

1 A bill to be entitled
2 An act relating to guaranty associations; amending s.
3 631.52, F.S.; expanding an exemption from the
4 applicability of certain provisions of state law to
5 include workers' compensation claims under employer
6 liability coverage; amending s. 631.54, F.S.; conforming
7 the definition of "account" to changes made by the act;
8 amending s. 631.55, F.S.; revising the separate accounts
9 of the association; amending s. 631.57, F.S.; conforming
10 cross-references; providing a legislative finding and
11 declaration; authorizing insurers to recoup certain
12 assessments levied by the Office of Insurance Regulation
13 by applying certain recoupment factors; deleting
14 provisions relating to classification and payment of
15 emergency assessments; providing guidelines and a
16 methodology for the calculation of recoupment factors for
17 recouping certain assessments; authorizing an insurer to
18 apply a recalculated recoupment factor under certain
19 conditions; providing for the return of excess assessments
20 and recoupment charges; providing that amounts recouped
21 are not premium and not subject to premium taxes, fees, or
22 commissions; requiring that insurers treat failure to pay
23 a recoupment charge as failure to pay the premium;
24 requiring that an insurer file with the office a statement
25 containing certain information within a specified period
26 before applying a recoupment factor to any policies;
27 authorizing an insurer to use a recoupment factor after
28 the expiration of such period; providing that an insurer

29 | need submit only one such statement for all lines of
30 | business; requiring that an insurer file with the office
31 | an accounting report containing certain information within
32 | a specified period after the completion of the recoupment
33 | process; providing that an insurer need submit only one
34 | such report for all lines of business; amending s.
35 | 631.713, F.S.; expanding the application of certain
36 | provisions of state law to certain residents of other
37 | states who own certain insurance policies; expanding the
38 | list of contracts and policies to which life and health
39 | insurance guaranty of payments provisions do not apply;
40 | providing for application to coverage under certain
41 | structured settlement annuities under certain
42 | circumstances; amending s. 631.714, F.S.; revising certain
43 | definitions; amending s. 631.717, F.S.; revising a
44 | guaranty association's aggregate liability for life
45 | insurance and deferred annuity contracts; authorizing an
46 | association to issue alternative policies or contracts to
47 | certain policies or contracts under certain circumstances;
48 | subjecting such alternative policies or contracts to
49 | specified requirements; creating s. 631.7295, F.S.;
50 | authorizing an association to succeed to the rights of an
51 | insolvent insurer arising after an order of liquidation or
52 | rehabilitation with regard to certain contracts of
53 | reinsurance; requiring that such an association pay all
54 | unpaid premiums due under the contract; amending s.
55 | 631.735, F.S.; specifying that certain advertisement
56 | prohibitions do not prohibit certain activities of a

57 licensed insurance agent; amending s. 631.904, F.S.;

58 revising the definition of the term "covered claim";

59 providing an effective date.

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

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63 Section 1. Subsection (14) of section 631.52, Florida

64 Statutes, is amended to read:

65 631.52 Scope.—This part shall apply to all kinds of direct

66 insurance, except:

67 (14) Workers' compensation, including claims under

68 employer liability coverage;

69 Section 2. Subsection (1) of section 631.54, Florida

70 Statutes, is amended to read:

71 631.54 Definitions.—As used in this part:

72 (1) "Account" means ~~any~~ one of the ~~three~~ accounts created

73 by s. 631.55.

74 Section 3. Subsection (2) of section 631.55, Florida

75 Statutes, is amended to read:

76 631.55 Creation of the association.—

77 (2) For the purposes of administration and assessment, the

78 association shall be divided into two ~~three~~ separate accounts:

79 (a) The auto liability and ~~account~~;

80 ~~(b) The auto physical damage account.~~ ; ~~and~~

81 (b)(e) The account for all other insurance to which this

82 part applies.

