

By the Committees on Judicial Oversight, Insurance and
Representatives Gannon and Kallinger

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.; revising construction and
6 purpose provisions; amending s. 631.011, F.S.;
7 providing additional definitions; revising
8 certain definitions; creating s. 631.015, F.S.;
9 providing for reciprocity; creating s. 631.025,
10 F.S.; specifying application to certain persons
11 and entities; amending s. 631.041, F.S.;
12 correcting a cross reference; creating s.
13 631.042, F.S.; limiting application of certain
14 time restrictions; providing for tolling
15 certain time limitations in certain actions;
16 amending s. 631.141, F.S.; authorizing the
17 Department of Insurance to exercise certain
18 third-party rights; providing an exception;
19 amending s. 631.154, F.S.; including certain
20 assets within provisions authorizing a receiver
21 to take certain actions; including certain
22 costs and expenses of the department in costs
23 and expenses entitled to be recovered by the
24 receiver under certain circumstances; creating
25 s. 631.156, F.S.; providing for investigations
26 by the department; providing department powers;
27 authorizing the department to provide certain
28 information in such investigations; requiring a
29 receivership court to order expedited discovery
30 under certain circumstances; providing for
31 penalties; creating s. 631.157, F.S.; providing

1 for civil actions by receivers; imposing
2 liability on certain persons or entities for
3 certain actions; specifying amounts of damages;
4 providing construction; providing costs and
5 expenses entitled to be recovered by the
6 receiver under certain circumstances; providing
7 a time certain for bringing certain actions;
8 creating s. 631.3915, F.S.; authorizing the
9 department to pursue actions for damages or
10 recoveries; amending s. 631.54, F.S.; revising
11 a definition; amending s. 631.57, F.S.; vesting
12 the Florida Insurance Guaranty Association with
13 the defenses of certain insolvent insurers;
14 creating s. 817.2341, F.S.; specifying certain
15 activities relating to false or misleading
16 financial statements or supporting documents as
17 criminal offenses; providing penalties;
18 repealing s. 624.3101, F.S., relating to false
19 or misleading financial statements or
20 supporting documents; providing an effective
21 date.

22
23 Be It Enacted by the Legislature of the State of Florida:

24
25 Section 1. Paragraph (w) of subsection (1) of section
26 626.9541, Florida Statutes, is amended to read:

27 626.9541 Unfair methods of competition and unfair or
28 deceptive acts or practices defined.--

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

1 (w) Soliciting or accepting new or renewal insurance
2 risks by insolvent or impaired insurer prohibited; penalty.--
3 1. Whether or not delinquency proceedings as to the
4 insurer have been or are to be initiated, but while such
5 insolvency or impairment exists, no director or officer of an
6 insurer, except with the written permission of the Department
7 of Insurance, shall authorize or permit the insurer to solicit
8 or accept new or renewal insurance risks in this state after
9 such director or officer knew, or reasonably should have
10 known, that the insurer was insolvent or impaired. "Impaired"
11 includes impairment of ~~for~~ capital or surplus, as defined in
12 s. 631.011~~(12)(9)~~and~~(13)(10)~~.

13 2. Any such director or officer, upon conviction of a
14 violation of this paragraph, is guilty of a felony of the
15 third degree, punishable as provided in s. 775.082, s.
16 775.083, or s. 775.084.

17 Section 2. Section 631.001, Florida Statutes, is
18 amended to read:

19 631.001 Title, construction, and purpose.--
20 (1) This part constitutes and may be cited as the
21 "Insurers Rehabilitation and Liquidation Act."
22 ~~(2) This part may not be interpreted to limit the~~
23 ~~powers granted the Department of Insurance by other provisions~~
24 ~~of law.~~

25 (2)(3) This part shall be liberally construed to
26 effect the purposes of this part ~~purpose stated in subsection~~
27 ~~(4)~~.

