

By the Committee on Banking and Insurance; and Senator Klein

311-1953-01

1 A bill to be entitled
2 An act relating to insurer rehabilitation and
3 liquidation; amending s. 626.9541, F.S.;
4 correcting a cross-reference; amending s.
5 631.001, F.S.; providing construction and
6 purposes; providing a short title; amending s.
7 631.011, F.S.; providing additional
8 definitions; creating s. 631.025, F.S.;
9 specifying application to certain persons and
10 entities; amending s. 631.041, F.S.; limiting
11 application of certain time restrictions;
12 correcting a cross-reference; creating s.
13 631.113, F.S.; providing for tolling certain
14 time limitations in certain actions; amending
15 s. 631.141, F.S.; vesting the Department of
16 Insurance with certain rights as receiver;
17 amending s. 631.154, F.S.; including certain
18 costs and expenses of the department in costs
19 and expenses entitled to be recovered by the
20 receiver under certain circumstances; creating
21 s. 631.156, F.S.; providing for investigations
22 by the department preliminary or incidental to
23 receivership proceedings; providing department
24 powers; authorizing the department to provide
25 certain information in such investigations;
26 granting the department certain discretionary
27 powers; creating s. 631.157, F.S.; imposing
28 liability on certain persons or entities for
29 certain actions; specifying amounts of damages;
30 providing construction; providing costs and
31 expenses entitled to be recovered by the

1 receiver under certain circumstances; providing
2 a time certain for bringing certain actions;
3 amending s. 631.57, F.S.; clarifying that the
4 association has the same legal defenses
5 available to the insolvent insurer; creating s.
6 631.3995, F.S.; providing procedures and
7 requirements for closing an estate; providing
8 for deposit of certain assets into the Closed
9 Estate Fund Trust Account; providing for uses
10 of such account; providing for reopening
11 certain proceedings; amending s. 631.54, F.S.;
12 revising a definition; creating s. 817.2341,
13 F.S.; providing criminal penalties for certain
14 activities; providing an effective date.

15
16 Be It Enacted by the Legislature of the State of Florida:

17
18 Section 1. Paragraph (w) of subsection (1) of section
19 626.9541, Florida Statutes, is amended to read:

20 626.9541 Unfair methods of competition and unfair or
21 deceptive acts or practices defined.--

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

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

27 1. Whether or not delinquency proceedings as to the
28 insurer have been or are to be initiated, but while such
29 insolvency or impairment exists, no director or officer of an
30 insurer, except with the written permission of the Department
31 of Insurance, shall authorize or permit the insurer to solicit

1 or accept new or renewal insurance risks in this state after
2 such director or officer knew, or reasonably should have
3 known, that the insurer was insolvent or impaired. "Impaired"
4 includes impairment for capital or surplus, as defined in s.
5 631.011~~(12)(9)~~and~~(13)(10)~~.

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

10 Section 2. Section 631.001, Florida Statutes, is
11 amended to read:

12 (Substantial rewording of section.

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

14 631.001 Construction; purposes.--

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

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

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

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

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

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

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

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

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

12 (i) Establish a system which equitably apportions any
13 unavoidable loss.

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

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

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

25 Section 3. Section 631.011, Florida Statutes, is
26 amended to read:

27 631.011 Definitions.--For the purpose of this part,
28 the term:

