

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 3024

SPONSOR: Banking and Insurance Committee and Senator Smith

SUBJECT: Insurers

DATE: April 14, 2004      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Knudson</u>	<u>Deffenbaugh</u>	<u>BI</u>	<u>Fav/CS</u>
2.	_____	_____	<u>JU</u>	_____
3.	_____	_____	<u>AGG</u>	_____
4.	_____	_____	<u>AP</u>	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**I. Summary:**

Committee Substitute for Senate Bill 3024 amends provisions relating to the requirements for obtaining a limited license to sell baggage and motor vehicle insurance, amends the definition of a public adjuster, amends the Insurers Rehabilitation and Liquidation Act, amends provisions relating to continuing care facilities, makes changes regarding how credit life and disability insurance reserves are calculated, and permits the Financial Services Commission to adopt mortality and disability tables by rule for use in determining the minimum non-forfeiture standard for life insurance.

The bill makes the following changes regarding limited licenses to sell baggage and motor vehicle insurance:

- Provides that an applicant for a limited license for baggage and motor vehicle excess liability insurance: 1) need only submit one application; 2) must obtain a license for each office; and 3) is required to pay applicable license fees. Permits a business entity offering this type of insurance to use part time employees to sell the product.

The bill makes the following changes to the definition of “public adjuster”:

- Excludes supervised employees of attorneys from the definition.
- Prohibits public adjusters from negotiating or settling claims related to extra-contractual damages unrelated to damages under the policy, unfair claims practices violations, torts, or statutory interest, costs, and attorney’s fees.
- Requires a public adjuster to ensure that if a licensed professional used in formulating estimates or adjusting a claim is licensed by the Florida Department of Business and Professional Regulation.

- Prohibits public adjusters from restricting access to the insured, a claimant, or the insured property.

The bill makes the following changes regarding the Insurers Rehabilitation and Liquidation Act:

- States that domiciliary courts that acquire jurisdiction over persons subject to s. 631.021, F.S., may exercise exclusive jurisdiction except as limited by the provisions of s. 631.021, F.S.
- Places jurisdiction over the assets or property in the Circuit Court of Leon County in a conservation, rehabilitation, or liquidation proceeding.
- Mandates that the estate of an insurer in rehabilitation or liquidation is entitled to actual damages, including costs and attorney's fees if it is injured by a willful violation of an applicable stay or injunction.
- Provides that a managing general agent or holding company with a controlling interest in a Florida domestic insurer is subject to jurisdiction of the court under the provisions of s. 631.025, F.S. The purpose of this change is to enable a court to exercise jurisdiction over "shell corporations" designed to shelter an insurance company's assets.
- States that a receiver's (the Department of Financial Services) expenses in a delinquency proceeding are administrative expenses that are recoverable by the receiver in an action in which the receiver is authorized to recover administrative expenses.
- Specifies that the entry of an order of conservation, rehabilitation or liquidation against an insurer cannot be deemed an anticipatory breach of a reinsurance contract, and cannot be grounds for retroactively revoking or canceling a reinsurance contract.
- Provides a common process of arbitration for insurance companies that are in receivership, and voids all arbitration provisions entered into by insurers who are in receivership.
- Amends requirements related to voidable transactions.

The bill makes the following changes regarding continuing care facilities:

- Permits the Financial Services Commission to require by rule that a continuing care provider submit electronically all or part of the annual report or quarterly statement to the Office of Insurance Regulation.
- Allows a continuing care retirement community to deposit required escrow accounts in state or federal chartered banks, saving and loan associations, and trust companies having a physical presence and doing business in Florida.
- Distinguishes the application of the term "facility" to a continuing care retirement community's entire facility and the application of the term to its nursing home facility with regard to standards for the use of sheltered nursing home beds. This clarification will make it easier for continuing care providers to use sheltered nursing home beds to serve people who are not continuing care retirement community residents.

The bill makes the following changes regarding the calculation of reserves for credit disability and life insurance:

- Exempts credit disability insurance from the requirement of maintaining an active reserve that is less in the aggregate than the pro-rata gross unearned premiums for such policies.
- Allows credit life and disability insurers to use newly adopted disability and mortality tables to set reserves, and repeals the previous requirement that the minimum reserve for credit life and disability policies be the unearned gross premium.