83 Section 4. Subsection (3) of section 631.57, Florida

84 Statutes, is amended to read:

85 | 631.57 Powers and duties of the association.—

86 | (3) (a) To the extent necessary to secure the funds for the
87 | respective accounts for the payment of covered claims, to pay
88 | the reasonable costs to administer the same, and to the extent
89 | necessary to secure the funds for the account specified in s.
90 | 631.55(2) (b) ~~(e)~~ or to retire indebtedness, including, without
91 | limitation, the principal, redemption premium, if any, and
92 | interest on, and related costs of issuance of, bonds issued
93 | under s. 631.695 and the funding of any reserves and other
94 | payments required under the bond resolution or trust indenture
95 | pursuant to which such bonds have been issued, the office, upon
96 | certification of the board of directors, shall levy assessments
97 | in the proportion that each insurer's net direct written
98 | premiums in this state in the classes protected by the account
99 | bears to the total of said net direct written premiums received
100 | in this state by all such insurers for the preceding calendar
101 | year for the kinds of insurance included within such account.
102 | Assessments shall be remitted to and administered by the board
103 | of directors in the manner specified by the approved plan. Each
104 | insurer so assessed shall have at least 30 days' written notice
105 | as to the date the assessment is due and payable. Every
106 | assessment shall be made as a uniform percentage applicable to
107 | the net direct written premiums of each insurer in the kinds of
108 | insurance included within the account in which the assessment is
109 | made. The assessments levied against any insurer shall not
110 | exceed in any one year more than 2 percent of that insurer's net
111 | direct written premiums in this state for the kinds of insurance
112 | included within such account during the calendar year next

113 preceding the date of such assessments.

114 (b) If sufficient funds from such assessments, together
115 with funds previously raised, are not available in any one year
116 in the respective account to make all the payments or
117 reimbursements then owing to insurers, the funds available shall
118 be prorated and the unpaid portion shall be paid as soon
119 thereafter as funds become available.

120 (c) The Legislature finds and declares that all
121 assessments paid by an insurer or insurer group as a result of a
122 levy by the office, including regular and emergency assessments,
123 constitute advances of funds from the insurer to the
124 association. An insurer may fully recoup such advances by
125 applying a separate recoupment factor to the premium of policies
126 of the same kind, line, or type as were considered by the office
127 in determining the assessment liability of the insurer or
128 insurer group. Assessments shall be included as an appropriate
129 factor in the making of rates.

130 (d) No state funds of any kind shall be allocated or paid
131 to said association or any of its accounts.

132 (e)1.a. In addition to assessments otherwise authorized in
133 paragraph (a) and to the extent necessary to secure the funds
134 for the account specified in s. 631.55(2) (b) ~~(e)~~ for the direct
135 payment of covered claims of insurers rendered insolvent by the
136 effects of a hurricane and to pay the reasonable costs to
137 administer such claims, or to retire indebtedness, including,
138 without limitation, the principal, redemption premium, if any,
139 and interest on, and related costs of issuance of, bonds issued
140 under s. 631.695 and the funding of any reserves and other

141 payments required under the bond resolution or trust indenture
142 pursuant to which such bonds have been issued, the office, upon
143 certification of the board of directors, shall levy emergency
144 assessments upon insurers holding a certificate of authority.
145 The emergency assessments payable under this paragraph by any
146 insurer shall not exceed in any single year more than 2 percent
147 of that insurer's direct written premiums, net of refunds, in
148 this state during the preceding calendar year for the kinds of
149 insurance within the account specified in s. 631.55(2) (b) ~~(e)~~.

150 b. Any emergency assessments authorized under this
151 paragraph shall be levied by the office upon insurers referred
152 to in sub-subparagraph a., upon certification as to the need for
153 such assessments by the board of directors. In the event the
154 board of directors participates in the issuance of bonds in
155 accordance with s. 631.695, emergency assessments shall be
156 levied in each year that bonds issued under s. 631.695 and
157 secured by such emergency assessments are outstanding, in such
158 amounts up to such 2-percent limit as required in order to
159 provide for the full and timely payment of the principal of,
160 redemption premium, if any, and interest on, and related costs
161 of issuance of, such bonds. The emergency assessments provided
162 for in this paragraph are assigned and pledged to the
163 municipality, county, or legal entity issuing bonds under s.
164 631.695 for the benefit of the holders of such bonds, in order
165 to enable such municipality, county, or legal entity to provide
166 for the payment of the principal of, redemption premium, if any,
167 and interest on such bonds, the cost of issuance of such bonds,
168 and the funding of any reserves and other payments required