28 (3)(4) The purposes ~~purpose~~ of this part, which are
29 integral elements of the regulation of the business of
30 insurance and are of vital public interest and concern, are
31 to:

- 1 (a) Protect ~~is the protection of~~ the interests of
2 policyholders insureds, creditors, and other claimants and the
3 public.
- 4 (b) Provide a comprehensive scheme for administering
5 insurer receiverships.~~generally, through~~
- 6 (c)~~(a)~~ Detect ~~Early detection of~~ any potentially
7 dangerous condition in an insurer and promptly apply ~~prompt~~
8 application of appropriate corrective measures, ~~which are~~
9 ~~neither unduly harsh nor subject to unwarranted publicity~~
10 ~~needlessly damaging to the insurer~~.
- 11 (d)~~(b)~~ Implement improved methods for rehabilitating
12 insurers, which methods involve the cooperation and management
13 expertise of the insurance industry.
- 14 (e)~~(c)~~ Enhance the ~~Enhanced~~ efficiency and economy of
15 the liquidation process by clarifying ~~through clarification~~
16 ~~and specification of~~ the law to minimize legal uncertainty and
17 litigation.
- 18 (f)~~(d)~~ Establish a system to equitably apportion
19 ~~Equitable apportionment of~~ any unavoidable loss, ~~and~~
- 20 (g)~~(e)~~ Administer insurer receiverships more
21 efficiently on an interstate and international basis ~~Lessening~~
22 ~~the problems of interstate rehabilitation and liquidation by~~
23 ~~facilitating cooperation between states in the liquidation~~
24 ~~process~~ and by extending ~~extension of~~ the scope of personal
25 jurisdiction over debtors of the insurer outside this state.
- 26 (h) Maximize recovery of assets for the benefit of the
27 insurer's estate; policyholders, creditors, and other
28 claimants; and the public.
- 29 (5) ~~The Insurers Rehabilitation and Liquidation Act~~
30 ~~shall be so interpreted and construed as to effectuate its~~
31 ~~general purpose to make uniform the law of those states which~~

1 ~~in substance and effect enact the Insurers Rehabilitation and~~
2 ~~Liquidation Act. To the extent that the provisions of the~~
3 ~~Insurers Rehabilitation and Liquidation Act, when applicable,~~
4 ~~conflict with other provisions of this chapter, the provisions~~
5 ~~of such act shall control.~~

6 Section 3. Section 631.011, Florida Statutes, is
7 amended to read:

8 631.011 Definitions.--For the purpose of this part,
9 the term:

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

13 (a) Equity ownership of voting securities;

14 (b) Common managerial control; or

15 (c) Collusive participation by the management of the
16 insurer and affiliate in the management of the insurer or the
17 affiliate.

18 (2) "Ancillary state" means, any state other than a
19 domiciliary state.

20 (3) "Assets," as used in this section ~~subsections~~
21 ~~(8)-(10)~~, means only allowed assets as defined in chapter 625.

22 (4) "Bona fide holder for value" means a person who,
23 while not possessing information that would lead a reasonable
24 person similarly situated to believe that the insurer is
25 insolvent or is experiencing an impairment of capital or an
26 impairment of surplus and while unaware of the imminence or
27 pendency of any receivership proceeding against the insurer,
28 has, in the exercise of reasonable business judgment,
29 exchanged his or her own funds, assets, or property for funds,
30 assets, or property of the insurer having an equivalent market
31 value.

1 ~~(5)(4)~~ "Court" refers to the circuit court in which
2 the receivership proceeding is pending.

3 ~~(6)(5)~~ "Delinquency proceeding" means any proceeding
4 commenced against an insurer pursuant to this chapter for the
5 purpose of liquidating, rehabilitating, reorganizing, or
6 conserving such insurer.

7 ~~(7)(6)~~ "Domiciliary state" means the state in which an
8 insurer is incorporated or organized or, in the case of an
9 insurer incorporated or organized in a foreign country, the
10 state in which such insurer, having become authorized to do
11 business in such state, has, at the commencement of a
12 delinquency proceeding, the largest amount of its assets held
13 in trust and assets held on deposit for the benefit of its
14 policyholders or policyholders and creditors in the United
15 States; and any such insurer is deemed to be domiciled in such
16 state.