The bill allows the Financial Services Commission to adopt the National Association of Insurance Commissioner's mortality and disability tables by rule for use in determining the minimum non-forfeiture standard for life insurance.

The bill substantially amends the following sections of the Florida Statutes: 625.081, 625.121, 626.321, 626.854, 631.021, 631.041, 631.0515, 631.141, 631.205, 631.261, 631.262, 631.263, 627.131, 651.026, 651.0261, 651.033, and 651.118.

This bill creates section 631.206 of the Florida Statutes.

This bill repeals section 625.131 of the Florida Statutes.

## II. Present Situation:

### **Limited License Insurance—Baggage and Motor Vehicle Excess Liability Coverage**

Insurance agents may be classified according to the number of products they sell, the type of products they sell, and their place of residency. A "general lines agent" is authorized under state law to transact any or all of the following lines of insurance: property, casualty, surety, health, and marine insurance. "Limited lines agents" are individuals or entities licensed as agents but limited to selling one or more of the following forms of insurance (each requiring a separate license): motor vehicle physical damage and mechanical breakdown, industrial fire or burglary, personal accident, baggage and motor vehicle excess liability, credit, credit life or disability, credit property, crop hail and multiple peril crop insurance, or in-transit and storage personal property.<sup>1</sup>

A limited license may be issued for the sale of insurance that covers personal effects, motor vehicle excess liability coverage, and coverage for the liability of the lessee to the lessor (lessee/lessor coverage) for damage to a rented or leased motor vehicle.<sup>2</sup> The license may be given to a business office that offers motor vehicles for rent or lease if insurance sales activities authorized by the license are limited to full-time salaried employees. Excess liability coverage and lessee/lessor coverage may only be offered if the lease or rental agreement does not exceed 30 days and coverage cannot be provided for more than 30 consecutive days per lease period. If the lease is extended beyond 30 days, coverage may be extended one time for up to an additional 30 days. Written notice must be given to the lessee stating that the lessee's personal insurance

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<sup>1</sup> Section 626.321, F.S.

<sup>2</sup> Section 626.321(d), F.S.

policy that provides coverage on an owned motor vehicle may provide additional excess coverage.

### **Public Adjusters**

Under the Insurance Code, there are three types of licensed adjusters in Florida: public adjusters,<sup>3</sup> independent adjusters,<sup>4</sup> and company employee adjusters.<sup>5</sup> A fourth type, catastrophe and emergency adjusters, are unlicensed and only used in emergency situations.<sup>6</sup> A public adjuster is an adjuster who works on behalf of a claimant rather than an insurance company. These adjusters aid claimants in filing insurance claims, investigating claims, and negotiating the settlement of a claim. However, a public adjuster is prohibited from acting on behalf of or aiding any person in negotiating or settling a claim relating to bodily injury, death, or non-economic damages, or from giving legal advice.<sup>7</sup> A public adjuster does not include a licensed health care provider who prepares or files a health insurance claim form on behalf of a patient, or a person who files a health claim on behalf of another and does so without compensation.

Public adjusters must be licensed by the Office of Insurance Regulation (OIR) based on specified qualifications which include having sufficient experience, training, or instruction concerning the adjusting of damages or losses under insurance contracts. These adjusters must pass a written examination and file a \$50,000 surety bond with the OIR prior to licensure. The bond must be in favor of the OIR and shall authorize recovery by that office of the damages sustained in case the licensee is guilty of fraud or unfair practices in connection with his or her business as a public adjuster. Representatives with the OIR state that there are currently 381 licensed public adjusters.<sup>8</sup>

In general, an adjuster may adjust in various classes of insurance including all lines insurance except life and annuities, motor vehicle physical damage insurance, property and casualty insurance, workers' compensation insurance, and health insurance.

Section 626.8698, F.S., creates disciplinary guidelines specifically for public adjusters. The OIR can deny, suspend, or revoke the license of a public adjuster as well as impose a fine of up to \$5,000 per act, if they violate the following:

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<sup>3</sup> Section 626.854, F.S. A public adjuster is a person who, for compensation, prepares, completes, or files an insurance claim form for an insured or third-party claimant, or who, for compensation acts or aids in any manner on behalf of an insured or third-party claimant in negotiating for, or effecting the settlement of, a claim or claims for loss or damage covered by an insurance contract or who advertises for employment as an adjuster of such claims. An exception is provided for licensed attorneys. A public adjuster also includes any person who, for money, commission, or any thing of value, solicits, investigates, or adjusts such claims on behalf of any such public adjuster.

