

1 A bill to be entitled
2 An act relating to insurance; amending s.
3 624.430, F.S.; providing for the department to
4 approve insurer withdrawals upon certain
5 conditions being satisfied; providing for the
6 dissolution of a domestic property and casualty
7 insurer upon approval of the surrender of the
8 certificate of authority; granting the
9 department rulemaking authority; amending s.
10 626.9541, F.S.; conforming cross-references;
11 amending s. 631.001, F.S.; revising
12 construction and purpose provisions; amending
13 s. 631.011, F.S.; providing additional
14 definitions; revising definitions; creating s.
15 631.015, F.S.; providing for reciprocity;
16 creating s. 631.025, F.S.; specifying
17 application to certain persons and entities;
18 amending s. 631.041, F.S.; conforming a
19 cross-reference; creating s. 631.042, F.S.;
20 limiting application of certain time
21 restrictions; providing for tolling certain
22 time limitations in certain actions; amending
23 s. 631.141, F.S.; authorizing the Department of
24 Insurance to exercise certain third-party
25 rights; providing an exception; amending s.
26 631.154, F.S.; including certain assets within
27 provisions authorizing a receiver to take
28 certain actions; including certain costs and
29 expenses of the department in costs and
30 expenses entitled to be recovered by the
31 receiver under certain circumstances; creating

1 s. 631.156, F.S.; providing for investigations
2 by the department; providing department powers;
3 authorizing the department to provide certain
4 information in such investigations; requiring a
5 receivership court to order expedited discovery
6 under certain circumstances; providing
7 penalties; creating s. 631.157, F.S.; providing
8 for civil actions by receivers; imposing
9 liability on certain persons or entities for
10 certain actions; specifying amounts of damages;
11 providing construction; providing costs and
12 expenses entitled to be recovered by the
13 receiver under certain circumstances; providing
14 a time certain for bringing certain actions;
15 creating s. 631.1571, F.S.; providing that
16 persons serving as officers or directors of
17 insolvent insurers may not thereafter serve as
18 officers or directors of insurers authorized in
19 this state; providing time restrictions;
20 creating s. 631.3915, F.S.; authorizing the
21 department to pursue actions for damages or
22 recoveries; amending s. 631.54, F.S.;
23 redefining the term "covered claim"; amending
24 s. 631.57, F.S.; vesting the Florida Insurance
25 Guaranty Association with the defenses of
26 certain insolvent insurers; amending s.
27 631.904, F.S.; redefining the term "covered
28 claim"; creating s. 817.2341, F.S.; specifying
29 certain activities relating to false or
30 misleading financial statements or supporting
31 documents as criminal offenses; providing

1 penalties; repealing s. 624.3101, F.S.,
2 relating to false or misleading financial
3 statements or supporting documents; providing
4 an effective date.

5
6 Be It Enacted by the Legislature of the State of Florida:

7
8 Section 1. Section 624.430, Florida Statutes, is
9 amended to read:

10 624.430 Withdrawal of insurer or discontinuance of
11 writing certain kinds or lines of insurance.--

12 (1) Any insurer desiring to surrender its certificate
13 of authority, withdraw from this state, or discontinue the
14 writing of any one or multiple kinds or lines of insurance in
15 this state shall give 90 days' notice in writing to the
16 department setting forth its reasons for such action. Any
17 insurer who does not write any premiums in a kind or line of
18 insurance within a calendar year shall have that kind or line
19 of insurance removed from its certificate of authority;
20 however, such line of insurance shall be restored to the
21 insurer's certificate upon the insurer demonstrating that it
22 has available the expertise necessary and meets the other
23 requirements of this code to write that line of insurance.

24 (2) If the department determines, based upon its
25 review of the notice and other required information, that the
26 plan of an insurer withdrawing from this state makes adequate
27 provision for the satisfaction of the insurer's obligations
28 and is not hazardous to policyholders or the public, the
29 department shall approve the surrender of the insurer's
30 certificate of authority. The department shall, within 45
31 days from receipt of a complete notice and all required or

1 requested additional information, approve, disapprove or
2 approve with conditions, the plan submitted by the insurer.
3 Failure to timely take action with respect to the notice shall
4 be deemed an approval of the surrender of the certificate of
5 authority.

