

A bill to be entitled

An act relating to the Florida Insurance Guaranty Association; amending s. 631.54, F.S.; defining the term "assessment year"; amending s. 631.57, F.S.; revising provisions relating to the levy of assessments on insurers; specifying the conditions under which such assessments are paid; revising procedures and timeframes for levy of the assessments; revising an exemption for assessments; amending s. 631.64, F.S.; requiring charges or recoupments to be displayed separately on premium bills to policyholders and prohibiting their inclusion in rates; amending ss. 627.727 and 631.55, F.S.; conforming cross-references; providing an effective date.

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

Section 1. Subsections (2) through (9) of section 631.54, Florida Statutes, are renumbered as subsections (3) through (10), respectively, and a new subsection (2) is added to that section to read:

631.54 Definitions.—As used in this part:

(2) "Assessment year" means the 12-month period, which may begin on the first day of any calendar quarter, whether January 1, April 1, July 1, or October 1, as specified in an order issued by the office directing insurers to pay an assessment to

27 the association. Upon entry of the order, insurers may begin  
 28 collecting assessments from policyholders for the assessment  
 29 year.

30 Section 2. Subsections (3) and (4) of section 631.57,  
 31 Florida Statutes, are amended to read:

32 631.57 Powers and duties of the association.—

33 (3) (a) To the extent necessary to secure ~~the~~ funds for the  
 34 respective accounts for the payment of covered claims, to pay  
 35 the reasonable costs to administer such accounts ~~the same~~, and  
 36 ~~to the extent necessary~~ to secure ~~the~~ funds for the account  
 37 specified in s. 631.55(2) (b) or to retire indebtedness,  
 38 including, without limitation, the principal, redemption  
 39 premium, if any, and interest on, and related costs of issuance  
 40 of, bonds issued under s. 631.695 and the funding of ~~any~~  
 41 reserves and other payments required under the bond resolution  
 42 or trust indenture pursuant to which such bonds have been  
 43 issued, the office, upon certification of the board of  
 44 directors, shall levy assessments initially estimated in the  
 45 proportion that each insurer's net direct written premiums in  
 46 this state in the classes protected by the account bears to the  
 47 total of said net direct written premiums received in this state  
 48 by all such insurers for the preceding calendar year for the  
 49 kinds of insurance included within such account. Assessments  
 50 shall be remitted to and administered by the board of directors  
 51 in the manner specified by the approved plan and paragraph (f).  
 52 Each insurer so assessed shall have at least 30 days' written

53 notice as to the date the initial assessment payment is due and  
54 payable. Every assessment shall be ~~made as~~ a uniform percentage  
55 applicable to the net direct written premiums of each insurer in  
56 the kinds of insurance included within the account in which the  
57 assessment is made. The assessments levied against any insurer  
58 may ~~shall~~ not exceed in any one year more than 2 percent of that  
59 insurer's net direct written premiums in this state for the  
60 kinds of insurance included within such account during the  
61 calendar year next preceding the date of such assessments.

62 (b) If sufficient funds from such assessments, together  
63 with funds previously raised, are not available in any one year  
64 in the respective account to make all the payments or  
65 reimbursements then owing to insurers, the funds available shall  
66 be prorated and the unpaid portion ~~shall be~~ paid as soon  
67 ~~thereafter~~ as funds become available.

68 (c) The Legislature finds and declares that all  
69 assessments paid by an insurer or insurer group as a result of a  
70 levy by the office, including assessments levied pursuant to  
71 paragraph (a) and emergency assessments levied pursuant to  
72 paragraph (e), constitute advances of funds from the insurer to  
73 the association. An insurer may fully recoup such advances by  
74 applying the uniform assessment percentage levied by the office  
75 to all ~~a separate recoupment factor to the premium of policies~~  
76 of the same kind or line as were considered by the office in  
77 determining the assessment liability of the insurer or insurer  
78 group as set forth in paragraph (f).

79        1. Assessments levied under subparagraph (f)1. are paid  
 80 before policy surcharges are collected and result in a  
 81 receivable for policy surcharges collected in the future. This  
 82 amount, to the extent it is likely that it will be realized,  
 83 meets the definition of an admissible asset as specified in the  
 84 National Association of Insurance Commissioners' Statement of  
 85 Statutory Accounting Principles No. 4. The asset shall be  
 86 established and recorded separately from the liability  
 87 regardless of whether it is based on a retrospective or  
 88 prospective premium-based assessment. If an insurer is unable to  
 89 fully recoup the amount of the assessment because of a reduction  
 90 in writings or withdrawal from the market, the amount recorded  
 91 as an asset shall be reduced to the amount reasonably expected  
 92 to be recouped.

