

By the Committees on Judiciary; Banking and Insurance; and  
Senator Klein

308-2222-02

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.  
31

1           (3) Upon department approval of the surrender of the  
2 certificate of authority of a domestic property and casualty  
3 insurer that is a corporation, the insurer may initiate the  
4 dissolution of the corporation in accordance with the  
5 applicable provisions of chapter 607.

6           ~~(4)(2)~~ Any insurer withdrawing from this state or  
7 discontinuing the writing of all kinds of insurance in this  
8 state shall surrender its certificate of authority.

9           ~~(5)(3)~~ This section does not apply to life insurance  
10 and corresponding lines of insurance as long as the insurer  
11 has in force life insurance policies and corresponding lines  
12 in this state.

13           ~~(6)(4)~~ This section does not apply to insurers during  
14 the calendar year in which they first receive their  
15 certificate of authority.

16           ~~(7)(5)~~ This section does not apply to insurers who  
17 have discontinued writing in accordance with an order issued  
18 by the department.

19           (8) The department may adopt rules to administer this  
20 section.

21           Section 2. Paragraph (w) of subsection (1) of section  
22 626.9541, Florida Statutes, is amended to read:

23           626.9541 Unfair methods of competition and unfair or  
24 deceptive acts or practices defined.--

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

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

30           1. Whether or not delinquency proceedings as to the  
31 insurer have been or are to be initiated, but while such

1 insolvency or impairment exists, no director or officer of an  
2 insurer, except with the written permission of the Department  
3 of Insurance, shall authorize or permit the insurer to solicit  
4 or accept new or renewal insurance risks in this state after  
5 such director or officer knew, or reasonably should have  
6 known, that the insurer was insolvent or impaired. "Impaired"  
7 includes impairment of ~~for~~ capital or surplus, as defined in  
8 s. 631.011(12)~~s. 631.011(9) and (13)(10)~~.

9           2. Any such director or officer, upon conviction of a  
10 violation of this paragraph, is guilty of a felony of the  
11 third degree, punishable as provided in s. 775.082, s.  
12 775.083, or s. 775.084.

13           Section 3. Section 631.001, Florida Statutes, is  
14 amended to read:

15           631.001 Title, construction, and purpose.--

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

18           ~~(2) This part may not be interpreted to limit the~~  
19 ~~powers granted the Department of Insurance by other provisions~~  
20 ~~of law.~~

21           (2)(3) This part shall be liberally construed to  
22 effect the purposes of this part ~~purpose stated in subsection~~  
23 ~~(4)~~.

24           (3)(4) The purposes ~~purpose~~ of this part, which are  
25 integral elements of the regulation of the business of  
26 insurance and are of vital public interest and concern, are  
27 to:

28           (a) Protect ~~is the protection of~~ the interests of  
29 policyholders ~~insureds~~, creditors, and other claimants and the  
30 public.

31

1           **(b) Provide a comprehensive scheme for administering**  
2 **insurer receiverships.**~~generally, through~~

3           ~~(c)(a) Detect Early detection of any potentially~~  
4 ~~dangerous condition in an insurer and promptly apply prompt~~  
5 ~~application of appropriate corrective measures, which are~~  
6 ~~neither unduly harsh nor subject to unwarranted publicity~~  
7 ~~needlessly damaging to the insurer.~~

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

11           ~~(e)(c) Enhance the Enhanced efficiency and economy of~~  
12 ~~the liquidation process by clarifying through clarification~~  
13 ~~and specification of the law to minimize legal uncertainty and~~  
14 ~~litigation.~~

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

17           ~~(g)(e) Administer insurer receiverships more~~  
18 ~~efficiently on an interstate and international basis lessening~~  
19 ~~the problems of interstate rehabilitation and liquidation by~~  
20 ~~facilitating cooperation between states in the liquidation~~  
21 ~~process and by extending extension of the scope of personal~~  
22 ~~jurisdiction over debtors of the insurer outside this state.~~