6 (3) Upon department approval of the surrender of the
7 certificate of authority of a domestic property and casualty
8 insurer that is a corporation, the insurer may initiate the
9 dissolution of the corporation in accordance with the
10 applicable provisions of chapter 607.

11 (4)(2) Any insurer withdrawing from this state or
12 discontinuing the writing of all kinds of insurance in this
13 state shall surrender its certificate of authority.

14 (5)(3) This section does not apply to life insurance
15 and corresponding lines of insurance as long as the insurer
16 has in force life insurance policies and corresponding lines
17 in this state.

18 (6)(4) This section does not apply to insurers during
19 the calendar year in which they first receive their
20 certificate of authority.

21 (7)(5) This section does not apply to insurers who
22 have discontinued writing in accordance with an order issued
23 by the department.

24 (8) The department may adopt rules to administer this
25 section.

26 Section 2. Paragraph (w) of subsection (1) of section
27 626.9541, Florida Statutes, is amended to read:

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

30
31

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

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

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

16 2. Any such director or officer, upon conviction of a
17 violation of this paragraph, is guilty of a felony of the
18 third degree, punishable as provided in s. 775.082, s.
19 775.083, or s. 775.084.

20 Section 3. Section 631.001, Florida Statutes, is
21 amended to read:

22 631.001 Title, construction, and purpose.--

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

25 ~~(2) This part may not be interpreted to limit the~~
26 ~~powers granted the Department of Insurance by other provisions~~
27 ~~of law.~~

28 (2)(3) This part shall be liberally construed to
29 effect the purposes of this part ~~purpose stated in subsection~~
30 ~~(4)~~.

31

1 ~~(3)(4)~~ The purposes ~~purpose~~ of this part, which are
2 integral elements of the regulation of the business of
3 insurance and are of vital public interest and concern, are
4 to:

5 ~~(a)~~ Protect ~~is the protection of~~ the interests of
6 policyholders ~~insureds~~, creditors, and other claimants and the
7 public.

8 ~~(b)~~ Provide a comprehensive scheme for administering
9 insurer receiverships.~~generally, through:~~

10 ~~(c)(a)~~ Detect ~~Early detection of~~ any potentially
11 dangerous condition in an insurer and promptly apply ~~prompt~~
12 application of appropriate corrective measures, ~~which are~~
13 ~~neither unduly harsh nor subject to unwarranted publicity~~
14 ~~needlessly damaging to the insurer.~~

15 ~~(d)(b)~~ Implement improved methods for rehabilitating
16 insurers, which methods involve the cooperation and management
17 expertise of the insurance industry.

18 ~~(e)(c)~~ Enhance the ~~Enhanced~~ efficiency and economy of
19 the liquidation process by clarifying ~~through clarification~~
20 ~~and specification of~~ the law to minimize legal uncertainty and
21 litigation.

22 ~~(f)(d)~~ Establish a system to equitably apportion
23 ~~Equitable apportionment of~~ any unavoidable loss. ~~and~~

24 ~~(g)(e)~~ Administer insurer receiverships more
25 efficiently on an interstate and international basis ~~Lessening~~
26 ~~the problems of interstate rehabilitation and liquidation by~~
27 ~~facilitating cooperation between states in the liquidation~~
28 ~~process~~ and by extending ~~extension of~~ the scope of personal
29 jurisdiction over debtors of the insurer outside this state.
30
31

1 (h) Maximize recovery of assets for the benefit of the
2 insurer's estate; policyholders, creditors, and other
3 claimants; and the public.

4 ~~(5) The Insurers Rehabilitation and Liquidation Act~~
5 ~~shall be so interpreted and construed as to effectuate its~~
6 ~~general purpose to make uniform the law of those states which~~
7 ~~in substance and effect enact the Insurers Rehabilitation and~~
8 ~~Liquidation Act. To the extent that the provisions of the~~
9 ~~Insurers Rehabilitation and Liquidation Act, when applicable,~~
10 ~~conflict with other provisions of this chapter, the provisions~~
11 ~~of such act shall control.~~

12 Section 4. Section 631.011, Florida Statutes, is
13 amended to read:

14 631.011 Definitions.--For the purpose of this part,
15 the term:

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

19 (a) Equity ownership of voting securities;

20 (b) Common managerial control; or

21 (c) Collusive participation by the management of the
22 insurer and affiliate in the management of the insurer or the
23 affiliate.

