

By Senator Klein

28-530-02

See HB 193

1 A bill to be entitled

2 An act relating to insurer rehabilitation and

3 liquidation; amending s. 626.9541, F.S.;

4 conforming 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 conforming 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. 631.193, F.S.; providing an
4 additional limitation upon the operation of a
5 release; creating s. 631.3995, F.S.; providing
6 procedures and requirements for closing an
7 estate; providing for deposit of certain assets
8 into the Closed Estate Fund Trust Account;
9 providing for uses of such account; providing
10 for reopening certain proceedings; amending s.
11 631.54, F.S.; revising a definition; amending
12 s. 631.57, F.S.; specifying additional criteria
13 for absence of certain obligations or
14 liabilities of the Florida Insurance Guaranty
15 Association; amending s. 631.60, F.S.; limiting
16 certain causes of action against the
17 association; specifying absence of creation of
18 additional rights against the association;
19 creating s. 817.2341, F.S.; providing criminal
20 penalties for certain activities; providing an
21 effective 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 for capital or surplus, as defined in s.
12 631.011~~(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 (Substantial rewording of section.

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

21 631.001 Construction; purposes.--

22 (1) The underlying purposes and policies of the
23 provisions of this part, which are integral elements of the
24 regulation of the business of insurance and are of vital
25 public interest and concern, are to:

26 (a) Protect the interests of insureds, claimants,
27 creditors, and the public.

28 (b) Provide a comprehensive scheme for the
29 receivership of insurers.

30 (c) Establish this state as a reciprocal state in
31 those states which, in substance and effect, enact the

1 National Association of Insurance Commissioners Rehabilitation
2 and Liquidation Model Act or the Uniform Insurers Liquidation
3 Act.

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

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

8 (f) Implement improved methods for rehabilitating
9 insurers, which methods involve the cooperation and management
10 expertise of the insurance industry.

11 (g) Enhance the efficiency and economy of liquidation
12 through clarification and specification of the law to minimize
13 legal uncertainty and litigation.

14 (h) Lessen the problems of interstate rehabilitation
15 and liquidation of an entity subject to the provisions of this
16 part by facilitating cooperation between states in the
17 liquidation process and by extension of the scope of personal
18 jurisdiction over debtors of the insurer outside this state.

19 (i) Establish a system which equitably apportions any
20 unavoidable loss.

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

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

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

1 Section 3. Section 631.011, Florida Statutes, is
2 amended to read:

3 631.011 Definitions.--For the purpose of this part,
4 the term:

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

8 (a) Equity ownership of voting securities;

9 (b) Common managerial control; or

10 (c) Collusive participation by the management of the
11 insurer and affiliate in the management of the insurer or the
12 affiliate.

13 (2) "Ancillary state" means, any state other than a
14 domiciliary state.

15 (3) "Assets," as used in this section ~~subsections~~
16 ~~(8)-(10)~~, means only allowed assets as defined in chapter 625.

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

26 ~~(5)(4)~~ "Court" refers to the circuit court in which
27 the receivership proceeding is pending.

28 ~~(6)(5)~~ "Delinquency proceeding" means any proceeding
29 commenced against an insurer pursuant to this chapter for the
30 purpose of liquidating, rehabilitating, reorganizing, or
31 conserving such insurer.

1 ~~(7)(6)~~ "Domiciliary state" means the state in which an
2 insurer is incorporated or organized or, in the case of an
3 insurer incorporated or organized in a foreign country, the
4 state in which such insurer, having become authorized to do
5 business in such state, has, at the commencement of a
6 delinquency proceeding, the largest amount of its assets held
7 in trust and assets held on deposit for the benefit of its
8 policyholders or policyholders and creditors in the United
9 States; and any such insurer is deemed to be domiciled in such
10 state.

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

18 ~~(9)(7)~~ "Foreign country" means territory not in any
19 state.

