

By Senator Latvala

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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 levy of
6 assessments on insurers by the Florida Insurance
7 Guaranty Association; specifying conditions under
8 which such assessments are paid; revising procedures
9 and timeframes for the levying of the assessments;
10 revising provisions relating to assessments that are
11 premium and not subject to the premium tax; limiting
12 an insurer's liability for uncollectible emergency
13 assessments; deleting the requirement to file a final
14 accounting report documenting the recoupment; revising
15 an exemption for assessments; amending s. 631.64,
16 F.S.; requiring charges or recoupments to be displayed
17 separately on premium statements to policyholders and
18 prohibiting their inclusion in rates; amending ss.
19 627.727 and 631.55, F.S.; conforming cross-references;
20 providing an effective date.

21
22 Be It Enacted by the Legislature of the State of Florida:

23
24 Section 1. Subsections (2) through (9) of section 631.54,
25 Florida Statutes, are renumbered as subsections (3) through
26 (10), respectively, and a new subsection (2) is added to that
27 section to read:

28 631.54 Definitions.—As used in this part:

29 (2) "Assessment year" means the 12-month period, which may

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30 begin on the first day of any calendar quarter, whether January
31 1, April 1, July 1, or October 1, as specified in an order
32 issued by the office directing insurers to pay an assessment to
33 the association.

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

36 631.57 Powers and duties of the association.—

37 (3) (a) To the extent necessary to secure ~~the~~ funds for the
38 respective accounts for the payment of covered claims, to pay
39 the reasonable costs to administer such accounts ~~the same~~, and
40 ~~to the extent necessary~~ to secure ~~the~~ funds for the account
41 specified in s. 631.55(2) (b) or to retire indebtedness,
42 including, without limitation, the principal, redemption
43 premium, if any, and interest on, and related costs of issuance
44 of, bonds issued under s. 631.695 and the funding of ~~any~~
45 reserves and other payments required under the bond resolution
46 or trust indenture pursuant to which such bonds have been
47 issued, the office, upon certification of the board of
48 directors, shall levy assessments, in accordance with
49 subparagraphs (f)1. or 2., initially estimated in the proportion
50 that each insurer's net direct written premiums in this state in
51 the classes protected by the account bears to the total of said
52 net direct written premiums received in this state by all such
53 insurers for the preceding calendar year for the kinds of
54 insurance included within such account. Assessments shall be
55 remitted to and administered by the board of directors in the
56 manner specified by the approved plan and paragraph (f). Each
57 insurer so assessed shall have at least 30 days' written notice
58 as to the date the initial assessment payment is due and

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59 payable. Every assessment shall be ~~made as~~ a uniform percentage
60 ~~applicable to the net direct written premiums of each insurer in~~
61 ~~the kinds of insurance included within the account in which the~~
62 ~~assessment is made.~~ The assessments levied against any insurer
63 may shall not exceed in any one calendar year more than 2
64 percent of that insurer's net direct written premiums in this
65 state for the kinds of insurance included within such account
66 ~~during the calendar year next preceding the date of such~~
67 ~~assessments.~~

68 (b) If sufficient funds from such assessments, together
69 with funds previously raised, are not available in any one year
70 in the respective account to make all the payments or
71 reimbursements then owing to insurers, the funds available shall
72 be prorated and the unpaid portion ~~shall be~~ paid as soon
73 ~~thereafter~~ as funds become available.

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

85 1. Assessments levied under subparagraph (f)1. are paid
86 before policy surcharges are collected and result in a
87 receivable for policy surcharges collected in the future. This

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88 amount, to the extent it is likely that it will be realized,
89 meets the definition of an admissible asset as specified in the
90 National Association of Insurance Commissioners' Statement of
91 Statutory Accounting Principles No. 4. The asset shall be
92 established and recorded separately from the liability
93 regardless of whether it is based on a retrospective or
94 prospective premium-based assessment. If an insurer is unable to
95 fully recoup the amount of the assessment because of a reduction
96 in writings or withdrawal from the market, the amount recorded
97 as an asset shall be reduced to the amount reasonably expected
98 to be recouped.

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

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

105 (e)1.a. In addition to assessments ~~otherwise~~ authorized in
106 paragraph (a), and to the extent necessary to secure the funds
107 for the account specified in s. 631.55(2)(b) for the direct
108 payment of covered claims of insurers rendered insolvent by the
109 effects of a hurricane and to pay the reasonable costs to
110 administer such claims, or to retire indebtedness, including,
111 without limitation, the principal, redemption premium, if any,
112 and interest on, and related costs of issuance of, bonds issued
113 under s. 631.695 and the funding of any reserves and other
114 payments required under the bond resolution or trust indenture
115 pursuant to which such bonds have been issued, the office, upon
116 certification of the board of directors, shall levy emergency

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117 assessments upon insurers holding a certificate of authority.
118 The emergency assessments levied against ~~payable under this~~
119 ~~paragraph by~~ any insurer may shall not exceed in any one
120 calendar ~~single~~ year more than 2 percent of that insurer's net
121 ~~direct~~ written premiums, ~~net of refunds,~~ in this state ~~during~~
122 ~~the preceding calendar year~~ for the kinds of insurance within
123 the account specified in s. 631.55(2)(b).

