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1 A bill to be entitled

2 An act relating to insurers; amending s. 626.854, F.S.;
3 limiting the scope of a public adjuster's authority;
4 requiring public adjusters to provide certain information
5 and make certain disclosures; prohibiting a public
6 adjuster from restricting access to certain entities and
7 communications with certain entities; requiring public
8 adjusters to submit certain recorded statements and sworn
9 examinations under certain circumstances; amending s.
10 631.021, F.S.; authorizing certain domiciliary courts to
11 exercise exclusive jurisdiction over certain persons under
12 certain circumstances; specifying the Circuit Court of
13 Leon County as having exclusive jurisdiction over certain
14 proceedings and claims; amending s. 631.041, F.S.;
15 entitling the estates of certain injured insurers to
16 actual damages; authorizing a receivership court to impose
17 additional sanctions; amending s. 631.0515, F.S.;
18 subjecting certain managing general agents or holding
19 companies to court jurisdiction under certain
20 circumstances; amending s. 631.141, F.S.; specifying
21 certain expenses as administrative and recoverable by a
22 receiver in certain proceedings; amending s. 631.205,
23 F.S.; specifying that entry of certain orders does not
24 constitute anticipatory breach of certain contracts or
25 serve as grounds for certain adverse contract actions by a
26 reinsurer; creating s. 631.206, F.S.; voiding certain
27 contractual arbitration provisions by insurers in
28 receivership; specifying a replacement arbitration
29 provision; amending s. 631.261, F.S.; voiding certain

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30 transfers or liens made by certain persons prior to
 31 certain delinquency proceedings; specifying a criterion
 32 for making certain transfers; amending ss. 631.262 and
 33 631.263, F.S.; specifying a criterion for making certain
 34 transfers; creating s. 631.400, F.S.; requiring a receiver
 35 to deposit certain estate funds of a liquidated insurance
 36 company into a separate closed estate account under
 37 certain circumstances; specifying use of such funds by the
 38 Division of Rehabilitation and Liquidation of the
 39 Department of Financial Services for certain purposes;
 40 specifying nonreversion of certain funds to the state but
 41 retention for certain uses; providing an effective date.

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43 Be It Enacted by the Legislature of the State of Florida:

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45 Section 1. Section 626.854, Florida Statutes, is amended
 46 to read:

47 626.854 "Public adjuster" defined; prohibitions;
 48 disclosure requirements.--The Legislature finds that it is
 49 necessary for the protection of the public to regulate public
 50 insurance adjusters and to prevent the unauthorized practice of
 51 law.

52 (1) A "public adjuster" is any person, except a duly
 53 licensed attorney at law as hereinafter in s. 626.860 provided,
 54 who, for money, commission, or any other thing of value,
 55 prepares, completes, or files an insurance claim form for an
 56 insured or third-party claimant or who, for money, commission,
 57 or any other thing of value, acts or aids in any manner on
 58 behalf of an insured or third-party claimant in negotiating for

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59 or effecting the settlement of a claim or claims for loss or
 60 damage covered by an insurance contract or who advertises for
 61 employment as an adjuster of such claims, and also includes any
 62 person who, for money, commission, or any other thing of value,
 63 solicits, investigates, or adjusts such claims on behalf of any
 64 such public adjuster.

65 (2) This definition does not apply to:

66 (a) A licensed health care provider or employee thereof
 67 who prepares or files a health insurance claim form on behalf of
 68 a patient.

69 (b) A person who files a health claim on behalf of another
 70 and does so without compensation.

71 (3)(a) A public adjuster may not give legal advice. A
 72 public adjuster may not act on behalf of or aid any person in
 73 negotiating or settling a claim relating to bodily injury,
 74 death, or noneconomic damages, or issues relating to extra-
 75 contractual damages, violations of part IX, tort claims,
 76 statutory interest, or costs and attorney's fees.

77 (b) A public adjuster must provide to the insurer and its
 78 representatives, together with the notice of representation, a
 79 complete copy of any contract between the public adjuster and
 80 the insured or claimant. The public adjuster must also provide
 81 the insurer and its representatives with a copy of any amended,
 82 revised, or supplemental contract entered into at any point
 83 during the claims handling process immediately upon entering
 84 into such amended, revised, or supplemental contract.
 85 Disclosures under this paragraph shall be in a form specified by
 86 rule of the Financial Services Commission.

87 (c) A public adjuster must disclose to his or her client

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88 and to the insurer any direct or indirect interest the public
 89 adjuster may have, and any compensation, referral fee, or other
 90 consideration the public adjuster may receive from any person
 91 performing services in connection with the adjustment of a claim
 92 or the repair or replacement of insured property.

93 (d) A public adjuster may not at any time restrict access
 94 to an insured, a claimant, or insured property by an insurer,
 95 company adjuster, independent adjuster, attorney, or other
 96 person acting on behalf of the insurer.