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

31

1 (11) "Good faith," as applied to a transferee or
2 transferor under this part, means honesty in fact and
3 intention and includes the exercise of reasonable business
4 judgment, together with the absence of information that would
5 lead a reasonable person in the same position to know that the
6 insurer is financially impaired or insolvent and together with
7 the absence of knowledge regarding the imminence or pendency
8 of any receivership proceeding against the insurer.

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

16 (13)~~(10)~~ "Impairment of surplus" means that the
17 surplus of a stock insurer, the additional surplus of a mutual
18 or reciprocal insurer, or the additional net trust fund of a
19 business trust insurer does not comply with the requirements
20 of s. 624.408.

21 (14)~~(11)~~ "Insolvency" means that all the assets of the
22 insurer, if made immediately available, would not be
23 sufficient to discharge all its liabilities or that the
24 insurer is unable to pay its debts as they become due in the
25 usual course of business. When the context of any provision of
26 this code so indicates, insolvency also includes and is
27 defined as "impairment of surplus," as defined in subsection
28 (13)~~(9)~~, and "impairment of capital," as defined in subsection
29 (12)~~(8)~~.

30 (15)~~(12)~~ "Insurer," in addition to persons so defined
31 under s. 624.03, also includes persons purporting to be

1 insurers or organizing, or holding themselves out as
2 organizing, in this state for the purpose of becoming insurers
3 and all insurers who have insureds resident in this state.

4 (16)~~(13)~~ "Liabilities," as used in subsections(12)
5 and (14)~~(8)-(10)~~, means all liabilities, including those
6 specifically required in s. 625.041.

7 (17)~~(14)~~ "Person" includes natural persons,
8 corporations, partnerships, trusts, estates, and sole
9 proprietorships.

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

31

1 ~~(19)(15)~~ "Receiver" means a receiver, liquidator,
2 rehabilitator, or conservator, as the context may require.

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

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

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

21 ~~(23)(19)~~ "State" is as defined in s. 624.08.

22 Section 4. Section 631.025, Florida Statutes, is
23 created to read:

24 631.025 Persons and entities subject to this
25 part.--The receivership proceedings authorized by this part
26 may be initiated against, and the receivership court may
27 exercise jurisdiction over, any person who is an insurer and
28 against any person whose inclusion is necessary for the
29 purposes of this part whether or not said person would
30 otherwise be an insurer, including, but not limited to, the
31 following:

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

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

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

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

16 (5) Current and former agents and brokers of the
17 insurer; policyholders, excess insurers, and reinsurers of the
18 insurer; current and former officers, directors, managers,
19 trustees, organizers, promoters, and persons in control of the
20 insurer; any third-party administrator; and any person who
21 maintains information for an insurer.

22 (6) Any corporation that directly or indirectly owns
23 10 percent or more of the stock of a Florida domestic insurer.

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

26 Section 5. Paragraph (d) of subsection (1) of section
27 631.041, Florida Statutes, is amended, and subsection (6) is
28 added to that section, to read:

29 631.041 Automatic stay; relief from stay;
30 injunctions.--

31

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

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

11 (6) No statute of limitations or defense of laches
12 shall run with respect to any action by or against an insurer
13 between the filing of a petition for conservation,
14 rehabilitation, or liquidation against an insurer and the
15 order granting or denying that petition. If the petition is
16 denied, any action against the insurer that might have been
17 commenced when the petition was filed may be commenced for at
18 least 60 days after the order denying such relief.