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

26 (3) "Assets," as used in this section ~~subsections~~
27 ~~(8)-(10)~~, means only allowed assets as defined in chapter 625.

28 (4) "Bona fide holder for value" means a person who,
29 while not possessing information that would lead a reasonable
30 person similarly situated to believe that the insurer is
31 insolvent or is experiencing an impairment of capital or an

1 impairment of surplus and while unaware of the imminence or
2 pendency of any receivership proceeding against the insurer,
3 has, in the exercise of reasonable business judgment,
4 exchanged his or her own funds, assets, or property for funds,
5 assets, or property of the insurer having an equivalent market
6 value.

7 ~~(5)(4)~~ "Court" refers to the circuit court in which
8 the receivership proceeding is pending.

9 ~~(6)(5)~~ "Delinquency proceeding" means any proceeding
10 commenced against an insurer pursuant to this chapter for the
11 purpose of liquidating, rehabilitating, reorganizing, or
12 conserving such insurer.

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

23 (8) "Fair consideration" means that consideration
24 which is given for property or assets of an insurer when, in
25 exchange for the funds, assets, or property and in good faith,
26 property is conveyed, services are rendered, or an enforceable
27 obligation not invalidated by the receivership proceedings is
28 created having a value to the insurer of not less than the
29 value of the funds, assets, or property given in exchange.

30 ~~(9)(7)~~ "Foreign country" means territory not in any
31 state.

1 ~~(10)(8)~~ "General assets" means all property, real,
2 personal, or otherwise, not specifically mortgaged, pledged,
3 deposited, or otherwise encumbered for the security or benefit
4 of specified persons or a limited class or classes of persons,
5 and as to such specifically encumbered property the term
6 includes all such property or its proceeds in excess of the
7 amount necessary to discharge the sum or sums secured thereby.
8 Assets held in trust and assets held on deposit for the
9 security or benefit of all policyholders or all policyholders
10 and creditors in the United States shall be deemed general
11 assets.

12 (11) "Good faith", as used in ss. 631.262 and 631.263,
13 means honesty in fact, including, but not limited to, the
14 exercise of reasonable business judgment, in the conduct or
15 transaction concerned, together with the absence of
16 information that would lead a reasonable person in the same
17 position to know that the insurer is insolvent or is
18 experiencing an impairment of capital or an impairment of
19 surplus and together with the absence of knowledge regarding
20 the imminence or pendency of any receivership proceeding
21 against the insurer.

22 ~~(12)(9)~~ "Impairment of capital" means that the minimum
23 surplus required to be maintained in s. 624.408 has been
24 dissipated and the insurer is not possessed of assets at least
25 equal to all its liabilities together with its total issued
26 and outstanding capital stock, if a stock insurer, or the
27 minimum surplus or net trust fund required by s. 624.407, if a
28 mutual, reciprocal, or business trust insurer.

29 ~~(13)(10)~~ "Impairment of surplus" means that the
30 surplus of a stock insurer, the additional surplus of a mutual
31 or reciprocal insurer, or the additional net trust fund of a

1 business trust insurer does not comply with the requirements
2 of s. 624.408.

3 (14)~~(11)~~ "Insolvency" means that all the assets of the
4 insurer, if made immediately available, would not be
5 sufficient to discharge all its liabilities or that the
6 insurer is unable to pay its debts as they become due in the
7 usual course of business. When the context of any provision of
8 this code so indicates, insolvency also includes and is
9 defined as "impairment of surplus," as defined in subsection
10 (13)~~(9)~~, and "impairment of capital," as defined in subsection
11 (12)~~(8)~~.

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

18 (16)~~(13)~~ "Liabilities," as used in subsections (12)
19 and (14)~~(8)-(10)~~, means all liabilities, including those
20 specifically required in s. 625.041.

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

23 (17) "Property" includes:

24 (a) All right, title, and interest of the insolvent
25 entity, whether legal or equitable, tangible or intangible, or
26 choate or inchoate, and includes choses in action, contract
27 rights, and any other interest recognized under the laws of
28 this state.

29 (b) Entitlements that existed prior to the entry of an
30 order of conservation, rehabilitation, or liquidation and
31 entitlements that may arise by operation of the provisions of

1 this part or other provisions of law allowing the department
2 to avoid prior transfers or assert other rights in its
3 capacity as receiver.