23           ~~(h) Maximize recovery of assets for the benefit of the~~  
24 ~~insurer's estate; policyholders, creditors, and other~~  
25 ~~claimants; and the public.~~

26           ~~(5) The Insurers Rehabilitation and Liquidation Act~~  
27 ~~shall be so interpreted and construed as to effectuate its~~  
28 ~~general purpose to make uniform the law of those states which~~  
29 ~~in substance and effect enact the Insurers Rehabilitation and~~  
30 ~~Liquidation Act. To the extent that the provisions of the~~  
31 ~~Insurers Rehabilitation and Liquidation Act, when applicable,~~

1 ~~conflict with other provisions of this chapter, the provisions~~  
2 ~~of such act shall control.~~

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

5 631.011 Definitions.--For the purpose of this part,  
6 the term:

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

10 (a) Equity ownership of voting securities;

11 (b) Common managerial control; or

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

15 (2) "Ancillary state" means, any state other than a  
16 domiciliary state.

17 (3) "Assets," as used in this section ~~subsections~~  
18 ~~(8)-(10)~~, means only allowed assets as defined in chapter 625.

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

29 (5)~~(4)~~ "Court" refers to the circuit court in which  
30 the receivership proceeding is pending.

31

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

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

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

22           ~~(9)~~<sup>(7)</sup> "Foreign country" means territory not in any  
23 state.

24           ~~(10)~~<sup>(8)</sup> "General assets" means all property, real,  
25 personal, or otherwise, not specifically mortgaged, pledged,  
26 deposited, or otherwise encumbered for the security or benefit  
27 of specified persons or a limited class or classes of persons,  
28 and as to such specifically encumbered property the term  
29 includes all such property or its proceeds in excess of the  
30 amount necessary to discharge the sum or sums secured thereby.  
31 Assets held in trust and assets held on deposit for the



1 security or benefit of all policyholders or all policyholders  
2 and creditors in the United States shall be deemed general  
3 assets.

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

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

21 (13)~~(10)~~ "Impairment of surplus" means that the  
22 surplus of a stock insurer, the additional surplus of a mutual  
23 or reciprocal insurer, or the additional net trust fund of a  
24 business trust insurer does not comply with the requirements  
25 of s. 624.408.

26 (14)~~(11)~~ "Insolvency" means that all the assets of the  
27 insurer, if made immediately available, would not be  
28 sufficient to discharge all its liabilities or that the  
29 insurer is unable to pay its debts as they become due in the  
30 usual course of business. When the context of any provision of  
31 this code so indicates, insolvency also includes and is

1 defined as "impairment of surplus," as defined in subsection  
2 ~~(13)(9)~~, and "impairment of capital," as defined in subsection  
3 ~~(12)(8)~~.

4 ~~(15)(12)~~ "Insurer," in addition to persons so defined  
5 under s. 624.03, also includes persons purporting to be  
6 insurers or organizing, or holding themselves out as  
7 organizing, in this state for the purpose of becoming insurers  
8 and all insurers who have policyholders ~~insureds~~ resident in  
9 this state.

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

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

15 (17) "Property" includes:

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

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

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

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

5 (18)~~(15)~~ "Receiver" means a receiver, liquidator,  
6 rehabilitator, reorganizer, or conservator, as the context may  
7 require.

8 (19) "Receivership" means the placement of an insurer  
9 under the control of a receiver pursuant to a delinquency  
10 proceeding under this part.

11 (20)~~(16)~~ "Reciprocal state" means any state other than  
12 this state in which in substance and effect the provisions of  
13 the Insurers Rehabilitation and Liquidation Act are in force,  
14 including the provisions requiring that the commissioner of  
15 insurance or equivalent insurance supervisory official be the  
16 receiver of a delinquent insurer.

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

25 (22)~~(18)~~ "Special deposit claim" means any claim  
26 secured by a deposit made pursuant to statute for the security  
27 or benefit of a limited class or classes of persons, but not  
28 including any general assets.

29 (23)~~(19)~~ "State" is as defined in s. 624.08.