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

- 1 (a) Equity ownership of voting securities;
- 2 (b) Common managerial control; or
- 3 (c) Collusive participation by the management of the
4 insurer and affiliate in the management of the insurer or the
5 affiliate.
- 6 (2) "Ancillary state" means, any state other than a
7 domiciliary state.
- 8 (3) "Assets," as used in this section ~~subsections~~
9 ~~(8)-(10)~~, means only allowed assets as defined in chapter 625.
- 10 (4) "Bona fide holder for value" means a holder who,
11 while not possessing information that would lead a reasonable
12 person in the holder's position to believe that the insurer is
13 financially impaired, and while unaware of the imminence or
14 pendency of any receivership proceeding against the insurer,
15 has, in the exercise of reasonable business judgment,
16 exchanged his or her own funds, assets, or property for funds,
17 assets, or property of the insurer having an equivalent market
18 value.
- 19 ~~(5)(4)~~ "Court" refers to the circuit court in which
20 the receivership proceeding is pending.
- 21 ~~(6)(5)~~ "Delinquency proceeding" means any proceeding
22 commenced against an insurer pursuant to this chapter for the
23 purpose of liquidating, rehabilitating, reorganizing, or
24 conserving such insurer.
- 25 ~~(7)(6)~~ "Domiciliary state" means the state in which an
26 insurer is incorporated or organized or, in the case of an
27 insurer incorporated or organized in a foreign country, the
28 state in which such insurer, having become authorized to do
29 business in such state, has, at the commencement of a
30 delinquency proceeding, the largest amount of its assets held
31 in trust and assets held on deposit for the benefit of its

1 policyholders or policyholders and creditors in the United
2 States; and any such insurer is deemed to be domiciled in such
3 state.

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

11 (9)(7) "Foreign country" means territory not in any
12 state.

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

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

1 (12)~~(9)~~ "Impairment of capital" means that the minimum
2 surplus required to be maintained in s. 624.408 has been
3 dissipated and the insurer is not possessed of assets at least
4 equal to all its liabilities together with its total issued
5 and outstanding capital stock, if a stock insurer, or the
6 minimum surplus or net trust fund required by s. 624.407, if a
7 mutual, reciprocal, or business trust insurer.

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

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

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

27 (16)~~(13)~~ "Liabilities," as used in subsections (12)
28 and (14)~~(8)~~~~(10)~~, means all liabilities, including those
29 specifically required in s. 625.041.

30
31

1 ~~(17)~~~~(14)~~ "Person" includes natural persons,
2 corporations, partnerships, trusts, estates, and sole
3 proprietorships.

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

26 ~~(19)~~~~(15)~~ "Receiver" means a receiver, liquidator,
27 rehabilitator, or conservator, as the context may require.

28 ~~(20)~~~~(16)~~ "Reciprocal state" means any state other than
29 this state in which in substance and effect the provisions of
30 the Insurers Rehabilitation and Liquidation Act are in force,
31 including the provisions requiring that the commissioner of

1 insurance or equivalent insurance supervisory official be the
2 receiver of a delinquent insurer.

3 (21)~~(17)~~ "Secured claim" means any claim secured by
4 mortgage, trust deed, pledge, deposit as security, escrow, or
5 otherwise but does not include a special deposit claim, a
6 claim against general assets, or a claim based on mere
7 possession. The term also includes a claim which more than 4
8 months before the commencement of a delinquency proceeding in
9 the state of the insurer's domicile has become a lien upon
10 specific assets by reason of judicial process.

11 (22)~~(18)~~ "Special deposit claim" means any claim
12 secured by a deposit made pursuant to statute for the security
13 or benefit of a limited class or classes of persons, but not
14 including any general assets.

15 (23)~~(19)~~ "State" is as defined in s. 624.08.

16 Section 4. Section 631.025, Florida Statutes, is
17 created to read:

18 631.025 Persons and entities subject to this
19 part.--Delinquency proceedings authorized by this part may be
20 initiated against any insurer as defined in s. 631.011(15) if
21 the statutory grounds are present as to that insurer, and the
22 receivership court may exercise jurisdiction over any person
23 required to cooperate with the department pursuant to s.
24 631.391 and over all persons made subject to the court's
25 jurisdiction by other provisions of law. Such persons include,
26 but are not limited to:

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

31

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

7 (3) An insurer who has insureds residing in this
8 state.

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

12 Section 5. Paragraph (d) of subsection (1) of section
13 631.041, Florida Statutes, is amended, and subsection (6) is
14 added to that section, to read:

15 631.041 Automatic stay; relief from stay;
16 injunctions.--

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

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

27 (6) No statute of limitations or defense of laches
28 shall run with respect to any action by or against an insurer
29 between the filing of a petition for conservation,
30 rehabilitation, or liquidation against an insurer and the
31 order granting or denying that petition. If the petition is

1 denied, any action against the insurer that might have been
2 commenced when the petition was filed may be commenced for at
3 least 60 days after the order denying such relief.

