

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 the furnishing of certain

57 written information in a form prepared by an association  
 58 upon request; amending s. 631.904, F.S.; revising the  
 59 definition of the term "covered claim"; providing an  
 60 effective date.

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

63  
 64 Section 1. Subsection (14) of section 631.52, Florida  
 65 Statutes, is amended to read:

66 631.52 Scope.—This part shall apply to all kinds of direct  
 67 insurance, except:

68 (14) Workers' compensation, including claims under  
 69 employer liability coverage;

70 Section 2. Subsection (1) of section 631.54, Florida  
 71 Statutes, is amended to read:

72 631.54 Definitions.—As used in this part:

73 (1) "Account" means ~~any~~ one of the ~~three~~ accounts created  
 74 by s. 631.55.

75 Section 3. Subsection (2) of section 631.55, Florida  
 76 Statutes, is amended to read:

77 631.55 Creation of the association.—

78 (2) For the purposes of administration and assessment, the  
 79 association shall be divided into two ~~three~~ separate accounts:

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

81 ~~(b) The auto physical damage account;~~ and

82 (b) (e) The account for all other insurance to which this  
 83 part applies.

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

85 Statutes, is amended to read:

86 631.57 Powers and duties of the association.—

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

113 included within such account during the calendar year next  
114 preceding the date of such assessments.

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

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

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

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

141 | under s. 631.695 and the funding of any reserves and other  
142 | payments required under the bond resolution or trust indenture  
143 | pursuant to which such bonds have been issued, the office, upon  
144 | certification of the board of directors, shall levy emergency  
145 | assessments upon insurers holding a certificate of authority.  
146 | The emergency assessments payable under this paragraph by any  
147 | insurer shall not exceed in any single year more than 2 percent  
148 | of that insurer's direct written premiums, net of refunds, in  
149 | this state during the preceding calendar year for the kinds of  
150 | insurance within the account specified in s. 631.55(2) (b) ~~(e)~~.

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

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

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

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

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

196 ~~2. In order to ensure that insurers paying emergency~~

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

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

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



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

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

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

253 association shall use any remitted excess recoupment amounts to  
254 reduce future assessments.

255 (g) Amounts recouped pursuant to this subsection for  
256 assessments levied under paragraph (a) due to insolvencies on or  
257 after July 1, 2010, are considered premium solely for premium  
258 tax purposes and are not subject to fees or commissions.

259 However, insurers shall treat the failure of an insured to pay a  
260 recoupment charge as a failure to pay the premium.

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

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

281 by year. The insurer or insurer group need submit only one  
 282 report for all lines of business using the same recoupment  
 283 factor.

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

288 631.713 Application of part.—

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

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

292 1. Are residents of this state; or

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

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

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

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

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

304 (3) This part does not apply to:

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

309 in the policy or contract employed in calculating returns or  
310 changes in value:

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

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

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

337 crediting interest or changing values was the date of impairment  
338 or insolvency, whichever is earlier, and shall not be subject to  
339 forfeiture.

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

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

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

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

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

356 631.714 Definitions.—As used in this part, the term:

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

364 (10) "Resident" means any person who resides in this state

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

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

379 631.717 Powers and duties of the association.—

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

392 (12)

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

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

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

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

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

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

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

429 631.735 Prohibited advertisement of Florida Life and  
 430 Health Insurance Guaranty Association Act in sale of insurance.—  
 431 A ~~No~~ person may not ~~shall~~ make, publish, disseminate, circulate,  
 432 or place before the public, or cause directly or indirectly to  
 433 be made, published, disseminated, circulated, or placed before  
 434 the public, in any newspaper, magazine, or other publication, or  
 435 in the form of a notice, circular, pamphlet, letter, or poster,  
 436 or over any radio station or television station, or in any other  
 437 way, any advertisement, announcement, or statement which uses  
 438 the existence of the Insurance Guaranty Association of this  
 439 state for the purpose of sales, solicitation, or inducement to  
 440 purchase any form of insurance covered by the Florida Life and  
 441 Health Insurance Guaranty Association Act. However, this section  
 442 does ~~shall~~ not apply to the Florida Life and Health Insurance  
 443 Guaranty Association or any other entity that ~~which~~ does not  
 444 sell or solicit insurance. This section also does not prohibit  
 445 the furnishing of written information that is in a form prepared  
 446 by the association, that summarizes the claim, cash value, and  
 447 annuity cash value limits of the association, upon request of  
 448 the policyholder or applicant for insurance.



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

451 631.904 Definitions.—As used in this part, the term:

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

CS/CS/HB 159

2010

477 insurer. This provision shall be applied retroactively to cover  
478 claims of an insolvent self-insurance fund resulting from  
479 accidents or losses incurred prior to January 1, 1994,  
480 regardless of the date the petition in circuit court was filed  
481 alleging insolvency and the date the court entered an order  
482 appointing a receiver.

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