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1 A bill to be entitled
 2 An act relating to the Florida Insurance Guaranty
 3 Association; amending s. 631.52, F.S.; revising the
 4 list of kinds of insurance exempted from the guarantee
 5 of payments; reordering and amending s. 631.57, F.S.;
 6 revising the duties of the association; authorizing
 7 the association to collect regular assessments
 8 directly from policyholders; authorizing the
 9 association to collect emergency assessments from
 10 insurers under certain circumstances; making technical
 11 and grammatical corrections; providing an effective
 12 date.

13
 14 Be It Enacted by the Legislature of the State of Florida:

15
 16 Section 1. Section 631.52, Florida Statutes, is amended to
 17 read:

18 631.52 Scope.—This part shall apply to all kinds of direct
 19 insurance, except for any of the following:

20 (1) Life, annuity, health, or disability insurance.~~†~~

21 (2) Mortgage guaranty, financial guaranty, or other forms
 22 of insurance offering protection against investment risks.~~†~~

23 (3) Fidelity or surety bonds, or any other bonding
 24 obligations.~~†~~

25 (4) Credit insurance, vendors' single interest insurance,
 26 or collateral protection insurance or any similar insurance
 27 protecting the interests of a creditor arising out of a
 28 creditor-debtor transaction.~~†~~

- 29 (5) Warranty, including motor vehicle service, home
- 30 warranty, or service warranty.~~†~~
- 31 (6) Ambulance service, health care service, or preneed
- 32 funeral merchandise or service.~~†~~
- 33 (7) Optometric service plan, pharmaceutical service plan,
- 34 or dental service plan.~~†~~
- 35 (8) Legal expense.~~†~~
- 36 (9) Health maintenance, prepaid health clinic, or
- 37 continuing care.~~†~~
- 38 (10) Ocean marine or wet marine insurance.~~†~~
- 39 (11) Self-insurance and any kind of self-insurance fund,
- 40 liability pool, or risk management fund.~~†~~
- 41 (12) Title insurance.~~†~~
- 42 (13) Surplus lines.~~†~~
- 43 (14) Workers' compensation, including claims under
- 44 employer liability coverage.~~†~~
- 45 (15) Any transaction or combination of transactions
- 46 between a person, including affiliates of such person, and an
- 47 insurer, including affiliates of such insurer, which involves
- 48 the transfer of investment or credit risk unaccompanied by the
- 49 transfer of insurance risk.~~†~~~~or~~
- 50 (16) Any insurance provided by or guaranteed by
- 51 government, including policies issued by risk apportionment
- 52 plans under s. 627.351.

53 Section 2. Subsection (2) of section 631.57, Florida

54 Statutes, is amended, and subsection (3) of that section is

55 reordered and amended, to read:

56 631.57 Powers and duties of the association.—

57 (2) The association may:

58 (a) Employ or retain such persons as are necessary to

59 handle claims and perform other duties of the association;

60 (b) Borrow funds necessary to effect the purposes of this

61 part in accord with the plan of operation, including borrowing

62 necessary to ensure that its cash flow needs are timely met to

63 pay covered claims when regular and emergency assessments are

64 levied on policyholders under subsection (3);

65 (c) Sue or be sued, provided that service of process is

66 ~~shall be~~ made upon the person registered with the department as

67 agent for the receipt of service of process; and

68 (d) Negotiate and become a party to such contracts as are

69 necessary to carry out the purpose of this part. ~~Additionally,~~

70 The association may also enter into such contracts with a

71 municipality, a county, or a legal entity created pursuant to s.

72 163.01(7)(g) ~~as are necessary~~ in order for the municipality,

73 county, or legal entity to issue bonds under s. 631.695. In

74 connection with the issuance of ~~any~~ such bonds and the entering

75 into of ~~any~~ such ~~necessary~~ contracts, the association may agree

76 to such terms and conditions as the association deems necessary

77 and proper.

