



461328

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/03/2014	.	
	.	
	.	
	.	

The Committee on Judiciary (Lee) recommended the following:

Senate Amendment (with title amendment)

Between lines 33 and 34
insert:

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, the term:

(2) "Assessment year" means the 12-month period, which may begin on the first day of any calendar quarter, whether January



461328

12 1, April 1, July 1, or October 1, as specified in an order
13 issued by the office directing insurers to pay an assessment to
14 the association. Upon entry of the order, insurers may begin
15 collecting assessments from policyholders for the assessment
16 year.

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

19 631.57 Powers and duties of the association.—

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



461328

41 payable. Every assessment shall be ~~made as~~ a uniform percentage
42 applicable to the net direct written premiums of each insurer in
43 the kinds of insurance included within the account in which the
44 assessment is made. The assessments levied against any insurer
45 may shall not exceed in any one year more than 2 percent of that
46 insurer's net direct written premiums in this state for the
47 kinds of insurance included within such account during the
48 calendar year next preceding the date of such assessments.

49 (b) If sufficient funds from such assessments, together
50 with funds previously raised, are not available in any one year
51 in the respective account to make all the payments or
52 reimbursements then owing to insurers, the funds available shall
53 be prorated and the unpaid portion ~~shall be~~ paid as soon
54 ~~thereafter~~ as funds become available.

55 (c) The Legislature finds and declares that all assessments
56 paid by an insurer or insurer group as a result of a levy by the
57 office, including assessments levied pursuant to paragraph (a)
58 and emergency assessments levied pursuant to paragraph (e),
59 constitute advances of funds from the insurer to the
60 association. An insurer may fully recoup such advances by
61 applying the uniform assessment percentage levied by the office
62 to all a separate recoupment factor to the premium of policies
63 of the same kind or line as were considered by the office in
64 determining the assessment liability of the insurer or insurer
65 group as set forth in paragraph (f).

66 1. Assessments levied under subparagraph (f)1. are paid
67 before policy surcharges are collected and result in a
68 receivable for policy surcharges collected in the future. This
69 amount, to the extent it is likely that it will be realized,



461328

70 meets the definition of an admissible asset as specified in the
71 National Association of Insurance Commissioners' Statement of
72 Statutory Accounting Principles No. 4. The asset shall be
73 established and recorded separately from the liability
74 regardless of whether it is based on a retrospective or
75 prospective premium-based assessment. If an insurer is unable to
76 fully recoup the amount of the assessment because of a reduction
77 in writings or withdrawal from the market, the amount recorded
78 as an asset shall be reduced to the amount reasonably expected
79 to be recouped.

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

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

86 (e)1.a. In addition to assessments ~~otherwise~~ authorized in
87 paragraph (a), and to the extent necessary to secure the funds
88 for the account specified in s. 631.55(2)(b) for the direct
89 payment of covered claims of insurers rendered insolvent by the
90 effects of a hurricane and to pay the reasonable costs to
91 administer such claims, or to retire indebtedness, including,
92 without limitation, the principal, redemption premium, if any,
93 and interest on, and related costs of issuance of, bonds issued
94 under s. 631.695 and the funding of any reserves and other
95 payments required under the bond resolution or trust indenture
96 pursuant to which such bonds have been issued, the office, upon
97 certification of the board of directors, shall levy emergency
98 assessments upon insurers holding a certificate of authority.



461328

99 The emergency assessments payable under this paragraph by any
100 insurer may ~~shall~~ not exceed in any single year more than 2
101 percent of that insurer's direct written premiums, net of
102 refunds, in this state during the preceding calendar year for
103 the kinds of insurance within the account specified in s.
104 631.55(2) (b) .