97 (e) A public adjuster may not, in connection with any
 98 claim, refuse to speak with an insurer, company adjuster,
 99 independent adjuster, attorney, or other person acting on behalf
 100 of the insurer. A public adjuster shall provide a recorded
 101 statement and an examination under oath upon request of an
 102 insurer, company adjuster, independent adjuster, attorney, or
 103 other person acting on behalf of the insurer.

104 (4) For purposes of this section, the term "insured"
 105 includes only the policyholder and any beneficiaries named or
 106 similarly identified in the policy.

107 Section 2. Subsection (6) is added to section 631.021,
 108 Florida Statutes, to read:

109 631.021 Jurisdiction of delinquency proceeding; venue;
 110 change of venue; exclusiveness of remedy; appeal.--

111 (6) The domiciliary court acquiring jurisdiction over
 112 persons subject to this section may exercise exclusive
 113 jurisdiction to the exclusion of all other courts, except as
 114 limited by the provisions of this section. Upon the issuance of
 115 an order of conservation, rehabilitation, or liquidation, the
 116 Circuit Court of Leon County shall have exclusive jurisdiction

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117 with respect to assets or property of any insurer subject to
 118 such proceedings and claims against said insurer's assets or
 119 property.

120 Section 3. Subsection (6) is added to section 631.041,
 121 Florida Statutes, to read:

122 631.041 Automatic stay; relief from stay; injunctions.--

123 (6) The estate of an insurer in rehabilitation or
 124 liquidation which is injured by any willful violation of an
 125 applicable stay or injunction shall be entitled to actual
 126 damages, including costs and attorney's fees, and, in
 127 appropriate circumstances, the receivership court may impose
 128 additional sanctions.

129 Section 4. Section 631.0515, Florida Statutes, is amended
 130 to read:

131 631.0515 Appointment of receiver; insurance holding
 132 company.--A delinquency proceeding pursuant to this chapter
 133 constitutes the sole and exclusive method of dissolving,
 134 liquidating, rehabilitating, reorganizing, conserving, or
 135 appointing a receiver of a Florida corporation which is not
 136 insolvent as defined by s. 607.01401(16); which through its
 137 shareholders, board of directors, or governing body is
 138 deadlocked in the management of its affairs; and which directly
 139 or indirectly owns all of the stock of a Florida domestic
 140 insurer. The department may petition for an order directing it
 141 to rehabilitate such corporation if the interests of
 142 policyholders or the public will be harmed as a result of the
 143 deadlock. The department shall use due diligence to resolve the
 144 deadlock. Whether or not the department petitions for an order,
 145 the circuit court shall not have jurisdiction pursuant to s.

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146 607.271, s. 607.274, or s. 607.277 to dissolve, liquidate, or
 147 appoint receivers with respect to, a Florida corporation which
 148 directly or indirectly owns all of the stock of a Florida
 149 domestic insurer and which is not insolvent as defined by s.
 150 607.01401(16). However, a managing general agent or holding
 151 company with a controlling interest in a domestic insurer in
 152 this state is subject to jurisdiction of the court under the
 153 provisions of s. 631.025.

154 Section 5. Paragraph (a) of subsection (7) of section
 155 631.141, Florida Statutes, is amended to read:

156 631.141 Conduct of delinquency proceeding; domestic and
 157 alien insurers.--

158 (7)(a) In connection with a delinquency proceeding, the
 159 department may appoint one or more special agents to act for it,
 160 and it may employ such counsel, clerks, and assistants as it
 161 deems necessary. The compensation of the special agents,
 162 counsel, clerks, or assistants and all expenses of taking
 163 possession of the insurer and of conducting the proceeding shall
 164 be fixed by the receiver, subject to the approval of the court,
 165 and shall be paid out of the funds or assets of the insurer.
 166 Such expenses are administrative expenses and are recoverable by
 167 the receiver in any actions in which the receiver is authorized
 168 or entitled to recover its administrative expenses. Within the
 169 limits of duties imposed upon them, special agents shall possess
 170 all the powers given to and, in the exercise of those powers,
 171 shall be subject to all duties imposed upon the receiver with
 172 respect to such proceeding.

173 Section 6. Section 631.205, Florida Statutes, is amended
 174 to read:

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175 631.205 Reinsurance proceeds.--All reinsurance proceeds
 176 payable under a contract of reinsurance to which the insolvent
 177 insurer is a party are to be paid directly to the domiciliary
 178 receiver as general assets of the receivership estate unless the
 179 reinsurance contract contains a clause which specifically names
 180 the insolvent insurer's insured as a direct beneficiary of the
 181 reinsurance contract. The entry of an order of conservation,
 182 rehabilitation, or liquidation shall not be deemed an
 183 anticipatory breach of any reinsurance contract, nor shall it be
 184 grounds for retroactive revocation or retroactive cancellation
 185 of any reinsurance contracts by the reinsurer.

