

By the Committee on Judiciary; and Senator Smith

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1                   A bill to be entitled  
2       An act relating to insurance; amending s. 624.425,  
3       F.S.; providing that the absence of a countersignature  
4       does not affect the validity of a policy or contract;  
5       amending s. 627.7311, F.S.; providing that a county  
6       may enact and enforce ordinances applicable to certain  
7       health care clinics; amending s. 627.94072, F.S.;  
8       providing an alternative form of a nonforfeiture  
9       provision for long-term care insurance; amending s.  
10      629.271, F.S.; authorizing reciprocal insurers to  
11      return a portion of unassigned funds to their  
12      subscribers; amending s. 631.54, F.S.; defining the  
13      term "assessment year"; amending s. 631.57, F.S.;  
14      revising provisions relating to the levy of  
15      assessments on insurers by the Florida Insurance  
16      Guaranty Association; specifying the conditions under  
17      which such assessments are paid; revising procedures  
18      and timeframes for the levying of the assessments;  
19      deleting the requirement that insurers file a final  
20      accounting report documenting the recoupment; revising  
21      an exemption for assessments; amending s. 631.64,  
22      F.S.; requiring charges or recoupments to be displayed  
23      separately on premium statements to policyholders and  
24      prohibiting their inclusion in rates; amending ss.  
25      627.727 and 631.55, F.S.; conforming cross-references;  
26      providing an effective date.

27  
28   Be It Enacted by the Legislature of the State of Florida:  
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30 Section 1. Subsection (1) of section 624.425, Florida  
31 Statutes, is amended to read:

32 624.425 Agent countersignature required, property,  
33 casualty, surety insurance.-

34 (1) Except as stated in s. 624.426, no authorized property,  
35 casualty, or surety insurer shall assume direct liability as to  
36 a subject of insurance resident, located, or to be performed in  
37 this state unless the policy or contract of insurance is issued  
38 by or through, and is countersigned by, an agent who is  
39 regularly commissioned and licensed currently as an agent and  
40 appointed as an agent for the insurer under this code. However,  
41 the absence of a countersignature does not affect the validity  
42 of the policy or contract. If two or more authorized insurers  
43 issue a single policy of insurance against legal liability for  
44 loss or damage to person or property caused by a ~~the~~ nuclear  
45 energy hazard, or a single policy insuring against loss or  
46 damage to property by radioactive contamination, whether or not  
47 also insuring against one or more other perils that may be  
48 insured ~~proper to insure~~ against in this state, such policy if  
49 otherwise lawful may be countersigned on behalf of all of the  
50 insurers by a licensed and appointed agent of the ~~any~~ insurer  
51 appearing thereon. The producing agent shall receive on each  
52 policy or contract the full and usual commission allowed and  
53 paid by the insurer to its agents on business written or  
54 transacted by them for the insurer.

55 Section 2. Section 627.7311, Florida Statutes, is amended  
56 to read:

57 627.7311 Effect of law ~~on personal injury protection~~  
58 ~~policies~~.-

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59       (1) The provisions and procedures authorized in ss.  
60 627.730-627.7405 shall be implemented by insurers offering  
61 policies pursuant to the Florida Motor Vehicle No-Fault Law. The  
62 Legislature intends that these provisions and procedures have  
63 full force and effect regardless of their express inclusion in  
64 an insurance policy form, and a specific provision or procedure  
65 authorized in ss. 627.730-627.7405 shall control over general  
66 provisions in an insurance policy form. An insurer is not  
67 required to amend its policy form or to expressly notify  
68 providers, claimants, or insureds in order to implement and  
69 apply such provisions or procedures.

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

74       Section 3. Subsection (2) of section 627.94072, Florida  
75 Statutes, is amended to read:

76       627.94072 Mandatory offers.—

77       (2) An insurer that offers a long-term care insurance  
78 policy, certificate, or rider in this state shall ~~must~~ offer a  
79 nonforfeiture protection provision providing reduced paid-up  
80 insurance, extended term, shortened benefit period, or ~~any~~ other  
81 benefit ~~benefits~~ approved by the office if all or part of a  
82 premium is not paid. A nonforfeiture provision may also be  
83 offered in the form of a return of premium on the death of the  
84 insured, or on the complete surrender or cancellation of the  
85 policy or contract. Nonforfeiture benefits and any additional  
86 premium for such benefits must be computed in an actuarially  
87 sound manner, ~~r~~ using a methodology that has been filed with and

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88 approved by the office.