93        2. Assessments levied under subparagraph (f)2. are paid  
 94 after policy surcharges are collected so that the recognition of  
 95 assets is based on actual premium written offset by the  
 96 obligation to the association.

97        (d) ~~No State funds may not of any kind shall~~ be allocated  
 98 or paid to the said association or any of its accounts.

99        (e)1.a. In addition to assessments ~~otherwise~~ authorized in  
 100 paragraph (a), and to the extent necessary to secure the funds  
 101 for the account specified in s. 631.55(2)(b) for the direct  
 102 payment of covered claims of insurers rendered insolvent by the  
 103 effects of a hurricane and to pay the reasonable costs to  
 104 administer such claims, or to retire indebtedness, including,

105 without limitation, the principal, redemption premium, if any,  
 106 and interest on, and related costs of issuance of, bonds issued  
 107 under s. 631.695 and the funding of any reserves and other  
 108 payments required under the bond resolution or trust indenture  
 109 pursuant to which such bonds have been issued, the office, upon  
 110 certification of the board of directors, shall levy emergency  
 111 assessments upon insurers holding a certificate of authority.  
 112 The emergency assessments payable under this paragraph by any  
 113 insurer may ~~shall~~ not exceed in any single year more than 2  
 114 percent of that insurer's direct written premiums, net of  
 115 refunds, in this state during the preceding calendar year for  
 116 the kinds of insurance within the account specified in s.  
 117 631.55(2)(b).

118 2.b. ~~Any~~ Emergency assessments authorized under this  
 119 paragraph shall be levied by the office upon insurers referred  
 120 to in subparagraph 1. ~~sub-subparagraph a.~~, upon certification as  
 121 to the need for such assessments by the board of directors. If  
 122 ~~In the event~~ the board of directors participates in the issuance  
 123 of bonds in accordance with s. 631.695, emergency assessments  
 124 shall be levied in each year that bonds issued under s. 631.695  
 125 and secured by such emergency assessments are outstanding, in  
 126 ~~such~~ amounts up to such 2-percent limit as required in order to  
 127 provide for the full and timely payment of the principal of,  
 128 redemption premium, if any, and interest on, and related costs  
 129 of issuance of, such bonds. The emergency assessments ~~provided~~  
 130 ~~for in this paragraph~~ are assigned and pledged to the

131 municipality, county, or legal entity issuing bonds under s.  
 132 631.695 for the benefit of the holders of such bonds, in order  
 133 ~~to enable such municipality, county, or legal entity~~ to provide  
 134 for the payment of the principal of, redemption premium, if any,  
 135 and interest on such bonds, the cost of issuance of such bonds,  
 136 and the funding of any reserves and other payments required  
 137 under the bond resolution or trust indenture pursuant to which  
 138 such bonds have been issued, without ~~the necessity of any~~  
 139 further action by the association, the office, or any other  
 140 party. If ~~To the extent~~ bonds are issued under s. 631.695 and  
 141 the association determines to secure such bonds by a pledge of  
 142 revenues received from the emergency assessments, such bonds,  
 143 upon such pledge of revenues, shall be secured by and payable  
 144 from the proceeds of such emergency assessments, and the  
 145 proceeds of emergency assessments levied under this paragraph  
 146 shall be remitted directly to and administered by the trustee or  
 147 custodian appointed for such bonds.

148 3.e. ~~Emergency assessments used to defease bonds issued~~  
 149 under this part ~~paragraph~~ may be payable in a single payment or,  
 150 at the option of the association, may be payable in 12 monthly  
 151 installments with the first installment being due and payable at  
 152 the end of the month after an emergency assessment is levied and  
 153 subsequent installments being due by ~~not later than~~ the end of  
 154 each succeeding month.

155 4.d. If emergency assessments are imposed, the report  
 156 required by s. 631.695(7) must ~~shall~~ include an analysis of the

157 revenues generated from the emergency assessments imposed under  
 158 this paragraph.

159 ~~5.e.~~ If emergency assessments are imposed, the references  
 160 in sub-subparagraph (1)(a)3.b. and s. 631.695(2) and (7) to  
 161 assessments levied under paragraph (a) must ~~shall~~ include  
 162 emergency assessments imposed under this paragraph.

163 ~~6.2.~~ If the board of directors participates in the  
 164 issuance of bonds in accordance with s. 631.695, an annual  
 165 assessment under this paragraph shall continue while the bonds  
 166 issued with respect to which the assessment was imposed are  
 167 outstanding, including any bonds the proceeds of which were used  
 168 to refund bonds issued pursuant to s. 631.695, unless adequate  
 169 provision has been made for the payment of the bonds in the  
 170 documents authorizing the issuance of such bonds.

