

By the Committee on Banking and Insurance; and Senator Lee

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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 levying of
6 assessments on insurers; specifying the conditions
7 under which such assessments are paid; revising
8 procedures and timeframes for levying the assessments;
9 amending s. 631.64, F.S.; requiring charges or
10 recoupments to be displayed separately on premium
11 bills to policyholders and prohibiting their inclusion
12 in rates; amending ss. 627.727 and 631.55, F.S.;
13 conforming cross-references; providing an effective
14 date.

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

17
18 Section 1. Present subsections (2) through (9) of section
19 631.54, Florida Statutes, are renumbered as subsections (3)
20 through (10), respectively, and a new subsection (2) is added to
21 that section, to read:

22 631.54 Definitions.—As used in this part:

23 (2) "Assessment year" means the 12-month period specified
24 in an order issued by the office directing insurers to pay an
25 assessment to the association. Upon entry of the order, insurers
26 may begin collecting assessments from policyholders for the
27 assessment year. The assessment year begins on the first day of
28 each quarter, beginning January 1.

29 Section 2. Subsection (3) of section 631.57, Florida

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30 Statutes, is amended to read:

31 631.57 Powers and duties of the association.—

32 (3) (a) To the extent necessary to secure ~~the~~ funds for the
33 respective accounts for the payment of covered claims, to pay
34 the reasonable costs to administer such accounts ~~the same~~, and
35 ~~to the extent necessary~~ to secure ~~the~~ funds for the account
36 specified in s. 631.55(2) (b) or to retire indebtedness,
37 including, without limitation, the principal, redemption
38 premium, if any, and interest on, and related costs of issuance
39 of, bonds issued under s. 631.695 and the funding of ~~any~~
40 reserves and other payments required under the bond resolution
41 or trust indenture pursuant to which such bonds have been
42 issued, the office, upon certification of the board of
43 directors, shall levy assessments initially estimated in the
44 proportion that each insurer's net direct written premiums in
45 this state in the classes protected by the account bears to the
46 total of said net direct written premiums received in this state
47 by all such insurers for the preceding calendar year for the
48 kinds of insurance included within such account. Assessments
49 shall be remitted to and administered by the board of directors
50 in the manner specified by the approved plan and paragraph (f).
51 Each insurer so assessed shall have at least 30 days' written
52 notice as to the date the initial assessment payment is due and
53 payable. Every assessment shall be ~~made as~~ a uniform percentage
54 applicable to the net direct written premiums of each insurer in
55 the kinds of insurance included within the account in which the
56 assessment is made. The assessments levied against any insurer
57 may ~~shall~~ not exceed in any one year more than 2 percent of that
58 insurer's net direct written premiums in this state for the

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59 kinds of insurance included within such account during the
60 calendar year next preceding the date of such assessments.

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

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

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

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88 fully recoup the amount of the assessment because of a reduction
89 in writings or withdrawal from the market, the amount recorded
90 as an asset shall be reduced to the amount reasonably expected
91 to be recouped.

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

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

98 (e)1.a. In addition to assessments ~~otherwise~~ authorized in
99 paragraph (a), and to the extent necessary to secure the funds
100 for the account specified in s. 631.55(2)(b) for the direct
101 payment of covered claims of insurers rendered insolvent by the
102 effects of a hurricane and to pay the reasonable costs to
103 administer such claims, or to retire indebtedness, including,
104 without limitation, the principal, redemption premium, if any,
105 and interest on, and related costs of issuance of, bonds issued
106 under s. 631.695 and the funding of any reserves and other
107 payments required under the bond resolution or trust indenture
108 pursuant to which such bonds have been issued, the office, upon
109 certification of the board of directors, shall levy emergency
110 assessments upon insurers holding a certificate of authority.
111 The emergency assessments payable under this paragraph by any
112 insurer may ~~shall~~ not exceed in any single year more than 2
113 percent of that insurer's direct written premiums, net of
114 refunds, in this state during the preceding calendar year for
115 the kinds of insurance within the account specified in s.
116 631.55(2)(b).