19 Section 6. Section 631.113, Florida Statutes, is
20 created to read:

21 631.113 Extension of time.--

22 (1) The running of any unexpired statute of
23 limitations as to any claims brought by the administrator,
24 conservator, rehabilitator, receiver, or liquidator, or an
25 official or agency exercising powers pursuant to this chapter
26 seeking damages or other recoveries on behalf of an insurer,
27 its policyholders, its creditors, or its estate, shall be
28 tolled for a period of 4 years from the entry of an order
29 placing the administrator, conservator, rehabilitator,
30 receiver, liquidator, or similar official or agency over the
31 insurer, provided, if the delinquency proceedings brought

1 pursuant to this chapter against the insurer terminate in less
2 than 4 years, such tolling shall cease at the time when the
3 proceedings are finally concluded, including all appeals
4 therefrom. Further, the right of action does not accrue and
5 the limitations period for any such action does not run during
6 the time when the insurer is controlled by parties acting
7 contrary to the company's interests or when the facts giving
8 rise to such claim are fraudulently concealed from regulatory
9 authorities or from any members of company management. The
10 provisions of chapter 95 shall be construed so as to be
11 consistent with the provisions of this section. The receiver
12 may institute any action or proceeding on behalf of the estate
13 of the insurer while any statute of limitation is tolled
14 pursuant to this section. The tolling shall be in addition to
15 any other applicable tolling provision.

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

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

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

29 (6) The department as receiver is vested with and may
30 assert all rights belonging to policyholders, creditors, and
31 the estate as well as all rights of the entity or entities in

1 receivership, except to the extent that an individual claim is
2 personal and unique to that claimant and recovery thereon
3 could not inure to the benefit of the estate or to other
4 claimants.

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

7 631.154 Funds or other property in the possession of
8 third person.--

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

12 (d) All costs, investigative and other expenses, which
13 include the department's in-house staff and staff attorney's
14 expenses, costs, and salaries, expended in necessary to the
15 recovery of the property or funds, and reasonable attorney's
16 fees.

17 Section 9. Section 631.156, Florida Statutes, is
18 created to read:

19 631.156 Investigation by the department.--

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

1 (a) Examine and review any and all documents that are
2 reasonably calculated to disclose or lead to the disclosure of
3 the causes and reasons for the insolvency, the discovery and
4 location of assets to be recovered, the recovery of such
5 assets, the truth or falsity of statements filed with the
6 department, and whether any law of this state, any other
7 state, or the Federal Government has been violated.

8 (b) Take statements or depositions under oath of any
9 person whose testimony is reasonably calculated to disclose or
10 lead to the disclosure of the causes and reasons for the
11 insolvency, the discovery of and location of assets to be
12 recovered, the recovery of such assets, the truth or falsity
13 of statements filed with the department, and whether any law
14 of this state, any other state, or the Federal Government has
15 been violated.

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

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

31

1 (2) In its capacity as receiver, the department may
2 provide documents, books and records, other investigative
3 products, work product, and analysis, including copies of any
4 or all of the foregoing items, to the Division of Insurance
5 Fraud or any other appropriate agency of state or federal
6 government. The sharing of information, investigative
7 products, or analysis shall not waive any work product or
8 other privilege that would otherwise apply under common law,
9 chapter 119, or any other law.

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

1 having unsuccessfully asserted such objection fails thereafter
2 to furnish the evidence or testimony, within the time provided
3 by the court or the department, shall be subject to the
4 contempt powers of the court, in addition to any other
5 applicable penalties which may be provided in the Florida
6 Insurance Code or other law.

7 Section 10. Section 631.157, Florida Statutes, is
8 created to read:

9 631.157 Civil action by the receiver.--

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

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

29 (b) If such embezzlement, abstraction, purloining,
30 conversion, or misappropriation jeopardized the safety and
31 soundness of an insurer or was a significant cause of such

1 insurer's being placed in conservation, rehabilitation, or
2 liquidation, such person shall be liable for triple the full
3 amount of any asset embezzled, abstracted, purloined,
4 converted, or misappropriated, plus prejudgment interest
5 provided by law on the original amount.

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

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

29 (b) If such misreporting jeopardized the safety and
30 soundness of an insurer or was a significant cause of such
31 insurer's being placed in conservation, rehabilitation, or

1 liquidation, such person shall be liable for triple the full
2 amount of any asset misreported.