17 (8) "Fair consideration" means that consideration
18 which is given for property or assets of an insurer when, in
19 exchange for the funds, assets, or property and in good faith,
20 property is conveyed, services are rendered, or an enforceable
21 obligation not invalidated by the receivership proceedings is
22 created having a value to the insurer of not less than the
23 value of the funds, assets, or property given in exchange.

24 ~~(9)(7)~~ "Foreign country" means territory not in any
25 state.

26 ~~(10)(8)~~ "General assets" means all property, real,
27 personal, or otherwise, not specifically mortgaged, pledged,
28 deposited, or otherwise encumbered for the security or benefit
29 of specified persons or a limited class or classes of persons,
30 and as to such specifically encumbered property the term
31 includes all such property or its proceeds in excess of the

1 amount necessary to discharge the sum or sums secured thereby.
2 Assets held in trust and assets held on deposit for the
3 security or benefit of all policyholders or all policyholders
4 and creditors in the United States shall be deemed general
5 assets.

6 (11) "Good faith" means honesty in fact, including,
7 but not limited to, the exercise of reasonable business
8 judgment, in the conduct or transaction concerned, together
9 with the absence of information that would lead a reasonable
10 person in the same position to know that the insurer is
11 insolvent or is experiencing an impairment of capital or an
12 impairment of surplus and together with the absence of
13 knowledge regarding the imminence or pendency of any
14 receivership proceeding against the insurer.

15 (12)~~(9)~~ "Impairment of capital" means that the minimum
16 surplus required to be maintained in s. 624.408 has been
17 dissipated and the insurer is not possessed of assets at least
18 equal to all its liabilities together with its total issued
19 and outstanding capital stock, if a stock insurer, or the
20 minimum surplus or net trust fund required by s. 624.407, if a
21 mutual, reciprocal, or business trust insurer.

22 (13)~~(10)~~ "Impairment of surplus" means that the
23 surplus of a stock insurer, the additional surplus of a mutual
24 or reciprocal insurer, or the additional net trust fund of a
25 business trust insurer does not comply with the requirements
26 of s. 624.408.

27 (14)~~(11)~~ "Insolvency" means that all the assets of the
28 insurer, if made immediately available, would not be
29 sufficient to discharge all its liabilities or that the
30 insurer is unable to pay its debts as they become due in the
31 usual course of business. When the context of any provision of

1 this code so indicates, insolvency also includes and is
2 defined as "impairment of surplus," as defined in subsection
3 ~~(13)(9)~~, and "impairment of capital," as defined in subsection
4 ~~(12)(8)~~.

5 ~~(15)(12)~~ "Insurer," in addition to persons so defined
6 under s. 624.03, also includes persons purporting to be
7 insurers or organizing, or holding themselves out as
8 organizing, in this state for the purpose of becoming insurers
9 and all insurers who have policyholders insureds resident in
10 this state.

11 ~~(16)(13)~~ "Liabilities," as used in subsections ~~(12)~~
12 ~~and (14)(8)-(10)~~, means all liabilities, including those
13 specifically required in s. 625.041.

14 ~~(14)~~ "Person" ~~includes natural persons, corporations,~~
15 ~~partnerships, trusts, estates, and sole proprietorships.~~

16 (17) "Property" includes:

17 (a) All right, title, and interest of the insolvent
18 entity, whether legal or equitable, tangible or intangible, or
19 choate or inchoate, and includes choses in action, contract
20 rights, and any other interest recognized under the laws of
21 this state.

22 (b) Entitlements that existed prior to the entry of an
23 order of conservation, rehabilitation, or liquidation and
24 entitlements that may arise by operation of the provisions of
25 this part or other provisions of law allowing the department
26 to avoid prior transfers or assert other rights in its
27 capacity as receiver.

28 (c) All records and data that are otherwise the
29 property of the insolvent insurer, in whatever form
30 maintained, including, but not limited to, claims and claim
31 files, application files, litigation files, premium records,

1 rate books, underwriting manuals, personnel records, or
2 financial records, or similar records within the possession,
3 custody, or control of a managing general agent, third-party
4 administrator, management company, accountant, attorney,
5 affiliate, or other person.

6
7 The term does not include privileged or confidential documents
8 of an insolvent insurer generated by a third party.

