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LEGISLATIVE ACTION

Senate

.

House

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Senator Smith moved the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Subsection (1) of section 624.425, Florida
Statutes, is amended to read:

624.425 Agent countersignature required, property,
casualty, surety insurance.-

(1) Except as stated in s. 624.426, no authorized property,
casualty, or surety insurer shall assume direct liability as to
a subject of insurance resident, located, or to be performed in



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12 this state unless the policy or contract of insurance is issued
13 by or through, and is countersigned by, an agent who is
14 regularly commissioned and licensed currently as an agent and
15 appointed as an agent for the insurer under this code. However,
16 the absence of a countersignature does not affect the validity
17 of the policy or contract. If two or more authorized insurers
18 issue a single policy of insurance against legal liability for
19 loss or damage to person or property caused by a ~~the~~ nuclear
20 energy hazard, or a single policy insuring against loss or
21 damage to property by radioactive contamination, whether or not
22 also insuring against one or more other perils that may be
23 insured ~~proper to insure~~ against in this state, such policy if
24 otherwise lawful may be countersigned on behalf of all of the
25 insurers by a licensed and appointed agent of the ~~any~~ insurer
26 appearing thereon. The producing agent shall receive on each
27 policy or contract the full and usual commission allowed and
28 paid by the insurer to its agents on business written or
29 transacted by them for the insurer.

30 Section 2. Section 627.7311, Florida Statutes, is amended
31 to read:

32 627.7311 Effect of law ~~on personal injury protection~~
33 ~~policies.~~-

34 (1) The provisions and procedures authorized in ss.
35 627.730-627.7405 shall be implemented by insurers offering
36 policies pursuant to the Florida Motor Vehicle No-Fault Law. The
37 Legislature intends that these provisions and procedures have
38 full force and effect regardless of their express inclusion in
39 an insurance policy form, and a specific provision or procedure
40 authorized in ss. 627.730-627.7405 shall control over general



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41 provisions in an insurance policy form. An insurer is not
42 required to amend its policy form or to expressly notify
43 providers, claimants, or insureds in order to implement and
44 apply such provisions or procedures.

45 (2) Sections 627.730-627.7405 do not preclude a county from
46 enacting and enforcing an ordinance applicable to health care
47 clinics that receive reimbursement under the Florida Motor
48 Vehicle No-Fault Law.

49 Section 3. Subsection (2) of section 627.902, Florida
50 Statutes, is amended to read:

51 627.902 Premium financing by an insurer or subsidiary.—

52 (2) ~~Nothing in~~ This part or ~~in~~ part XV of this chapter does
53 not disallow ~~disallows~~ or otherwise ~~apply~~ applies to:

54 (a) Installment payment arrangements offered by an insurer
55 if such arrangements do not involve the advancement of funds
56 which would constitute financing; or

57 (b) A discount for ~~an~~ any insured who pays the entire
58 premium for the entire policy term at the inception of the term
59 if the discount is found to be actuarially justified by the
60 office and approved by the office pursuant to ~~the provisions of~~
61 part I of this chapter. Such actuarially justified and approved
62 discount may ~~shall~~ not be deemed a component of or related to
63 premium financing.

64 Section 4. Subsection (2) of section 627.94072, Florida
65 Statutes, is amended to read:

66 627.94072 Mandatory offers.—

67 (2) An insurer that offers a long-term care insurance
68 policy, certificate, or rider in this state shall ~~must~~ offer a
69 nonforfeiture protection provision providing reduced paid-up



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70 insurance, extended term, shortened benefit period, or ~~any~~ other
71 benefit ~~benefits~~ approved by the office if all or part of a
72 premium is not paid. A nonforfeiture provision may also be
73 offered in the form of a return of premium on the death of the
74 insured, or on the complete surrender or cancellation of the
75 policy or contract. Nonforfeiture benefits and any additional
76 premium for such benefits must be computed in an actuarially
77 sound manner, using a methodology that has been filed with and
78 approved by the office.