4 (c) All records and data that are otherwise the
5 property of the insolvent insurer, in whatever form
6 maintained, including, but not limited to, claims and claim
7 files, application files, litigation files, premium records,
8 rate books, underwriting manuals, personnel records, or
9 financial records, or similar records within the possession,
10 custody, or control of a managing general agent, third-party
11 administrator, management company, accountant, attorney,
12 affiliate, or other person.

13 (18)(15) "Receiver" means a receiver, liquidator,
14 rehabilitator, reorganizer, or conservator, as the context may
15 require.

16 (19) "Receivership" means the placement of an insurer
17 under the control of a receiver pursuant to a delinquency
18 proceeding under this part.

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

25 (21)(17) "Secured claim" means any claim secured by
26 mortgage, trust deed, pledge, deposit as security, escrow, or
27 otherwise but does not include a special deposit claim, a
28 claim against general assets, or a claim based on mere
29 possession. The term also includes a claim which more than 4
30 months before the commencement of a delinquency proceeding in
31

1 the state of the insurer's domicile has become a lien upon
2 specific assets by reason of judicial process.

3 (22)~~(18)~~ "Special deposit claim" means any claim
4 secured by a deposit made pursuant to statute for the security
5 or benefit of a limited class or classes of persons, but not
6 including any general assets.

7 (23)~~(19)~~ "State" is as defined in s. 624.08.

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

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

16 Section 6. Section 631.025, Florida Statutes, is
17 created to read:

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

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

31

1 (2) A person purporting to transact an insurance
2 business in this state and any person who acts as an insurer,
3 transacts insurance, or otherwise engages in insurance
4 activities in or from this state, with or without a
5 certificate of authority or proper authority from the
6 department, against whom claims arising from that business may
7 exist now or in the future.

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

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

13 Section 7. Subsection (1) of section 631.041, Florida
14 Statutes, is amended 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 (a) The commencement or continuation of judicial,
24 administrative, or other action or proceeding against the
25 insurer or against its assets or any part thereof;

26 (b) The enforcement of a judgment against the insurer
27 or an affiliate obtained either before or after the
28 commencement of the delinquency proceeding;

29 (c) Any act to obtain possession of property of the
30 insurer;

31

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

5 (e) Any act to collect, assess, or recover a claim
6 against the insurer, except claims as provided for under this
7 chapter; and

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

10 Section 8. Section 631.042, Florida Statutes, is
11 created to read:

12 631.042 Extension of time.--

13 (1) With respect to any action by or against an
14 insurer, no statute of limitations or defense of laches shall
15 run between the date the department files a petition for a
16 delinquency proceeding against an insurer and the date the
17 court enters an order granting or denying that petition. If
18 the petition is denied, any action against the insurer that
19 might have been commenced when the petition was filed may be
20 commenced no later than 60 days after the order denying such
21 relief or the remaining unexpired time under the applicable
22 statute of limitations or defense of laches that was available
23 on the day the petition was filed, whichever is longer.

24 (2) The running of any unexpired statute of
25 limitations, as to any claims brought by the administrator, a
26 receiver, or an official or agency exercising powers pursuant
27 to this chapter seeking damages or other recoveries on behalf
28 of an insurer, its policyholders, its creditors, or its
29 estate, shall be tolled for a period of 4 years from the date
30 the court enters an order placing the insurer in receivership.
31 If the delinquency proceedings against the insurer terminate

1 in fewer than 4 years, tolling shall cease at the time the
2 proceedings are final, including all appeals.

3 (3) A cause of action does not accrue, and the
4 limitations period for any such action does not run, during
5 the time the insurer is controlled by parties acting contrary
6 to the company's interests or when facts giving rise to the
7 claim are concealed fraudulently from regulatory authorities
8 or from any members of company management. The provisions of
9 chapter 95 shall be construed to be consistent with the
10 provisions of this section. The receiver may institute any
11 action or proceeding authorized under this part while any
12 statute of limitation is tolled pursuant to this section.
13 This tolling provision shall be in addition to any other
14 applicable tolling provision.