<sup>4</sup> Section 626.855, F.S. An independent adjuster is any person who is self-employed or is associated with or employed by an independent adjusting firm or other independent adjusters, and who undertakes on behalf of an insurer to ascertain and determine the amount of any claim payable under an insurance contract or undertakes to effect settlement of a claim.

<sup>5</sup> Section 626.856, F.S. A company employee adjuster is an adjuster who is employed by an insurer or insurer's subsidiary, and who undertakes on behalf of an insurer to ascertain and determine the amount of any claim payable under an insurance contract or undertakes to effect settlement of a claim.

<sup>6</sup> Section 626.859, F.S. Emergency adjusters are designated and certified by the Office of Insurance Regulation as qualified to adjust claims.

<sup>7</sup> Section 626.854, F.S., also provides legislative intent language which states that it is necessary for the protection of the public to regulate public insurance adjusters and to prevent the unauthorized practice of law.

<sup>8</sup> There are 337 resident and 44 non-resident licensed public adjusters.

- any provision of ch. 626, F.S.;
- a rule or order of the OIR;
- receive payment as a result of an unfair or deceptive practice or receive or accept any fee, kickback, or other thing of value pursuant to any agreement or understanding, oral or otherwise;
- enter into a split-fee arrangement with another person who is not a public adjuster;
- be paid for services that have not been performed;
- violate s. 316.066, F.S., which prohibits the use of accident reports for commercial solicitation purposes, or s. 817.234, F.S., which is the criminal statute prohibiting the filing of a false or fraudulent insurance claim.
- solicit or take advantage of a person who is vulnerable, or otherwise upset as a result of a trauma, accident, or other similar occurrence; or
- violate any ethical rule of the Financial Services Commission.

There are further provisions under the Insurance Code (ss. 626.611 and 626.621, F.S.) which authorize general grounds for suspension or revocation of a license and related disciplinary provisions which apply to public adjusters, insurance agents, and other licensees under ch. 626, F.S. These provisions include demonstrated lack of fitness or trustworthiness, fraudulent or dishonest practices, misappropriations of funds, etc. In addition, in 1993, the Department of Insurance adopted by rule a code of ethical standards for all adjusters (Rule Chapter 4-220.201, F.A.C.) and the following year promulgated a rule pertaining to the conduct of public adjusters. (Rule Chapter 4-200.051, F.A.C.)<sup>9</sup>

Rule 4-220.051(6), requires that all contracts for public adjuster services must be in writing and must be signed by the adjuster. Under rule 4-220.201(3), F.A.C., a violation of any provision of this rule constitutes grounds for administrative action against the public adjuster upon grounds that include, but are not limited to, that the violation demonstrates a lack of fitness to engage the business of insurance. That rule also provides:

- (4)(a), an adjuster must disclose all financial interest in any direct or indirect aspect of an adjusting transaction to the insured.
- (5)(a), a public adjuster shall advise the insured and claimant in advance of their right to choice of counsel to represent the insured or claimant.
- (5)(d), a public adjuster shall not prevent, or attempt to dissuade or prevent, a claimant from speaking privately with the insurer, company or independent adjuster, attorney, or any other person, regarding the settlement of the claim.
- (5)(f), a public adjuster shall not accept referrals of business from any person with whom the public adjuster may conduct business where there is any form or manner of agreement to compensate the person, whether directly or indirectly, for referring business to the public adjuster, except as between licensed public adjusters, or licensed public adjusters and members of the Florida Bar, no public adjuster may compensate any person, whether directly or indirectly, for the principal purpose of referring business to the public adjuster.

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<sup>9</sup> Now the Office of Insurance Regulation.

Further, s. 626.8738, F.S., provides that in addition to any other remedy imposed under the Insurance Code, any person who acts as a resident or nonresident public adjuster without being licensed is guilty of a third-degree felony.