78 (3) (a) To the extent necessary to secure ~~the~~ funds for the

79 respective accounts paying for ~~the payment of~~ covered claims, to

80 pay the reasonable costs to administer such accounts ~~the same,~~

81 and ~~to the extent necessary~~ to secure ~~the~~ funds for the account

82 specified in s. 631.55(2)(b) or to retire indebtedness,

83 including, without limitation, the principal, redemption

84 premium, if any, and interest on, and related costs of issuance

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85 of, bonds issued under s. 631.695 and the funding of any
86 reserves and other payments required under the bond resolution
87 or trust indenture pursuant to which such bonds have been
88 issued, the office, upon certification of the board of
89 directors, shall levy regular assessments in the proportion that
90 each insurer's net direct written premiums in this state in the
91 classes protected by the account bears to the total of the said
92 net direct written premiums received in this state by all such
93 insurers for the preceding calendar year for the kinds of
94 insurance included within such account. Regular assessments
95 shall be remitted to and administered by the board of directors
96 in the manner specified by the approved plan. Each insurer so
97 assessed has ~~shall have~~ at least 30 days' written notice as to
98 the date the assessment is due and payable. ~~Every assessment~~
99 ~~shall be made as a uniform percentage applicable to the net~~
100 ~~direct written premiums of each insurer in the kinds of~~
101 ~~insurance included within the account in which the assessment is~~
102 ~~made.~~ The regular assessments levied against an any insurer may
103 ~~shall not exceed~~ in any one year exceed ~~more than~~ 2 percent of
104 that insurer's net direct written premiums in this state for the
105 kinds of insurance included within such account during the
106 calendar year next preceding the date of such assessments. An
107 insurer may fully recoup regular assessments levied against
108 prior year premiums by applying a separate recoupment factor to
109 the premium of policies of the same kind or line as were
110 considered by the office in determining the assessment liability
111 of the insurer or insurer group.

112 (b) In lieu of collecting the regular assessment under

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113 paragraph (a) from insurers, the association may collect all or
114 part of the assessment directly from policyholders. If the
115 association elects to collect the assessment directly from
116 policyholders, the office shall issue an order specifying the
117 date the board requires the insurers to begin collecting the
118 assessment, which must be at least 90 days after the date the
119 board levies the assessment. The order must specify a uniform
120 percentage determined by the board, and verified by the office,
121 of the direct written premium for all lines of business in the
122 applicable accounts. The assessment collected may not exceed 2
123 percent of the premium in any single year. The insurers shall
124 collect such assessments without being affected by any credit,
125 limitation, exemption, or deferment. Assessments collected under
126 this paragraph shall be transferred regularly to the association
127 as set forth in the order levying the assessment.

128 (e) ~~(b)~~ If sufficient funds from regular and emergency ~~such~~
129 assessments, together with funds previously raised, are not
130 available in any one year in the respective account to make all
131 the payments or reimbursements ~~then~~ owing to insurers, the funds
132 available shall be prorated and the unpaid portion ~~shall be paid~~
133 as soon ~~thereafter~~ as funds become available.

134 ~~(c) The Legislature finds and declares that all~~
135 ~~assessments paid by an insurer or insurer group as a result of a~~
136 ~~levy by the office, including assessments levied pursuant to~~
137 ~~paragraph (a) and emergency assessments, constitute advances of~~
138 ~~funds from the insurer to the association. An insurer may fully~~
139 ~~recoup such advances by applying a separate recoupment factor to~~
140 ~~the premium of policies of the same kind or line as were~~

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141 ~~considered by the office in determining the assessment liability~~
142 ~~of the insurer or insurer group.~~

143 ~~(f)-(d)~~ No State funds may not of any kind shall be
144 allocated or paid to the said association or any of its
145 accounts.

146 ~~(c)-(e)~~ 1.a. In addition to regular assessments ~~otherwise~~
147 authorized under ~~in~~ paragraph (a), and to the extent necessary
148 to secure ~~the~~ funds for the account specified in s. 631.55(2)(b)
149 for the direct payment of covered claims of insurers rendered
150 insolvent by the effects of a hurricane and to pay the
151 reasonable costs to administer such claims, or to retire
152 indebtedness, including, without limitation, the principal,
153 redemption premium, if any, and interest on, and related costs
154 of issuance of, bonds issued under s. 631.695 and the funding of
155 any reserves and other payments required under the bond
156 resolution or trust indenture pursuant to which such bonds have
157 been issued, ~~the association office, upon certification of the~~
158 ~~board of directors,~~ shall levy emergency assessments directly
159 upon policyholders, which shall be collected by insurers holding
160 a certificate of authority. Pursuant to such levy, the office
161 shall issue an order specifying the date the board requires the
162 insurers to begin collecting the assessment, which must be at
163 least 90 days after the date the board levies the assessment.
164 The order must specify a uniform percentage determined by the
165 board, and verified by the office, of the direct written premium
166 for all lines of business in the applicable accounts. The
167 assessment collected may not exceed 2 percent of the premium in
168 any single year. The insurers shall collect such assessments

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169 without being affected by any credit, limitation, exemption, or
170 deferment. Assessments collected by insurers under this
171 paragraph shall be transferred regularly to the association as
172 set forth in the order levying the assessment.