79 Section 5. Section 629.271, Florida Statutes, is amended to
80 read:

81 629.271 Distribution of savings.-

82 (1) A reciprocal insurer may ~~from time to time~~ return to
83 its subscribers any unused premiums, savings, or credits
84 accruing to their accounts. ~~Any~~ Such distribution may ~~shall~~ not
85 unfairly discriminate between classes of risks, or policies, or
86 between subscribers, but ~~such distribution~~ may vary as to
87 classes of subscribers based on ~~upon~~ the experience of such
88 classes.

89 (2) In addition to the option provided in subsection (1), a
90 domestic reciprocal insurer may, upon the prior written approval
91 of the office, pay to its subscribers a portion of unassigned
92 funds of up to 10 percent of surplus with distribution limited
93 to 50 percent of net income from the previous calendar year.
94 Such distribution may not unfairly discriminate between classes
95 of risks, or policies, or between subscribers, but may vary as
96 to classes of subscribers based on the experience of such
97 classes.

98 Section 6. Subsections (2) through (9) of section 631.54,



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99 Florida Statutes, are renumbered as subsections (3) through
100 (10), respectively, and a new subsection (2) is added to that
101 section to read:

102 631.54 Definitions.—As used in this part, the term:

103 (2) “Assessment year” means the 12-month period, which may
104 begin on the first day of any calendar quarter, whether January
105 1, April 1, July 1, or October 1, as specified in an order
106 issued by the office directing insurers to pay an assessment to
107 the association. Upon entry of the order, insurers may begin
108 collecting assessments from policyholders for the assessment
109 year.

110 Section 7. Subsections (3) and (4) of section 631.57,
111 Florida Statutes, are amended to read:

112 631.57 Powers and duties of the association.—

113 (3) (a) To the extent necessary to secure ~~the~~ funds for the
114 respective accounts for the payment of covered claims, to pay
115 the reasonable costs to administer such accounts ~~the same~~, and
116 ~~to the extent necessary~~ to secure ~~the~~ funds for the account
117 specified in s. 631.55(2) (b) or to retire indebtedness,
118 including, without limitation, the principal, redemption
119 premium, if any, and interest on, and related costs of issuance
120 of, bonds issued under s. 631.695 and the funding of ~~any~~
121 reserves and other payments required under the bond resolution
122 or trust indenture pursuant to which such bonds have been
123 issued, the office, upon certification of the board of
124 directors, shall levy assessments initially estimated in the
125 proportion that each insurer’s net direct written premiums in
126 this state in the classes protected by the account bears to the
127 total of said net direct written premiums received in this state



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128 by all such insurers for the preceding calendar year for the
129 kinds of insurance included within such account. Assessments
130 shall be remitted to and administered by the board of directors
131 in the manner specified by the approved plan and paragraph (f).
132 Each insurer so assessed shall have at least 30 days' written
133 notice as to the date the initial assessment payment is due and
134 payable. Every assessment shall be ~~made as~~ a uniform percentage
135 applicable to the net direct written premiums of each insurer in
136 the kinds of insurance included within the account in which the
137 assessment is made. The assessments levied against any insurer
138 may ~~shall~~ not exceed in any one year more than 2 percent of that
139 insurer's net direct written premiums in this state for the
140 kinds of insurance included within such account during the
141 calendar year next preceding the date of such assessments.

142 (b) If sufficient funds from such assessments, together
143 with funds previously raised, are not available in any one year
144 in the respective account to make all the payments or
145 reimbursements then owing to insurers, the funds available shall
146 be prorated and the unpaid portion ~~shall be~~ paid as soon
147 ~~thereafter~~ as funds become available.

148 (c) The Legislature finds and declares that all assessments
149 paid by an insurer or insurer group as a result of a levy by the
150 office, including assessments levied pursuant to paragraph (a)
151 and emergency assessments levied pursuant to paragraph (e),
152 constitute advances of funds from the insurer to the
153 association. An insurer may fully recoup such advances by
154 applying the uniform assessment percentage levied by the office
155 to all ~~a separate recoupment factor to the premium of policies~~
156 of the same kind or line as were considered by the office in



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157 determining the assessment liability of the insurer or insurer
158 group as set forth in paragraph (f).