9 (18)(15) "Receiver" means a receiver, liquidator,
10 rehabilitator, reorganizer, or conservator, as the context may
11 require.

12 (19) "Receivership" means the placement of an insurer
13 under the control of a receiver pursuant to a delinquency
14 proceeding under this part.

15 (20)(16) "Reciprocal state" means any state other than
16 this state in which in substance and effect the provisions of
17 the Insurers Rehabilitation and Liquidation Act are in force,
18 including the provisions requiring that the commissioner of
19 insurance or equivalent insurance supervisory official be the
20 receiver of a delinquent insurer.

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

29 (22)(18) "Special deposit claim" means any claim
30 secured by a deposit made pursuant to statute for the security

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1 or benefit of a limited class or classes of persons, but not
2 including any general assets.

3 ~~(23)(19)~~ "State" is as defined in s. 624.08.

4 Section 4. Section 631.015, Florida Statutes, is
5 created to read:

6 631.015 Reciprocity; treatment of
7 policyholders.--Reciprocity in the treatment of policyholders
8 in receivership is extended to those states which, in
9 substance and effect, enact the National Association of
10 Insurance Commissioners Rehabilitation and Liquidation Model
11 Act or the Uniform Insurers Liquidation Act.

12 Section 5. Section 631.025, Florida Statutes, is
13 created to read:

14 631.025 Persons subject to this part.--Delinquency
15 proceedings authorized by this part may be initiated against
16 any insurer, as defined in s. 631.011(15), if the statutory
17 grounds are present as to that insurer, and the court may
18 exercise jurisdiction over any person required to cooperate
19 with the department pursuant to s. 631.391 and over all
20 persons made subject to the court's jurisdiction by other
21 provisions of law. Such persons include, but are not limited
22 to:

23 (1) A person transacting, or that has transacted,
24 insurance business in or from this state and against whom
25 claims arising from that business may exist now or in the
26 future.

27 (2) A person purporting to transact an insurance
28 business in this state and any person who acts as an insurer,
29 transacts insurance, or otherwise engages in insurance
30 activities in or from this state, with or without a
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1 certificate of authority or proper authority from the
2 department.

3 (3) An insurer with policyholders resident in this
4 state.

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

8 Section 6. Paragraph (d) of subsection (1) of section
9 631.041, Florida Statutes, is amended to read:

10 631.041 Automatic stay; relief from stay;
11 injunctions.--

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

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

22 Section 7. Section 631.042, Florida Statutes, is
23 created to read:

24 631.042 Extension of time.--

25 (1) With respect to any action by or against an
26 insurer, no statute of limitations or defense of laches shall
27 run between the date the department files a petition for a
28 delinquency proceeding against an insurer and the date the
29 court enters an order granting or denying that petition. If
30 the petition is denied, any action against the insurer that
31 might have been commenced when the petition was filed may be

1 commenced for at least 60 days after the order denying such
2 relief.

3 (2) The running of any unexpired statute of
4 limitations, as to any claims brought by the administrator, a
5 receiver, or an official or agency exercising powers pursuant
6 to this chapter seeking damages or other recoveries on behalf
7 of an insurer, its policyholders, its creditors, or its
8 estate, shall be tolled for a period of 4 years from the date
9 the court enters an order placing the insurer in receivership.
10 If the delinquency proceedings against the insurer terminate
11 in fewer than 4 years, tolling shall cease at the time the
12 proceedings are final, including all appeals.

13 (3) The right of action does not accrue, and the
14 limitations period for any such action does not run, during
15 the time the insurer is controlled by parties acting contrary
16 to the company's interests or when facts giving rise to the
17 claim are concealed fraudulently from regulatory authorities
18 or from any members of company management. The provisions of
19 chapter 95 shall be construed to be consistent with the
20 provisions of this section. The receiver may institute any
21 action or proceeding authorized under this part while any
22 statute of limitation is tolled pursuant to this section.
23 This tolling provision shall be in addition to any other
24 applicable tolling provision.

