

26 (23) of section 631.011, Florida Statutes, are renumbered as
 27 subsections (10) through (16) and (18) through (25),
 28 respectively, present subsections (14) and (16) are amended, and
 29 new subsections (9) and (17) are added to that section, to read:

30 631.011 Definitions.—For the purpose of this part, the
 31 term:

32 (9) "Federal home loan bank" means a bank established
 33 under the Federal Home Loan Bank Act, 12 U.S.C. ss. 1421 et seq.

34 (14) "Insolvency" means that all the assets of the
 35 insurer, if made immediately available, would not be sufficient
 36 to discharge all its liabilities or that the insurer is unable
 37 to pay its debts as they become due in the usual course of
 38 business. When the context of any provision of this code so
 39 indicates, insolvency also includes and is defined as
 40 "impairment of surplus," as defined in subsection (14) ~~(13)~~, and
 41 "impairment of capital," as defined in subsection (13) ~~(12)~~.

42 (17) "Insurer-member" means an insurer who is a member of
 43 a federal home loan bank.

44 ~~(18)~~ ~~(16)~~ "Liabilities," as used in subsections (13) ~~(12)~~
 45 and (15) ~~(14)~~, means all liabilities, including those
 46 specifically required in s. 625.041.

47 Section 2. Paragraphs (e) and (f) of subsection (1) of
 48 section 631.041, Florida Statutes, are amended, and paragraph
 49 (g) is added to that subsection, to read:

50 631.041 Automatic stay; relief from stay; injunctions.—

51 (1) An application or petition under s. 631.031 operates
 52 as a matter of law as an automatic stay applicable to all
 53 persons and entities, other than the receiver and the office,
 54 which shall be permanent and survive the entry of an order of
 55 conservation, rehabilitation, or liquidation, and which shall
 56 prohibit:

57 (e) Any act to collect, assess, or recover a claim against
 58 the insurer, except claims as provided for under this chapter;
 59 ~~and~~

60 (f) The setoff or offset of any debt owing to the insurer,
 61 except offsets as provided in s. 631.281; and

62 (g) A federal home loan bank, 7 days after the
 63 department's filing of a delinquency proceeding against the
 64 bank's insurer-member, from being stayed or from being precluded
 65 from exercising its rights regarding collateral pledged by the
 66 insurer-member.

67 1. If a federal home loan bank exercises its rights
 68 regarding collateral pledged by an insurer-member who is subject
 69 to a delinquency proceeding, the federal home loan bank shall
 70 repurchase any outstanding capital stock that is in excess of
 71 that amount of federal home loan bank stock that the insurer-
 72 member is required to hold as a minimum investment to the extent
 73 that the federal home loan bank in good faith determines the
 74 repurchase to be permissible under applicable laws, regulations,
 75 and regulatory obligations and the federal home loan bank's

76 capital plan and consistent with the federal home loan bank's
77 current capital stock practices applicable to its entire
78 membership.

79 2. After the appointment of a receiver for the insurer-
80 member, the federal home loan bank shall, within 10 business
81 days after a request from the receiver, provide a process and
82 establish a timeline for all of the following:

83 a. The release of collateral that exceeds the amount
84 required to support secured obligations remaining after any
85 repayment of loans as determined in accordance with the
86 applicable agreements between the federal home loan bank and the
87 insurer-member.

88 b. The release of any of the insurer-member's collateral
89 remaining in the federal home loan bank's possession after
90 repayment in full of all outstanding secured obligations of the
91 insurer-member.

92 c. The payment of fees owed by the insurer-member and the
93 operation of deposits and other accounts of the insurer-member
94 with the federal home loan bank.

95 d. The possible redemption or repurchase of federal home
96 loan bank stock or excess stock of any class that the insurer-
97 member is required to own.

98 3. Upon request of the receiver, the federal home loan
99 bank shall provide any available option for the insurer-member
100 subject to the delinquency proceeding to renew or restructure a

101 loan to defer associated prepayment fees, subject to market
 102 conditions; the terms of any loans outstanding to the insurer-
 103 member; the applicable policies of the federal home loan bank;
 104 and the federal home loan bank's compliance with federal laws
 105 and regulations.

