

By the Committee on Banking and Insurance; and Senator Klein

311-1278-02

1                                   A bill to be entitled  
2           An act relating to insurer rehabilitation and  
3           liquidation; amending s. 626.9541, F.S.;  
4           conforming cross-references; 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           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          conforming 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; granting  
29          the department certain discretionary powers;  
30          creating s. 631.157, F.S.; providing for civil  
31          actions by receivers; imposing liability on

1 certain persons or entities for certain  
2 actions; specifying amounts of damages;  
3 providing construction; providing costs and  
4 expenses entitled to be recovered by the  
5 receiver under certain circumstances; providing  
6 a time certain for bringing certain actions;  
7 creating s. 631.1571, F.S.; providing that  
8 persons serving as officers or directors of  
9 insolvent insurers may not thereafter serve as  
10 officers or directors of insurers authorized in  
11 this state; providing time restrictions;  
12 creating s. 631.3915, F.S.; authorizing the  
13 department to pursue actions for damages or  
14 recoveries; amending s. 631.54, F.S.;  
15 redefining the term "covered claim"; amending  
16 s. 631.57, F.S.; vesting the Florida Insurance  
17 Guaranty Association with the defenses of  
18 certain insolvent insurers; creating s.  
19 817.2341, F.S.; specifying certain activities  
20 relating to false or misleading financial  
21 statements or supporting documents as criminal  
22 offenses; providing penalties; repealing s.  
23 624.3101, F.S., relating to false or misleading  
24 financial statements or supporting documents;  
25 providing an effective date.

26  
27 Be It Enacted by the Legislature of the State of Florida:

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29 Section 1. Paragraph (w) of subsection (1) of section  
30 626.9541, Florida Statutes, is amended to read:

31

1           626.9541 Unfair methods of competition and unfair or  
2 deceptive acts or practices defined.--

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

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

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

18           2. Any such director or officer, upon conviction of a  
19 violation of this paragraph, is guilty of a felony of the  
20 third degree, punishable as provided in s. 775.082, s.  
21 775.083, or s. 775.084.

22           Section 2. Section 631.001, Florida Statutes, is  
23 amended to read:

24           631.001 Title, construction, and purpose.--

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

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

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1           ~~(2)(3)~~ This part shall be liberally construed to  
2 effect the purposes of this part ~~purpose stated in subsection~~  
3 ~~(4)~~.

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

8           ~~(a)~~ Protect ~~is the protection of~~ the interests of  
9 policyholders ~~insureds~~, creditors, and other claimants and the  
10 public.

11           ~~(b)~~ Provide a comprehensive scheme for administering  
12 insurer receiverships.~~generally, through~~

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

18           ~~(d)(b)~~ Implement improved methods for rehabilitating  
19 insurers, which methods involve the cooperation and management  
20 expertise of the insurance industry.

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

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

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

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

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

14 Section 3. Section 631.011, Florida Statutes, is  
15 amended to read:

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

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

21 (a) Equity ownership of voting securities;

22 (b) Common managerial control; or

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

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

28 (3) "Assets," as used in this section ~~subsections~~  
29 ~~(8)-(10)~~, means only allowed assets as defined in chapter 625.

30 (4) "Bona fide holder for value" means a person who,  
31 while not possessing information that would lead a reasonable

1 person similarly situated to believe that the insurer is  
2 insolvent or is experiencing an impairment of capital or an  
3 impairment of surplus and while unaware of the imminence or  
4 pendency of any receivership proceeding against the insurer,  
5 has, in the exercise of reasonable business judgment,  
6 exchanged his or her own funds, assets, or property for funds,  
7 assets, or property of the insurer having an equivalent market  
8 value.

9 (5)~~(4)~~ "Court" refers to the circuit court in which  
10 the receivership proceeding is pending.

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

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

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

1           ~~(9)(7)~~ "Foreign country" means territory not in any  
2 state.

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

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

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

30           ~~(13)(10)~~ "Impairment of surplus" means that the  
31 surplus of a stock insurer, the additional surplus of a mutual

1 or reciprocal insurer, or the additional net trust fund of a  
2 business trust insurer does not comply with the requirements  
3 of s. 624.408.

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

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

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

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

24 (17) "Property" includes:

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

30 (b) Entitlements that existed prior to the entry of an  
31 order of conservation, rehabilitation, or liquidation and



1 entitlements that may arise by operation of the provisions of  
2 this part or other provisions of law allowing the department  
3 to avoid prior transfers or assert other rights in its  
4 capacity as receiver.

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

14  
15 The term does not include privileged or confidential documents  
16 of an insolvent insurer generated by a third party.

17 (18)(15) "Receiver" means a receiver, liquidator,  
18 rehabilitator, reorganizer, or conservator, as the context may  
19 require.

20 (19) "Receivership" means the placement of an insurer  
21 under the control of a receiver pursuant to a delinquency  
22 proceeding under this part.