159 1. Assessments levied under subparagraph (f)1. are paid
160 before policy surcharges are collected and result in a
161 receivable for policy surcharges collected in the future. This
162 amount, to the extent it is likely that it will be realized,
163 meets the definition of an admissible asset as specified in the
164 National Association of Insurance Commissioners' Statement of
165 Statutory Accounting Principles No. 4. The asset shall be
166 established and recorded separately from the liability
167 regardless of whether it is based on a retrospective or
168 prospective premium-based assessment. If an insurer is unable to
169 fully recoup the amount of the assessment because of a reduction
170 in writings or withdrawal from the market, the amount recorded
171 as an asset shall be reduced to the amount reasonably expected
172 to be recouped.

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

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

179 (e)1.a. In addition to assessments ~~otherwise~~ authorized in
180 paragraph (a), and to the extent necessary to secure the funds
181 for the account specified in s. 631.55(2)(b) for the direct
182 payment of covered claims of insurers rendered insolvent by the
183 effects of a hurricane and to pay the reasonable costs to
184 administer such claims, or to retire indebtedness, including,
185 without limitation, the principal, redemption premium, if any,



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186 and interest on, and related costs of issuance of, bonds issued
187 under s. 631.695 and the funding of any reserves and other
188 payments required under the bond resolution or trust indenture
189 pursuant to which such bonds have been issued, the office, upon
190 certification of the board of directors, shall levy emergency
191 assessments upon insurers holding a certificate of authority.
192 The emergency assessments payable under this paragraph by any
193 insurer may ~~shall~~ not exceed in any single year more than 2
194 percent of that insurer's direct written premiums, net of
195 refunds, in this state during the preceding calendar year for
196 the kinds of insurance within the account specified in s.
197 631.55(2) (b).

198 ~~2.b. Any~~ Emergency assessments authorized under this
199 paragraph shall be levied by the office upon insurers referred
200 to in subparagraph 1. ~~sub-subparagraph a.~~, upon certification as
201 to the need for such assessments by the board of directors. If
202 ~~In the event~~ the board ~~of directors~~ participates in the issuance
203 of bonds in accordance with s. 631.695, emergency assessments
204 shall be levied in each year that bonds issued under s. 631.695
205 and secured by such emergency assessments are outstanding, in
206 ~~such~~ amounts up to such 2 percent ~~2-percent~~ limit as required in
207 order to provide for the full and timely payment of the
208 principal of, redemption premium, if any, and interest on, and
209 related costs of issuance of, such bonds. The emergency
210 assessments ~~provided for in this paragraph~~ are assigned and
211 pledged to the municipality, county, or legal entity issuing
212 bonds under s. 631.695 for the benefit of the holders of such
213 bonds, ~~in order to enable such municipality, county, or legal~~
214 ~~entity~~ to provide for the payment of the principal of,



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215 redemption premium, if any, and interest on such bonds, the cost
216 of issuance of such bonds, and the funding of any reserves and
217 other payments required under the bond resolution or trust
218 indenture pursuant to which such bonds have been issued, without
219 ~~the necessity of any~~ further action by the association, the
220 office, or any other party. If ~~To the extent~~ bonds are issued
221 under s. 631.695 and the association determines to secure such
222 bonds by a pledge of revenues received from the emergency
223 assessments, such bonds, upon such pledge of revenues, shall be
224 secured by and payable from the proceeds of such emergency
225 assessments, and the proceeds of emergency assessments levied
226 under this paragraph shall be remitted directly to and
227 administered by the trustee or custodian appointed for such
228 bonds.

229 ~~3.e.~~ Emergency assessments used to defease bonds issued
230 under this part ~~paragraph~~ may be payable in a single payment or,
231 at the option of the association, may be payable in 12 monthly
232 installments with the first installment being due and payable at
233 the end of the month after an emergency assessment is levied and
234 subsequent installments being due by ~~not later than~~ the end of
235 each succeeding month.