15 (4) For actions not covered by subsection (2), if any
16 unexpired time period is fixed by any agreement or in any
17 proceeding for doing any act for the benefit of the estate,
18 the receiver shall have 180 days, or for good cause shown more
19 than 180 days as allowed by the court, from the date the court
20 enters the order granting the department's petition for a
21 delinquency proceeding.

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

26 631.141 Conduct of delinquency proceeding; domestic
27 and alien insurers.--

28 (6) The department may assert all rights belonging to
29 third parties, including, but not limited to, policyholders,
30 creditors, and other claimants, except to the extent an
31 individual claim is personal and unique to the claimant and

1 could not inure to the benefit of the estate or to
2 policyholders, creditors, or other claimants.

3 Section 10. Section 631.154, Florida Statutes, is
4 amended to read:

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

7 (1) If the receiver determines that funds, assets, or
8 property in the possession of another person are rightfully
9 the property of the estate, the receiver shall deliver to such
10 person a written demand for immediate delivery of the funds,
11 assets, or property to the receiver, referencing this section
12 by number, referencing the court and docket number of the
13 receivership action, and notifying the person that any claim
14 of right to the funds, assets, or property by her or him must
15 be presented to the ~~receivership~~ court within 20 days after
16 the date of the written demand. Any person who holds funds,
17 assets, or other property belonging to an entity placed in
18 receivership ~~subject to an order of conservation,~~
19 ~~rehabilitation, or liquidation~~ under this chapter shall
20 deliver the funds, assets, or other property to the receiver
21 on demand. Should the person allege any right to retain the
22 funds, assets, or other property pursuant to s. 631.155, s.
23 631.191, s. 631.261, s. 631.262, s. 631.263, or s. 631.281, a
24 pleading setting out the right shall be filed with the court
25 within 20 days after ~~of~~ the receipt of the receiver's demand
26 that the funds, assets, or property be delivered to the
27 receiver. The person shall serve a copy of the pleading on
28 the receiver. The pleading of the person shall inform the
29 court as to the nature of the claim to the property, the
30 alleged value of the assets or property, or the amount of
31 funds held, and what action has been taken by the person to

1 preserve and protect the assets or property or to preserve any
2 funds pending determination of the dispute.

3 (2) If requested by the receiver, a hearing shall be
4 held to determine where and under what conditions the
5 property, assets, or funds shall be held by the person pending
6 determination of the dispute. The court may impose conditions
7 as it may deem necessary or appropriate for the preservation
8 of the property until the court can determine the validity of
9 the person's claim to the property, assets, or funds. If any
10 property, assets, or funds are allowed to remain in the
11 possession of the person after demand made by the receiver,
12 that person shall be strictly liable for any waste, loss, or
13 damage of the property, assets, or funds retained.

14 (3) If a person has filed a pleading alleging any
15 right to retain funds, assets, or property, the court shall
16 hold a subsequent hearing to determine entitlement to the
17 funds, assets, or property claimed by the receiver.

18 (4) If a person fails to file the pleading required by
19 subsection (1) within the 20-day period, the court may, upon
20 petition of the receiver and upon a copy of the petition being
21 served by the petitioner to such person, issue its summary
22 order directing the immediate delivery of the funds, assets,
23 or property to the receiver and finding that the person has
24 waived all claims of right to the funds, assets, or property.

25 (5) This section shall apply to all proceedings
26 brought by the receiver to recover funds, assets, or property
27 believed by the receiver under this chapter to be assets of
28 the entity subject to an order of conservation,
29 rehabilitation, or liquidation. The receiver shall be exempt
30 from the provisions of s. 57.111.

31

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

4 (a) The property or its cash value as of the date of
5 the order of conservation, rehabilitation, or liquidation,
6 whichever is applicable.

7 (b) Rental for the use of the property to run from the
8 date of the order of conservation, rehabilitation, or
9 liquidation, whichever is applicable, to the date the property
10 is delivered to the receiver.

11 (c) In the case of funds, interest at the statutory
12 rate to run from the date of the order of conservation,
13 rehabilitation, or liquidation, whichever is applicable, to
14 the date the funds are delivered to the receiver.

15 (d) All costs, investigative and other expenses,
16 including, but not limited to, those for department staff,
17 incurred in necessary to the recovery of the property, assets,
18 or funds, and reasonable attorney's fees. Department staff
19 costs and expenses include staff salaries.