### **Rehabilitation or Liquidation of Insurers**

Part I of ch. 631, F.S., contains the Insurers Rehabilitation and Liquidation Act. The act governs the receivership process for insurance companies in Florida. The Office of Insurance Regulation oversees active insurance companies and monitors their financial health. When insurers experience severe financial difficulty and are impaired or insolvent,<sup>10</sup> they are subject to a delinquency proceeding such as rehabilitation, liquidation, reorganization or conservancy whereby the insurer is placed into receivership. Federal law specifies that insurance companies cannot file for bankruptcy.<sup>11</sup> Thus the receivership provisions of ch. 631, F.S., are the sole means by which an insurance company may be placed into receivership.<sup>12</sup>

A delinquency proceeding is initiated when the director of the OIR notifies the Department of Financial Services (Department) that a determination has been made that ground(s) exist for initiating a delinquency proceeding against an insurer. The Department may then commence the delinquency proceeding by applying to the court<sup>13</sup> for an order directing the insurer to show cause why the Department should not be the receiver of the insurance company pursuant to receivership proceedings. A full hearing is held and the court either grants or denies the application. The Department may also commence a delinquency proceeding by applying to the court by petition for the entry of a consent order of conservation, rehabilitation, or liquidation.<sup>14</sup> Rehabilitation and liquidation are the most commonly utilized delinquency proceedings by the Division of Rehabilitation and Liquidation (division) of the Department of Financial Services. Each seeks to apportion equitably any unavoidable losses and to maximize the recovery of assets for the benefit of policyholders, creditors, the public, and other claimants of the insurer.<sup>15</sup>

In rehabilitation, the Department takes possession of the property of the insurer (referred to as a receivership) and conducts the insurer's business in such a way as to attempt to correct the financial condition of the company.<sup>16</sup> If the rehabilitation is successful, the insurance company regains possession of its property and continues operations. However, if the rehabilitation is unsuccessful, then liquidation is likely to occur.

An insurer is subject to liquidation if it is, or is about to become, insolvent. In liquidation the Department takes possession of all property and assets of the insurer and gives notice to all creditors who have claims against the insurer to present claims.<sup>17</sup> The outstanding claims against the insurer are settled and at the end of the liquidation process the insurance company ceases to exist because it has no assets with which to operate.

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<sup>10</sup> Sections 631.051 and 631.061, F.S. (2003).

<sup>11</sup> 11 U.S.C. § 109(b)(2)

<sup>12</sup> Section 631.021, F.S. (2003).

<sup>13</sup> The venue of a delinquency proceeding or summary proceeding is the Circuit Court of Leon County. Appeal is available to the Florida First District Court of Appeal. Sections 631.021(2) & (3), F.S. (2003).

<sup>14</sup> Section 631.031, F.S. (2003).

<sup>15</sup> Section 631.001, F.S. (2003).

<sup>16</sup> Section 631.101, F.S. (2003).

<sup>17</sup> Section 631.111, F.S. (2003).

In both rehabilitation and liquidation, receivership estates are created whereby the receiver (the Department) receives control over the insurer and its assets. The division administers the receivership estates. Generally, all receivership expenses are paid for out of the assets of the receivership estate (the insurance company's assets). The receiver has authority to hire outside attorneys, accountants, and other experts to audit the accounts and policies of the impaired insurer, though the court must approve the use of any company funds to hire professionals to aid in the receivership process.

Once the division successfully places an insurer into receivership, staff and any contractors hired by the division spend their time marshalling the assets of the company and paying claims. This process includes selling real property and other assets of the company, as well as prosecuting lawsuits against negligent actuaries, auditors, company directors and officers of the insurer. The division also collects any reinsurance that is due, which is often of the insurer's largest assets. Representatives from the division indicate that receivership is often a long-term undertaking that can last over 10 years.

### **Continuing Care Facilities**

In Florida, a person must obtain a certificate of authority<sup>18</sup> from the Office of Insurance Regulation in order to engage in the business of providing continuing care<sup>19</sup> or to construct a continuing care facility.<sup>20</sup> The certification process is designed to protect residents of continuing care facilities by ensuring that such facilities are financially solvent, that the owners and administrators of the facility are reputable, and that contracts between residents and the facility are fair, and that resident's rights are respected. Facilities are required to file an annual financial report that includes detailed financial information.<sup>21</sup>

### **Mortality and Disability Tables for Life Insurance and Annuities**

Under current law, new mortality and disability tables for life insurance and annuities are required to be adopted by statute under s. 625.121, F.S. Every state except Florida permits their insurance department to adopt these mortality and disability tables by rule rather than enacting a law every time the tables are updated. The National Association of Insurance Commissioners (NAIC) adopts and updates periodically the mortality and disability tables pertaining to life insurance and annuities. According to representatives with the Office of Insurance Regulation (OIR), allowing the OIR to adopt the NAIC tables by rule would facilitate the adoption of such tables and aid insurers in complying with Florida's regulations.