105 ~~2.b. Any~~ Emergency assessments authorized under this
106 paragraph shall be levied by the office upon insurers referred
107 to in subparagraph 1. ~~sub-subparagraph a.~~, upon certification as
108 to the need for such assessments by the board of directors. If
109 ~~In the event~~ the board ~~of directors~~ participates in the issuance
110 of bonds in accordance with s. 631.695, emergency assessments
111 shall be levied in each year that bonds issued under s. 631.695
112 and secured by such emergency assessments are outstanding, in
113 ~~such~~ amounts up to such 2-percent limit as required in order to
114 provide for the full and timely payment of the principal of,
115 redemption premium, if any, and interest on, and related costs
116 of issuance of, such bonds. The emergency assessments ~~provided~~
117 ~~for in this paragraph~~ are assigned and pledged to the
118 municipality, county, or legal entity issuing bonds under s.
119 631.695 for the benefit of the holders of such bonds, in order
120 ~~to enable such municipality, county, or legal entity~~ to provide
121 for the payment of the principal of, redemption premium, if any,
122 and interest on such bonds, the cost of issuance of such bonds,
123 and the funding of any reserves and other payments required
124 under the bond resolution or trust indenture pursuant to which
125 such bonds have been issued, without ~~the necessity of any~~
126 further action by the association, the office, or any other
127 party. If ~~To the extent~~ bonds are issued under s. 631.695 and



461328

128 the association determines to secure such bonds by a pledge of
129 revenues received from the emergency assessments, such bonds,
130 upon such pledge of revenues, shall be secured by and payable
131 from the proceeds of such emergency assessments, and the
132 proceeds of emergency assessments levied under this paragraph
133 shall be remitted directly to and administered by the trustee or
134 custodian appointed for such bonds.

135 ~~3.e.~~ Emergency assessments used to defease bonds issued
136 under this part paragraph may be payable in a single payment or,
137 at the option of the association, may be payable in 12 monthly
138 installments with the first installment being due and payable at
139 the end of the month after an emergency assessment is levied and
140 subsequent installments being due by ~~not later than~~ the end of
141 each succeeding month.

142 ~~4.d.~~ If emergency assessments are imposed, the report
143 required by s. 631.695(7) must ~~shall~~ include an analysis of the
144 revenues generated from the emergency assessments imposed under
145 this paragraph.

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

150 ~~6.2.~~ If the board of directors participates in the issuance
151 of bonds in accordance with s. 631.695, an annual assessment
152 under this paragraph shall continue while the bonds issued with
153 respect to which the assessment was imposed are outstanding,
154 including any bonds the proceeds of which were used to refund
155 bonds issued pursuant to s. 631.695, unless adequate provision
156 has been made for the payment of the bonds in the documents



461328

157 authorizing the issuance of such bonds.

158 ~~7.3.~~ Emergency assessments under this paragraph are not
159 premium and are not subject to the premium tax, to any fees, or
160 to any commissions. An insurer is liable for all emergency
161 assessments that the insurer collects and shall treat the
162 failure of an insured to pay an emergency assessment as a
163 failure to pay the premium. An insurer is not liable for
164 uncollectible emergency assessments.

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

184 1. The association, office, and insurers remitting
185 assessments pursuant to paragraph (a) or paragraph (e) must



461328

186 comply with the following:

187 a. In the order levying an assessment, the office shall
188 specify the actual percentage amount to be collected uniformly
189 from all the policyholders of insurers subject to the assessment
190 and the date on which the assessment year begins, which may not
191 begin before 90 days after the association board certifies such
192 an assessment.

193 b. Insurers shall make an initial payment to the
194 association before the beginning of the assessment year on or
195 before the date specified in the order of the office.

196 c. Insurers that have written insurance in the calendar
197 year before the year in which the assessment is certified by the
198 board shall make an initial payment based on the net direct
199 written premium amount from the prior calendar year as set forth
200 in the insurers annual statement, multiplied by the uniform
201 percentage of premium specified in the order issued by the
202 office. Insurers that have not written insurance in the prior
203 calendar year in any of the lines under the account which are
204 being assessed, but which are writing insurance as of, or after,
205 the date the board certifies the assessment to the office, shall
206 pay an amount based on a good faith estimate of the amount of
207 net direct written premium anticipated to be written in the
208 subject lines of business for the assessment year, multiplied by
209 the uniform percentage of premium specified in the order issued
210 by the office.