169 under the bond resolution or trust indenture pursuant to which
170 such bonds have been issued, without the necessity of any
171 further action by the association, the office, or any other
172 party. To the extent bonds are issued under s. 631.695 and the
173 association determines to secure such bonds by a pledge of
174 revenues received from the emergency assessments, such bonds,
175 upon such pledge of revenues, shall be secured by and payable
176 from the proceeds of such emergency assessments, and the
177 proceeds of emergency assessments levied under this paragraph
178 shall be remitted directly to and administered by the trustee or
179 custodian appointed for such bonds.

180 c. Emergency assessments under this paragraph may be
181 payable in a single payment or, at the option of the
182 association, may be payable in 12 monthly installments with the
183 first installment being due and payable at the end of the month
184 after an emergency assessment is levied and subsequent
185 installments being due not later than the end of each succeeding
186 month.

187 d. If emergency assessments are imposed, the report
188 required by s. 631.695(7) shall include an analysis of the
189 revenues generated from the emergency assessments imposed under
190 this paragraph.

191 e. If emergency assessments are imposed, the references in
192 sub-subparagraph (1)(a)3.b. and s. 631.695(2) and (7) to
193 assessments levied under paragraph (a) shall include emergency
194 assessments imposed under this paragraph.

195 ~~2. In order to ensure that insurers paying emergency~~
196 ~~assessments levied under this paragraph continue to charge rates~~

197 ~~that are neither inadequate nor excessive, within 90 days after~~
198 ~~being notified of such assessments, each insurer that is to be~~
199 ~~assessed pursuant to this paragraph shall submit a rate filing~~
200 ~~for coverage included within the account specified in s.~~
201 ~~631.55(2)(c) and for which rates are required to be filed under~~
202 ~~s. 627.062. If the filing reflects a rate change that, as a~~
203 ~~percentage, is equal to the difference between the rate of such~~
204 ~~assessment and the rate of the previous year's assessment under~~
205 ~~this paragraph, the filing shall consist of a certification so~~
206 ~~stating and shall be deemed approved when made. Any rate change~~
207 ~~of a different percentage shall be subject to the standards and~~
208 ~~procedures of s. 627.062.~~

209 2.3. ~~If In the event~~ the board of directors participates
210 in the issuance of bonds in accordance with s. 631.695, an
211 annual assessment under this paragraph shall continue while the
212 bonds issued with respect to which the assessment was imposed
213 are outstanding, including any bonds the proceeds of which were
214 used to refund bonds issued pursuant to s. 631.695, unless
215 adequate provision has been made for the payment of the bonds in
216 the documents authorizing the issuance of such bonds.

217 3.4. Emergency assessments under this paragraph are not
218 premium and are not subject to the premium tax, to any fees, or
219 to any commissions. An insurer is liable for all emergency
220 assessments that the insurer collects and shall treat the
221 failure of an insured to pay an emergency assessment as a
222 failure to pay the premium. An insurer is not liable for
223 uncollectible emergency assessments.

224 (f) The recoupment factor applied to policies in

225 accordance with paragraph (c) shall be selected by the insurer
226 or insurer group so as to provide for the probable recoupment of
227 both regular and emergency assessments over a period of 12
228 months, unless the insurer or insurer group, at its option,
229 elects to recoup the assessment over a longer period. The
230 recoupment factor shall apply to all policies of the same kind,
231 line, or type as were considered by the office in determining
232 the assessment liability of the insurer or insurer group issued
233 or renewed during a 12-month period. If the insurer or insurer
234 group does not collect the full amount of the assessment during
235 one 12-month period, the insurer or insurer group may apply
236 recalculated recoupment factors to policies issued or renewed
237 during one or more succeeding 12-month periods. If, at the end
238 of a 12-month period, the insurer or insurer group has collected
239 from the combined kinds, lines, or types of policies subject to
240 assessment more than the total amount of the assessment paid by
241 the insurer or insurer group, the excess amount shall be
242 disbursed as follows:

243 1. If the excess amount does not exceed 15 percent of the
244 total assessment paid by the insurer or insurer group, the
245 excess amount shall be remitted to the association within 60
246 days after the end of the 12-month period in which the excess
247 recoupment charges were collected.