## **III. Effect of Proposed Changes:**

**Section 1.** Amends s. 626.321, F.S., pertaining to limited licenses for baggage and motor vehicle excess liability insurance. The bill provides that an entity applying for a license under this section is required to submit only one application for a license; is required to obtain a license for each office; and is required to pay applicable license fees. The bill further provides that for

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<sup>18</sup> Section 651.023, F.S.

<sup>19</sup> "Continuing care" is defined as providing shelter and either nursing care or personal services as defined by s. 400.402, F.S., pursuant to a contract. (s. 621.011(2), F.S.)

<sup>20</sup> Section 651.021, F.S.

<sup>21</sup> Section 651.026, F.S.

limited licenses for baggage and motor vehicle excess liability insurance, a business entity offering this type of insurance may use part-time, as opposed to full-time employees, to offer such insurance. The measure also corrects a statutory cross-reference.

**Section 2.** Amends s. 626.854, F.S., which defines “public adjuster” for purposes of part IV, ch. 626, F.S. The bill states that an employee of a licensed attorney is not a “public adjuster.”

The bill states that a public adjuster cannot negotiate or settle a claim relating to extra-contractual damages unrelated to damages under the policy, unfair insurance trade practices, tort claims, statutory interest, or costs and attorney’s fees. The prohibited settlement activities are added to the current prohibitions regarding bodily injury, death, or non-economic damages claims. The bill states that these requirements cannot be construed to prohibit a public adjuster from testifying or consulting with an attorney in pursuing claims for extra-contractual damages or unfair claims settlement practices.

Public adjusters are required by the bill to ensure that licensed professionals sued in adjusting a claim are licensed by the Florida Department of Business and Professional Regulation. The bill prohibits public adjusters from restricting an insurer’s access to the insured, a claimant, or the insured property. All three must be made available to the insurer or any person acting on the insurer’s behalf.

**Section 3.** Creates subsection (6) of s. 631.021, F.S. The section details the original and appellate jurisdiction and change of venue rules for delinquency proceedings, and states that ch. 631, F.S., delinquency proceedings are the exclusive means of liquidating, rehabilitating, reorganizing, or conserving an insurer. New subsection (6) states that domiciliary courts that acquire jurisdiction over persons subject to s. 631.021, F.S., may exercise exclusive jurisdiction except as limited by the provisions of s. 631.021. The bill also provides that once an order of conservation, rehabilitation, or liquidation is issued, the Circuit Court of Leon County has exclusive jurisdiction over the assets or property of any insurer subject to proceedings and claims against their assets or property.

**Section 4.** Creates subsection (6) of s. 631.041, F.S., to mandate that the estate of an insurer in rehabilitation or liquidation is entitled to actual damages, including costs and attorney’s fees if it is injured by a willful violation of an applicable stay or injunction. Additional sanctions may be imposed if appropriate.

**Section 5.** Amends s. 631.0515, F.S., to provide that a managing general agent or holding company with a controlling interest in a Florida domestic insurer is subject to jurisdiction of the court under the provisions of s. 631.025, F.S. The purpose of this change is to enable a court to exercise jurisdiction over “shell corporations” designed to shelter an insurance company’s assets.

**Section 6.** Amends s. 631.141(7)(a), F.S., which states that a receiver’s (the Department) expenses in a delinquency proceeding are administrative expenses that are recoverable by the receiver in an action in which the receiver is authorized to recover administrative expenses.

**Section 7.** Amends s. 631.205, F.S., to specify that the entry of an order of conservation, rehabilitation or liquidation against an insurer cannot be deemed an anticipatory breach of a



reinsurance contract, and cannot be grounds for retroactively revoking or canceling a reinsurance contract. Some reinsurers require provisions in reinsurance contracts that state if an insurance company goes into receivership, it is a violation of the reinsurance contract. The changes created by this section will prevent a reinsurer from voiding a contract because of the entry of an order of conservation, rehabilitation, or liquidation.