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

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

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

27 Section 11. Section 631.193, Florida Statutes, is
28 amended to read:

29 631.193 Releases.--The filing of a claim constitutes a
30 release of the insured from liability to the claimant to the
31 extent of the coverage or policy limits provided by the

1 insolvent insurer. The release is conditioned upon the
2 cooperation of the insured with the receiver and the Florida
3 Insurance Guaranty Association and any other guaranty
4 association in defense of the claim. This release does not
5 operate to discharge the Florida Insurance Guaranty
6 Association or any other guaranty association from any of its
7 responsibilities and duties set out in this chapter, nor does
8 it operate to impose any liability on any such guaranty
9 association which would not have existed absent the filing of
10 a claim in the receivership.

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

13 631.3995 Closing of estate; Closed Estate Fund Trust
14 Account.--

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

26 (2) Any remaining reserved assets that are provided
27 for in subsection (1) and that may not be practicably or
28 economically distributed to claimants shall be deposited into
29 a segregated account to be known as the Closed Estate Fund
30 Trust Account, if created by law. The department may use
31 moneys held in the account for paying the administrative

1 expenses of companies subject to this part that lack
2 sufficient assets to allow the department to perform its
3 duties and obligations under this part. An annual audit of the
4 Closed Estate Fund Trust Account shall be performed regardless
5 of its balance.

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

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

12 631.54 Definitions.--As used in this part:

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

26 Section 14. Subsection (1) of section 631.57, Florida
27 Statutes, is amended to read:

28 631.57 Powers and duties of the association.--

29 (1) The association shall:

30 (a)1. Be obligated to the extent of the covered claims
31 existing:

1 a. Prior to adjudication of insolvency and arising
2 within 30 days after the determination of insolvency;

3 b. Before the policy expiration date if less than 30
4 days after the determination; or

5 c. Before the insured replaces the policy or causes
6 its cancellation, if she or he does so within 30 days of the
7 determination.

8 2. The obligation under subparagraph 1. shall include
9 only that amount of each covered claim which is in excess of
10 \$100 and is less than \$300,000, except with respect to
11 policies covering condominium associations or homeowners'
12 associations, which associations have a responsibility to
13 provide insurance coverage on residential units within the
14 association, the obligation shall include that amount of each
15 covered property insurance claim which is less than \$100,000
16 multiplied by the number of condominium units or other
17 residential units; however, as to homeowners' associations,
18 this subparagraph applies only to claims for damage or loss to
19 residential units and structures attached to residential
20 units.

21 3. In no event shall the association be obligated to a
22 policyholder or claimant in an amount in excess of the
23 obligation of the insolvent insurer under the policy from
24 which the claim arises or under circumstances in which the
25 insolvent insurer could not have been compelled to pay the
26 claim.

27
28 The foregoing notwithstanding, the association shall have no
29 obligation to pay covered claims to be paid from the proceeds
30 of bonds issued under s. 166.111(2). However, the association
31 shall cause assessments to be made under paragraph (3)(e) for

1 such covered claims, and such assessments shall be assigned
2 and pledged under paragraph (3)(e) to or on behalf of the
3 issuer of such bonds for the benefit of the holders of such
4 bonds. The association shall administer any such covered
5 claims and present valid covered claims for payment in
6 accordance with the provisions of the assistance program in
7 connection with which such bonds have been issued.

8 (b) Be deemed the insurer to the extent of its
9 obligation on the covered claims, and, to such extent, shall
10 have all rights, duties, defenses, and obligations of the
11 insolvent insurer as if the insurer had not become insolvent.
12 In no event shall the association be liable for any penalties
13 or interest or any amount in excess of the limits set forth in
14 paragraph (a) and the other limitations on liability also set
15 forth in this chapter.