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

1           631.015 Reciprocity; treatment of  
2 policyholders.--Reciprocity in the treatment of policyholders  
3 in receivership is extended to those states which, in  
4 substance and effect, enact the National Association of  
5 Insurance Commissioners Rehabilitation and Liquidation Model  
6 Act or the Uniform Insurers Liquidation Act.

7           Section 6. Section 631.025, Florida Statutes, is  
8 created to read:

9           631.025 Persons subject to this part.--Delinquency  
10 proceedings authorized by this part may be initiated against  
11 any insurer, as defined in s. 631.011(15), if the statutory  
12 grounds are present as to that insurer, and the court may  
13 exercise jurisdiction over any person required to cooperate  
14 with the department pursuant to s. 631.391 and over all  
15 persons made subject to the court's jurisdiction by other  
16 provisions of law. Such persons include, but are not limited  
17 to:

18           (1) A person transacting, or that has transacted,  
19 insurance business in or from this state and against whom  
20 claims arising from that business may exist now or in the  
21 future.

22           (2) A person purporting to transact an insurance  
23 business in this state and any person who acts as an insurer,  
24 transacts insurance, or otherwise engages in insurance  
25 activities in or from this state, with or without a  
26 certificate of authority or proper authority from the  
27 department, against whom claims arising from that business may  
28 exist now or in the future.

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

31

1           (4) All other persons organized or in the process of  
2 organizing with the intent to transact an insurance business  
3 in this state.

4           Section 7. Subsection (1) of section 631.041, Florida  
5 Statutes, is amended to read:

6           631.041 Automatic stay; relief from stay;  
7 injunctions.--

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

14           (a) The commencement or continuation of judicial,  
15 administrative, or other action or proceeding against the  
16 insurer or against its assets or any part thereof;

17           (b) The enforcement of a judgment against the insurer  
18 or an affiliate obtained either before or after the  
19 commencement of the delinquency proceeding;

20           (c) Any act to obtain possession of property of the  
21 insurer;

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

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

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

31

1           Section 8. Section 631.042, Florida Statutes, is  
2 created to read:

3           631.042 Extension of time.--

4           (1) With respect to any action by or against an  
5 insurer, no statute of limitations or defense of laches shall  
6 run between the date the department files a petition for a  
7 delinquency proceeding against an insurer and the date the  
8 court enters an order granting or denying that petition. If  
9 the petition is denied, any action against the insurer that  
10 might have been commenced when the petition was filed may be  
11 commenced no later than 60 days after the order denying such  
12 relief or the remaining unexpired time under the applicable  
13 statute of limitations or defense of laches that was available  
14 on the day the petition was filed, whichever is longer.

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

25           (3) A cause of action does not accrue, and the  
26 limitations period for any such action does not run, during  
27 the time the insurer is controlled by parties acting contrary  
28 to the company's interests or when facts giving rise to the  
29 claim are concealed fraudulently from regulatory authorities  
30 or from any members of company management. The provisions of  
31 chapter 95 shall be construed to be consistent with the

1 provisions of this section. The receiver may institute any  
2 action or proceeding authorized under this part while any  
3 statute of limitation is tolled pursuant to this section.  
4 This tolling provision shall be in addition to any other  
5 applicable tolling provision.

6 (4) For actions not covered by subsection (2), if any  
7 unexpired time period is fixed by any agreement or in any  
8 proceeding for doing any act for the benefit of the estate,  
9 the receiver shall have 180 days, or for good cause shown more  
10 than 180 days as allowed by the court, from the date the court  
11 enters the order granting the department's petition for a  
12 delinquency proceeding.

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

17 631.141 Conduct of delinquency proceeding; domestic  
18 and alien insurers.--

19 (6) The department may assert all rights belonging to  
20 third parties, including, but not limited to, policyholders,  
21 creditors, and other claimants, except to the extent an  
22 individual claim is personal and unique to the claimant and  
23 could not inure to the benefit of the estate or to  
24 policyholders, creditors, or other claimants.