20
21 It is the intent of this section that a person found to be
22 holding receivership assets fully reimburse the receiver for
23 any and all efforts made to recover those assets.

24 Section 11. Section 631.156, Florida Statutes, is
25 created to read:

26 631.156 Investigation by the department; scope of
27 authority; sharing of materials.--

28 (1) The department may, under the direction and
29 supervision of the receivership court, conduct an
30 investigation to determine the causes of the insolvency,
31 including whether false statements filed with the department

1 contributed to the insolvency and if any laws of this state,
2 any other state, or the Federal Government relating to the
3 solvency of the insurer were violated; to discover assets for
4 recovery; and to determine the location of assets and their
5 manner of recovery. The department may take statements under
6 oath and examine and review the books, records, and documents
7 of the insurer or any affiliate, controlling person, officer,
8 director, manager, trustee, agent, adjuster, employee, or
9 independent contractor of any insurer or affiliate and any
10 other person possessing any executive authority over, or
11 exercising or having exercised any control over, any segment
12 of the affairs of the insurer or affiliate. Contracts of
13 reinsurance between an insurer and a reinsurer do not
14 constitute the exercise of control by the reinsurer over the
15 insurer for purposes of this section.

16 (2) The department may provide documents, books, and
17 records; other investigative products, work product, and
18 analysis; and copies of any or all of such materials to the
19 Division of Insurance Fraud or any other appropriate
20 government agency. The sharing of these materials shall not
21 wave any work product or other privilege otherwise applicable
22 under law.

23 (3) The receivership court, upon motion of the
24 department, shall enter an order expediting compliance with
25 the requirements of subsection (1). The court may impose
26 appropriate penalties and sanctions for noncompliance with
27 such order, including penalties and sanctions for the loss,
28 destruction, or spoliation of any evidence that occurs after
29 entry of such order.

30 Section 12. Section 631.157, Florida Statutes, is
31 created to read:

1 631.157 Civil action by the receiver.--

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

14 (a) If the funds, assets, or property obtained or used
15 did not jeopardize the safety and soundness of an insurer and
16 was not a significant cause of such insurer being placed in
17 receivership, the person shall be liable only for the full
18 amount of any funds, assets, or property obtained or used,
19 plus prejudgment interest provided by law.

20 (b) If the funds, assets, or property obtained or used
21 jeopardized the safety and soundness of an insurer or was a
22 significant cause of the insurer being placed in receivership,
23 the person shall be liable for triple the full amount of any
24 funds, assets, or property obtained or used, plus prejudgment
25 interest provided by law on the original amount.

26 (2)(a) Any person who:

27 1. Is engaged in the business of insurance, is or acts
28 as an officer, director, agent, or employee of any person
29 engaged in the business of insurance, or is involved in a
30 transaction relating to the conduct of affairs of such a
31

1 business, other than as an insured or beneficiary under a
2 policy of insurance;

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

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

8
9 with the intent to deceive the insurer, including any officer,
10 employee, or agent of the insurer, the department, or any
11 agent or examiner appointed by the department to examine the
12 affairs of the person or insurer, concerning the financial
13 condition or solvency of such business is liable to the
14 department as receiver for the use and benefit of the
15 insolvent insurer's estate, creditors, and policyholders, as
16 provided in paragraph (b).

17 (b)1. If the misreporting did not jeopardize the
18 safety and soundness of an insurer and was not a significant
19 cause of the insurer being placed in receivership, the person
20 shall be liable only for the full amount of any asset
21 misreported.

22 2. If the misreporting jeopardized the safety and
23 soundness of an insurer or was a significant cause of the
24 insurer being placed in receivership, the person shall be
25 liable for triple the full amount of any asset misreported.

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

1 safety and soundness of the insurer and to have been a
2 significant cause of the insurer's being placed in
3 conservation, rehabilitation, or liquidation, with the burden
4 of proof on the defendants to show otherwise.

5 (4) If the receiver is successful in establishing a
6 claim under this section, the receiver shall be entitled to
7 recover all of its costs; investigative and other expenses,
8 which shall include the department's in-house staff and staff
9 attorney's expenses, costs, and salaries, expended in the
10 prosecution of the action; and reasonable attorney's fees.
11 The receiver shall be exempt from the provisions of s. 57.111.