25 (4) For actions not covered by subsection (2), if any
26 unexpired time period is fixed by any agreement or in any
27 proceeding for doing any act for the benefit of the estate,
28 the receiver shall have 180 days, or for good cause shown more
29 than 180 days as allowed by the court, from the date the court
30 enters the order granting the department's petition for a
31 delinquency proceeding.

1 Section 8. Subsections (6) through (9) of section
2 631.141, Florida Statutes, are renumbered as subsections (7)
3 through (10), respectively, and a new subsection (6) is added
4 to said section to read:

5 631.141 Conduct of delinquency proceeding; domestic
6 and alien insurers.--

7 (6) The department may assert all rights belonging to
8 third parties, including, but not limited to, policyholders,
9 creditors, and other claimants, except to the extent an
10 individual claim is personal and unique to the claimant and
11 could not inure to the benefit of the estate or to
12 policyholders, creditors, or other claimants.

13 Section 9. Section 631.154, Florida Statutes, is
14 amended to read:

15 631.154 Funds, assets, or other property in the
16 possession of third person.--

17 (1) If the receiver determines that funds, assets, or
18 property in the possession of another person are rightfully
19 the property of the estate, the receiver shall deliver to such
20 person a written demand for immediate delivery of the funds,
21 assets, or property to the receiver, referencing this section
22 by number, referencing the court and docket number of the
23 receivership action, and notifying the person that any claim
24 of right to the funds, assets, or property by her or him must
25 be presented to the ~~receivership~~ court within 20 days after
26 the date of the written demand. Any person who holds funds,
27 assets, or other property belonging to an entity placed in
28 receivership ~~subject to an order of conservation,~~
29 ~~rehabilitation, or liquidation~~ under this chapter shall
30 deliver the funds, assets, or other property to the receiver
31 on demand. Should the person allege any right to retain the

1 funds, assets,or other property pursuant to s. 631.155, s.
2 631.191, s. 631.261, s. 631.262, s. 631.263, or s. 631.281, a
3 pleading setting out the right shall be filed with the court
4 within 20 days after ~~of~~ the receipt of the receiver's demand
5 that the funds, assets,or property be delivered to the
6 receiver. The person shall serve a copy of the pleading on
7 the receiver. The pleading of the person shall inform the
8 court as to the nature of the claim to the property, the
9 alleged value of the assets or property,or the amount of
10 funds held, and what action has been taken by the person to
11 preserve and protect the assets or property or to preserve any
12 funds pending determination of the dispute.

13 (2) If requested by the receiver, a hearing shall be
14 held to determine where and under what conditions the
15 property, assets,or funds shall be held by the person pending
16 determination of the dispute. The court may impose conditions
17 as it may deem necessary or appropriate for the preservation
18 of the property until the court can determine the validity of
19 the person's claim to the property, assets,or funds. If any
20 property, assets,or funds are allowed to remain in the
21 possession of the person after demand made by the receiver,
22 that person shall be strictly liable for any waste, loss, or
23 damage of the property, assets,or funds retained.

24 (3) If a person has filed a pleading alleging any
25 right to retain funds, assets,or property, the court shall
26 hold a subsequent hearing to determine entitlement to the
27 funds, assets,or property claimed by the receiver.

28 (4) If a person fails to file the pleading required by
29 subsection (1) within the 20-day period, the court may, upon
30 petition of the receiver and upon a copy of the petition being
31 served by the petitioner to such person, issue its summary

1 order directing the immediate delivery of the funds, assets,
2 or property to the receiver and finding that the person has
3 waived all claims of right to the funds, assets, or property.

4 (5) This section shall apply to all proceedings
5 brought by the receiver to recover funds, assets, or property
6 believed by the receiver under this chapter to be assets of
7 the entity subject to an order of conservation,
8 rehabilitation, or liquidation. The receiver shall be exempt
9 from the provisions of s. 57.111.

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

13 (a) The property or its cash value as of the date of
14 the order of conservation, rehabilitation, or liquidation,
15 whichever is applicable.

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

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

24 (d) All costs, investigative and other expenses,
25 including, but not limited to, those for department staff,
26 incurred in necessary to the recovery of the property, assets,
27 or funds, and reasonable attorney's fees. Department staff
28 costs and expenses include staff salaries.

