

By Senator Rader

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1                                   A bill to be entitled  
2       An act relating to insurance guaranty associations;  
3       creating s. 626.8621, F.S.; authorizing certain  
4       guaranty association employees to adjust losses for  
5       the Florida Insurance Guaranty Association if certain  
6       conditions are met; amending s. 631.54, F.S.;  
7       redefining the term "net direct written premiums" as  
8       "direct written premiums" and revising the definition  
9       of that term; amending s. 631.57, F.S.; deleting a  
10      calculation of initial estimated assessments levied by  
11      the Office of Insurance Regulation on insurers in the  
12      Florida Insurance Guaranty Association; providing that  
13      a notice requirement for initial assessments applies  
14      to emergency assessments; revising the frequency of  
15      payable installments for assessments if an installment  
16      method is elected by the association; revising the  
17      basis of calculating initial payments of assessments  
18      for certain insurers; conforming a provision to  
19      changes made by the act; amending ss. 625.012, 631.59,  
20      and 631.912, F.S.; conforming provisions to changes  
21      made by the act; amending s. 631.914, F.S.; deleting a  
22      calculation of initial estimated assessments levied by  
23      the office on insurers in the Florida Workers'  
24      Compensation Insurance Guaranty Association; revising  
25      the method for calculating assessments; authorizing  
26      the association to audit certain reports by insurers  
27      and self-insurance funds; specifying a requirement for  
28      the office in levying policy surcharges; revising a  
29      procedure for collecting policy surcharges; revising

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30 an installment method of payments to apply to policy  
31 surcharges rather than to assessments; revising  
32 requirements if the association elects to require  
33 insurers to remit assessments before surcharging  
34 policies; revising a requirement for annual  
35 reconciliation reports by insurers; revising  
36 construction; revising the applicability of premium  
37 taxes, fees, and commissions; providing an effective  
38 date.

39  
40 Be It Enacted by the Legislature of the State of Florida:

41  
42 Section 1. Section 626.8621, Florida Statutes, is created  
43 to read:

44 626.8621 Adjustments by guaranty association employees.-

45 (1) An employee of the Florida Insurance Guaranty  
46 Association, created under part II of chapter 631, may adjust  
47 losses for the association if such employee holds, or has held  
48 within the past 10 years, licensure in this state which allows  
49 for the adjustment of such losses.

50 (2) An employee of a guaranty association established by  
51 another state whose insurance regulators are members of the  
52 National Association of Insurance Commissioners may adjust  
53 losses for the Florida Insurance Guaranty Association. The  
54 authorization for such employees to adjust losses must be  
55 included in a contract with the Florida Insurance Guaranty  
56 Association and the employee's guaranty association or  
57 association's authorized representative. The Florida Insurance  
58 Guaranty Association shall contract only for employees of other

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59 state guaranty associations who maintain the appropriate  
60 experience and training for adjusting such claims.

61 Section 2. Subsection (9) of section 631.54, Florida  
62 Statutes, is amended to read:

63 631.54 Definitions.—As used in this part:

64 (9) ~~“Net Direct written premiums”~~ means direct gross  
65 premiums written in this state on insurance policies to which  
66 this part applies, less return premiums thereon ~~and dividends~~  
67 ~~paid or credited to policyholders~~ on such direct business. The  
68 term “Net direct written premiums” does not include premiums on  
69 contracts between insurers or reinsurers.

70 Section 3. Paragraphs (a), (e), and (f) of subsection (3)  
71 of section 631.57, Florida Statutes, are amended to read:

72 631.57 Powers and duties of the association.—

73 (3) (a) To the extent necessary to secure funds for the  
74 respective accounts for the payment of covered claims, to pay  
75 the reasonable costs to administer such accounts, and to secure  
76 funds for the account specified in s. 631.55(2)(b) or to retire  
77 indebtedness, including, without limitation, the principal,  
78 redemption premium, if any, and interest on, and related costs  
79 of issuance of, bonds issued under s. 631.695 and the funding of  
80 reserves and other payments required under the bond resolution  
81 or trust indenture pursuant to which such bonds have been  
82 issued, the office, upon certification of the board of  
83 directors, shall levy assessments, in accordance with  
84 subparagraph (f)1. or subparagraph (f)2., ~~initially estimated in~~  
85 ~~the proportion that each insurer’s net direct written premiums~~  
86 ~~in this state in the classes protected by the account bears to~~  
87 ~~the total of said net direct written premiums received in this~~

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88 ~~state by all such insurers for the preceding calendar year for~~  
89 ~~the kinds of insurance included within such account.~~ Assessments  
90 shall be remitted to and administered by the board of directors  
91 in the manner specified by the approved plan and paragraph (f).  
92 ~~Each insurer so assessed shall have at least 30 days' written~~  
93 ~~notice as to the date the initial assessment payment is due and~~  
94 ~~payable.~~ Every assessment shall be a uniform percentage. The  
95 assessments levied against any insurer may not exceed in any one  
96 calendar year more than 2 percent of that insurer's ~~net~~ direct  
97 written premiums in this state for the kinds of insurance  
98 included within such account.

