

By Senator Brandes

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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.

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

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

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- 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 employer
- 44 liability coverage.~~†~~
- 45 (15) Any transaction or combination of transactions between
- 46 a person, including affiliates of such person, and an insurer,
- 47 including affiliates of such insurer, which involves the
- 48 transfer of investment or credit risk unaccompanied by the
- 49 transfer of insurance risk.~~†~~~~or~~
- 50 (16) Any insurance provided by or guaranteed by government,
- 51 including policies issued by risk apportionment plans under s.
- 52 627.351.

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

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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  
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

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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  
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

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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 assessments~~  
135 ~~paid by an insurer or insurer group as a result of a levy by the~~  
136 ~~office, including assessments levied pursuant to paragraph (a)~~  
137 ~~and emergency assessments, constitute advances of funds from the~~  
138 ~~insurer to the association. An insurer may fully recoup such~~  
139 ~~advances by applying a separate recoupment factor to the premium~~  
140 ~~of policies of the same kind or line as were considered by the~~  
141 ~~office in determining the assessment liability of the insurer or~~  
142 ~~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.

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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  
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

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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 ~~upon insurers referred~~  
191 ~~to in sub-subparagraph a.,~~ only 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

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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

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

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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 the  
272 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  
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

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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  
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.