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

4 Section 10. Section 631.156, Florida Statutes, is
5 created to read:

6 631.156 Investigation by the department; scope of
7 authority; sharing of materials.--

8 (1) The department may, under the direction and
9 supervision of the receivership court, conduct an
10 investigation to determine the cause of the insolvency,
11 including whether false statements filed with the department
12 contributed to the insolvency and if any laws of this state,
13 any other state, or the Federal Government relating to the
14 solvency of the insurer were violated; to discover assets for
15 recovery; and to determine the location of assets and their
16 manner of recovery. The department may take statements under
17 oath and examine and review the books, records, and documents
18 of the insurer or any affiliate, controlling person, officer,
19 director, manager, trustee, agent, adjuster, employee, or
20 independent contractor of any insurer or affiliate and any
21 other person possessing any executive authority over, or
22 exercising or having exercised any control over, any segment
23 of the affairs of the insurer or affiliate. Contracts of
24 reinsurance between an insurer and a reinsurer do not
25 constitute the exercise of control by the reinsurer over the
26 insurer for purposes of this section.

27 (2) The department may provide documents, books, and
28 records; other investigative products, work product, and
29 analysis; and copies of any or all of such materials to the
30 Division of Insurance Fraud or any other appropriate
31 government agency. The sharing of these materials shall not

1 waive any work product or other privilege otherwise applicable
2 under law.

3 (3) The receivership court shall order expedited
4 compliance with the requirements of subsection (1) and shall
5 impose appropriate penalties and sanctions for noncompliance,
6 including penalties and sanctions for the loss, destruction,
7 or spoliation of any evidence after entry of the order.

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

10 631.157 Civil action by the receiver.--

11 (1) Any person who is engaged in the business of
12 insurance, is or acts as an officer, director, agent, or
13 employee of any person engaged in the business of insurance,
14 or is involved in a transaction relating to the conduct of
15 affairs of such a business, other than as an insured or
16 beneficiary under a policy of insurance, and who willfully
17 obtains or uses, as defined in s. 812.012(3), any funds,
18 assets, or property, including, but not limited to, moneys,
19 funds, premiums, credits, or other property of an insurer,
20 shall be liable to the department as receiver for the use and
21 benefit of an insolvent insurer's estate, claimants,
22 creditors, and policyholders, as follows:

23 (a) If the funds, assets, or property obtained or used
24 did not jeopardize the safety and soundness of an insurer and
25 was not a significant cause of such insurer being placed in
26 receivership, the person shall be liable only for the full
27 amount of any funds, assets, or property obtained or used,
28 plus prejudgment interest provided by law.

29 (b) If the funds, assets, or property obtained or used
30 jeopardized the safety and soundness of an insurer or was a
31 significant cause of the insurer being placed in receivership,

1 the person shall be liable for triple the full amount of any
2 funds, assets, or property obtained or used, plus prejudgment
3 interest provided by law on the original amount.

4 (2)(a) Any person who:

5 1. Is engaged in the business of insurance, is or acts
6 as an officer, director, agent, or employee of any person
7 engaged in the business of insurance, or is involved in a
8 transaction relating to the conduct of affairs of such a
9 business, other than as an insured or beneficiary under a
10 policy of insurance;

11 2. Has actual knowledge or such constructive knowledge
12 as should have been obtained through reasonable inquiry by a
13 person in that position; and

14 3. Misreports a material fact in any book, report, or
15 statement of an insurer

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17 with the intent to deceive the insurer, including any officer,
18 employee, or agent of the insurer, the department, or any
19 agent or examiner appointed by the department to examine the
20 affairs of the person or insurer, concerning the financial
21 condition or solvency of such business is liable to the
22 department as receiver for the use and benefit of the
23 insolvent insurer's estate, creditors, and policyholders, as
24 provided in paragraph (b).

25 (b)1. If the misreporting did not jeopardize the
26 safety and soundness of an insurer and was not a significant
27 cause of the insurer being placed in receivership, the person
28 shall be liable only for the full amount of any asset
29 misreported.