236 ~~4.d.~~ If emergency assessments are imposed, the report
237 required by s. 631.695(7) must ~~shall~~ include an analysis of the
238 revenues generated from the emergency assessments imposed under
239 this paragraph.

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



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244 ~~6.2.~~ If the board of directors participates in the issuance
245 of bonds in accordance with s. 631.695, an annual assessment
246 under this paragraph shall continue while the bonds issued with
247 respect to which the assessment was imposed are outstanding,
248 including any bonds the proceeds of which were used to refund
249 bonds issued pursuant to s. 631.695, unless adequate provision
250 has been made for the payment of the bonds in the documents
251 authorizing the issuance of such bonds.

252 ~~7.3.~~ Emergency assessments under this paragraph are not
253 premium and are not subject to the premium tax, to any fees, or
254 to any commissions. An insurer is liable for all emergency
255 assessments that the insurer collects and shall treat the
256 failure of an insured to pay an emergency assessment as a
257 failure to pay the premium. An insurer is not liable for
258 uncollectible emergency assessments.

259 ~~(f) The recoupment factor applied to policies in accordance~~
260 ~~with paragraph (c) shall be selected by the insurer or insurer~~
261 ~~group so as to provide for the probable recoupment of both~~
262 ~~assessments levied pursuant to paragraph (a) and emergency~~
263 ~~assessments over a period of 12 months, unless the insurer or~~
264 ~~insurer group, at its option, elects to recoup the assessment~~
265 ~~over a longer period. The recoupment factor shall apply to all~~
266 ~~policies of the same kind or line as were considered by the~~
267 ~~office in determining the assessment liability of the insurer or~~
268 ~~insurer group issued or renewed during a 12-month period. If the~~
269 ~~insurer or insurer group does not collect the full amount of the~~
270 ~~assessment during one 12-month period, the insurer or insurer~~
271 ~~group may apply recalculated recoupment factors to policies~~
272 ~~issued or renewed during one or more succeeding 12-month~~



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273 ~~periods. If, at the end of a 12-month period, the insurer or~~
274 ~~insurer group has collected from the combined kinds or lines of~~
275 ~~policies subject to assessment more than the total amount of the~~
276 ~~assessment paid by the insurer or insurer group, the excess~~
277 ~~amount shall be disbursed as follows:~~

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

281 a. In the order levying an assessment, the office shall
282 specify the actual percentage amount to be collected uniformly
283 from all the policyholders of insurers subject to the assessment
284 and the date on which the assessment year begins, which may not
285 begin until 90 days after the association board certifies such
286 an assessment.

287 b. Insurers shall make an initial payment to the
288 association before the beginning of the assessment year on or
289 before the date specified in the order of the office.

290 c. Insurers that have written insurance in the calendar
291 year before the year in which the assessment is certified by the
292 board shall make an initial payment based on the net direct
293 written premium amount from the prior calendar year as set forth
294 in the insurers' annual statements, multiplied by the uniform
295 percentage of premium specified in the order issued by the
296 office. Insurers that have not written insurance in the prior
297 calendar year in any of the lines under the account which are
298 being assessed, but that are writing insurance as of, or after,
299 the date the board certifies the assessment to the office, shall
300 pay an amount based on a good faith estimate of the amount of
301 net direct written premium anticipated to be written in the



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302 subject lines of business for the assessment year, multiplied by
303 the uniform percentage of premium specified in the order issued
304 by the office.