171 ~~7.3.~~ Emergency assessments under this paragraph are not  
 172 premium and are not subject to the premium tax, to any fees, or  
 173 to any commissions. An insurer is liable for all emergency  
 174 assessments that the insurer collects and shall treat the  
 175 failure of an insured to pay an emergency assessment as a  
 176 failure to pay the premium. An insurer is not liable for  
 177 uncollectible emergency assessments.

178 (f) ~~The recoupment factor applied to policies in~~  
 179 ~~accordance with paragraph (c) shall be selected by the insurer~~  
 180 ~~or insurer group so as to provide for the probable recoupment of~~  
 181 ~~both assessments levied pursuant to paragraph (a) and emergency~~  
 182 ~~assessments over a period of 12 months, unless the insurer or~~

183 ~~insurer group, at its option, elects to recoup the assessment~~  
184 ~~over a longer period. The recoupment factor shall apply to all~~  
185 ~~policies of the same kind or line as were considered by the~~  
186 ~~office in determining the assessment liability of the insurer or~~  
187 ~~insurer group issued or renewed during a 12-month period. If the~~  
188 ~~insurer or insurer group does not collect the full amount of the~~  
189 ~~assessment during one 12-month period, the insurer or insurer~~  
190 ~~group may apply recalculated recoupment factors to policies~~  
191 ~~issued or renewed during one or more succeeding 12-month~~  
192 ~~periods. If, at the end of a 12-month period, the insurer or~~  
193 ~~insurer group has collected from the combined kinds or lines of~~  
194 ~~policies subject to assessment more than the total amount of the~~  
195 ~~assessment paid by the insurer or insurer group, the excess~~  
196 ~~amount shall be disbursed as follows:~~

197 1. The association, office, and insurers remitting  
198 assessments pursuant to paragraph (a) or paragraph (e) must  
199 comply with the following:

200 a. In the order levying an assessment, the office shall  
201 specify the actual percentage amount to be collected uniformly  
202 from all the policyholders of insurers subject to the assessment  
203 and the date on which the assessment year begins, which may not  
204 begin before 90 days after the association board certifies such  
205 an assessment.

206 b. Insurers shall make an initial payment to the  
207 association before the beginning of the assessment year on or  
208 before the date specified in the order of the office.



209 c. Insurers that have written insurance in the calendar  
210 year before the year in which the assessment is certified by the  
211 board shall make an initial payment based on the net direct  
212 written premium amount from the prior calendar year as set forth  
213 in the insurers annual statement, multiplied by the uniform  
214 percentage of premium specified in the order issued by the  
215 office. Insurers that have not written insurance in the prior  
216 calendar year in any of the lines under the account which are  
217 being assessed, but which are writing insurance as of, or after,  
218 the date the board certifies the assessment to the office, shall  
219 pay an amount based on a good faith estimate of the amount of  
220 net direct written premium anticipated to be written in the  
221 subject lines of business for the assessment year, multiplied by  
222 the uniform percentage of premium specified in the order issued  
223 by the office.

224 d. Insurers shall file a reconciliation report with the  
225 association within 45 days after the end of the assessment year  
226 which indicates the amount of the initial payment to the  
227 association before the assessment year, whether such amount was  
228 based on net direct written premium contained in a prior  
229 calendar year annual statement or a good faith projection, the  
230 amount actually collected during the assessment year, and such  
231 other information contained on a form adopted by the association  
232 and provided to the insurers in advance. If the insurer  
233 collected from policyholders more than the amount initially  
234 paid, the insurer shall pay the excess amount to the

235 association. If the insurer collected from policyholders an  
236 amount which is less than the amount initially paid to the  
237 association, the association shall credit the insurer that  
238 amount against future assessments. Such payment reconciliation  
239 report, and any payment of excess amounts collected from  
240 policyholders, shall be completed and remitted to the  
241 association within 90 days after the end of the assessment year.  
242 The association shall send a final reconciliation report on all  
243 insurers to the office within 120 days after each assessment  
244 year.