211 d. Insurers shall file a reconciliation report with the
212 association within 45 days after the end of the assessment year
213 which indicates the amount of the initial payment to the
214 association before the assessment year, whether such amount was



461328

215 based on net direct written premium contained in a prior
216 calendar year annual statement or a good faith projection, the
217 amount actually collected during the assessment year, and such
218 other information contained on a form adopted by the association
219 and provided to the insurers in advance. If the insurer
220 collected from policyholders more than the amount initially
221 paid, the insurer shall pay the excess amount to the
222 association. If the insurer collected from policyholders an
223 amount which is less than the amount initially paid to the
224 association, the association shall credit the insurer that
225 amount against future assessments. Such payment reconciliation
226 report, and any payment of excess amounts collected from
227 policyholders, shall be completed and remitted to the
228 association within 90 days after the end of the assessment year.
229 The association shall send a final reconciliation report on all
230 insurers to the office within 120 days after each assessment
231 year.

232 e. Insurers remitting reconciliation reports under this
233 paragraph to the association are subject to s. 626.9541(1)(e).
234 ~~If the excess amount does not exceed 15 percent of the total~~
235 ~~assessment paid by the insurer or insurer group, the excess~~
236 ~~amount shall be remitted to the association within 60 days after~~
237 ~~the end of the 12-month period in which the excess recoupment~~
238 ~~charges were collected.~~

239 2. The association may use a monthly installment method
240 instead of the method described in sub-subparagraphs (f)1.b. and
241 c. or in combination thereof based on the association's
242 projected cash flow. If the association projects that it has
243 cash on hand for the payment of anticipated claims in the



461328

244 applicable account for at least 6 months, the board may make an
245 estimate of the assessment needed and may recommend to the
246 office the assessment percentage that may be collected as a
247 monthly assessment. The office may, in the order levying the
248 assessment on insurers, specify that the assessment is due and
249 payable monthly as the funds are collected from insureds
250 throughout the assessment year, in which case the assessment
251 shall be a uniform percentage of premium collected during the
252 assessment year and shall be collected from all policyholders
253 with policies in the classes protected by the account. All
254 insurers shall collect the assessment without regard to whether
255 the insurers reported premium in the year preceding the
256 assessment. Insurers are not required to advance funds if the
257 association and the office elect to use the monthly installment
258 option. All funds collected shall be retained by the association
259 for the payment of current or future claims. This subparagraph
260 does not alter the obligation of an insurer to remit assessments
261 levied pursuant to this subsection to the association. ~~If the~~
262 ~~excess amount exceeds 15 percent of the total assessment paid by~~
263 ~~the insurer or insurer group, the excess amount shall be~~
264 ~~returned to the insurer's or insurer group's current~~
265 ~~policyholders by refunds or premium credits. The association~~
266 ~~shall use any remitted excess recoupment amounts to reduce~~
267 ~~future assessments.~~

268 (g) Amounts recouped pursuant to this subsection for
269 assessments levied under paragraph (a) due to insolvencies on or
270 after July 1, 2010, are considered premium solely for premium
271 tax purposes and are not subject to fees or commissions.
272 However, insurers shall treat the failure of an insured to pay a



461328

273 recoupment charge as a failure to pay the premium.

274 ~~(h) At least 15 days before applying the recoupment factor~~
275 ~~to any policies, the insurer or insurer group shall file with~~
276 ~~the office a statement for informational purposes only setting~~
277 ~~forth the amount of the recoupment factor and an explanation of~~
278 ~~how the recoupment factor will be applied. Such statement shall~~
279 ~~include documentation of the assessment paid by the insurer or~~
280 ~~insurer group and the arithmetic calculations supporting the~~
281 ~~recoupment factor. The insurer or insurer group may use the~~
282 ~~recoupment factor at any time after the expiration of the 15-day~~
283 ~~period. The insurer or insurer group need submit only one~~
284 ~~informational statement for all lines of business using the same~~
285 ~~recoupment factor.~~