305 d. Insurers shall file a reconciliation report with the
306 association within 45 days after the end of the assessment year
307 which indicates the amount of the initial payment to the
308 association before the assessment year, whether such amount was
309 based on net direct written premium contained in a prior
310 calendar year annual statement or a good faith projection, the
311 amount actually collected during the assessment year, and such
312 other information contained on a form adopted by the association
313 and provided to the insurers in advance. If the insurer
314 collected from policyholders more than the amount initially
315 paid, the insurer shall pay the excess amount to the
316 association. If the insurer collected from policyholders an
317 amount which is less than the amount initially paid to the
318 association, the association shall credit the insurer that
319 amount against future assessments. Such payment reconciliation
320 report, and any payment of excess amounts collected from
321 policyholders, shall be completed and remitted to the
322 association within 90 days after the end of the assessment year.
323 The association shall send a final reconciliation report on all
324 insurers to the office within 120 days after each assessment
325 year.

326 e. Insurers remitting reconciliation reports to the
327 association under this paragraph are subject to s.
328 626.9541(1)(e). If the excess amount does not exceed 15 percent
329 of the total assessment paid by the insurer or insurer group,
330 the excess amount shall be remitted to the association within 60



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331 ~~days after the end of the 12-month period in which the excess~~
332 ~~recoupment charges were collected.~~

333 2. The association may use a monthly installment method
334 instead of the method described in sub-subparagraphs 1.b. and c.
335 or in combination thereof based on the association's projected
336 cash flow. If the association projects that it has cash on hand
337 for the payment of anticipated claims in the applicable account
338 for at least 6 months, the board may make an estimate of the
339 assessment needed and may recommend to the office the assessment
340 percentage that may be collected as a monthly assessment. The
341 office may, in the order levying the assessment on insurers,
342 specify that the assessment is due and payable monthly as the
343 funds are collected from insureds throughout the assessment
344 year, in which case the assessment shall be a uniform percentage
345 of premium collected during the assessment year and shall be
346 collected from all policyholders with policies in the classes
347 protected by the account. All insurers shall collect the
348 assessment without regard to whether the insurers reported
349 premium in the year preceding the assessment. Insurers are not
350 required to advance funds if the association and the office
351 elect to use the monthly installment option. All funds collected
352 shall be retained by the association for the payment of current
353 or future claims. This subparagraph does not alter the
354 obligation of an insurer to remit assessments levied pursuant to
355 this subsection to the association. ~~If the excess amount exceeds~~
356 ~~15 percent of the total assessment paid by the insurer or~~
357 ~~insurer group, the excess amount shall be returned to the~~
358 ~~insurer's or insurer group's current policyholders by refunds or~~
359 ~~premium credits. The association shall use any remitted excess~~



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360 ~~recoupment amounts to reduce future assessments.~~

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

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

367 ~~(h) At least 15 days before applying the recoupment factor~~
368 ~~to any policies, the insurer or insurer group shall file with~~
369 ~~the office a statement for informational purposes only setting~~
370 ~~forth the amount of the recoupment factor and an explanation of~~
371 ~~how the recoupment factor will be applied. Such statement shall~~
372 ~~include documentation of the assessment paid by the insurer or~~
373 ~~insurer group and the arithmetic calculations supporting the~~
374 ~~recoupment factor. The insurer or insurer group may use the~~
375 ~~recoupment factor at any time after the expiration of the 15-day~~
376 ~~period. The insurer or insurer group need submit only one~~
377 ~~informational statement for all lines of business using the same~~
378 ~~recoupment factor.~~

379 ~~(i) No later than 90 days after the insurer or insurer~~
380 ~~group has completed the recoupment process, the insurer or~~
381 ~~insurer group shall file with the office, for information~~
382 ~~purposes only, a final accounting report documenting the~~
383 ~~recoupment. The report shall provide the amounts of assessments~~
384 ~~paid by the insurer or insurer group, the amounts and~~
385 ~~percentages recouped by year from each affected line of~~
386 ~~business, and the direct written premium subject to recoupment~~
387 ~~by year. The insurer or insurer group need submit only one~~
388 ~~report for all lines of business using the same recoupment~~



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389 ~~factor.~~

390 (h) Assessments levied under this subsection are levied
391 upon insurers. This subsection does not create a cause of action
392 by a policyholder with respect to the levying of, or a
393 policyholder's duty to pay, such assessments.