173 1. If, after consultation with its financial advisor, the
174 board determines that it must immediately begin paying the
175 covered claims of one or more insolvent insurers and financing
176 is not reasonably available, it may levy the emergency
177 assessment on insurers in the same manner as set forth in
178 paragraph (a), except that an emergency assessment may be paid
179 by the insurer in a single payment or, at the option of the
180 association, in 12 monthly installments with the first
181 installment being due and payable at the end of the month after
182 the emergency assessment is levied and subsequent installments
183 being due by the end of each succeeding month. ~~The emergency~~
184 ~~assessments payable under this paragraph by any insurer shall~~
185 ~~not exceed in any single year more than 2 percent of that~~
186 ~~insurer's direct written premiums, net of refunds, in this state~~
187 ~~during the preceding calendar year for the kinds of insurance~~
188 ~~within the account specified in s. 631.55(2)(b).~~

189 2.b. Any Emergency assessments authorized under this
190 paragraph shall be levied by the office only upon insurers
191 ~~referred to in sub-subparagraph a.,~~ upon certification as to the
192 need for such assessments by the board of directors. If ~~In the~~
193 ~~event~~ the board ~~of directors~~ participates in the issuance of
194 bonds in accordance with s. 631.695, emergency assessments shall
195 be levied in each year that bonds issued under s. 631.695 and
196 secured by such emergency assessments are outstanding, ~~in such~~

197 amounts up to such 2 percent ~~2-percent~~ limit as required in
 198 order to provide for the full and timely payment of the
 199 principal of, redemption premium, if any, and interest on, and
 200 related costs of issuance of, such bonds. The emergency
 201 assessments ~~provided for in this paragraph~~ are assigned and
 202 pledged to the municipality, county, or legal entity issuing
 203 bonds under s. 631.695 for the benefit of the holders of such
 204 bonds, in order to enable such municipality, county, or legal
 205 entity to provide for the payment of the principal of,
 206 redemption premium, if any, and interest on such bonds, the cost
 207 of issuance of such bonds, and the funding of any reserves and
 208 other payments required under the bond resolution or trust
 209 indenture pursuant to which such bonds have been issued, without
 210 the necessity for ~~of~~ any further action by the association, the
 211 office, or any other party. If ~~To the extent~~ bonds are issued
 212 under s. 631.695 and the association secures ~~determines to~~
 213 ~~secure~~ such bonds by a pledge of revenues received from the
 214 emergency assessments, such bonds, upon such pledge of revenues,
 215 shall be secured by and payable from the proceeds of such
 216 emergency assessments, and the proceeds of emergency assessments
 217 levied under this paragraph shall be remitted directly to and
 218 administered by the trustee or custodian appointed for the
 219 payment of such bonds.

220 ~~e. Emergency assessments under this paragraph may be~~
 221 ~~payable in a single payment or, at the option of the~~
 222 ~~association, may be payable in 12 monthly installments with the~~
 223 ~~first installment being due and payable at the end of the month~~
 224 ~~after an emergency assessment is levied and subsequent~~

225 | ~~installments being due not later than the end of each succeeding~~
 226 | ~~month.~~

227 | 3.d. If emergency assessments are imposed, the report
 228 | required by s. 631.695(7) must ~~shall~~ include an analysis of the
 229 | revenues generated from the emergency assessments imposed under
 230 | this paragraph.

231 | 4.e. If emergency assessments are imposed, the references
 232 | in sub-subparagraph (1)(a)3.b. and s. 631.695(2) and (7) to
 233 | regular assessments levied under paragraph (a) must ~~shall~~
 234 | include emergency assessments imposed under this paragraph.

