

Committee Substitute for
Committee Substitute for Senate Bill No. 432

An act relating to insurance; amending s. 624.430, F.S.; providing for the department to approve insurer withdrawals upon certain conditions being satisfied; providing for the dissolution of a domestic property and casualty insurer upon approval of the surrender of the certificate of authority; granting the department rulemaking authority; amending s. 626.9541, F.S.; conforming cross-references; amending s. 631.001, F.S.; revising construction and purpose provisions; amending s. 631.011, F.S.; providing additional definitions; revising definitions; creating s. 631.015, F.S.; providing for reciprocity; creating s. 631.025, F.S.; specifying application to certain persons and entities; amending s. 631.041, F.S.; conforming a cross-reference; creating s. 631.042, F.S.; limiting application of certain time restrictions; providing for tolling certain time limitations in certain actions; amending s. 631.141, F.S.; authorizing the Department of Insurance to exercise certain third-party rights; providing an exception; amending s. 631.154, F.S.; including certain assets within provisions authorizing a receiver to take certain actions; including certain costs and expenses of the department in costs and expenses entitled to be recovered by the receiver under certain circumstances; creating s. 631.156, F.S.; providing for investigations by the department; providing department powers; authorizing the department to provide certain information in such investigations; requiring a receivership court to order expedited discovery under certain circumstances; providing penalties; creating s. 631.157, F.S.; providing for civil actions by receivers; imposing liability on certain persons or entities for certain actions; specifying amounts of damages; providing construction; providing costs and expenses entitled to be recovered by the receiver under certain circumstances; providing a time certain for bringing certain actions; creating s. 624.4073, F.S.; prohibiting a person who served as an officer or director of an insolvent insurer on or after a specified date from thereafter serving as an officer or director of an insurer authorized in this state; providing certain exceptions; creating s. 631.3915, F.S.; authorizing the department to pursue actions for damages or recoveries; amending s. 631.54, F.S.; redefining the term "covered claim"; amending s. 631.57, F.S.; vesting the Florida Insurance Guaranty Association with the defenses of certain insolvent insurers; amending s. 631.904, F.S.; redefining the term "covered claim"; creating s. 817.2341, F.S.; specifying certain activities relating to false or misleading financial statements or supporting documents as criminal offenses; providing penalties; repealing s. 624.3101, F.S., relating to false or misleading financial statements or supporting documents; providing an effective date.

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

Section 1. Section 624.430, Florida Statutes, is amended to read:

624.430 Withdrawal of insurer or discontinuance of writing certain kinds or lines of insurance.—

(1) Any insurer desiring to surrender its certificate of authority, withdraw from this state, or discontinue the writing of any one or multiple kinds or lines of insurance in this state shall give 90 days' notice in writing to the department setting forth its reasons for such action. Any insurer who does not write any premiums in a kind or line of insurance within a calendar year shall have that kind or line of insurance removed from its certificate of authority; however, such line of insurance shall be restored to the insurer's certificate upon the insurer demonstrating that it has available the expertise necessary and meets the other requirements of this code to write that line of insurance.

(2) If the department determines, based upon its review of the notice and other required information, that the plan of an insurer withdrawing from this state makes adequate provision for the satisfaction of the insurer's obligations and is not hazardous to policyholders or the public, the department shall approve the surrender of the insurer's certificate of authority. The department shall, within 45 days from receipt of a complete notice and all required or requested additional information, approve, disapprove, or approve with conditions the plan submitted by the insurer. Failure to timely take action with respect to the notice shall be deemed an approval of the surrender of the certificate of authority.

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

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

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

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

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

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

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

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

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

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

1. Whether or not delinquency proceedings as to the insurer have been or are to be initiated, but while such insolvency or impairment exists, no director or officer of an insurer, except with the written permission of the Department of Insurance, shall authorize or permit the insurer to solicit or accept new or renewal insurance risks in this state after such director or officer knew, or reasonably should have known, that the insurer was insolvent or impaired. “Impaired” includes impairment of ~~for~~ capital or surplus, as defined in ~~s. 631.011(12) s. 631.011(9)~~ and ~~(13)(10)~~.

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

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

631.001 Title, construction, and purpose.—

(1) This part constitutes and may be cited as the “Insurers Rehabilitation and Liquidation Act.”

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

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

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

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

(b) Provide a comprehensive scheme for administering insurer receiver-ships, generally, through:

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

(d)(b) Implement improved methods for rehabilitating insurers, which methods involve the cooperation and management expertise of the insurance industry;

(e)(e) Enhance the Enhanced efficiency and economy of the liquidation process by clarifying through clarification and specification of the law to minimize legal uncertainty and litigation.;

~~(f)(d)~~ Establish a system to equitably apportion ~~Equitable apportionment of any unavoidable loss,; and~~

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

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

~~(5)—The Insurers Rehabilitation and Liquidation Act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which in substance and effect enact the Insurers Rehabilitation and Liquidation Act. To the extent that the provisions of the Insurers Rehabilitation and Liquidation Act, when applicable, conflict with other provisions of this chapter, the provisions of such act shall control.~~

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

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

(1) “Affiliate” means any entity which exercises control over or is controlled by the insurer, directly or indirectly through:

(a) Equity ownership of voting securities;

(b) Common managerial control; or

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

(2) “Ancillary state” means, any state other than a domiciliary state.

