

1 A bill to be entitled

2 An act relating to the Florida Insurance Guaranty
 3 Association; amending s. 631.54, F.S.; defining the
 4 term "assessment year"; amending s. 631.57, F.S.;
 5 revising provisions relating to the levy of
 6 assessments on insurers; specifying the conditions
 7 under which such assessments are paid; revising
 8 procedures and timeframes for levy of the assessments;
 9 revising an exemption for assessments; amending s.
 10 631.64, F.S.; requiring charges or recoupments to be
 11 displayed separately on premium bills to policyholders
 12 and prohibiting their inclusion in rates; amending ss.
 13 627.727 and 631.55, F.S.; conforming cross-references;
 14 providing an effective date.

15
 16 Be It Enacted by the Legislature of the State of Florida:

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

22 631.54 Definitions.—As used in this part:

23 (2) "Assessment year" means the 12-month period, which may
 24 begin on the first day of any calendar quarter, whether January
 25 1, April 1, July 1, or October 1, as specified in an order
 26 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.~~ 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) Assessments levied under this subsection are levied
 288 upon insurers. This subsection does not create a cause of action
 289 by a policyholder with respect to the levying of, or a
 290 policyholder's duty to pay, such assessments.

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

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

313 ~~factor.~~

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

CS/CS/HB 143

2014

365 provided in chapter 617.

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