25 Section 10. Section 631.154, Florida Statutes, is  
26 amended to read:

27 631.154 Funds, assets, or other property in the  
28 possession of third person.--

29 (1) If the receiver determines that funds, assets, or  
30 property in the possession of another person are rightfully  
31 the property of the estate, the receiver shall deliver to such

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

25 (2) If requested by the receiver, a hearing shall be  
26 held to determine where and under what conditions the  
27 property, assets, or funds shall be held by the person pending  
28 determination of the dispute. The court may impose conditions  
29 as it may deem necessary or appropriate for the preservation  
30 of the property until the court can determine the validity of  
31 the person's claim to the property, assets, or funds. If any



1 property, assets,or funds are allowed to remain in the  
2 possession of the person after demand made by the receiver,  
3 that person shall be strictly liable for any waste, loss, or  
4 damage of the property, assets,or funds retained.

5 (3) If a person has filed a pleading alleging any  
6 right to retain funds, assets,or property, the court shall  
7 hold a subsequent hearing to determine entitlement to the  
8 funds, assets,or property claimed by the receiver.

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

16 (5) This section shall apply to all proceedings  
17 brought by the receiver to recover funds, assets,or property  
18 believed by the receiver under this chapter to be assets of  
19 the entity subject to an order of conservation,  
20 rehabilitation, or liquidation. The receiver shall be exempt  
21 from the provisions of s. 57.111.

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

25 (a) The property or its cash value as of the date of  
26 the order of conservation, rehabilitation, or liquidation,  
27 whichever is applicable.

28 (b) Rental for the use of the property to run from the  
29 date of the order of conservation, rehabilitation, or  
30 liquidation, whichever is applicable, to the date the property  
31 is delivered to the receiver.

1 (c) In the case of funds, interest at the statutory  
2 rate to run from the date of the order of conservation,  
3 rehabilitation, or liquidation, whichever is applicable, to  
4 the date the funds are delivered to the receiver.

5 (d) All costs, investigative and other expenses,  
6 including, but not limited to, those for department staff,  
7 incurred in ~~necessary~~ to the recovery of the property, assets,  
8 or funds, and reasonable attorney's fees. Department staff  
9 costs and expenses include staff salaries.

10  
11 It is the intent of this section that a person found to be  
12 holding receivership assets fully reimburse the receiver for  
13 any and all efforts made to recover those assets.

14 Section 11. Section 631.156, Florida Statutes, is  
15 created to read:

16 631.156 Investigation by the department; scope of  
17 authority; sharing of materials.--

18 (1) The department may, under the direction and  
19 supervision of the receivership court, conduct an  
20 investigation to determine the causes of the insolvency,  
21 including whether false statements filed with the department  
22 contributed to the insolvency and if any laws of this state,  
23 any other state, or the Federal Government relating to the  
24 solvency of the insurer were violated; to discover assets for  
25 recovery; and to determine the location of assets and their  
26 manner of recovery. The department may take statements under  
27 oath and examine and review the books, records, and documents  
28 of the insurer or any affiliate, controlling person, officer,  
29 director, manager, trustee, agent, adjuster, employee, or  
30 independent contractor of any insurer or affiliate and any  
31 other person possessing any executive authority over, or

1 exercising or having exercised any control over, any segment  
2 of the affairs of the insurer or affiliate. Contracts of  
3 reinsurance between an insurer and a reinsurer do not  
4 constitute the exercise of control by the reinsurer over the  
5 insurer for purposes of this section.

6 (2) The department may provide documents, books, and  
7 records; other investigative products, work product, and  
8 analysis; and copies of any or all of such materials to the  
9 Division of Insurance Fraud or any other appropriate  
10 government agency. The sharing of these materials shall not  
11 waive any work product or other privilege otherwise applicable  
12 under law.

13 (3) The receivership court, upon motion of the  
14 department, shall enter an order expediting compliance with  
15 the requirements of subsection (1). The court may impose  
16 appropriate penalties and sanctions for noncompliance with  
17 such order, including penalties and sanctions for the loss,  
18 destruction, or spoliation of any evidence that occurs after  
19 entry of such order.