**Section 8.** Creates s. 631.206, F.S., which provides a common process of arbitration for insurance companies that are in receivership, and voids all arbitration provisions that insurers who are in receivership entered into. Arbitration must be conducted pursuant to the American Arbitration Association commercial Arbitration Rules and ch. 682, F.S. Venue is in Leon County, Florida. Hearing will be conducted in front of a three person arbitration panel, with each party choosing one arbitrator, and the third being selected by the two arbitrators chosen by the parties. The arbitrators must be selected from a list of qualified arbitrators with 10 years experience in the insurance industry. The section also contains a section regarding mediators, stating if the parties cannot agree on a mediator, each party shall select one from a list approved by the receivership court.

**Section 9.** Amends subsection (1) and creates subsection (4) of s. 631.261, F.S. The section governs certain types of voidable transfers and states that a transfer of an insurer's property are voidable if made within 4 months of the commencement of delinquency proceedings under ch. 631, F.S., with the intent of enabling a creditor to obtain a greater percentage of his or her debt than other creditors of the same class. The bill amends subsection (1) by eliminating the intent element of the current statute regarding enabling a creditor to obtain a greater percentage of debt. The bill also states that a transfer or lien upon the property of an insurer or the affiliate of an insurer that is made between 4 months to 1 year prior to the commencement of a delinquency proceeding under the chapter is void if the transfer or lien benefited a director, officer, employee, stockholder, member, subscriber, affiliate, managing general agent, insider, of the insurer, or a relative of any of the foregoing. The changes should make it more difficult to make transfers of insurance company property that benefit certain parties to the exclusion of others prior to the start of delinquency proceedings.

Subsection (4) is created and mandates that for purposes of s. 631.261, F.S., a transfer is not made or created until the insurer or affiliate of the insurer has acquired rights in the transferred property. The timing of a transfer is important in determining whether the transfer may be voided by the receiver (the Department).

**Section 10.** Amends s. 631.262(2)(e) F.S. The section contains the requirements for making a transfer of insurer property within 1 year prior to the filing of a successful petition in a delinquency proceeding. The bill states that for purposes of the section, a transfer is not made until the insurer or affiliate has acquired rights in the transferred property. The change conforms to the changes in section 8 of the bill regarding a transfer and whether it may be voided.

**Section 11.** Amends s. 631.263(6), F.S. The section contains the requirements for making a transfer of insurer property made after the original petition is filed in a delinquency proceeding. The bill states that for purposes of the section, a transfer is not made until the insurer or affiliate has acquired rights in the transferred property. The change conforms to the changes in section 8 of the bill regarding a transfer and whether it may be voided.

**Section 12.** Amends s. 625.081, F.S., and exempts credit disability insurance from the requirement that the insurer maintain an active life reserve that is less in the aggregate than the pro rata gross unearned premiums for such policies. The exemption will allow reserves to be set using new mortality and disability tables adopted by section 13 of this bill. Use of these tables should enable insurers to set more accurate reserves.

**Section 13.** Amends 625.121, F.S., relating to the standard valuation law pertaining to life insurance policies, to permit the Financial Services Commission (commission) to adopt the National Association of Insurance Commissioner's (NAIC) mortality and disability tables by rule. Under current law, mortality and disability tables are periodically updated and adopted for use by all states. This provision permits the commission to adopt updated tables by rule of the Financial Services Commission for policies issued on or after July 1, 2004. The provision applies to ordinary life, disability in or supplemental to ordinary life, accidental death benefits in or supplemental to policies, annuities and pure endowments.

The bill also allows insurers to use the minimum reserve requirements for single-premium credit disability insurance, monthly premium credit life insurance and monthly premium credit disability insurance established by the National Association of Insurance Commissioners. This provision applies to policies issued prior to January 1, 2004.

**Section 14.** Repeals s. 625.131, F.S., which requires the minimum reserve for credit life and disability policies to be the unearned gross premium, and contains reserve requirements. The section is repealed due to the adoption of new standard ordinary mortality tables in s. 625.121(13), F.S. (section 5 of this bill), which will be used to set reserves.