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

29 (21)(17) "Secured claim" means any claim secured by  
30 mortgage, trust deed, pledge, deposit as security, escrow, or  
31 otherwise but does not include a special deposit claim, a

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

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

10 (23)~~(19)~~ "State" is as defined in s. 624.08.

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

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

19 Section 5. Section 631.025, Florida Statutes, is  
20 created to read:

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

30 (1) A person transacting, or that has transacted,  
31 insurance business in or from this state and against whom

1 claims arising from that business may exist now or in the  
2 future.

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

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

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

14 Section 6. Subsection (1) of section 631.041, Florida  
15 Statutes, is amended to read:

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

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

24 (a) The commencement or continuation of judicial,  
25 administrative, or other action or proceeding against the  
26 insurer or against its assets or any part thereof;

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

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

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 7. 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 for at least 60 days after the order denying such  
21 relief.

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

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

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

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

24           631.141 Conduct of delinquency proceeding; domestic  
25 and alien insurers.--

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

1           Section 9. Section 631.154, Florida Statutes, is  
2 amended to read:

3           631.154 Funds, assets, or other property in the  
4 possession of third person.--

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

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

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

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

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

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

1 (a) The property or its cash value as of the date of  
2 the order of conservation, rehabilitation, or liquidation,  
3 whichever is applicable.

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

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

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

17  
18 It is the intent of this section that a person found to be  
19 holding receivership assets fully reimburse the receiver for  
20 any and all efforts made to recover those assets.

21 Section 10. Section 631.156, Florida Statutes, is  
22 created to read:

23 631.156 Investigation by the department; scope of  
24 authority; sharing of materials.--

25 (1) The department may, under the direction and  
26 supervision of the receivership court, conduct an  
27 investigation to determine the causes of the insolvency,  
28 including whether false statements filed with the department  
29 contributed to the insolvency and if any laws of this state,  
30 any other state, or the Federal Government relating to the  
31 solvency of the insurer were violated; to discover assets for



1 recovery; and to determine the location of assets and their  
2 manner of recovery. To the extent reasonably calculated to  
3 further the investigation, the department may examine and  
4 review any and all documents; take statements under oath;  
5 examine and review the books, records, and documents of any  
6 affiliate, controlling person, officer, director, manager,  
7 trustee, agent, adjuster, employee, or independent contractor  
8 of any insurer or affiliate and any other person possessing  
9 any executive authority over, or exercising or having  
10 exercised any control over, any segment of the affairs of the  
11 insurer or affiliate; and request the court to issue any  
12 necessary subpoenas. Contracts of reinsurance between an  
13 insurer and a reinsurer do not constitute the exercise of  
14 control by the reinsurer over the insurer for purposes of this  
15 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 waive any work product or other privilege otherwise applicable  
22 under law.

23 (3) The department shall have the discretion to  
24 determine the books, records, documents, or testimony  
25 reasonably calculated to:

26 1. Disclose, or lead to the disclosure of, the causes  
27 of the insolvency.

28 2. Discover or locate, or lead to the discovery and  
29 location of, assets to be recovered and the recovery of those  
30 assets.

31

1           3. Determine the veracity of statements filed with the  
2 department.

3           4. Determine whether any laws of this state, any other  
4 state, or the Federal Government were violated.

5  
6 Parties failing to produce requested materials or provide  
7 requested testimony under this section shall present their  
8 objections by written motion to the court within 10 days  
9 following receipt of the request and shall be responsible for  
10 the loss of any evidence occurring from the date the  
11 department made its request for materials or testimony. The  
12 court shall determine as expeditiously as possible whether the  
13 department has abused its discretion in seeking the materials  
14 or testimony, with the objecting party having the burden of  
15 proof. A party who fails to produce the requested materials  
16 or testimony without filing a proper timely objection or who,  
17 having unsuccessfully asserted the objection, fails to furnish  
18 the evidence or testimony within the time provided by the  
19 court or the department shall be subject to the contempt  
20 powers of the court in addition to any other penalties  
21 applicable under law.

22           Section 11. Section 631.157, Florida Statutes, is  
23 created to read:

24           631.157 Civil action by the receiver.--

25           (1) Any person who is engaged in the business of  
26 insurance, is or acts as an officer, director, agent, or  
27 employee of any person engaged in the business of insurance,  
28 or is involved in a transaction relating to the conduct of  
29 affairs of such a business, other than as an insured or  
30 beneficiary under a policy of insurance, and who willfully  
31 obtains or uses, as defined in s. 812.012(3), any funds,

1 assets, or property, including, but not limited to, moneys,  
2 funds, premiums, credits, or other property of an insurer,  
3 shall be liable to the department as receiver for the use and  
4 benefit of an insolvent insurer's estate, claimants,  
5 creditors, and policyholders, as follows:

6 (a) If the funds, assets, or property obtained or used  
7 did not jeopardize the safety and soundness of an insurer and  
8 was not a significant cause of such insurer being placed in  
9 receivership, the person shall be liable only for the full  
10 amount of any funds, assets, or property obtained or used,  
11 plus prejudgment interest provided by law.