20 Section 12. Section 631.157, Florida Statutes, is  
21 created to read:

22 631.157 Civil action by the receiver.--

23 (1) Any person who is engaged in the business of  
24 insurance, is or acts as an officer, director, agent, or  
25 employee of any person engaged in the business of insurance,  
26 or is involved in a transaction relating to the conduct of  
27 affairs of such a business, other than as an insured or  
28 beneficiary under a policy of insurance, and who willfully  
29 obtains or uses, as defined in s. 812.012(3), any funds,  
30 assets, or property, including, but not limited to, moneys,  
31 funds, premiums, credits, or other property of an insurer,

1 shall be liable to the department as receiver for the use and  
2 benefit of an insolvent insurer's estate, claimants,  
3 creditors, and policyholders, as follows:

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

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

16 (2)(a) Any person who:

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

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

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

28  
29 with the intent to deceive the insurer, including any officer,  
30 employee, or agent of the insurer, the department, or any  
31 agent or examiner appointed by the department to examine the

1 affairs of the person or insurer, concerning the financial  
2 condition or solvency of such business is liable to the  
3 department as receiver for the use and benefit of the  
4 insolvent insurer's estate, creditors, and policyholders, as  
5 provided in paragraph (b).

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

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

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

25 (4) If the receiver is successful in establishing a  
26 claim under this section, the receiver shall be entitled to  
27 recover all of its costs; investigative and other expenses,  
28 which shall include the department's in-house staff and staff  
29 attorney's expenses, costs, and salaries, expended in the  
30 prosecution of the action; and reasonable attorney's fees.  
31 The receiver shall be exempt from the provisions of s. 57.111.

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

6           Section 13. Section 631.1571, Florida Statutes, is  
7 created to read:

8           631.1571 Officers and directors of insolvent  
9 insurers.--Any person who was an officer or director of an  
10 insurer doing business in this state and who served in that  
11 capacity within the 2-year period prior to the date the  
12 insurer became insolvent, for any insolvency that occurs on or  
13 after July 1, 2002, may not thereafter serve as an officer or  
14 director of an insurer authorized in this state.

15           Section 14. Section 631.3915, Florida Statutes, is  
16 created to read:

17           631.3915 Actions for damages.--The department, in its  
18 capacity as administrator, receiver, or similar capacity, may  
19 pursue any actions for damages or other recoveries on behalf  
20 of the insurer's estate and the insurer's policyholders,  
21 creditors, and other claimants.

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

24           631.54 Definitions.--As used in this part:

25           (3) "Covered claim" means an unpaid claim, including  
26 one of unearned premiums, which arises out of, and is within  
27 the coverage, and not in excess of, the applicable limits of  
28 an insurance policy to which this part applies, issued by an  
29 insurer, if such insurer becomes an insolvent insurer after  
30 October 1, 1970, and the claimant or insured is a resident of  
31 this state at the time of the insured event or the property

1 from which the claim arises is permanently located in this  
2 state. "Covered claim" shall not include any amount due any  
3 reinsurer, insurer, insurance pool, or underwriting  
4 association, as subrogation, contribution, indemnification,  
5 ~~recoveries~~ or otherwise. Member insurers shall have no right  
6 of subrogation against the insured of any insolvent member.

7 Section 16. Paragraph (b) of subsection (1) of section  
8 631.57, Florida Statutes, is amended to read:

9 631.57 Powers and duties of the association.--

10 (1) The association shall:

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

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

19 631.904 Definitions.--As used in this part, the term:

20 (2) "Covered claim" means an unpaid claim, including a  
21 claim for return of unearned premiums, which arises out of, is  
22 within the coverage of, and is not in excess of the applicable  
23 limits of, an insurance policy to which this part applies,  
24 which policy was issued by an insurer and which claim is made  
25 on behalf of a claimant or insured who was a resident of this  
26 state at the time of the injury. The term "covered claim" does  
27 not include any amount sought as a return of premium under any  
28 retrospective rating plan;any amount due any reinsurer,  
29 insurer, insurance pool, or underwriting association, as  
30 subrogation recoveries or otherwise; or any return of premium  
31 resulting from a policy that was not in force on the date of

1 the final order of liquidation. Member insurers have no right  
2 of subrogation against the insured of any insolvent insurer.  
3 This provision shall be applied retroactively to cover claims  
4 of an insolvent self-insurance fund resulting from accidents  
5 or losses incurred prior to January 1, 1994, regardless of the  
6 date the Department of Insurance filed a petition in circuit  
7 court alleging insolvency and the date the court entered an  
8 order appointing a receiver.