16 Section 15. Subsection (1) of section 631.60, Florida
17 Statutes, is amended to read:

18 631.60 Effect of paid claims.--

19 (1) Any person recovering under this part shall be
20 deemed to have assigned her or his rights under the policy to
21 the association to the extent of the person's recovery from
22 the association, regardless of whether such recovery is
23 received directly from the association or through payments
24 made from the proceeds of bonds issued under s. 166.111(2).
25 Every insured or claimant seeking the protection of this part
26 shall cooperate with the association to the same extent as
27 such person would have been required to cooperate with the
28 insolvent insurer. The association shall have no cause of
29 action against the insured of the insolvent insurer for any
30 sums it has paid out except such causes of action as the
31 insolvent insurer would have had if such sums had been paid by

1 the insolvent insurer. In the case of an insolvent insurer
2 operating on a plan with assessment liability, payments of
3 claims of the association shall not operate to reduce the
4 liability of insureds to the receiver, liquidator, or
5 statutory successor for unpaid assessments. Under no
6 circumstances shall any person have any cause of action
7 against the association which that person would not have had
8 against the insolvent insurer, nor shall this chapter be
9 construed as creating any additional rights against the
10 association which would not have existed against the insolvent
11 insurer.

12 Section 16. Section 817.2341, Florida Statutes, is
13 created to read:

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

17 (1)(a) Any person who makes a false entry of a
18 material fact in any book, report, or statement relating to a
19 transaction of an insurer or entity organized pursuant to
20 chapter 624 or chapter 641, intending thereby to deceive any
21 person about the financial condition or solvency of such
22 insurer or entity, commits a felony of the third degree,
23 punishable as provided in s. 775.082, s. 775.083, or s.
24 775.084.

25 (b) If such false entry of a material fact is made
26 with the intent to deceive any person as to the impairment of
27 capital, as defined in s. 631.011(12), of such insurer or
28 entity or is the significant cause of such insurer or entity
29 being placed in conservation, rehabilitation, or liquidation
30 by a court, the offense is a felony of the first degree,
31

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

3 (2)(a) Any person who knowingly makes a material false
4 statement or report to the department or any agent of the
5 department, or who knowingly and materially overvalues any
6 property in any document or report prepared to be presented to
7 the department or any agent of the department, commits a
8 felony of the third degree, punishable as provided in s.
9 775.082, s. 775.083, or s. 775.084.

10 (b) If such material false statement or report or such
11 material overvaluation is made with the intent to deceive any
12 person as to the impairment of capital, as defined in s.
13 631.011(12), of an insurer or entity organized pursuant to
14 chapter 624 or chapter 641, or is the significant cause of
15 such insurer or entity being placed in conservation,
16 rehabilitation, or liquidation by a court, the offense is a
17 felony of the first degree, punishable as provided in s.
18 775.082, s. 775.083, or s. 775.084.

19 Section 17. This act shall take effect July 1, 2002.
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LEGISLATIVE SUMMARY

Creates the "Insurers Rehabilitation and Liquidation Act." Specifies application of receivership proceedings to specified persons and entities. Provides for tolling time limitations in conservation, liquidation, rehabilitation, or receivership actions. Vests the Department of Insurance with rights as receiver in receivership proceedings. Includes the department's in-house staff and staff attorney's expenses, costs, and salaries in costs and expenses entitled to be recovered by a receiver who is successful in establishing a claim. Provides for investigations by the department preliminary or incidental to receivership proceedings, authorizes the department to provide information in such investigations, and grants the department discretionary powers in determining information necessary to such investigations. Imposes liability on persons or entities engaged in insurance business for willfully embezzling, abstracting, purloining, converting, or misappropriating assets or property and specifies amounts of damages. Provides an additional limitation on the operation of a release. Provides procedures and requirements for closing an estate, provides for depositing estate assets into the Closed Estate Fund Trust Account, and provides for uses of such account. Revises obligations and liabilities of the Florida Insurance Guaranty Association and limits causes of action and creation of additional rights against the association. Provides criminal penalties for making false entries of a material fact in books, reports, or statements relating to insurer transactions or knowingly making a material false statement or report to the Department of Insurance or knowingly and materially overvaluing property in a document or report provided to the department. (See bill for details.)