of
18 and location of assets to be recovered, the recovery of such
19 assets, the truth or falsity of statements filed with the
20 department, or whether any law of this state, any other state,
21 or the Federal Government has been violated;
22 (b) Take statements or depositions under oath of any
23 person whose testimony is reasonably calculated to disclose or
24 lead to the disclosure of the causes and reasons for the
25 insolvency, the discovery of and location of assets to be
26 recovered, the recovery of such assets, the truth or falsity
27 of statements filed with the department, or whether any law of
28 this state, any other state, or the Federal Government has
29 been violated;
30 (c) Request the court having jurisdiction over the
31 receivership proceedings to issue any necessary subpoenas; and

1 (d) Examine and review the books, records, and
2 documents of any affiliate, controlling person, officer,
3 director, manager, trustee, agent, adjuster, employee, or
4 independent contractor of any insurer or affiliate and any
5 other person that possesses any executive authority over, or
6 who exercises or has exercised any control over, any segment
7 of the affairs of the insurer or affiliate, to the extent that
8 such examination is reasonably calculated to disclose or lead
9 to the disclosure of the causes and reasons for the
10 insolvency, the discovery of and location of assets to be
11 recovered, the recovery of such assets, the truth or falsity
12 of statements filed with the department, or whether any law of
13 this state, any other state, or the Federal Government has
14 been violated.

15 (2) The department may not be hindered in its
16 investigation by virtue of the insurer's and the affiliates'
17 manner of doing business. If the insurer and any of its
18 affiliates have, at any time prior to the institution of any
19 type of receivership proceedings, commingled their operations;
20 operated as an integrated entity, whether or not adjudged a
21 single business enterprise for purposes of the Florida
22 Insurance Code; filed a combined financial statement with any
23 governmental authority or published a combined financial
24 statement to any investor or customer; had common officers,
25 directors, managers, trustees, agents, adjusters, employees,
26 independent contractors, accountants, auditors, attorneys, or
27 other significant personnel, regardless of whether such
28 persons are controlling persons or affiliates as defined in
29 the Florida Insurance Code; or operated in fact as a combined
30 or integrated entity to any degree, such persons or entities
31 may not withhold from the department any books, records,

1 documents, or testimony that would otherwise be privileged if
2 the insurer and its affiliates had conducted their business as
3 unrelated entities.

4 (3) In its capacity as receiver, the department may
5 provide documents, books and records, other investigative
6 products, work products, or analysis, including copies of any
7 such items, to its Division of Insurance Fraud or any other
8 appropriate agency of the state or Federal Government. The
9 sharing of information, investigative products, or analysis
10 does not waive any privilege granted to work products or any
11 other privilege that would otherwise apply under common law,
12 chapter 119, or any other law.

13 (4) The department, as the court's receiver and
14 subject to the court's power to review the determination or
15 appoint a general master to do so, may determine what books,
16 records, documents, or testimony would be reasonably
17 calculated to disclose or lead to the disclosure of the causes
18 and reasons for the insolvency, the discovery of and location
19 of assets to be recovered, the recovery of the assets, the
20 truth or falsity of statements filed with the department, or
21 whether any law of this state or of the Federal Government has
22 been violated. A party asserting that any documents requested
23 by the department under this section are not subject to
24 review, or that any particular testimony may not be obtained,
25 must present such contention by written motion to the
26 receivership court within 10 days after receipt of the
27 request, and such party is fully responsible for the loss of
28 any evidence which occurs after the department first informs
29 the party of its request for evidence or testimony. The court
30 shall, as expeditiously as possible, determine whether the
31 department has abused its discretion in seeking such evidence

1 or testimony with the objecting party having the burden of
2 proof. A party who fails to produce the requested evidence or
3 testimony without filing a proper timely objection or who,
4 having unsuccessfully asserted such objection, fails
5 thereafter to furnish the evidence or testimony within the
6 time provided by the court or the department is subject to the
7 contempt powers of the court, in addition to any other
8 applicable penalties that may be provided in the Florida
9 Insurance Code or other law.

10 Section 9. Section 631.157, Florida Statutes, is
11 created to read:

12 631.157 Civil action by the receiver.--

13 (1) If any person who is engaged in the business of
14 insurance; who acts as or is an officer, director, agent, or
15 employee of any person engaged in the business of insurance;
16 or who is involved, other than as an insured or beneficiary
17 under a policy of insurance, in a transaction relating to the
18 conduct of affairs of such a business and willfully embezzles,
19 abstracts, purloins, converts, or misappropriates any asset or
20 property, including, but not limited to, moneys, funds,
21 premiums, credits, or other property of an insurer, such
22 person is liable to the department as receiver for the use and
23 benefit of an insolvent insurer's estate, creditors, and
24 policyholders, as follows:

25 (a) If the embezzlement, abstraction, purloining,
26 conversion, or misappropriation did not jeopardize the safety
27 and soundness of an insurer and was not a significant cause of
28 the insurer's being placed in conservation, rehabilitation, or
29 liquidation, the person is liable only for the full amount of
30 any asset embezzled, abstracted, purloined, or
31 misappropriated, plus prejudgment interest as provided by law.