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

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

~~(5)(4)~~ “Court” refers to the circuit court in which the receivership proceeding is pending.

~~(6)(5)~~ “Delinquency proceeding” means any proceeding commenced against an insurer pursuant to this chapter for the purpose of liquidating, rehabilitating, reorganizing, or conserving such insurer.

(7)(6) “Domiciliary state” means the state in which an insurer is incorporated or organized or, in the case of an insurer incorporated or organized in a foreign country, the state in which such insurer, having become authorized to do business in such state, has, at the commencement of a delinquency proceeding, the largest amount of its assets held in trust and assets held on deposit for the benefit of its policyholders or policyholders and creditors in the United States; and any such insurer is deemed to be domiciled in such state.

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

(9)(7) “Foreign country” means territory not in any state.

(10)(8) “General assets” means all property, real, personal, or otherwise, not specifically mortgaged, pledged, deposited, or otherwise encumbered for the security or benefit of specified persons or a limited class or classes of persons, and as to such specifically encumbered property the term includes all such property or its proceeds in excess of the amount necessary to discharge the sum or sums secured thereby. Assets held in trust and assets held on deposit for the security or benefit of all policyholders or all policyholders and creditors in the United States shall be deemed general assets.

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

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

(13)(10) “Impairment of surplus” means that the surplus of a stock insurer, the additional surplus of a mutual or reciprocal insurer, or the additional net trust fund of a business trust insurer does not comply with the requirements of s. 624.408.

(14)(11) “Insolvency” means that all the assets of the insurer, if made immediately available, would not be sufficient to discharge all its liabilities or that the insurer is unable to pay its debts as they become due in the usual course of business. When the context of any provision of this code so indicates, insolvency also includes and is defined as “impairment of surplus,” as

defined in subsection ~~(13)~~(9), and “impairment of capital,” as defined in subsection ~~(12)~~(8).

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

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

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

(17) “Property” includes:

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

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

(c) All records and data that are otherwise the property of the insolvent insurer, in whatever form maintained, including, but not limited to, claims and claim files, application files, litigation files, premium records, rate books, underwriting manuals, personnel records, or financial records, or similar records within the possession, custody, or control of a managing general agent, third-party administrator, management company, accountant, attorney, affiliate, or other person.

~~(18)~~(15) “Receiver” means a receiver, liquidator, rehabilitator, reorganizer, or conservator, as the context may require.

~~(19)~~ “Receivership” means the placement of an insurer under the control of a receiver pursuant to a delinquency proceeding under this part.

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

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

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

~~(23)~~(19) “State” is as defined in s. 624.08.

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

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

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

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

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

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

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

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

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

631.041 Automatic stay; relief from stay; injunctions.—

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

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

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

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

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

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

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

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

631.042 Extension of time.—

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

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

(3) A cause of action does not accrue, and the limitations period for any such action does not run, during the time the insurer is controlled by parties acting contrary to the company's interests or when facts giving rise to the claim are concealed fraudulently from regulatory authorities or from any members of company management. The provisions of chapter 95 shall be construed to be consistent with the provisions of this section. The receiver may institute any action or proceeding authorized under this part while any statute of limitation is tolled pursuant to this section. This tolling provision shall be in addition to any other applicable tolling provision.

(4) For actions not covered by subsection (2), if any unexpired time period is fixed by any agreement or in any proceeding for doing any act for the benefit of the estate, the receiver shall have 180 days, or for good cause

shown more than 180 days as allowed by the court, from the date the court enters the order granting the department's petition for a delinquency proceeding.

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

631.141 Conduct of delinquency proceeding; domestic and alien insurers.—

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

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

631.154 Funds, assets, or other property in the possession of third person.—

(1) If the receiver determines that funds, assets, or property in the possession of another person are rightfully the property of the estate, the receiver shall deliver to such person a written demand for immediate delivery of the funds, assets, or property to the receiver, referencing this section by number, referencing the court and docket number of the receivership action, and notifying the person that any claim of right to the funds, assets, or property by her or him must be presented to the receivership court within 20 days after the date of the written demand. Any person who holds funds, assets, or other property belonging to an entity placed in receivership ~~subject to an order of conservation, rehabilitation, or liquidation~~ under this chapter shall deliver the funds, assets, or other property to the receiver on demand. Should the person allege any right to retain the funds, assets, or other property pursuant to s. 631.155, s. 631.191, s. 631.261, s. 631.262, s. 631.263, or s. 631.281, a pleading setting out the right shall be filed with the court within 20 days after of the receipt of the receiver's demand that the funds, assets, or property be delivered to the receiver. The person shall serve a copy of the pleading on the receiver. The pleading of the person shall inform the court as to the nature of the claim to the property, the alleged value of the assets or property, or the amount of funds held, and what action has been taken by the person to preserve and protect the assets or property or to preserve any funds pending determination of the dispute.