248 2. If the excess amount exceeds 15 percent of the total
249 assessment paid by the insurer or insurer group, the excess
250 amount shall be returned to the insurer's or insurer group's
251 current policyholders by refunds or premium credits. The
252 association shall use any remitted excess recoupment amounts to

253 reduce future assessments.

254 (g) Amounts recouped under this subsection for assessments
 255 levied under paragraph (a) due to insolvencies on or after July
 256 1, 2010, are not premium and are not subject to premium taxes,
 257 fees, or commissions. However, insurers shall treat the failure
 258 of an insured to pay a recoupment charge as a failure to pay the
 259 premium.

260 (h) At least 15 days before applying the recoupment factor
 261 to any policies, the insurer or insurer group shall file with
 262 the office a statement for informational purposes only setting
 263 forth the amount of the recoupment factor and an explanation of
 264 how the recoupment factor will be applied. Such statement shall
 265 include documentation of the assessment paid by the insurer or
 266 insurer group and the arithmetic calculations supporting the
 267 recoupment factor. The insurer or insurer group may use the
 268 recoupment factor at any time after the expiration of the 15-day
 269 period. The insurer or insurer group need submit only one
 270 informational statement for all lines of business using the same
 271 recoupment factor.

272 (i) No later than 90 days after the insurer or insurer
 273 group has completed the recoupment process, the insurer or
 274 insurer group shall file with the office, for information
 275 purposes only, a final accounting report documenting the
 276 recoupment. The report shall provide the amounts of assessments
 277 paid by the insurer or insurer group, the amounts and
 278 percentages recouped by year from each affected line of
 279 business, and the direct written premium subject to recoupment
 280 by year. The insurer or insurer group need submit only one

281 report for all lines of business using the same recoupment
 282 factor.

283 Section 5. Paragraph (b) of subsection (2) of section
 284 631.713, Florida Statutes, is amended, paragraphs (n), (o), and
 285 (p) are added to subsection (3) of that section, and subsection
 286 (5) is added to that section, to read:

287 631.713 Application of part.—

288 (2) Coverage under this part shall be provided to:

289 (b) Persons who are owners of or certificateholders under
 290 such policies or contracts, and who:

291 1. Are residents of this state; or

292 2. Are residents of other states, but only if:

293 a. The insurers which issued such policies or contracts
 294 are domiciled in this state;

295 b. Such insurers were not licensed ~~never held a license or~~
 296 ~~certificate of authority~~ in the states in which such persons
 297 reside at the time specified in a state's guaranty association
 298 law as necessary for coverage by that state's association;

299 c. Such other states have associations similar to the
 300 association created by this part; and

301 d. Such persons are not eligible for coverage by such
 302 associations.

303 (3) This part does not apply to:

304 (n) A portion of a policy or contract, to the extent that
 305 the rate of interest on which the policy or contract is based,
 306 or the interest rate, crediting rate, or similar factor
 307 determined by use of an index or other external reference stated
 308 in the policy or contract employed in calculating returns or

309 changes in value:

310 1. Averaged over the period of 4 years immediately
311 preceding the date on which the member insurer becomes an
312 impaired or insolvent insurer under this part, whichever is
313 earlier, exceeds the rate of interest determined by subtracting
314 2 percentage points from Moody's Corporate Bond Yield Average
315 averaged for that same 4-year period or for such lesser period
316 if the policy or contract was issued less than 4 years before
317 the member insurer becomes an impaired or insolvent insurer
318 under this part, whichever is earlier; and

319 2. On and after the date on which the member insurer
320 becomes an impaired or insolvent insurer under this part,
321 whichever is earlier, exceeds the rate of interest determined by
322 subtracting 3 percentage points from the most current version of
323 Moody's Corporate Bond Yield Average.