30 2. If the misreporting jeopardized the safety and
31 soundness of an insurer or was a significant cause of the

1 insurer being placed in receivership, the person shall be
2 liable for triple the full amount of any asset misreported.

3 (3) If the asset or property that has been obtained or
4 used was reported to the department as being available to the
5 insurer as an admitted asset and such asset is unavailable to
6 the receiver for payment of the obligations of the insurer at
7 the time a receivership proceeding is instituted, the
8 obtaining or using shall be presumed to have jeopardized the
9 safety and soundness of the insurer and to have been a
10 significant cause of the insurer's being placed in
11 conservation, rehabilitation, or liquidation, with the burden
12 of proof on the defendants to show otherwise.

13 (4) If the receiver is successful in establishing a
14 claim under this section, the receiver shall be entitled to
15 recover all of its costs; investigative and other expenses,
16 which shall include the department's in-house staff and staff
17 attorney's expenses, costs, and salaries, expended in the
18 prosecution of the action; and reasonable attorney's fees.
19 The receiver shall be exempt from the provisions of s. 57.111.

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

25 Section 12. Section 631.3915, Florida Statutes, is
26 created to read:

27 631.3915 Actions for damages.--The department, in its
28 capacity as administrator, receiver, or similar capacity, may
29 pursue any actions for damages or other recoveries on behalf
30 of the insurer's estate and the insurer's policyholders,
31 creditors, and other claimants.

1 Section 13. Subsection (3) of section 631.54, Florida
2 Statutes, is amended to read:

3 631.54 Definitions.--As used in this part:

4 (3) "Covered claim" means an unpaid claim, including
5 one of unearned premiums, which arises out of, and is within
6 the coverage, and not in excess of, the applicable limits of
7 an insurance policy to which this part applies, issued by an
8 insurer, if such insurer becomes an insolvent insurer after
9 October 1, 1970, and the claimant or insured is a resident of
10 this state at the time of the insured event or the property
11 from which the claim arises is permanently located in this
12 state. "Covered claim" shall not include any amount due any
13 reinsurer, insurer, insurance pool, or underwriting
14 association, as subrogation, contribution, indemnification,
15 ~~recoveries~~ or otherwise. Member insurers shall have no right
16 of subrogation against the insured of any insolvent member.

17 Section 14. Paragraph (b) of subsection (1) of section
18 631.57, Florida Statutes, is amended to read:

19 631.57 Powers and duties of the association.--

20 (1) The association shall:

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

27 Section 15. Section 817.2341, Florida Statutes, is
28 created to read:

29 817.2341 False or misleading statements or supporting
30 documents; penalty.--

31

1 (1) Any person who willfully files with the
2 department, or who willfully signs for filing with the
3 department, a materially false or materially misleading
4 financial statement or document in support of such statement
5 required by law or rule, with intent to deceive and with
6 knowledge that the statement or document is materially false
7 or materially misleading, commits a felony of the third
8 degree, punishable as provided in s. 775.082, s. 775.083, or
9 s. 775.084.

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

17 (b) If the false entry of a material fact is made with
18 the intent to deceive any person as to the impairment of
19 capital, as defined in s. 631.011(12), of the insurer or
20 entity or is the significant cause of the insurer or entity
21 being placed in conservation, rehabilitation, or liquidation
22 by a court, the person commits a felony of the first degree,
23 punishable as provided in s. 775.082, s. 775.083, or s.
24 775.084.

25 (3)(a) Any person who knowingly makes a material false
26 statement or report to the department or any agent of the
27 department, or knowingly and materially overvalues any
28 property in any document or report prepared to be presented to
29 the department or any agent of the department, commits a
30 felony of the third degree, punishable as provided in s.
31 775.082, s. 775.083, or s. 775.084.

1 (b) If the material false statement or report or the
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 the
6 insurer or entity being placed in receivership by a court, the
7 person commits a felony of the first degree, punishable as
8 provided in s. 775.082, s. 775.083, or s. 775.084.

9 Section 16. Section 624.3101, Florida Statutes, is
10 repealed.

11 Section 17. This act shall take effect July 1, 2002.

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