12 (b) If the funds, assets, or property obtained or used  
13 jeopardized the safety and soundness of an insurer or was a  
14 significant cause of the insurer being placed in receivership,  
15 the person shall be liable for triple the full amount of any  
16 funds, assets, or property obtained or used, plus prejudgment  
17 interest provided by law on the original amount.

18 (2)(a) Any person who:

19 1. Is engaged in the business of insurance, is or acts  
20 as an officer, director, agent, or employee of any person  
21 engaged in the business of insurance, or is involved in a  
22 transaction relating to the conduct of affairs of such a  
23 business, other than as an insured or beneficiary under a  
24 policy of insurance;

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

28 3. Misreports a material fact in any book, report, or  
29 statement of an insurer  
30  
31

1 with the intent to deceive the insurer, including any officer,  
2 employee, or agent of the insurer, the department, or any  
3 agent or examiner appointed by the department to examine the  
4 affairs of the person or insurer, concerning the financial  
5 condition or solvency of such business is liable to the  
6 department as receiver for the use and benefit of the  
7 insolvent insurer's estate, creditors, and policyholders, as  
8 provided in paragraph (b).

9 (b)1. If the misreporting did not jeopardize the  
10 safety and soundness of an insurer and was not a significant  
11 cause of the insurer being placed in receivership, the person  
12 shall be liable only for the full amount of any asset  
13 misreported.

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

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

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

1 attorney's expenses, costs, and salaries, expended in the  
2 prosecution of the action; and reasonable attorney's fees.

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

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

9 Section 12. Section 631.1571, Florida Statutes, is  
10 created to read:

11 631.1571 Officers and directors of insolvent  
12 insurers.--Any person who was an officer or director of an  
13 insurer doing business in this state and who served in that  
14 capacity within the 2-year period prior to the date the  
15 insurer became insolvent, for any insolvency that occurs on or  
16 after July 1, 2002, may not thereafter serve as an officer or  
17 director of an insurer authorized in this state.

18 Section 13. Section 631.3915, Florida Statutes, is  
19 created to read:

20 631.3915 Actions for damages.--The department, in its  
21 capacity as administrator, receiver, or similar capacity, may  
22 pursue any actions for damages or other recoveries on behalf  
23 of the insurer's estate and the insurer's policyholders,  
24 creditors, and other claimants.

25 Section 14. Subsection (3) of section 631.54, Florida  
26 Statutes, is amended to read:

27 631.54 Definitions.--As used in this part:

28 (3) "Covered claim" means an unpaid claim, including  
29 one of unearned premiums, which arises out of, and is within  
30 the coverage, and not in excess of, the applicable limits of  
31 an insurance policy to which this part applies, issued by an

1 insurer, if such insurer becomes an insolvent insurer after  
2 October 1, 1970, and the claimant or insured is a resident of  
3 this state at the time of the insured event or the property  
4 from which the claim arises is permanently located in this  
5 state. "Covered claim" shall not include any amount due any  
6 reinsurer, insurer, insurance pool, or underwriting  
7 association, as subrogation, contribution, indemnification,  
8 ~~recoveries~~ or otherwise. Member insurers shall have no right  
9 of subrogation against the insured of any insolvent member.

10 Section 15. Paragraph (b) of subsection (1) of section  
11 631.57, Florida Statutes, is amended to read:

12 631.57 Powers and duties of the association.--

13 (1) The association shall:

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

20 Section 16. Section 817.2341, Florida Statutes, is  
21 created to read:

22 817.2341 False or misleading statements or supporting  
23 documents; penalty.--

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

31

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 17. Section 624.3101, Florida Statutes, is  
4 repealed.

5 Section 18. This act shall take effect July 1, 2002.

6  
7 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
8 COMMITTEE SUBSTITUTE FOR  
9 Senate Bill 432

10 Creates a definition for the term "receivership."

11 Creates a reciprocity provision for the treatment of  
12 policyholders in Florida and other states which adopt  
specified model laws.

13 Provides that officers and directors of insolvent companies  
14 may not thereafter serve in such capacities for insurers  
authorized in Florida under certain conditions.

15 Authorizes the Department, under the direction and supervision  
16 of the receivership court, to conduct an investigation into  
the reasons for the insolvency.

17 Clarifies that contracts of reinsurance between the insurer  
18 and a reinsurer would not constitute the exercise of control  
by the reinsurer over the insurer for certain purposes.

19 Provides for additional and more severe criminal penalties for  
20 persons who knowingly make or provide materially false or  
misleading information to the Department of Insurance.

21 Removes provisions that would be superfluous to current  
22 statutory authority of the Department of Insurance.

23 Removes a provision which would have redirected property of  
24 the estate that cannot be disposed of in a cost effective  
manner from the Unclaimed Property Trust Fund to the Closed  
Estate Trust Fund.