1 **(b) If the embezzlement, abstraction, purloining,**
2 **conversion, or misappropriation jeopardized the safety and**
3 **soundness of an insurer or was a significant cause of the**
4 **insurer's being placed in conservation, rehabilitation, or**
5 **liquidation, the person is liable for triple the full amount**
6 **of any asset embezzled, abstracted, purloined, converted, or**
7 **misappropriated, plus prejudgment interest on the original**
8 **amount as provided by law.**

9 **(2) If any person who is engaged in the business of**
10 **insurance; who acts as, or is an officer, director, agent, or**
11 **employee of any person engaged in the business of insurance;**
12 **or who is involved, other than as an insured or beneficiary**
13 **under a policy of insurance, in a transaction relating to the**
14 **conduct of affairs of such a business, and who, while having**
15 **actual knowledge or such constructive knowledge as should have**
16 **been obtained through reasonable inquiry by a person in such**
17 **position of the falsity thereof, misreports or makes any false**
18 **entry of material fact in any book, report, or statement of an**
19 **insurer to deceive such insurer, including any officer,**
20 **employee, or agent of such insurer, the department, or any**
21 **agent or examiner appointed by the department to examine the**
22 **affairs of such person or of the insurer concerning the**
23 **financial condition or solvency of such business, such person**
24 **is liable to the department as receiver for the use and**
25 **benefit of an insolvent insurer's estate, creditors, and**
26 **policyholders, as follows:**

27 **(a) If such misreporting did not jeopardize the safety**
28 **and soundness of an insurer and was not a significant cause of**
29 **such insurer's being placed in conservation rehabilitation, or**
30 **liquidation, such person is liable only for the full amount of**
31 **any asset misreported.**

1 (b) If such misreporting jeopardized the safety and
2 soundness of an insurer or was a significant cause of such
3 insurer's being placed in conservation, rehabilitation, or
4 liquidation, such person is liable for triple the full amount
5 of any asset misreported.

6 (3) If the asset or property that has been
7 misreported, embezzled, abstracted, purloined, converted, or
8 misappropriated was reported to the department as being
9 available to the insurer as an admitted asset and such asset
10 is unavailable to the receiver for payment of the obligations
11 of the insurer at the time when a receivership proceeding is
12 instituted, the misreporting, embezzlement, abstraction,
13 purloining, conversion, or misappropriation is presumed to
14 have jeopardized the safety and soundness of the insurer and
15 to have been a significant cause of such insurer's being
16 placed in conservation, rehabilitation, or liquidation, and
17 the defendant has the burden of proof to show otherwise.

18 (4) If the receiver is successful in establishing its
19 claim under this section or any part of this section, the
20 receiver is entitled to recover all of its costs,
21 investigative expenses, and other expenses, including
22 expenses, costs, and salaries of the department's in-house
23 staff and attorneys, expended in the prosecution of the
24 action, and reasonable attorney's fees. The receiver is exempt
25 from s. 57.111.

26 (5) An action under this section may be brought at any
27 time before the expiration of 4 years after the date of entry
28 of the initial order of rehabilitation or liquidation under
29 this part, but must be filed before the receivership
30 proceeding is closed or dismissed.

31

1 Section 10. Section 631.400, Florida Statutes, is
2 created to read:

3 631.400 Closing of estate.--

4 (1) When all assets justifying the expense of
5 collection and distribution have been marshaled and
6 distributed under this part, the department shall petition the
7 court to terminate the liquidation proceedings and to close
8 the estate. The court may grant any other relief as is
9 appropriate, including a full discharge of all liability and
10 responsibility of the liquidator, the reservation of assets
11 for administrative expenses incurred in the closing of the
12 estate, and any other actions the department finds necessary
13 or appropriate for the winding up of the estate.

14 (2) The department may petition the court to reopen
15 the proceedings for good cause shown, including the marshaling
16 of additional assets, and the court may enter any other orders
17 it finds appropriate.