89 Section 4. Section 629.271, Florida Statutes, is amended to  
90 read:

91 629.271 Distribution of savings.—A reciprocal insurer may  
92 ~~from time to time~~ return to its subscribers any unused premiums,  
93 savings, or credits accruing to their accounts. Upon the prior  
94 written approval of the office, a reciprocal insurer may return  
95 to its subscribers a portion of unassigned funds of up to 10  
96 percent of surplus with distribution limited to 50 percent of  
97 net income from the previous calendar year. ~~Any~~ Such  
98 distribution may ~~shall~~ not unfairly discriminate between classes  
99 of risks, or policies, or between subscribers, but ~~such~~  
100 ~~distribution~~ may vary as to classes of subscribers based on ~~upon~~  
101 the experience of such classes.

102 Section 5. Subsections (2) through (9) of section 631.54,  
103 Florida Statutes, are renumbered as subsections (3) through  
104 (10), respectively, and a new subsection (2) is added to that  
105 section to read:

106 631.54 Definitions.—As used in this part, the term:  
107 (2) "Assessment year" means the 12-month period, which may  
108 begin on the first day of any calendar quarter, whether January  
109 1, April 1, July 1, or October 1, as specified in an order  
110 issued by the office directing insurers to pay an assessment to  
111 the association. Upon entry of the order, insurers may begin  
112 collecting assessments from policyholders for the assessment  
113 year.

114 Section 6. Subsections (3) and (4) of section 631.57,  
115 Florida Statutes, are amended to read:

116 631.57 Powers and duties of the association.—

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117 (3) (a) To the extent necessary to secure ~~the~~ funds for the  
118 respective accounts for the payment of covered claims, to pay  
119 the reasonable costs to administer such accounts ~~the same~~, and  
120 ~~to the extent necessary~~ to secure ~~the~~ funds for the account  
121 specified in s. 631.55(2) (b) or to retire indebtedness,  
122 including, without limitation, the principal, redemption  
123 premium, if any, and interest on, and related costs of issuance  
124 of, bonds issued under s. 631.695 and the funding of ~~any~~  
125 reserves and other payments required under the bond resolution  
126 or trust indenture pursuant to which such bonds have been  
127 issued, the office, upon certification of the board of  
128 directors, shall levy assessments initially estimated in the  
129 proportion that each insurer's net direct written premiums in  
130 this state in the classes protected by the account bears to the  
131 total of said net direct written premiums received in this state  
132 by all such insurers for the preceding calendar year for the  
133 kinds of insurance included within such account. Assessments  
134 shall be remitted to and administered by the board of directors  
135 in the manner specified by the approved plan and paragraph (f).  
136 Each insurer so assessed shall have at least 30 days' written  
137 notice as to the date the initial assessment payment is due and  
138 payable. Every assessment shall be ~~made as~~ a uniform percentage  
139 applicable to the net direct written premiums of each insurer in  
140 the kinds of insurance included within the account in which the  
141 assessment is made. The assessments levied against any insurer  
142 may ~~shall~~ not exceed in any one year more than 2 percent of that  
143 insurer's net direct written premiums in this state for the  
144 kinds of insurance included within such account during the  
145 calendar year next preceding the date of such assessments.

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

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

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

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175 as an asset shall be reduced to the amount reasonably expected  
176 to be recouped.

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

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

183 (e)1.a. In addition to assessments ~~otherwise~~ authorized in  
184 paragraph (a), and to the extent necessary to secure the funds  
185 for the account specified in s. 631.55(2)(b) for the direct  
186 payment of covered claims of insurers rendered insolvent by the  
187 effects of a hurricane and to pay the reasonable costs to  
188 administer such claims, or to retire indebtedness, including,  
189 without limitation, the principal, redemption premium, if any,  
190 and interest on, and related costs of issuance of, bonds issued  
191 under s. 631.695 and the funding of any reserves and other  
192 payments required under the bond resolution or trust indenture  
193 pursuant to which such bonds have been issued, the office, upon  
194 certification of the board of directors, shall levy emergency  
195 assessments upon insurers holding a certificate of authority.  
196 The emergency assessments payable under this paragraph by any  
197 insurer may ~~shall~~ not exceed in any single year more than 2  
198 percent of that insurer's direct written premiums, net of  
199 refunds, in this state during the preceding calendar year for  
200 the kinds of insurance within the account specified in s.  
201 631.55(2)(b).