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

17 Section 13. Section 631.1571, Florida Statutes, is
18 created to read:

19 631.1571 Officers and directors of insolvent
20 insurers.--Any person who was an officer or director of an
21 insurer doing business in this state and who served in that
22 capacity within the 2-year period prior to the date the
23 insurer became insolvent, for any insolvency that occurs on or
24 after July 1, 2002, may not thereafter serve as an officer or
25 director of an insurer authorized in this state.

26 Section 14. Section 631.3915, Florida Statutes, is
27 created to read:

28 631.3915 Actions for damages.--The department, in its
29 capacity as administrator, receiver, or similar capacity, may
30 pursue any actions for damages or other recoveries on behalf
31

1 of the insurer's estate and the insurer's policyholders,
2 creditors, and other claimants.

3 Section 15. Subsection (3) of section 631.54, Florida
4 Statutes, is amended to read:

5 631.54 Definitions.--As used in this part:

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

19 Section 16. Paragraph (b) of subsection (1) of section
20 631.57, Florida Statutes, is amended to read:

21 631.57 Powers and duties of the association.--

22 (1) The association shall:

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

29 Section 17. Subsection (2) of section 631.904, Florida
30 Statutes, is amended to read:

31 631.904 Definitions.--As used in this part, the term:

1 (2) "Covered claim" means an unpaid claim, including a
 2 claim for return of unearned premiums, which arises out of, is
 3 within the coverage of, and is not in excess of the applicable
 4 limits of, an insurance policy to which this part applies,
 5 which policy was issued by an insurer and which claim is made
 6 on behalf of a claimant or insured who was a resident of this
 7 state at the time of the injury. The term "covered claim" does
 8 not include any amount sought as a return of premium under any
 9 retrospective rating plan; any amount due any reinsurer,
 10 insurer, insurance pool, or underwriting association, as
 11 subrogation recoveries or otherwise; or any return of premium
 12 resulting from a policy that was not in force on the date of
 13 the final order of liquidation. Member insurers have no right
 14 of subrogation against the insured of any insolvent insurer.
 15 This provision shall be applied retroactively to cover claims
 16 of an insolvent self-insurance fund resulting from accidents
 17 or losses incurred prior to January 1, 1994, regardless of the
 18 date the Department of Insurance filed a petition in circuit
 19 court alleging insolvency and the date the court entered an
 20 order appointing a receiver.

21 Section 18. Section 817.2341, Florida Statutes, is
 22 created to read:

23 817.2341 False or misleading statements or supporting
 24 documents; penalty.--

25 (1) Any person who willfully files with the
 26 department, or who willfully signs for filing with the
 27 department, a materially false or materially misleading
 28 financial statement or document in support of such statement
 29 required by law or rule, with intent to deceive and with
 30 knowledge that the statement or document is materially false
 31 or materially misleading, commits a felony of the third

1 degree, punishable as provided in s. 775.082, s. 775.083, or
2 s. 775.084.

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

10 (b) If the false entry of a material fact is made with
11 the intent to deceive any person as to the impairment of
12 capital, as defined in s. 631.011(12), of the insurer or
13 entity or is the significant cause of the insurer or entity
14 being placed in conservation, rehabilitation, or liquidation
15 by a court, the person commits a felony of the first degree,
16 punishable as provided in s. 775.082, s. 775.083, or s.
17 775.084.

18 (3)(a) Any person who knowingly makes a material false
19 statement or report to the department or any agent of the
20 department, or knowingly and materially overvalues any
21 property in any document or report prepared to be presented to
22 the department or any agent of the department, commits a
23 felony of the third degree, punishable as provided in s.
24 775.082, s. 775.083, or s. 775.084.

25 (b) If the material false statement or report or the
26 material overvaluation is made with the intent to deceive any
27 person as to the impairment of capital, as defined in s.
28 631.011(12), of an insurer or entity organized pursuant to
29 chapter 624 or chapter 641, or is the significant cause of the
30 insurer or entity being placed in receivership by a court, the
31

1 person commits a felony of the first degree, punishable as
2 provided in s. 775.082, s. 775.083, or s. 775.084.

3 Section 19. Section 624.3101, Florida Statutes, is
4 repealed.

5 Section 20. This act shall take effect July 1, 2002.
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31