

By Senator Smith

14-1301-04

See HB 1687

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

1 reinsurer; creating s. 631.206, F.S.; voiding
2 certain contractual arbitration provisions by
3 insurers in receivership; specifying a
4 replacement arbitration provision; amending s.
5 631.261, F.S.; voiding certain transfers or
6 liens made by certain persons prior to certain
7 delinquency proceedings; specifying a criterion
8 for making certain transfers; amending ss.
9 631.262 and 631.263, F.S.; specifying a
10 criterion for making certain transfers;
11 creating s. 631.400, F.S.; requiring a receiver
12 to deposit certain estate funds of a liquidated
13 insurance company into a separate closed estate
14 account under certain circumstances; specifying
15 use of such funds by the Division of
16 Rehabilitation and Liquidation of the
17 Department of Financial Services for certain
18 purposes; specifying nonreversion of certain
19 funds to the state but retention for certain
20 uses; providing an effective date.

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22 Be It Enacted by the Legislature of the State of Florida:
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24 Section 1. Section 626.854, Florida Statutes, is
25 amended to read:
26 626.854 "Public adjuster" defined; prohibitions;
27 disclosure requirements.--The Legislature finds that it is
28 necessary for the protection of the public to regulate public
29 insurance adjusters and to prevent the unauthorized practice
30 of law.

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1 (1) A "public adjuster" is any person, except a duly
2 licensed attorney at law as hereinafter in s. 626.860
3 provided, who, for money, commission, or any other thing of
4 value, prepares, completes, or files an insurance claim form
5 for an insured or third-party claimant or who, for money,
6 commission, or any other thing of value, acts or aids in any
7 manner on behalf of an insured or third-party claimant in
8 negotiating for or effecting the settlement of a claim or
9 claims for loss or damage covered by an insurance contract or
10 who advertises for employment as an adjuster of such claims,
11 and also includes any person who, for money, commission, or
12 any other thing of value, solicits, investigates, or adjusts
13 such claims on behalf of any such public adjuster.

14 (2) This definition does not apply to:

15 (a) A licensed health care provider or employee
16 thereof who prepares or files a health insurance claim form on
17 behalf of a patient.

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

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

26 (b) A public adjuster must provide to the insurer and
27 its representatives, together with the notice of
28 representation, a complete copy of any contract between the
29 public adjuster and the insured or claimant. The public
30 adjuster must also provide the insurer and its representatives
31 with a copy of any amended, revised, or supplemental contract

1 entered into at any point during the claims handling process
2 immediately upon entering into such amended, revised, or
3 supplemental contract. Disclosures under this paragraph shall
4 be in a form specified by rule of the Financial Services
5 Commission.

6 (c) A public adjuster must disclose to his or her
7 client and to the insurer any direct or indirect interest the
8 public adjuster may have, and any compensation, referral fee,
9 or other consideration the public adjuster may receive from
10 any person performing services in connection with the
11 adjustment of a claim or the repair or replacement of insured
12 property.

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

17 (e) A public adjuster may not, in connection with any
18 claim, refuse to speak with an insurer, company adjuster,
19 independent adjuster, attorney, or other person acting on
20 behalf of the insurer. A public adjuster shall provide a
21 recorded statement and an examination under oath upon request
22 of an insurer, company adjuster, independent adjuster,
23 attorney, or other person acting on behalf of the insurer.

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

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

29 631.021 Jurisdiction of delinquency proceeding; venue;
30 change of venue; exclusiveness of remedy; appeal.--

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1 (6) The domiciliary court acquiring jurisdiction over
2 persons subject to this section may exercise exclusive
3 jurisdiction to the exclusion of all other courts, except as
4 limited by the provisions of this section. Upon the issuance
5 of an order of conservation, rehabilitation, or liquidation,
6 the Circuit Court of Leon County shall have exclusive
7 jurisdiction with respect to assets or property of any insurer
8 subject to such proceedings and claims against said insurer's
9 assets or property.

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

12 631.041 Automatic stay; relief from stay;
13 injunctions.--

14 (6) The estate of an insurer in rehabilitation or
15 liquidation which is injured by any willful violation of an
16 applicable stay or injunction shall be entitled to actual
17 damages, including costs and attorney's fees, and, in
18 appropriate circumstances, the receivership court may impose
19 additional sanctions.

20 Section 4. Section 631.0515, Florida Statutes, is
21 amended to read:

22 631.0515 Appointment of receiver; insurance holding
23 company.--A delinquency proceeding pursuant to this chapter
24 constitutes the sole and exclusive method of dissolving,
25 liquidating, rehabilitating, reorganizing, conserving, or
26 appointing a receiver of a Florida corporation which is not
27 insolvent as defined by s. 607.01401(16); which through its
28 shareholders, board of directors, or governing body is
29 deadlocked in the management of its affairs; and which
30 directly or indirectly owns all of the stock of a Florida
31 domestic insurer. The department may petition for an order

1 directing it to rehabilitate such corporation if the interests
2 of policyholders or the public will be harmed as a result of
3 the deadlock. The department shall use due diligence to
4 resolve the deadlock. Whether or not the department petitions
5 for an order, the circuit court shall not have jurisdiction
6 pursuant to s. 607.271, s. 607.274, or s. 607.277 to dissolve,
7 liquidate, or appoint receivers with respect to, a Florida
8 corporation which directly or indirectly owns all of the stock
9 of a Florida domestic insurer and which is not insolvent as
10 defined by s. 607.01401(16). However, a managing general agent
11 or holding company with a controlling interest in a domestic
12 insurer in this state is subject to jurisdiction of the court
13 under the provisions of s. 631.025.