4 Section 6. Section 631.113, Florida Statutes, is
5 created to read:

6 631.113 Extension of time.--

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

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

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

12 631.141 Conduct of delinquency proceeding; domestic
13 and alien insurers.--

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

21 Section 8. Paragraph (d) of subsection (6) of section
22 631.154, Florida Statutes, is amended to read:

23 631.154 Funds or other property in the possession of
24 third person.--

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

28 (d) All costs, investigative and other expenses, which
29 include the department's in-house staff and staff attorney's
30 expenses, costs, and salaries, expended in ~~necessary to~~ the
31

1 recovery of the property or funds, and reasonable attorney's
2 fees.

3 Section 9. Section 631.156, Florida Statutes, is
4 created to read:

5 631.156 Investigation by the department.--

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

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

25 (b) Take statements or depositions under oath of any
26 person whose testimony is reasonably calculated to disclose or
27 lead to the disclosure of the causes and reasons for the
28 insolvency, the discovery of and location of assets to be
29 recovered, the recovery of such assets, the truth or falsity
30 of statements filed with the department, and whether any law

31

1 of this state, any other state, or the Federal Government has
2 been violated.

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

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

18 (2) In its capacity as receiver, the department may
19 provide documents, books and records, other investigative
20 products, work product, and analysis, including copies of any
21 or all of the foregoing items, to the Division of Insurance
22 Fraud or any other appropriate agency of state or federal
23 government. The sharing of information, investigative
24 products, or analysis shall not waive any work product or
25 other privilege that would otherwise apply under common law,
26 chapter 119, or any other law.

27 (3) The department, as the court's receiver, is
28 granted the discretion to determine what books, records,
29 documents, or testimony would be reasonably calculated to
30 disclose or lead to the disclosure of the causes and reasons
31 for the insolvency, the discovery and location of assets to be

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

24 Section 10. Section 631.157, Florida Statutes, is
25 created to read:

26 631.157 Civil action by the receiver.--

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

1 conduct of affairs of such a business, and who willfully
2 obtains or uses, as defined in s. 812.012(2), any asset or
3 property, including, but not limited to, moneys, funds,
4 premiums, credits, or other property of an insurer, shall be
5 liable to the department as receiver for the use and benefit
6 of an insolvent insurer's estate, creditors, and
7 policyholders, as follows:

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

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

20 (2) Any person who is engaged in the business of
21 insurance or who acts as or is an officer, director, agent, or
22 employee of any person engaged in the business of insurance,
23 or is involved, other than as an insured or beneficiary under
24 a policy of insurance, in a transaction relating to the
25 conduct of affairs of such a business, and who, while having
26 actual knowledge or such constructive knowledge as should have
27 been obtained through reasonable inquiry by a person in such
28 position, if such person knowingly misreports, or knowingly
29 makes any false entry of, a material fact in any book, report,
30 or statement of an insurer with the intent to deceive such
31 insurer, including any officer, employee, or agent of such

1 insurer, the department, or any agent or examiner appointed by
2 the department to examine the affairs of such person or of the
3 insurer, concerning the financial condition or solvency of
4 such business, shall be liable to the department as receiver
5 for the use and benefit of an insolvent insurer's estate,
6 creditors, and policyholders, as follows:

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

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

17 (3) If the asset or property that has been obtained or
18 used was reported to the department as being available to the
19 insurer as an admitted asset and such asset is unavailable to
20 the receiver for payment of the obligations of the insurer at
21 the time when a receivership proceeding is instituted, the
22 obtaining or using shall be presumed to have jeopardized the
23 safety and soundness of the insurer and to have been a
24 significant cause of such insurer's being placed in
25 conservation, rehabilitation, or liquidation, with the burden
26 of proof on the defendants to show otherwise.

27 (4) If the receiver is successful in establishing a
28 claim under this section, the receiver shall be entitled to
29 recover all of its costs, investigative and other expenses,
30 which shall include the department's in-house staff and staff
31 attorney's expenses, costs, and salaries, expended in the

1 prosecution of the action, and reasonable attorney's fees.