**Section 15.** Amends s. 627.476, F.S., to permit a life insurance company to substitute the ordinary mortality tables adopted after 1980 by the National Association of Insurance Commissioners for use in determining the minimum non-forfeiture standard.

**Section 16.** Adds subsection (9) to s. 651.026, F.S., to give the Financial Services Commission rulemaking authority to require that continuing care facilities submit their annual reports by electronic means.

**Section 17.** Amends s. 651.0261, F.S., to give the Financial Services Commission rulemaking authority to require that continuing care facilities submit their quarterly statements by electronic means.

**Section 18.** Amends s. 651.033(1)(a), F.S., to update terminology now in ch. 651, F.S., specifying where a continuing care retirement community may deposit required escrow accounts. The change will allow accounts to be established in state or federal chartered banks, saving and loan associations, and trust companies having a physical presence and doing business in Florida.

**Section 19.** Creates subsection (7) of s. 651.118, F.S. The bill helps to distinguish the application of the term "facility" to a continuing care retirement community's entire facility and the application of the term to its nursing home facility with regard to standards for the use of

sheltered nursing home beds. It will make it easier for continuing care providers to use sheltered nursing home beds to serve people who are not continuing care retirement community residents.

**Section 20.** Provides that the act takes effect upon becoming a law.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

**V. Economic Impact and Fiscal Note:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Third-party claimants could no longer be represented by public adjusters and insured could not be represented by such adjusters as to claims relating to bad faith claims, claims involving unfair claims practices violations, tort claims, statutory interest, costs, and attorney's fees. These insured and third-party claimants may have to resort to hiring an attorney or an accountant in order to settle such claims.

The bill would limit the authority of public adjusters and their potential income.

Insurance companies will benefit under the bill's provisions since they can obtain reasonable access to an insured or claimant, or to the insured's property.

Section 3 of the bill allows an insurer's estate to recover damages and costs, and sections 8, 9, and 10, amend what constitutes a voidable transfer. The provisions will reduce the amount of debt recoverable by some creditors through transfers of property to the creditor made within 4 months of the start of delinquency proceedings. All of the changes to these sections will negatively impact persons found by the court to have damaged an estate in receivership. However, estates so wronged will receive a corresponding benefit when recovering for violations based on these amendments. All of these provisions will potentially increase the amount of assets recoverable by the Department and thereby

decrease amounts that may need to be assessed against insurers to fund the insurance guaranty associations.

The bill limits the right of a reinsurer to cancel a policy on the grounds that an insurance company breached its contract with the reinsurer by going into receivership. This will increase costs for reinsurers, while increasing the amounts of assets the Department can use to rehabilitate the insurer or when liquidating assets.

Continuing care facilities may realize greater earnings on escrow accounts since they will have more options (a state or federally chartered bank, savings and loan, or trust company physically in Florida and doing business) from which to choose where to make deposits.

**C. Government Sector Impact:**

The bill, specifically the creation of the Closed Estate Account in section 11 of the bill, will have a negative fiscal impact on the State School Trust Fund. The Closed Estate Account will be funded from the unclaimed assets of a liquidated insurer or assets recovered after the closing of the estate of a liquidated insurance company. Currently, these funds revert to the Unclaimed Property Trust Fund, which deposits funds into the State School Trust Fund. The amount of potential reduction to the State School Trust Fund would vary from year to year, but the average amount over fiscal year 2001-02, 2002-03 and thus far in 2003-04 (9 months) is \$279,000.

Section 5 of the bill permits the Department of Financial Services to recover its expenses in a delinquency proceeding in actions in which such recovery is authorized. This will have a positive fiscal impact on the Department of Financial Services.

The Leon County Circuit Court may be fiscally impacted by the bill's requirement that it will have exclusive jurisdiction over insurer receivership proceedings. The fiscal impact should be minimal because most cases of this type are currently heard in the Leon County Circuit Court. Any increase in costs to the Leon County court would be accompanied by cost savings to other courts because of this provision and the bill's prohibition on duplicate filings in other courts.

**VI. Technical Deficiencies:**

On page 10, line 31 and page 11, lines 1 and 2, the bill makes reference to the selection of a mediator. The reference should be to the selection of an arbitrator.

On page 7, line 25, the jurisdiction of the domiciliary court is established, except as limited "by this section." The correct term should be "by this chapter."

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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