394 (4) The office department may exempt or temporarily defer
395 any insurer from any regular or emergency assessment if the
396 office finds that the insurer is impaired or insolvent or if an
397 assessment would result in such insurer's financial statement
398 reflecting an amount of capital or surplus less than the sum of
399 the minimum amount required by any jurisdiction in which the
400 insurer is authorized to transact insurance.

401 Section 8. Section 631.64, Florida Statutes, is amended to
402 read:

403 631.64 Recognition of assessments in rates. Charges or
404 recoupments shall be separately displayed on premium statements
405 to enable policyholders to determine the amount charged for
406 association assessments but may not be included in rates filed
407 and approved by the office. The rates and premiums charged for
408 insurance policies to which this part applies may include
409 amounts sufficient to recoup a sum equal to the amounts paid to
410 the association by the member insurer less any amounts returned
411 to the member insurer by the association, and such rates shall
412 not be deemed excessive because they contain an amount
413 reasonably calculated to recoup assessments paid by the member
414 insurer.

415 Section 9. Subsection (5) of section 627.727, Florida
416 Statutes, is amended to read:

417 627.727 Motor vehicle insurance; uninsured and underinsured



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418 vehicle coverage; insolvent insurer protection.-

419 (5) Any person having a claim against an insolvent insurer
420 as defined in s. 631.54(6) under ~~the provisions of~~ this section
421 shall present such claim for payment to the Florida Insurance
422 Guaranty Association only. In the event of a payment to a any
423 person in settlement of a claim arising under ~~the provisions of~~
424 this section, the association is not subrogated or entitled to
425 ~~any~~ recovery against the claimant's insurer. The association,
426 however, has the rights of recovery as set forth in chapter 631
427 in the proceeds recoverable from the assets of the insolvent
428 insurer.

429 Section 10. Subsection (1) of section 631.55, Florida
430 Statutes, is amended to read:

431 631.55 Creation of the association.-

432 (1) There is created a nonprofit corporation to be known as
433 the "Florida Insurance Guaranty Association, Incorporated." All
434 insurers defined as member insurers in s. 631.54(7) shall be
435 members of the association as a condition of their authority to
436 transact insurance in this state, and, further, as a condition
437 of such authority, an insurer must ~~shall~~ agree to reimburse the
438 association for all claim payments the association makes on the
439 ~~said~~ insurer's behalf if such insurer is subsequently
440 rehabilitated. The association shall perform its functions under
441 a plan of operation established and approved under s. 631.58 and
442 shall exercise its powers through a board of directors
443 established under s. 631.56. The corporation shall have all
444 those powers granted or permitted nonprofit corporations, as
445 provided in chapter 617.

446 Section 11. This act shall take effect July 1, 2014.



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===== T I T L E A M E N D M E N T =====

And the title is amended as follows:

Delete everything before the enacting clause
and insert:

A bill to be entitled
An act relating to insurance; amending s. 624.425,
F.S.; providing that the absence of a countersignature
does not affect the validity of a policy or contract;
amending s. 627.7311, F.S.; providing that a county
may enact and enforce ordinances applicable to certain
health care clinics; amending s. 627.902, F.S.;
providing that premium financing does not apply to
installment payment arrangements that do not involve
the advancement of funds; amending s. 627.94072, F.S.;
providing an alternative form of a nonforfeiture
provision for long-term care insurance; amending s.
629.271, F.S.; authorizing reciprocal insurers to
return a portion of unassigned funds to their
subscribers; 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 by the Florida Insurance
Guaranty Association; specifying the conditions under
which such assessments are paid; revising procedures
and timeframes for the levying of the assessments;
deleting the requirement that insurers file a final
accounting report documenting the recoupment; revising
an exemption for assessments; amending s. 631.64,



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476 F.S.; requiring charges or recoupments to be displayed
477 separately on premium statements to policyholders and
478 prohibiting their inclusion in rates; amending ss.
479 627.727 and 631.55, F.S.; conforming cross-references;
480 providing an effective date.