106 Section 3. Subsections (3) and (4) of section 631.261,
 107 Florida Statutes, are renumbered as subsections (4) and (5),
 108 respectively, and a new subsection (3) is added to that section,
 109 to read:

110 631.261 Voidable transfers.—

111 (3) The receiver for an insurer-member may not void any
 112 transfer of, or any obligation to transfer, money or any other
 113 property arising under or in connection with any federal home
 114 loan bank security agreement; any pledge, security, collateral,
 115 or guarantee agreement; or any other similar arrangement or
 116 credit enhancement relating to a federal home loan bank security
 117 agreement made in the ordinary course of business and in
 118 compliance with the applicable federal home loan bank agreement.
 119 However, a transfer may be voided under this section if the
 120 transfer was made with the intent to hinder, delay, or defraud
 121 the insurer-member, the receiver for the insurer-member, or
 122 existing or future creditors. This subsection does not affect a
 123 receiver's rights regarding advances to an insurer-member in a
 124 delinquency proceeding pursuant to 12 C.F.R. s. 1266.4.

125 Section 4. Paragraph (w) of subsection (1) of section

126 626.9541, Florida Statutes, is amended to read:

127 626.9541 Unfair methods of competition and unfair or
 128 deceptive acts or practices defined.—

129 (1) UNFAIR METHODS OF COMPETITION AND UNFAIR OR DECEPTIVE
 130 ACTS.—The following are defined as unfair methods of competition
 131 and unfair or deceptive acts or practices:

132 (w) Soliciting or accepting new or renewal insurance risks
 133 by insolvent or impaired insurer prohibited; penalty.—

134 1. Whether or not delinquency proceedings as to the
 135 insurer have been or are to be initiated, but while such
 136 insolvency or impairment exists, no director or officer of an
 137 insurer, except with the written permission of the office, shall
 138 authorize or permit the insurer to solicit or accept new or
 139 renewal insurance risks in this state after such director or
 140 officer knew, or reasonably should have known, that the insurer
 141 was insolvent or impaired. "Impaired" includes impairment of
 142 capital or impairment of surplus, as those terms are defined in
 143 s. 631.011 ~~s. 631.011(12) and (13)~~.

144 2. Any such director or officer, upon conviction of a
 145 violation of this paragraph, is guilty of a felony of the third
 146 degree, punishable as provided in s. 775.082, s. 775.083, or s.
 147 775.084.

148 Section 5. Section 631.025, Florida Statutes, is amended
 149 to read:

150 631.025 Persons subject to this part.—Delinquency

151 proceedings authorized by this part may be initiated against any
 152 insurer, as defined in s. 631.011 ~~s. 631.011(15)~~, if the
 153 statutory grounds are present as to that insurer, and the court
 154 may exercise jurisdiction over any person required to cooperate
 155 with the department and office pursuant to s. 631.391 and over
 156 all persons made subject to the court's jurisdiction by other
 157 provisions of law. Such persons include, but are not limited to:

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

161 (2) A person purporting to transact an insurance business
 162 in this state and any person who acts as an insurer, transacts
 163 insurance, or otherwise engages in insurance activities in or
 164 from this state, with or without a certificate of authority or
 165 proper authority from the department or office, against whom
 166 claims arising from that business may exist now or in the
 167 future.

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

169 (4) All other persons organized or in the process of
 170 organizing with the intent to transact an insurance business in
 171 this state.

172 Section 6. Paragraph (d) of subsection (1) of section
 173 631.041, Florida Statutes, is amended to read:

174 631.041 Automatic stay; relief from stay; injunctions.—

175 (1) An application or petition under s. 631.031 operates

176 as a matter of law as an automatic stay applicable to all
 177 persons and entities, other than the receiver and the office,
 178 which shall be permanent and survive the entry of an order of
 179 conservation, rehabilitation, or liquidation, and which shall
 180 prohibit:

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

185 Section 7. Paragraph (b) of subsection (2) and paragraph
 186 (b) of subsection (3) of section 817.2341, Florida Statutes, are
 187 amended to read:

188 817.2341 False or misleading statements or supporting
 189 documents; penalty.—

190 (2)

191 (b) If the false entry of a material fact is made with the
 192 intent to deceive any person as to the impairment of capital, as
 193 defined in s. 631.011 ~~s. 631.011(12)~~, of the insurer or entity
 194 or is the significant cause of the insurer or entity being
 195 placed in conservation, rehabilitation, or liquidation by a
 196 court, the person commits a felony of the first degree,
 197 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

198 (3)

199 (b) If the material false statement or report or the
 200 material overvaluation is made with the intent to deceive any

HB 1405

2022

201 person as to the impairment of capital, as defined in s. 631.011
202 ~~s. 631.011(12)~~, of an insurer or entity organized pursuant to
203 chapter 624 or chapter 641, or is the significant cause of the
204 insurer or entity being placed in receivership by a court, the
205 person commits a felony of the first degree, punishable as
206 provided in s. 775.082, s. 775.083, or s. 775.084.

207 Section 8. This act shall take effect July 1, 2022.