286 ~~(i) No later than 90 days after the insurer or insurer~~
287 ~~group has completed the recoupment process, the insurer or~~
288 ~~insurer group shall file with the office, for information~~
289 ~~purposes only, a final accounting report documenting the~~
290 ~~recoupment. The report shall provide the amounts of assessments~~
291 ~~paid by the insurer or insurer group, the amounts and~~
292 ~~percentages recouped by year from each affected line of~~
293 ~~business, and the direct written premium subject to recoupment~~
294 ~~by year. The insurer or insurer group need submit only one~~
295 ~~report for all lines of business using the same recoupment~~
296 ~~factor.~~

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

301 (4) The office department may exempt or temporarily defer



461328

302 any insurer from any regular or emergency assessment if the
303 office finds that the insurer is impaired or insolvent or if an
304 assessment would result in such insurer's financial statement
305 reflecting an amount of capital or surplus less than the sum of
306 the minimum amount required by any jurisdiction in which the
307 insurer is authorized to transact insurance.

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

310 631.64 Recognition of assessments ~~in rates.~~ Charges or
311 recoupments shall be separately displayed on premium statements
312 to enable policyholders to determine the amount charged for
313 association assessments but may not be included in rates filed
314 and approved by the office. ~~The rates and premiums charged for~~
315 ~~insurance policies to which this part applies may include~~
316 ~~amounts sufficient to recoup a sum equal to the amounts paid to~~
317 ~~the association by the member insurer less any amounts returned~~
318 ~~to the member insurer by the association, and such rates shall~~
319 ~~not be deemed excessive because they contain an amount~~
320 ~~reasonably calculated to recoup assessments paid by the member~~
321 ~~insurer.~~

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

324 627.727 Motor vehicle insurance; uninsured and underinsured
325 vehicle coverage; insolvent insurer protection.-

326 (5) Any person having a claim against an insolvent insurer
327 as defined in s. 631.54(6) ~~under the provisions of this section~~
328 shall present such claim for payment to the Florida Insurance
329 Guaranty Association only. In the event of a payment to a any
330 person in settlement of a claim arising under ~~the provisions of~~



461328

331 this section, the association is not subrogated or entitled to
332 ~~any~~ recovery against the claimant's insurer. The association,
333 however, has the rights of recovery as set forth in chapter 631
334 in the proceeds recoverable from the assets of the insolvent
335 insurer.

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

338 631.55 Creation of the association.—

339 (1) There is created a nonprofit corporation to be known as
340 the "Florida Insurance Guaranty Association, Incorporated." All
341 insurers defined as member insurers in s. 631.54(7) shall be
342 members of the association as a condition of their authority to
343 transact insurance in this state, and, further, as a condition
344 of such authority, an insurer must ~~shall~~ agree to reimburse the
345 association for all claim payments the association makes on the
346 ~~said~~ insurer's behalf if such insurer is subsequently
347 rehabilitated. The association shall perform its functions under
348 a plan of operation established and approved under s. 631.58 and
349 shall exercise its powers through a board of directors
350 established under s. 631.56. The corporation shall have all
351 those powers granted or permitted nonprofit corporations, as
352 provided in chapter 617.

353
354 ===== T I T L E A M E N D M E N T =====

355 And the title is amended as follows:

356 Between lines 4 and 5

357 insert:

358 amending s. 631.54, F.S.; defining the term

359 "assessment year"; amending s. 631.57, F.S.; revising



461328

360 provisions relating to the levy of assessments on
361 insurers by the Florida Insurance Guaranty
362 Association; specifying the conditions under which
363 such assessments are paid; revising procedures and
364 timeframes for the levying of the assessments;
365 deleting the requirement to file a final accounting
366 report documenting the recoupment; revising an
367 exemption for assessments; amending s. 631.64, F.S.;
368 requiring charges or recoupments to be displayed
369 separately on premium statements to policyholders and
370 prohibiting their inclusion in rates; amending ss.
371 627.727 and 631.55, F.S.; conforming cross-references;