(2) If requested by the receiver, a hearing shall be held to determine where and under what conditions the property, assets, or funds shall be held by the person pending determination of the dispute. The court may impose conditions as it may deem necessary or appropriate for the preservation of the property until the court can determine the validity of the person's claim to the property, assets, or funds. If any property, assets, or funds are allowed to remain in the possession of the person after demand made by the receiver, that person shall be strictly liable for any waste, loss, or damage of the property, assets, or funds retained.

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

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

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

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

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

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

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

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

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

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

631.156 Investigation by the department; scope of authority; sharing of materials.—

(1) The department may, under the direction and supervision of the receivership court, conduct an investigation to determine the causes of the insolvency, including whether false statements filed with the department contributed to the insolvency and if any laws of this state, any other state, or the Federal Government relating to the solvency of the insurer were violated; to discover assets for recovery; and to determine the location of assets and their manner of recovery. The department may take statements under oath and examine and review the books, records, and documents of the insurer or any affiliate, controlling person, officer, director, manager,

trustee, agent, adjuster, employee, or independent contractor of any insurer or affiliate and any other person possessing any executive authority over, or exercising or having exercised any control over, any segment of the affairs of the insurer or affiliate. Contracts of reinsurance between an insurer and a reinsurer do not constitute the exercise of control by the reinsurer over the insurer for purposes of this section.

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

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

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

631.157 Civil action by the receiver.—

(1) Any person who is engaged in the business of insurance, is or acts as an officer, director, agent, or employee of any person engaged in the business of insurance, or is involved in a transaction relating to the conduct of affairs of such a business, other than as an insured or beneficiary under a policy of insurance, and who willfully obtains or uses, as defined in s. 812.012(3), any funds, assets, or property, including, but not limited to, moneys, funds, premiums, credits, or other property of an insurer, shall be liable to the department as receiver for the use and benefit of an insolvent insurer's estate, claimants, creditors, and policyholders, as follows:

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

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

(2)(a) Any person who:

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

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

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

with the intent to deceive the insurer, including any officer, employee, or agent of the insurer, the department, or any agent or examiner appointed by the department to examine the affairs of the person or insurer, concerning the financial condition or solvency of such business is liable to the department as receiver for the use and benefit of the insolvent insurer's estate, creditors, and policyholders, as provided in paragraph (b).

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

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

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

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

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

Section 13. Section 624.4073, Florida Statutes, is created to read:

624.4073 Officers and directors of insolvent insurers.—Any person who was an officer or director of an insurer doing business in this state and who served in that capacity within the 2-year period prior to the date the insurer became insolvent, for any insolvency that occurs on or after July 1, 2002, may not thereafter serve as an officer or director of an insurer authorized in this state unless the officer or director demonstrates that his or her personal actions or omissions were not a significant contributing cause to the insolvency.

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

631.3915 Actions for damages.—The department, in its capacity as administrator, receiver, or similar capacity, may pursue any actions for damages or other recoveries on behalf of the insurer’s estate and the insurer’s policyholders, creditors, and other claimants.

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

631.54 Definitions.—As used in this part:

(3) “Covered claim” means an unpaid claim, including one of unearned premiums, which arises out of, and is within the coverage, and not in excess of, the applicable limits of an insurance policy to which this part applies, issued by an insurer, if such insurer becomes an insolvent insurer after October 1, 1970, and the claimant or insured is a resident of this state at the time of the insured event or the property from which the claim arises is permanently located in this state. “Covered claim” shall not include any amount due any reinsurer, insurer, insurance pool, or underwriting association, as subrogation, contribution, indemnification, recoveries or otherwise. Member insurers shall have no right of subrogation against the insured of any insolvent member.

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

631.57 Powers and duties of the association.—

(1) The association shall:

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

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

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

(2) “Covered claim” means an unpaid claim, including a claim for return of unearned premiums, which arises out of, is within the coverage of, and is not in excess of the applicable limits of, an insurance policy to which this part applies, which policy was issued by an insurer and which claim is made on behalf of a claimant or insured who was a resident of this state at the time of the injury. The term “covered claim” does not include any amount sought as a return of premium under any retrospective rating plan; any amount due any reinsurer, insurer, insurance pool, or underwriting association, as subrogation recoveries or otherwise; or any return of premium resulting from a policy that was not in force on the date of the final order of liquidation. Member insurers have no right of subrogation against the insured of any insolvent insurer. This provision shall be applied retroactively to cover claims of an insolvent self-insurance fund resulting from accidents or losses incurred prior to January 1, 1994, regardless of the date the Department of

Insurance filed a petition in circuit court alleging insolvency and the date the court entered an order appointing a receiver.

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

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

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

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

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

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

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

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

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

Approved by the Governor April 16, 2002.

Filed in Office Secretary of State April 16, 2002.