202 2.b. Any Emergency assessments authorized under this  
203 paragraph shall be levied by the office upon insurers referred

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204 to in subparagraph 1. ~~sub-subparagraph a.~~, upon certification as  
205 to the need for such assessments by the board of directors. If  
206 ~~In the event~~ the board ~~of directors~~ participates in the issuance  
207 of bonds in accordance with s. 631.695, emergency assessments  
208 shall be levied in each year that bonds issued under s. 631.695  
209 and secured by such emergency assessments are outstanding, in  
210 ~~such~~ amounts up to such 2 percent ~~2-percent~~ limit as required in  
211 order to provide for the full and timely payment of the  
212 principal of, redemption premium, if any, and interest on, and  
213 related costs of issuance of, such bonds. The emergency  
214 assessments ~~provided for in this paragraph~~ are assigned and  
215 pledged to the municipality, county, or legal entity issuing  
216 bonds under s. 631.695 for the benefit of the holders of such  
217 bonds, in order ~~to enable such municipality, county, or legal~~  
218 ~~entity~~ to provide for the payment of the principal of,  
219 redemption premium, if any, and interest on such bonds, the cost  
220 of issuance of such bonds, and the funding of any reserves and  
221 other payments required under the bond resolution or trust  
222 indenture pursuant to which such bonds have been issued, without  
223 ~~the necessity of any~~ further action by the association, the  
224 office, or any other party. If ~~To the extent~~ bonds are issued  
225 under s. 631.695 and the association determines to secure such  
226 bonds by a pledge of revenues received from the emergency  
227 assessments, such bonds, upon such pledge of revenues, shall be  
228 secured by and payable from the proceeds of such emergency  
229 assessments, and the proceeds of emergency assessments levied  
230 under this paragraph shall be remitted directly to and  
231 administered by the trustee or custodian appointed for such  
232 bonds.



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

240       ~~4.d.~~ If emergency assessments are imposed, the report  
241 required by s. 631.695(7) must ~~shall~~ include an analysis of the  
242 revenues generated from the emergency assessments imposed under  
243 this paragraph.

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

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

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

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262 uncollectible emergency assessments.

263 ~~(f) The recoupment factor applied to policies in accordance~~  
264 ~~with paragraph (c) shall be selected by the insurer or insurer~~  
265 ~~group so as to provide for the probable recoupment of both~~  
266 ~~assessments levied pursuant to paragraph (a) and emergency~~  
267 ~~assessments over a period of 12 months, unless the insurer or~~  
268 ~~insurer group, at its option, elects to recoup the assessment~~  
269 ~~over a longer period. The recoupment factor shall apply to all~~  
270 ~~policies of the same kind or line as were considered by the~~  
271 ~~office in determining the assessment liability of the insurer or~~  
272 ~~insurer group issued or renewed during a 12-month period. If the~~  
273 ~~insurer or insurer group does not collect the full amount of the~~  
274 ~~assessment during one 12-month period, the insurer or insurer~~  
275 ~~group may apply recalculated recoupment factors to policies~~  
276 ~~issued or renewed during one or more succeeding 12-month~~  
277 ~~periods. If, at the end of a 12-month period, the insurer or~~  
278 ~~insurer group has collected from the combined kinds or lines of~~  
279 ~~policies subject to assessment more than the total amount of the~~  
280 ~~assessment paid by the insurer or insurer group, the excess~~  
281 ~~amount shall be disbursed as follows:~~

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

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

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291 b. Insurers shall make an initial payment to the  
292 association before the beginning of the assessment year on or  
293 before the date specified in the order of the office.