324 (o) A portion of a policy or contract to the extent the
325 policy or contract provides for interest or other changes in
326 value to be determined by the use of an index or other external
327 reference stated in the policy or contract, but which has not
328 been credited to the policy or contract, or as to which the
329 policy or contract owner's rights are subject to forfeiture, as
330 of the date the member insurer becomes an impaired or insolvent
331 insurer under this part. However, if the interest or change in
332 value is credited less frequently than annually as determined by
333 using the procedures defined in the policy or contract, interest
334 or change in value shall be credited by using the procedure
335 defined in the policy or contract as if the contractual date of
336 crediting interest or changing values was the date of impairment

337 or insolvency, whichever is earlier, and shall not be subject to
 338 forfeiture.

339 (p) A policy or contract providing any hospital, medical,
 340 prescription drug, or other health care benefits pursuant to
 341 Medicare Part C or Part D or any regulations issued pursuant to
 342 Medicare Part C or Part D.

343 (5) Notwithstanding any other provisions of this part,
 344 this part applies to coverage of a person who is a payee under a
 345 structured settlement annuity, or a beneficiary if the payee is
 346 deceased, with a coverage limit of \$300,000 by the association,
 347 if:

348 (a) The payee is a resident of this state, regardless of
 349 where the contract owner resides.

350 (b) Neither the payee, the beneficiary, nor the contract
 351 owner is eligible for coverage by the association of the state
 352 in which the contract owner resides.

353 Section 6. Subsections (6) and (10) of section 631.714,
 354 Florida Statutes, are amended to read:

355 631.714 Definitions.—As used in this part, the term:

356 (6) "Insolvent insurer" means a member insurer authorized
 357 to transact insurance in this state, either at the time the
 358 policy was issued or when the insured event occurred, and
 359 against which an order of liquidation with a finding of
 360 insolvency has been entered by a court of competent
 361 jurisdiction, ~~if such order has become final by the exhaustion~~
 362 ~~of appellate review.~~

363 (10) "Resident" means any person who resides in this state
 364 at the time a member insurer is determined to be an impaired or

365 insolvent insurer and to whom contractual obligations are owed
 366 by such impaired or insolvent member insurer. A person may be a
 367 resident of only one state, which in the case of a person other
 368 than an individual shall be the person's principal place of
 369 business. Citizens of the United States who are residents of
 370 foreign countries or United States possessions, territories, or
 371 protectorates that do not have an association similar to the
 372 guaranty association created by this part shall be deemed
 373 residents of the state of domicile of the insurer issuing the
 374 policies or contracts.

375 Section 7. Subsection (9) of section 631.717, Florida
 376 Statutes, is amended, and paragraph (g) is added to subsection
 377 (12) of that section, to read:

378 631.717 Powers and duties of the association.—

379 (9) The association's liability for the contractual
 380 obligations of the insolvent insurer shall be as great as, but
 381 no greater than, the contractual obligations of the insurer in
 382 the absence of such insolvency, unless such obligations are
 383 reduced as permitted by subsection (4), but the aggregate
 384 liability of the association shall not exceed \$100,000 in net
 385 cash surrender and net cash withdrawal values for life
 386 insurance, \$250,000 in net cash surrender and net cash
 387 withdrawal values for deferred annuity contracts, or \$300,000
 388 for all benefits including cash values, with respect to any one
 389 life. In no event shall the association be liable for any
 390 penalties or interest.

391 (12)

392 (g) In carrying out its duties in connection with

393 guaranteeing, assuming, or reinsuring policies or contracts
394 under subsections (2) and (3), the association may, subject to
395 approval of the receivership court, issue substitute coverage
396 for a policy or contract that provides an interest rate,
397 crediting rate, or similar factor determined by use of an index
398 or other external reference stated in the policy or contract
399 employed in calculating returns or changes in value by issuing
400 an alternative policy or contract. In lieu of the index or other
401 external reference provided for in the original policy or
402 contract, the alternative policy or contract must provide for a
403 fixed interest rate, payment of dividends with minimum
404 guarantees, or a different method for calculating interest or
405 changes in value. In such case:

406 1. There is no requirement for evidence of insurability,
407 waiting period, or other exclusion that would not have applied
408 under the replaced policy or contract.