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

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146 association, the office, or any other party. ~~If To the extent~~
147 bonds are issued under s. 631.695 and the association determines
148 to secure such bonds by a pledge of revenues received from the
149 emergency assessments, such bonds, upon such pledge of revenues,
150 shall be secured by and payable from the proceeds of such
151 emergency assessments, and the proceeds of emergency assessments
152 levied under this paragraph shall be remitted directly to and
153 administered by the trustee or custodian appointed for such
154 bonds.

155 ~~3.e.~~ Emergency assessments used to defease bonds issued
156 under this part paragraph may be payable in a single payment or,
157 at the option of the association, may be payable in 12 monthly
158 installments with the first installment being due and payable at
159 the end of the month after an emergency assessment is levied and
160 subsequent installments being due by ~~not later than~~ the end of
161 each succeeding month.

162 ~~4.d.~~ If emergency assessments are imposed, the report
163 required by s. 631.695(7) must ~~shall~~ include an analysis of the
164 revenues generated from the emergency assessments imposed under
165 this paragraph.

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

170 ~~6.2.~~ If the board of directors participates in the issuance
171 of bonds in accordance with s. 631.695, an annual assessment
172 under this paragraph shall continue while the bonds issued with
173 respect to which the assessment was imposed are outstanding,
174 including any bonds the proceeds of which were used to refund

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175 bonds issued pursuant to s. 631.695, unless adequate provision
176 has been made for the payment of the bonds in the documents
177 authorizing the issuance of such bonds.

178 ~~3. Emergency assessments under this paragraph are not~~
179 ~~premium and are not subject to the premium tax, to any fees, or~~
180 ~~to any commissions. An insurer is liable for all emergency~~
181 ~~assessments that the insurer collects and shall treat the~~
182 ~~failure of an insured to pay an emergency assessment as a~~
183 ~~failure to pay the premium. An insurer is not liable for~~
184 ~~uncollectible emergency assessments.~~

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

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204 1. The association, office, and insurers remitting
205 emergency assessments pursuant to paragraph (a) or paragraph (e)
206 must comply with the following:

207 a. In the order levying an assessment, the office shall
208 specify the actual percentage amount to be collected uniformly
209 from all the policyholders of insurers subject to the assessment
210 and the date on which the assessment year begins, which may not
211 begin before 90 days after the association board certifies such
212 an assessment.

213 b. Insurers shall make an initial payment to the
214 association before the beginning of the assessment year on or
215 before the date specified in the order of the office.

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

231 d. Insurers shall file a reconciliation report with the
232 association within 45 days after the end of the assessment year

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233 which indicates the amount of the initial payment to the
234 association before the assessment year, whether such amount was
235 based on net direct written premium contained in a previous
236 calendar year annual statement or a good faith projection, the
237 amount actually collected during the assessment year, and such
238 other information contained on a form adopted by the association
239 and provided to the insurers in advance. If the insurer
240 collected from policyholders more than the amount initially
241 paid, the insurer shall pay the excess amount to the
242 association. If the insurer collected from policyholders an
243 amount which is less than the amount initially paid to the
244 association, the association shall credit the insurer that
245 amount against future assessments. Such payment reconciliation
246 report, and any payment of excess amounts collected from
247 policyholders, shall be completed and remitted to the
248 association within 90 days after the end of the assessment year.
249 The association shall send a final reconciliation report on all
250 insurers to the office within 120 days after each assessment
251 year.

252 e. Insurers remitting reconciliation reports under this
253 paragraph to the association are subject to s. 626.9541(1)(e).
254 ~~If the excess amount does not exceed 15 percent of the total~~
255 ~~assessment paid by the insurer or insurer group, the excess~~
256 ~~amount shall be remitted to the association within 60 days after~~
257 ~~the end of the 12-month period in which the excess recoupment~~
258 ~~charges were collected.~~

259 2. For assessments required under paragraph (a) or
260 paragraph (e), the association may use a monthly installment
261 method instead of the method described in sub-subparagraphs 1.b.

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262 and c. or in combination thereof based on the association's
263 projected cash flow. If the association projects that it has
264 cash on hand for the payment of anticipated claims in the
265 applicable account for at least 6 months, the board may make an
266 estimate of the assessment needed and may recommend to the
267 office the assessment percentage that may be collected as a
268 monthly assessment. The office may, in the order levying the
269 assessment on insurers, specify that the assessment is due and
270 payable monthly as the funds are collected from insureds
271 throughout the assessment year, in which case the assessment
272 shall be a uniform percentage of premium collected during the
273 assessment year and shall be collected from all policyholders
274 with policies in the classes protected by the account. All
275 insurers shall collect the assessment without regard to whether
276 the insurers reported premium in the year preceding the
277 assessment. Insurers are not required to advance funds if the
278 association and the office elect to use the monthly installment
279 option. All funds collected shall be retained by the association
280 for the payment of current or future claims. This subparagraph
281 does not alter the obligation of an insurer to remit assessments
282 levied pursuant to this subsection to the association. ~~If the~~
283 ~~excess amount exceeds 15 percent of the total assessment paid by~~
284 ~~the insurer or insurer group, the excess amount shall be~~
285 ~~returned to the insurer's or insurer group's current~~
286 ~~policyholders by refunds or premium credits. The association~~
287 ~~shall use any remitted excess recoupment amounts to reduce~~
288 ~~future assessments.~~

289 ~~(g) Amounts recouped pursuant to this subsection for~~
290 ~~assessments levied under paragraph (a) due to insolvencies on or~~

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291 ~~after July 1, 2010, are considered premium solely for premium~~
292 ~~tax purposes and are not subject to fees or commissions.~~
293 ~~However,~~ Insurers shall treat the failure of an insured to pay a
294 recoupment charge as a failure to pay the premium.