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117 ~~2.b.~~ Any Emergency assessments authorized under this
118 paragraph shall be levied by the office upon insurers referred
119 to in subparagraph 1. ~~sub-subparagraph a.~~, upon certification as
120 to the need for such assessments by the board of directors. If
121 ~~In the event~~ the board of directors participates in the issuance
122 of bonds in accordance with s. 631.695, emergency assessments
123 shall be levied in each year that bonds issued under s. 631.695
124 and secured by such emergency assessments are outstanding, in
125 ~~such~~ amounts up to such 2-percent limit as required in order to
126 provide for the full and timely payment of the principal of,
127 redemption premium, if any, and interest on, and related costs
128 of issuance of, such bonds. The emergency assessments ~~provided~~
129 ~~for in this paragraph~~ are assigned and pledged to the
130 municipality, county, or legal entity issuing bonds under s.
131 631.695 for the benefit of the holders of such bonds, in order
132 ~~to enable such municipality, county, or legal entity~~ to provide
133 for the payment of the principal of, redemption premium, if any,
134 and interest on such bonds, the cost of issuance of such bonds,
135 and the funding of any reserves and other payments required
136 under the bond resolution or trust indenture pursuant to which
137 such bonds have been issued, without ~~the necessity of any~~
138 further action by the association, the office, or any other
139 party. If ~~To the extent~~ bonds are issued under s. 631.695 and
140 the association determines to secure such bonds by a pledge of
141 revenues received from the emergency assessments, such bonds,
142 upon such pledge of revenues, shall be secured by and payable
143 from the proceeds of such emergency assessments, and the
144 proceeds of emergency assessments levied under this paragraph
145 shall be remitted directly to and administered by the trustee or

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146 custodian appointed for such bonds.

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

154 ~~4.d.~~ If emergency assessments are imposed, the report
155 required by s. 631.695(7) must ~~shall~~ include an analysis of the
156 revenues generated from the emergency assessments imposed under
157 this paragraph.

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

162 ~~6.2.~~ If the board of directors participates in the issuance
163 of bonds in accordance with s. 631.695, an annual assessment
164 under this paragraph shall continue while the bonds issued with
165 respect to which the assessment was imposed are outstanding,
166 including any bonds the proceeds of which were used to refund
167 bonds issued pursuant to s. 631.695, unless adequate provision
168 has been made for the payment of the bonds in the documents
169 authorizing the issuance of such bonds.

170 ~~7.3.~~ Emergency assessments under this paragraph are not
171 premium and are not subject to the premium tax, to any fees, or
172 to any commissions. An insurer is liable for all emergency
173 assessments that the insurer collects and shall treat the
174 failure of an insured to pay an emergency assessment as a

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175 failure to pay the premium. An insurer is not liable for
176 uncollectible emergency assessments.

177 ~~(f) The recoupment factor applied to policies in accordance~~
178 ~~with paragraph (c) shall be selected by the insurer or insurer~~
179 ~~group so as to provide for the probable recoupment of both~~
180 ~~assessments levied pursuant to paragraph (a) and emergency~~
181 ~~assessments over a period of 12 months, unless the insurer or~~
182 ~~insurer group, at its option, elects to recoup the assessment~~
183 ~~over a longer period. The recoupment factor shall apply to all~~
184 ~~policies of the same kind or line as were considered by the~~
185 ~~office in determining the assessment liability of the insurer or~~
186 ~~insurer group issued or renewed during a 12-month period. If the~~
187 ~~insurer or insurer group does not collect the full amount of the~~
188 ~~assessment during one 12-month period, the insurer or insurer~~
189 ~~group may apply recalculated recoupment factors to policies~~
190 ~~issued or renewed during one or more succeeding 12-month~~
191 ~~periods. If, at the end of a 12-month period, the insurer or~~
192 ~~insurer group has collected from the combined kinds or lines of~~
193 ~~policies subject to assessment more than the total amount of the~~
194 ~~assessment paid by the insurer or insurer group, the excess~~
195 ~~amount shall be disbursed as follows:~~

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

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

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204 an assessment.