14 Section 5. Paragraph (a) of subsection (7) of section
15 631.141, Florida Statutes, is amended to read:

16 631.141 Conduct of delinquency proceeding; domestic
17 and alien insurers.--

18 (7)(a) In connection with a delinquency proceeding,
19 the department may appoint one or more special agents to act
20 for it, and it may employ such counsel, clerks, and assistants
21 as it deems necessary. The compensation of the special agents,
22 counsel, clerks, or assistants and all expenses of taking
23 possession of the insurer and of conducting the proceeding
24 shall be fixed by the receiver, subject to the approval of the
25 court, and shall be paid out of the funds or assets of the
26 insurer. Such expenses are administrative expenses and are
27 recoverable by the receiver in any actions in which the
28 receiver is authorized or entitled to recover its
29 administrative expenses. Within the limits of duties imposed
30 upon them, special agents shall possess all the powers given
31 to and, in the exercise of those powers, shall be subject to

1 all duties imposed upon the receiver with respect to such
2 proceeding.

3 Section 6. Section 631.205, Florida Statutes, is
4 amended to read:

5 631.205 Reinsurance proceeds.--All reinsurance
6 proceeds payable under a contract of reinsurance to which the
7 insolvent insurer is a party are to be paid directly to the
8 domiciliary receiver as general assets of the receivership
9 estate unless the reinsurance contract contains a clause which
10 specifically names the insolvent insurer's insured as a direct
11 beneficiary of the reinsurance contract. The entry of an order
12 of conservation, rehabilitation, or liquidation shall not be
13 deemed an anticipatory breach of any reinsurance contract, nor
14 shall it be grounds for retroactive revocation or retroactive
15 cancellation of any reinsurance contracts by the reinsurer.

16 Section 7. Section 631.206, Florida Statutes, is
17 created to read:

18 631.206 Arbitration.--If an insurer in receivership
19 has entered into an agreement containing an arbitration
20 provision for resolution of disputes, that provision is void
21 and shall be replaced by operation of law with the following
22 provision:

23 Any controversy or claim arising out of or
24 relating to this contract, or the breach
25 thereof, shall be settled by arbitration
26 pursuant to the American Arbitration
27 Association Commercial Arbitration Rules and
28 chapter 682, Florida Statutes, and judgment on
29 the award rendered by the arbitrators shall be
30 entered by the receivership court. Venue shall
31 be in Leon County, Florida. Disputes shall be

1 submitted to a panel of three arbitrators, one
2 to be chosen by each party and the third by the
3 two so chosen. Arbitrators shall be selected
4 from a list of potential qualified arbitrators
5 with 10 years' experience involving the
6 insurance industry. If the parties do not agree
7 upon the qualifications of a mediator, each
8 party shall select its mediator from a list of
9 potential mediators approved by the
10 receivership court.

11 Section 8. Subsection (1) of section 631.261, Florida
12 Statutes, is amended, and subsection (4) is added to that
13 section, to read:

14 631.261 Voidable transfers.--

15 (1)(a) Any transfer of, or lien upon, the property of
16 an insurer or affiliate which is made or created within 4
17 months prior to the commencement of any delinquency proceeding
18 under this chapter which gives ~~with the intent of giving to~~
19 any creditor of the insurer a preference or enables ~~of~~
20 ~~enabling~~ the creditor to obtain a greater percentage of her or
21 his debt than any other creditor of the same class, ~~and which~~
22 ~~is accepted by such creditor having reasonable cause to~~
23 ~~believe that such preference will occur,~~ shall be voidable.

24 (b) Any transfer of, or lien upon, the property of an
25 insurer or affiliate which is made or created between 4 months
26 and 1 year prior to the commencement of any delinquency
27 proceeding under this chapter is void if such transfer or lien
28 inured to the benefit of a director, officer, employee,
29 stockholder, member, subscriber, affiliate, managing general
30 agent, or insider or any relative of any director, officer,

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1 employee, stockholder, member, subscriber, affiliate, managing
2 general agent, or insider.

3 (4) For purposes of this section, a transfer is not
4 made or created until the insurer or affiliate has acquired
5 rights in the property transferred.

6 Section 9. Paragraph (e) of subsection (2) of section
7 631.262, Florida Statutes, is redesignated as paragraph (f)
8 and amended, and new paragraph (e) is added to that
9 subsection, to read:

10 631.262 Transfers prior to petition.--

11 (2) Transfers shall be deemed to have been made or
12 suffered, or obligations incurred, when perfected according to
13 the following criteria:

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

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

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

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

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

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

4 Section 10. Subsection (6) is added to section
5 631.263, Florida Statutes, to read:

6 631.263 Transfers after petition.--

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

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

12 631.400 Closed estate account.--

13 (1) If unclaimed funds remain in the estate of a
14 liquidated insurance company after the estate is closed or a
15 receiver recovers funds in an estate of a liquidated insurance
16 company after the estate is closed, the receiver shall deposit
17 those funds when received into a separate closed estate
18 account.

19 (2) Funds received and deposited in the account
20 pursuant to subsection (1) shall be used by the Division of
21 Rehabilitation and Liquidation of the Department of Financial
22 Services to defray the division's expenses in the discharge of
23 its duties as prescribed by law, including the initiation of
24 delinquency proceedings and all other legitimate expenses
25 relating to the discharge of the duties imposed in and charged
26 to the division.

27 (3) If, at the end of any fiscal year, a balance of
28 funds remains in a closed estate account, such balance shall
29 not revert to the general fund of the state but shall be
30 retained in the closed estate account to be used for the
31 purposes set forth in subsection (2).

1 Section 12. This act shall take effect upon becoming a
2 law.
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