186 Section 7. Section 631.206, Florida Statutes, is created
 187 to read:

188 631.206 Arbitration.--If an insurer in receivership has
 189 entered into an agreement containing an arbitration provision
 190 for resolution of disputes, that provision is void and shall be
 191 replaced by operation of law with the following provision:

192
 193 Any controversy or claim arising out of or relating to
 194 this contract, or the breach thereof, shall be settled
 195 by arbitration pursuant to the American Arbitration
 196 Association Commercial Arbitration Rules and chapter
 197 682, Florida Statutes, and judgment on the award
 198 rendered by the arbitrators shall be entered by the
 199 receivership court. Venue shall be in Leon County,
 200 Florida. Disputes shall be submitted to a panel of
 201 three arbitrators, one to be chosen by each party and
 202 the third by the two so chosen. Arbitrators shall be
 203 selected from a list of potential qualified

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204 arbitrators with 10 years' experience involving the
 205 insurance industry. If the parties do not agree upon
 206 the qualifications of a mediator, each party shall
 207 select its mediator from a list of potential mediators
 208 approved by the receivership court.

209
 210 Section 8. Subsection (1) of section 631.261, Florida
 211 Statutes, is amended, and subsection (4) is added to said
 212 section, to read:

213 631.261 Voidable transfers.--

214 (1)(a) Any transfer of, or lien upon, the property of an
 215 insurer or affiliate which is made or created within 4 months
 216 prior to the commencement of any delinquency proceeding under
 217 this chapter ~~which gives with the intent of giving to any~~
 218 creditor of the insurer a preference or enables ~~of enabling~~ the
 219 creditor to obtain a greater percentage of her or his debt than
 220 any other creditor of the same class, ~~and which is accepted by~~
 221 ~~such creditor having reasonable cause to believe that such~~
 222 ~~preference will occur,~~ shall be voidable.

223 (b) Any transfer of, or lien upon, the property of an
 224 insurer or affiliate which is made or created between 4 months
 225 and 1 year prior to the commencement of any delinquency
 226 proceeding under this chapter is void if such transfer or lien
 227 inured to the benefit of a director, officer, employee,
 228 stockholder, member, subscriber, affiliate, managing general
 229 agent, or insider or any relative of any director, officer,
 230 employee, stockholder, member, subscriber, affiliate, managing
 231 general agent, or insider.

232 (4) For purposes of this section, a transfer is not made

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233 or created until the insurer or affiliate has acquired rights in
 234 the property transferred.

235 Section 9. Paragraph (e) of subsection (2) of section
 236 631.262, Florida Statutes, is redesignated as paragraph (f) and
 237 amended, and new paragraph (e) is added to said subsection, to
 238 read:

239 631.262 Transfers prior to petition.--

240 (2) Transfers shall be deemed to have been made or
 241 suffered, or obligations incurred, when perfected according to
 242 the following criteria:

243 (a) A transfer of property other than real property shall
 244 be deemed to be made or suffered when it becomes so far
 245 perfected that no subsequent lien obtainable by legal or
 246 equitable proceedings on a simple contract could become superior
 247 to the rights of the transferee.†

248 (b) A transfer of real property shall be deemed to be made
 249 or suffered when it becomes so far perfected that no subsequent
 250 bona fide purchaser from the insurer could obtain rights
 251 superior to the rights of the transferee.†

252 (c) A transfer which creates an equitable lien shall not
 253 be deemed to be perfected if there are available means by which
 254 a legal lien could be created.†

255 (d) Any transfer not perfected prior to the filing of a
 256 petition in a delinquency proceeding shall be deemed to be made
 257 immediately before the filing of a successful petition.†

258 (e) For the purposes of this section, a transfer is not
 259 made until the insurer or affiliate has acquired rights in the
 260 property transferred.

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261 (f)~~(e)~~ Paragraphs (a)-(e)~~(d)~~ apply whether or not there
 262 are or were creditors who might have obtained any liens or
 263 persons who might have become bona fide purchasers.

264 Section 10. Subsection (6) is added to section 631.263,
 265 Florida Statutes, to read:

266 631.263 Transfers after petition.--

267 (6) For the purposes of this section, a transfer is not
 268 made until the insurer or affiliate has acquired rights in the
 269 property transferred.

270 Section 11. Section 631.400, Florida Statutes, is created
 271 to read:

272 631.400 Closed estate account.--

273 (1) If unclaimed funds remain in the estate of a liquidated
 274 insurance company after the estate is closed or a receiver
 275 recovers funds in an estate of a liquidated insurance company
 276 after the estate is closed, the receiver shall deposit those
 277 funds when received into a separate closed estate account.

278 (2) Funds received and deposited in the account pursuant to
 279 subsection (1) shall be used by the Division of Rehabilitation
 280 and Liquidation of the Department of Financial Services to defray
 281 the division's expenses in the discharge of its duties as
 282 prescribed by law, including the initiation of delinquency
 283 proceedings and all other legitimate expenses relating to the
 284 discharge of the duties imposed in and charged to the division.

285 (3) If, at the end of any fiscal year, a balance of funds
 286 remains in a closed estate account, such balance shall not
 287 revert to the general fund of the state but shall be retained in
 288 the closed estate account to be used for the purposes set forth
 289 in subsection (2).

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290 Section 12. This act shall take effect upon becoming a
291 law.