245 e. Insurers remitting reconciliation reports under this  
246 paragraph to the association are subject to s. 626.9541(1)(e).  
247 ~~If the excess amount does not exceed 15 percent of the total~~  
248 ~~assessment paid by the insurer or insurer group, the excess~~  
249 ~~amount shall be remitted to the association within 60 days after~~  
250 ~~the end of the 12-month period in which the excess recoupment~~  
251 ~~charges were collected.~~

252 2. The association may use a monthly installment method  
253 instead of the method described in sub-subparagraphs (f)1.b. and  
254 c. or in combination thereof based on the association's  
255 projected cash flow. If the association projects that it has  
256 cash on hand for the payment of anticipated claims in the  
257 applicable account for at least 6 months, the board may make an  
258 estimate of the assessment needed and may recommend to the  
259 office the assessment percentage that may be collected as a  
260 monthly assessment. The office may, in the order levying the

261 assessment on insurers, specify that the assessment is due and  
262 payable monthly as the funds are collected from insureds  
263 throughout the assessment year, in which case the assessment  
264 shall be a uniform percentage of premium collected during the  
265 assessment year and shall be collected from all policyholders  
266 with policies in the classes protected by the account. All  
267 insurers shall collect the assessment without regard to whether  
268 the insurers reported premium in the year preceding the  
269 assessment. Insurers are not required to advance funds if the  
270 association and the office elect to use the monthly installment  
271 option. All funds collected shall be retained by the association  
272 for the payment of current or future claims. This subparagraph  
273 does not alter the obligation of an insurer to remit assessments  
274 levied pursuant to this subsection to the association. ~~If the~~  
275 ~~excess amount exceeds 15 percent of the total assessment paid by~~  
276 ~~the insurer or insurer group, the excess amount shall be~~  
277 ~~returned to the insurer's or insurer group's current~~  
278 ~~policyholders by refunds or premium credits. The association~~  
279 ~~shall use any remitted excess recoupment amounts to reduce~~  
280 ~~future assessments.~~

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

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

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

310 (i) Assessments levied under this subsection are levied  
 311 upon insurers. This subsection does not create a cause of action  
 312 by a policyholder with respect to the levying of, or a

313 policyholder's duty to pay, such assessments.

314 (4) The office ~~department~~ may exempt or temporarily defer  
315 any insurer from any regular or emergency assessment if the  
316 office finds that the insurer is impaired or insolvent or if an  
317 assessment would result in such insurer's financial statement  
318 reflecting an amount of capital or surplus less than the sum of  
319 the minimum amount required by any jurisdiction in which the  
320 insurer is authorized to transact insurance.

321 Section 3. Section 631.64, Florida Statutes, is amended to  
322 read:

323 631.64 Recognition of assessments ~~in rates.~~ Charges or  
324 recoupments shall be separately displayed on premium bills to  
325 enable policyholders to determine the amount charged for  
326 association assessments but may not be included in rates filed  
327 and approved by the office. The rates and premiums charged for  
328 insurance policies to which this part applies may include  
329 amounts sufficient to recoup a sum equal to the amounts paid to  
330 the association by the member insurer less any amounts returned  
331 to the member insurer by the association, and such rates shall  
332 not be deemed excessive because they contain an amount  
333 reasonably calculated to recoup assessments paid by the member  
334 insurer.

335 Section 4. Subsection (5) of section 627.727, Florida  
336 Statutes, is amended to read:

337 627.727 Motor vehicle insurance; uninsured and  
338 underinsured vehicle coverage; insolvent insurer protection.—

339 (5) Any person having a claim against an insolvent insurer  
 340 as defined in s. 631.54~~(6)~~ under ~~the provisions of~~ this section  
 341 shall present such claim for payment to the Florida Insurance  
 342 Guaranty Association only. In the event of a payment to a ~~any~~  
 343 person in settlement of a claim arising under ~~the provisions of~~  
 344 this section, the association is not subrogated or entitled to  
 345 ~~any~~ recovery against the claimant's insurer. The association,  
 346 however, has the rights of recovery as set forth in chapter 631  
 347 in the proceeds recoverable from the assets of the insolvent  
 348 insurer.

349 Section 5. Subsection (1) of section 631.55, Florida  
 350 Statutes, is amended to read:

351 631.55 Creation of the association.—

352 (1) There is created a nonprofit corporation to be known  
 353 as the "Florida Insurance Guaranty Association, Incorporated."  
 354 All insurers defined as member insurers in s. 631.54~~(7)~~ shall be  
 355 members of the association as a condition of their authority to  
 356 transact insurance in this state, and, further, as a condition  
 357 of such authority, an insurer must ~~shall~~ agree to reimburse the  
 358 association for all claim payments the association makes on the  
 359 ~~said~~ insurer's behalf if such insurer is subsequently  
 360 rehabilitated. The association shall perform its functions under  
 361 a plan of operation established and approved under s. 631.58 and  
 362 shall exercise its powers through a board of directors  
 363 established under s. 631.56. The corporation shall have all  
 364 those powers granted or permitted nonprofit corporations, as

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365 provided in chapter 617.

366 Section 6. This act shall take effect July 1, 2014.