235 | 5.2. If the board of directors participates in the
 236 | issuance of bonds in accordance with s. 631.695, an emergency
 237 | ~~annual~~ assessment under this paragraph must ~~shall~~ continue while
 238 | the bonds issued with respect to which the assessment was
 239 | imposed are outstanding, including any bonds the proceeds of
 240 | which were used to refund bonds issued pursuant to s. 631.695,
 241 | unless adequate provision has been made for the payment of the
 242 | bonds in the documents authorizing the issuance of such bonds.

243 | 6.3. Emergency assessments under this paragraph are not
 244 | premium and are not subject to the premium tax, to any fees, or
 245 | to any commissions. An insurer is liable for all emergency
 246 | assessments that the insurer collects and shall treat the
 247 | failure of an insured to pay an emergency assessment as a
 248 | failure to pay the premium. An insurer is not liable for
 249 | uncollectible emergency assessments.

250 | (d) ~~(f)~~ The recoupment factor applied to policies in
 251 | accordance with paragraph (a) or subparagraph (c)1. ~~paragraph~~
 252 | ~~(e)~~ shall be selected by the insurer or insurer group ~~so as~~ to

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253 provide for the probable recoupment of ~~both assessments levied~~
254 ~~pursuant to paragraph (a) and emergency~~ assessments over a
255 period of 12 months, unless the insurer or insurer group, at its
256 option, elects to recoup the assessment over a longer period.
257 The recoupment factor applies ~~shall apply~~ to all policies of the
258 same kind or line as were considered by the office in
259 determining the assessment liability of the insurer or insurer
260 group issued or renewed during a 12-month period.

261 1. If the insurer or insurer group does not collect the
262 full amount of the assessment during one 12-month period, the
263 insurer or insurer group may apply recalculated recoupment
264 factors to policies issued or renewed during one or more
265 succeeding 12-month periods.

266 2. If, at the end of a 12-month period, the insurer or
267 insurer group has collected from the combined kinds or lines of
268 policies subject to assessment more than the total amount of the
269 assessment paid by the insurer or insurer group, the excess
270 amount shall be disbursed as follows:

271 a.1. If the excess amount does not exceed 15 percent of
272 the total assessment paid by the insurer or insurer group, the
273 excess amount shall be remitted to the association within 60
274 days after the end of the 12-month period in which the excess
275 recoupment charges were collected.

276 b.2. If the excess amount exceeds 15 percent of the total
277 assessment paid by the insurer or insurer group, the excess
278 amount shall be returned to the insurer's or insurer group's
279 current policyholders by refunds or premium credits. The
280 association shall use any remitted excess recoupment amounts to

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281 reduce future assessments.

282 3.(g) Amounts recouped pursuant to this paragraph
283 ~~subsection~~ for regular assessments levied under paragraph (a)
284 due to insolvencies on or after July 1, 2010, are considered
285 premium solely for premium tax purposes and are not subject to
286 fees or commissions. However, insurers shall treat the failure
287 of an insured to pay a recoupment charge as a failure to pay the
288 premium.

289 4.(h) At least 15 days before applying the recoupment
290 factor to any policies, the insurer or insurer group shall file
291 with the office a statement for informational purposes only
292 setting forth the amount of the recoupment factor and an
293 explanation of how the recoupment factor will be applied. Such
294 statement must ~~shall~~ include documentation of the assessment
295 paid by the insurer or insurer group and the arithmetic
296 calculations supporting the recoupment factor. The insurer or
297 insurer group may use the recoupment factor at any time after
298 the expiration of the 15-day period. The insurer or insurer
299 group need submit only one informational statement for all lines
300 of business using the same recoupment factor.

301 5.(i) Within ~~No later than~~ 90 days after the insurer or
302 insurer group has completed the recoupment process, the insurer
303 or insurer group shall file with the office, for information
304 purposes only, a final accounting report documenting the
305 recoupment. The report must ~~shall~~ provide the amounts of
306 assessments paid by the insurer or insurer group, the amounts
307 and percentages recouped by year from each affected line of
308 business, and the direct written premium subject to recoupment

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309 | by year. The insurer or insurer group need submit only one
310 | report for all lines of business using the same recoupment
311 | factor.

312 | Section 3. This act shall take effect July 1, 2013.