18 Section 11. Subsection (3) of section 631.54, Florida
19 Statutes, is amended to read:

20 631.54 Definitions.--As used in this part:

21 (3) "Covered claim" means an unpaid claim, including
22 one of unearned premiums, which arises out of, and is within
23 the coverage, and not in excess of, the applicable limits of
24 an insurance policy to which this part applies, issued by an
25 insurer, if such insurer becomes an insolvent insurer after
26 October 1, 1970, and the claimant or insured is a resident of
27 this state at the time of the insured event or the property
28 from which the claim arises is permanently located in this
29 state. "Covered claim" does ~~shall~~ not include any amount due
30 any reinsurer, insurer, insurance pool, or underwriting
31 association, as subrogation, contribution, indemnification,

1 ~~recoveries~~ or otherwise. Member insurers shall have no right
2 of subrogation against the insured of any insolvent member.

3 Section 12. Paragraph (w) of subsection (1) of section
4 626.9541, Florida Statutes, is amended to read:

5 626.9541 Unfair methods of competition and unfair or
6 deceptive acts or practices defined.--

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

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

12 1. Whether or not delinquency proceedings as to the
13 insurer have been or are to be initiated, but while such
14 insolvency or impairment exists, no director or officer of an
15 insurer, except with the written permission of the Department
16 of Insurance, shall authorize or permit the insurer to solicit
17 or accept new or renewal insurance risks in this state after
18 such director or officer knew, or reasonably should have
19 known, that the insurer was insolvent or impaired. "Impaired"
20 includes impairment for capital or surplus, as defined in s.
21 631.011(12) and (13)~~s. 631.011(9) and (10)~~.

22 2. Any such director or officer, upon conviction of a
23 violation of this paragraph, is guilty of a felony of the
24 third degree, punishable as provided in s. 775.082, s.
25 775.083, or s. 775.084.

26 Section 13. Section 817.2341, Florida Statutes, is
27 created to read:

28 817.2341 Crimes by or affecting persons engaged in the
29 administration of any insurer or entity organized under
30 chapter 624 or chapter 641.--

31

1 (1)(a) Any person who makes a false entry of a
2 material fact in any book, report, or statement relating to a
3 transaction of an insurer or entity organized under chapter
4 624 or chapter 641, with intent to deceive any person about
5 the financial condition or solvency of the insurer or entity
6 commits a felony of the third degree, punishable as provided
7 in s. 775.082, s. 775.083, or s. 775.084.

8 (b) If the false entry of a material fact is made with
9 the intent to deceive any person as to the impairment of
10 capital as defined in s. 631.011(9) of the insurer or entity,
11 or is the significant cause of the insurer or entity being
12 placed on conservation, rehabilitation, or liquidation by a
13 court, the offense is a felony of the first degree, punishable
14 as provided in s. 775.082, s. 775.083, or s. 775.084.

15 (2)(a) Any person who knowingly makes a material false
16 statement or report to the department or any of its agents, or
17 who knowingly and materially overvalues any property in any
18 document or report prepared to be presented to the department
19 or any of its agents, commits a felony of the third degree,
20 punishable as provided in s. 775.082, s. 775.083, or s.
21 775.084.

22 (b) If the material false statement or report or such
23 material overvaluation is made with the intent to deceive any
24 person as to the impairment of capital as defined in s.
25 631.011(9) of an insurer or entity organized under chapter 624
26 or chapter 641, or is the significant cause of such insurer or
27 entity being placed on conservation, rehabilitation, or
28 liquidation by a court, the offense is a felony of the first
29 degree, punishable as provided in s. 775.082, s. 775.083 or s.
30 775.084.

31 Section 14. This act shall take effect July 1, 2001.

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SENATE SUMMARY

Revises various provisions of ch. 631, F.S., relating to the rehabilitation and liquidation of insolvent insurers. Tolls any statute of limitations for 4 years for purposes of a claim on behalf of an insurer, its policyholder, its creditors, or its estate. Provides for an award of damages for an injury that occurs due to a violation of a stay against obtaining or enforcing a judgment. Tolls the statute of limitations or the defense of laches following the filing of a petition for conservation, rehabilitation, or liquidation. Specifies the powers of the Department of Insurance when acting as a receiver in a delinquency proceeding. Authorizes the department to investigate the causes for an insurer's insolvency. Provides for such investigation notwithstanding the commingling of an insurer's operations and assets. Authorizes the department to provide information to its Division of Insurance Fraud or any other state or federal agency in its capacity as receiver. Provides for an order of contempt for failure to produce evidence or testimony. Provides for civil actions by the Department of Insurance as receiver for the benefit of an insurer's estate, creditors, and policyholders. Provides procedures for terminating liquidation proceedings and closing an insurer's estate. Provides penalties for crimes by or affecting persons engaged in the administration of an insurer or entity organized under ch. 624 or ch. 641, F.S. (See bill for details.)