9 Section 18. Section 817.2341, Florida Statutes, is  
10 created to read:

11 817.2341 False or misleading statements or supporting  
12 documents; penalty.--

13 (1) Any person who willfully files with the  
14 department, or who willfully signs for filing with the  
15 department, a materially false or materially misleading  
16 financial statement or document in support of such statement  
17 required by law or rule, with intent to deceive and with  
18 knowledge that the statement or document is materially false  
19 or materially misleading, commits a felony of the third  
20 degree, punishable as provided in s. 775.082, s. 775.083, or  
21 s. 775.084.

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

29 (b) If the false entry of a material fact is made with  
30 the intent to deceive any person as to the impairment of  
31 capital, as defined in s. 631.011(12), of the insurer or



1 entity or is the significant cause of the insurer or entity  
2 being placed in conservation, rehabilitation, or liquidation  
3 by a court, the person commits a felony of the first degree,  
4 punishable as provided in s. 775.082, s. 775.083, or s.  
5 775.084.

6 (3)(a) Any person who knowingly makes a material false  
7 statement or report to the department or any agent of the  
8 department, or knowingly and materially overvalues any  
9 property in any document or report prepared to be presented to  
10 the department or any agent of the department, commits a  
11 felony of the third degree, punishable as provided in s.  
12 775.082, s. 775.083, or s. 775.084.

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

21 Section 19. Section 624.3101, Florida Statutes, is  
22 repealed.

23 Section 20. This act shall take effect July 1, 2002.

- 1                   STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
2                   COMMITTEE SUBSTITUTE FOR  
3                   CS for Senate Bill 432
- 4 --       Amends s. 624.430, F.S., which pertains to the  
5       withdrawal of insurers from the state, to provide that a  
6       solvent insurer can submit a plan for withdrawal to the  
7       Department of Insurance and, upon approval of the plan,  
8       the insurer may initiate corporate dissolution  
9       proceedings pursuant to chapter 607, F.S.
- 10 --       Revises the definition of the term "good faith" so that  
11       the application of the definition is limited to the  
12       provisions in ss. 631.262 and 631.263, F.S., regarding  
13       transfers of the insurer's property.
- 14 --       Clarifies s. 631.025, F.S., to provide that the court  
15       has jurisdiction in a delinquency proceeding over  
16       persons purporting to transact insurance business and  
17       against whom claims may exist now or in the future.
- 18 --       Clarifies s. 631.042, F.S., which contains provisions  
19       tolling statutes of limitation when delinquency  
20       petitions are filed. When the court denies a petition  
21       for delinquency, the remaining time to file an action  
22       against an insurer will be the greater of 60 days or the  
23       amount of unexpired time, as of the date of the filing  
24       of the petition of delinquency, remaining under the  
25       applicable statute of limitations.
- 26 --       Modifies the provisions in s. 631.156, F.S., relating to  
27       the department's ability to investigate the causes of an  
28       insurer's insolvency. The court is required, upon motion  
29       of the department, to enter an order expediting  
30       discovery related to the investigation. The court may  
31       impose penalties and sanctions for noncompliance with  
      the discovery order, including penalties and sanctions  
      for the destruction, loss, or spoliation of any evidence  
      that occurs after the entry of the discovery order.
- Amends s. 631.904, F.S., which provides definitions  
      applicable to the Florida Workers' Compensation  
      Insurance Guaranty Association, to revise the definition  
      of the term "covered claim" to exclude any return of  
      premium for retrospective rating plans.