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

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

8 Section 11. Paragraph (b) of subsection (1) of section
9 631.57, Florida Statutes, is amended to read:

10 631.57 Powers and duties of the association.--

11 (1) The association shall:

12 (b) Be deemed the insurer to the extent of its
13 obligation on the covered claims, and, to such extent, shall
14 have all rights, duties, defenses, and obligations of the
15 insolvent insurer as if the insurer had not become insolvent.
16 In no event shall the association be liable for any penalties
17 or interest.

18 Section 12. Section 631.3995, Florida Statutes, is
19 created to read:

20 631.3995 Closing of estate; Closed Estate Fund Trust
21 Account.--

22 (1) When all assets justifying the expense of
23 collection and distribution have been marshaled and
24 distributed under this part, the department shall petition the
25 court to terminate the liquidation proceedings and to close
26 the estate. The court may grant such other relief as may be
27 appropriate, including, but not limited to, a full discharge
28 of all liability and responsibility of the liquidator, the
29 reservation of assets for administrative expenses incurred in
30 the closing of the estate, and any other actions the

31

1 department feels necessary or appropriate for closing the
2 estate.

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

14 (3) 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 such other
17 orders as may be deemed appropriate.

18 Section 13. 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" shall not include any amount due any
30 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 14. Section 817.2341, Florida Statutes, is
4 created to read:

5 817.2341 Crimes by or affecting persons engaged in the
6 administration of any insurer or entity organized pursuant to
7 chapter 624 or chapter 641.--

8 (1)(a) Any person who makes a false entry of a
9 material fact in any book, report, or statement relating to a
10 transaction of an insurer or entity organized pursuant to
11 chapter 624 or chapter 641, intending thereby to deceive any
12 person about the financial condition or solvency of such
13 insurer or entity, commits a felony of the third degree,
14 punishable as provided in s. 775.082, s. 775.083, or s.
15 775.084.

16 (b) If such false entry of a material fact is made
17 with the intent to deceive any person as to the impairment of
18 capital, as defined in s. 631.011(12), of such insurer or
19 entity or is the significant cause of such insurer or entity
20 being placed in conservation, rehabilitation, or liquidation
21 by a court, the offense is a felony of the first degree,
22 punishable as provided in s. 775.082, s. 775.083, or s.
23 775.084.

24 (2)(a) Any person who knowingly makes a material false
25 statement or report to the department or any agent of the
26 department, or who knowingly and materially overvalues any
27 property in any document or report prepared to be presented to
28 the department or any agent of the department, commits a
29 felony of the third degree, punishable as provided in s.
30 775.082, s. 775.083, or s. 775.084.

31

1 (b) If such material false statement or report or such
2 material overvaluation is made with the intent to deceive any
3 person as to the impairment of capital, as defined in s.
4 631.011(12), of an insurer or entity organized pursuant to
5 chapter 624 or chapter 641, or is the significant cause of
6 such insurer or entity being placed in conservation,
7 rehabilitation, or liquidation by a court, the offense is a
8 felony of the first degree, punishable as provided in s.
9 775.082, s. 775.083, or s. 775.084.

10 Section 15. This act shall take effect July 1, 2001.

11
12 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
13 COMMITTEE SUBSTITUTE FOR
14 SB 1816

15 Removes the provision defining a "single business enterprise."

16 Eliminates the provision allowing the estate of an insurer
17 that is injured by any willful violation of a stay to be
entitled to actual damages, costs and attorney's fees.

18 Provides for an additional 10 days for a party to object to
19 production of certain documents requested by the Department of
Insurance, acting as the court's receiver.

20 Adds the provision clarifying that the Florida Insurance
21 Guaranty Association assumes all defenses available to the
insolvent insurer.

22 Clarifies that records and data held by other persons must
23 specifically be the property of the insolvent insurer.

24 Removes archaic undefined terms such as "purloined" and
"abstracted" under the civil action provision and replaces
25 such terms with references to "obtained" or "used" as such
references are defined under Florida's theft law.