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

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

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

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

244 e. Insurers remitting reconciliation reports under this
245 paragraph to the association are subject to s. 626.9541(1)(e).

246 f. Assessments levied under this subsection are levied upon
247 insurers. This subsection does not create a cause of action by a
248 policyholder with respect to the levying of, or a policyholder's
249 duty to pay, such assessments. ~~If the excess amount does not~~
250 ~~exceed 15 percent of the total assessment paid by the insurer or~~
251 ~~insurer group, the excess amount shall be remitted to the~~
252 ~~association within 60 days after the end of the 12-month period~~
253 ~~in which the excess recoupment charges were collected.~~

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

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

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

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

286 ~~(h) At least 15 days before applying the recoupment factor~~
287 ~~to any policies, the insurer or insurer group shall file with~~
288 ~~the office a statement for informational purposes only setting~~
289 ~~forth the amount of the recoupment factor and an explanation of~~
290 ~~how the recoupment factor will be applied. Such statement shall~~

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291 ~~include documentation of the assessment paid by the insurer or~~
292 ~~insurer group and the arithmetic calculations supporting the~~
293 ~~recoupment factor. The insurer or insurer group may use the~~
294 ~~recoupment factor at any time after the expiration of the 15-day~~
295 ~~period. The insurer or insurer group need submit only one~~
296 ~~informational statement for all lines of business using the same~~
297 ~~recoupment factor.~~

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

309 Section 3. Section 631.64, Florida Statutes, is amended to
310 read:

311 631.64 Recognition of assessments in rates.—The rates and
312 premiums charged for insurance policies to which this part
313 applies may include separate amounts sufficient to recoup a sum
314 equal to the amounts paid or payable to the association by the
315 member insurer less any amounts returned to the member insurer
316 by the association, and such rates may ~~shall~~ not be deemed
317 excessive because they contain an amount reasonably calculated
318 to recoup assessments paid by the member insurer. Charges or
319 recoupments shall be separately displayed on premium bills to

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320 enable policyholders to determine the amount charged for
321 association assessments, and may not be included in rates filed
322 and approved by the office.

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

325 627.727 Motor vehicle insurance; uninsured and underinsured
326 vehicle coverage; insolvent insurer protection.—

327 (5) Any person having a claim against an insolvent insurer
328 as defined in s. 631.54(6) under ~~the provisions of~~ this section
329 shall present such claim for payment to the Florida Insurance
330 Guaranty Association only. In the event of a payment to a any
331 person in settlement of a claim arising under ~~the provisions of~~
332 this section, the association is not subrogated or entitled to
333 ~~any~~ recovery against the claimant's insurer. The association,
334 however, has the rights of recovery as set forth in chapter 631
335 in the proceeds recoverable from the assets of the insolvent
336 insurer.

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

339 631.55 Creation of the association.—

340 (1) There is created a nonprofit corporation to be known as
341 the "Florida Insurance Guaranty Association, Incorporated." All
342 insurers defined as member insurers in s. 631.54(7) shall be
343 members of the association as a condition of their authority to
344 transact insurance in this state, and, further, as a condition
345 of such authority, an insurer must ~~shall~~ agree to reimburse the
346 association for all claim payments the association makes on the
347 ~~said~~ insurer's behalf if such insurer is subsequently
348 rehabilitated. The association shall perform its functions under

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349 a plan of operation established and approved under s. 631.58 and
350 shall exercise its powers through a board of directors
351 established under s. 631.56. The corporation shall have all
352 those powers granted or permitted nonprofit corporations, as
353 provided in chapter 617.

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