409 2. The alternative policy or contract shall be
410 substantially similar to the replaced policy or contract in all
411 other material terms.

412 Section 8. Section 631.7295, Florida Statutes, is created
413 to read:

414 631.7295 Reinsurance.—With respect to covered policies for
415 which the association becomes obligated after an entry of an
416 order of liquidation or rehabilitation, the association may
417 elect to succeed to the rights of the insolvent insurer arising
418 after the order of liquidation or rehabilitation under any
419 contract of reinsurance to which the insolvent insurer was a
420 party, to the extent such contract provides coverage for losses

421 occurring after the date of the order of liquidation or
 422 rehabilitation. As a condition to making such election, the
 423 association must pay all unpaid premiums due under the contract
 424 for coverage relating to periods before and after the date on
 425 which the order of liquidation or rehabilitation was entered.

426 Section 9. Section 631.735, Florida Statutes, is amended
 427 to read:

428 631.735 Prohibited advertisement of Florida Life and
 429 Health Insurance Guaranty Association Act in sale of insurance.—
 430 A ~~No~~ person may not shall make, publish, disseminate, circulate,
 431 or place before the public, or cause directly or indirectly to
 432 be made, published, disseminated, circulated, or placed before
 433 the public, in any newspaper, magazine, or other publication, or
 434 in the form of a notice, circular, pamphlet, letter, or poster,
 435 or over any radio station or television station, or in any other
 436 way, any advertisement, announcement, or statement which uses
 437 the existence of the Insurance Guaranty Association of this
 438 state for the purpose of sales, solicitation, or inducement to
 439 purchase any form of insurance covered by the Florida Life and
 440 Health Insurance Guaranty Association Act. However, this section
 441 does shall not apply to the Florida Life and Health Insurance
 442 Guaranty Association or any other entity that ~~which~~ does not
 443 sell or solicit insurance. This section does not prohibit a
 444 licensed insurance agent from explaining the existence or
 445 function of the association to policyholders, prospects, or
 446 applicants for coverage.

447 Section 10. Subsection (2) of section 631.904, Florida
 448 Statutes, is amended to read:

449 631.904 Definitions.—As used in this part, the term:
450 (2) "Covered claim" means an unpaid claim, including a
451 claim for return of unearned premiums, which arises out of, is
452 within the coverage of, and is not in excess of the applicable
453 limits of, an insurance policy to which this part applies, which
454 policy was issued by an insurer and which claim is made on
455 behalf of a claimant or insured who was a resident of this state
456 at the time of the injury. The term "covered claim" includes
457 unpaid claims under any employer liability coverage of a
458 workers' compensation policy limited to the lesser of \$300,000
459 or the limits of the policy. The term "covered claim" does not
460 include any amount sought as a return of premium under any
461 retrospective rating plan; any amount due any reinsurer,
462 insurer, insurance pool, or underwriting association, as
463 subrogation recoveries or otherwise; any claim that would
464 otherwise be a covered claim that has been rejected by any other
465 state guaranty fund on the grounds that the insured's net worth
466 is greater than that allowed under that state's guaranty fund or
467 liquidation law, except this exclusion from the definition of
468 covered claim shall not apply to employers who, prior to April
469 30, 2004, entered into an agreement with the corporation
470 preserving the employer's right to seek coverage of claims
471 rejected by another state's guaranty fund; or any return of
472 premium resulting from a policy that was not in force on the
473 date of the final order of liquidation. Member insurers have no
474 right of subrogation against the insured of any insolvent
475 insurer. This provision shall be applied retroactively to cover
476 claims of an insolvent self-insurance fund resulting from

CS/HB 159

2010

477 accidents or losses incurred prior to January 1, 1994,
478 regardless of the date the petition in circuit court was filed
479 alleging insolvency and the date the court entered an order
480 appointing a receiver.

481 Section 11. This act shall take effect July 1, 2010.