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

309 d. Insurers shall file a reconciliation report with the  
310 association within 45 days after the end of the assessment year  
311 which indicates the amount of the initial payment to the  
312 association before the assessment year, whether such amount was  
313 based on net direct written premium contained in a prior  
314 calendar year annual statement or a good faith projection, the  
315 amount actually collected during the assessment year, and such  
316 other information contained on a form adopted by the association  
317 and provided to the insurers in advance. If the insurer  
318 collected from policyholders more than the amount initially  
319 paid, the insurer shall pay the excess amount to the

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320 association. If the insurer collected from policyholders an  
321 amount which is less than the amount initially paid to the  
322 association, the association shall credit the insurer that  
323 amount against future assessments. Such payment reconciliation  
324 report, and any payment of excess amounts collected from  
325 policyholders, shall be completed and remitted to the  
326 association within 90 days after the end of the assessment year.  
327 The association shall send a final reconciliation report on all  
328 insurers to the office within 120 days after each assessment  
329 year.

330 e. Insurers remitting reconciliation reports to the  
331 association under this paragraph are subject to s.  
332 626.9541(1)(e). If the excess amount does not exceed 15 percent  
333 of the total assessment paid by the insurer or insurer group,  
334 the excess amount shall be remitted to the association within 60  
335 days after the end of the 12-month period in which the excess  
336 recoupment charges were collected.

337 2. The association may use a monthly installment method  
338 instead of the method described in sub-subparagraphs 1.b. and c.  
339 or in combination thereof based on the association's projected  
340 cash flow. If the association projects that it has cash on hand  
341 for the payment of anticipated claims in the applicable account  
342 for at least 6 months, the board may make an estimate of the  
343 assessment needed and may recommend to the office the assessment  
344 percentage that may be collected as a monthly assessment. The  
345 office may, in the order levying the assessment on insurers,  
346 specify that the assessment is due and payable monthly as the  
347 funds are collected from insureds throughout the assessment  
348 year, in which case the assessment shall be a uniform percentage

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349 of premium collected during the assessment year and shall be  
350 collected from all policyholders with policies in the classes  
351 protected by the account. All insurers shall collect the  
352 assessment without regard to whether the insurers reported  
353 premium in the year preceding the assessment. Insurers are not  
354 required to advance funds if the association and the office  
355 elect to use the monthly installment option. All funds collected  
356 shall be retained by the association for the payment of current  
357 or future claims. This subparagraph does not alter the  
358 obligation of an insurer to remit assessments levied pursuant to  
359 this subsection to the association. ~~If the excess amount exceeds~~  
360 ~~15 percent of the total assessment paid by the insurer or~~  
361 ~~insurer group, the excess amount shall be returned to the~~  
362 ~~insurer's or insurer group's current policyholders by refunds or~~  
363 ~~premium credits. The association shall use any remitted excess~~  
364 ~~recoupment amounts to reduce future assessments.~~

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

371 ~~(h) At least 15 days before applying the recoupment factor~~  
372 ~~to any policies, the insurer or insurer group shall file with~~  
373 ~~the office a statement for informational purposes only setting~~  
374 ~~forth the amount of the recoupment factor and an explanation of~~  
375 ~~how the recoupment factor will be applied. Such statement shall~~  
376 ~~include documentation of the assessment paid by the insurer or~~  
377 ~~insurer group and the arithmetic calculations supporting the~~

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378 ~~recoupment factor. The insurer or insurer group may use the~~  
379 ~~recoupment factor at any time after the expiration of the 15-day~~  
380 ~~period. The insurer or insurer group need submit only one~~  
381 ~~informational statement for all lines of business using the same~~  
382 ~~recoupment factor.~~

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

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

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

405 Section 7. Section 631.64, Florida Statutes, is amended to  
406 read:

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

419           Section 8. Subsection (5) of section 627.727, Florida  
420 Statutes, is amended to read:

421           627.727 Motor vehicle insurance; uninsured and underinsured  
422 vehicle coverage; insolvent insurer protection.-

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

433           Section 9. Subsection (1) of section 631.55, Florida  
434 Statutes, is amended to read:

435           631.55 Creation of the association.-

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

450 Section 10. This act shall take effect July 1, 2014.