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

299 (i) Assessments levied under this subsection are not
300 premium and are not subject to the premium tax, to any fees, or
301 to any commissions. An insurer is liable for any emergency
302 assessments that the insurer collects and shall treat the
303 failure of an insured to pay an emergency assessment as a
304 failure to pay the premium. An insurer is not liable for
305 uncollectible emergency assessments.

306 ~~(h) At least 15 days before applying the recoupment factor~~
307 ~~to any policies, the insurer or insurer group shall file with~~
308 ~~the office a statement for informational purposes only setting~~
309 ~~forth the amount of the recoupment factor and an explanation of~~
310 ~~how the recoupment factor will be applied. Such statement shall~~
311 ~~include documentation of the assessment paid by the insurer or~~
312 ~~insurer group and the arithmetic calculations supporting the~~
313 ~~recoupment factor. The insurer or insurer group may use the~~
314 ~~recoupment factor at any time after the expiration of the 15-day~~
315 ~~period. The insurer or insurer group need submit only one~~
316 ~~informational statement for all lines of business using the same~~
317 ~~recoupment factor.~~

318 ~~(i) No later than 90 days after the insurer or insurer~~
319 ~~group has completed the recoupment process, the insurer or~~

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320 ~~insurer group shall file with the office, for information~~
321 ~~purposes only, a final accounting report documenting the~~
322 ~~recoupment. The report shall provide the amounts of assessments~~
323 ~~paid by the insurer or insurer group, the amounts and~~
324 ~~percentages recouped by year from each affected line of~~
325 ~~business, and the direct written premium subject to recoupment~~
326 ~~by year. The insurer or insurer group need submit only one~~
327 ~~report for all lines of business using the same recoupment~~
328 ~~factor.~~

329 (4) The office department may exempt or temporarily defer
330 any insurer from any regular or emergency assessment if the
331 office finds that the insurer is impaired or insolvent or if an
332 assessment would result in such insurer's financial statement
333 reflecting an amount of capital or surplus less than the sum of
334 the minimum amount required by any jurisdiction in which the
335 insurer is authorized to transact insurance.

336 Section 3. Section 631.64, Florida Statutes, is amended to
337 read:

338 631.64 Recognition of assessments ~~in rates.~~ Charges or
339 recoupments shall be separately displayed on premium statements
340 to enable policyholders to determine the amount charged for
341 association assessments but may not be included in rates filed
342 and approved by the office. ~~The rates and premiums charged for~~
343 ~~insurance policies to which this part applies may include~~
344 ~~amounts sufficient to recoup a sum equal to the amounts paid to~~
345 ~~the association by the member insurer less any amounts returned~~
346 ~~to the member insurer by the association, and such rates shall~~
347 ~~not be deemed excessive because they contain an amount~~
348 ~~reasonably calculated to recoup assessments paid by the member~~

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349 ~~insurer.~~

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

352 627.727 Motor vehicle insurance; uninsured and underinsured
353 vehicle coverage; insolvent insurer protection.—

354 (5) Any person having a claim against an insolvent insurer
355 as defined in s. 631.54(6) under ~~the provisions of~~ this section
356 shall present such claim for payment to the Florida Insurance
357 Guaranty Association only. In the event of a payment to a ~~any~~
358 person in settlement of a claim arising under ~~the provisions of~~
359 this section, the association is not subrogated or entitled to
360 ~~any~~ recovery against the claimant's insurer. The association,
361 however, has the rights of recovery as set forth in chapter 631
362 in the proceeds recoverable from the assets of the insolvent
363 insurer.

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

366 631.55 Creation of the association.—

367 (1) There is created a nonprofit corporation to be known as
368 the "Florida Insurance Guaranty Association, Incorporated." All
369 insurers defined as member insurers in s. 631.54(7) shall be
370 members of the association as a condition of their authority to
371 transact insurance in this state, and, further, as a condition
372 of such authority, an insurer must ~~shall~~ agree to reimburse the
373 association for all claim payments the association makes on the
374 ~~said~~ insurer's behalf if such insurer is subsequently
375 rehabilitated. The association shall perform its functions under
376 a plan of operation established and approved under s. 631.58 and
377 shall exercise its powers through a board of directors

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378 established under s. 631.56. The corporation shall have all
379 those powers granted or permitted nonprofit corporations, as
380 provided in chapter 617.

381 Section 6. This act shall take effect July 1, 2015.