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

116 2. Emergency assessments authorized under this paragraph

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

144       3. Emergency assessments used to defease bonds issued under  
145 this part may be payable in a single payment or, at the option

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146 of the association, may be payable in quarterly ~~12-monthly~~  
147 installments, with the first installment being due and payable  
148 at the end of the month after an emergency assessment is levied  
149 and subsequent installments being due by the end of each  
150 succeeding month.

151 4. If emergency assessments are imposed, the report  
152 required by s. 631.695(7) must include an analysis of the  
153 revenues generated from the emergency assessments imposed under  
154 this paragraph.

155 5. If emergency assessments are imposed, the references in  
156 sub-subparagraph (1)(a)3.b. and s. 631.695(2) and (7) to  
157 assessments levied under paragraph (a) must include emergency  
158 assessments imposed under this paragraph.

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

167 (f)1. The association, office, and insurers remitting  
168 assessments pursuant to paragraph (a) or paragraph (e) must  
169 comply with the following:

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

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175 an assessment.

176 b. Insurers shall make an initial payment to the  
177 association before the beginning of the assessment year on or  
178 before the date specified in the order of the office. Each  
179 insurer shall have at least 30 days' written notice as to the  
180 date on which the initial assessment payment is due and payable.

181 c. Insurers that have written insurance in the calendar  
182 year before the year in which the assessment is certified by the  
183 board shall make an initial payment based on the ~~net~~ direct  
184 written premium in this state for the classes protected by the  
185 account amount from the previous calendar year as set forth in  
186 the insurer's annual statement, multiplied by the uniform  
187 percentage of premium specified in the order issued by the  
188 office. Insurers that have not written insurance in the previous  
189 calendar year in any of the lines under the account which are  
190 being assessed, but which are writing insurance as of, or after,  
191 the date the board certifies the assessment to the office, shall  
192 pay an amount based on a good faith estimate of the amount of  
193 ~~net~~ direct written premium anticipated to be written in the  
194 subject lines of business for the assessment year, multiplied by  
195 the uniform percentage of premium specified in the order issued  
196 by the office.

197 d. Insurers shall file a reconciliation report with the  
198 association which indicates the amount of the initial payment to  
199 the association before the assessment year, whether such amount  
200 was based on ~~net~~ direct written premium contained in a previous  
201 calendar year annual statement or a good faith projection, the  
202 amount actually collected during the assessment year, and such  
203 other information contained on a form adopted by the association

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204 and provided to the insurers in advance. If the insurer  
205 collected from policyholders more than the amount initially  
206 paid, the insurer shall pay the excess amount to the  
207 association. If the insurer collected from policyholders an  
208 amount which is less than the amount initially paid to the  
209 association, the association shall credit the insurer that  
210 amount against future assessments. Such payment reconciliation  
211 report, and any payment of excess amounts collected from  
212 policyholders, shall be completed and remitted to the  
213 association within 90 days after the end of the assessment year.  
214 The association shall send a final reconciliation report on all  
215 insurers to the office within 120 days after each assessment  
216 year.

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

219 2. For assessments required under paragraph (a) or  
220 paragraph (e), the association may use a quarterly ~~monthly~~  
221 installment method instead of the method described in sub-  
222 subparagraphs 1.b. and c. or in combination thereof based on the  
223 association's projected cash flow. If the association projects  
224 that it has cash on hand for the payment of anticipated claims  
225 in the applicable account for at least 6 months, the board may  
226 make an estimate of the assessment needed and may recommend to  
227 the office the assessment percentage that may be collected as a  
228 quarterly ~~monthly~~ assessment. The office may, in the order  
229 levying the assessment on insurers, specify that the assessment  
230 is due and payable quarterly ~~monthly~~ as the funds are collected  
231 from insureds throughout the assessment year, in which case the  
232 assessment shall be a uniform percentage of premium collected

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233 during the assessment year and shall be collected from all  
234 policyholders with policies in the classes protected by the  
235 account. All insurers shall collect the assessment without  
236 regard to whether the insurers reported premium in the year  
237 preceding the assessment. Insurers are not required to advance  
238 funds if the association and the office elect to use the  
239 quarterly ~~monthly~~ installment option. All funds collected shall  
240 be retained by the association for the payment of current or  
241 future claims. This subparagraph does not alter the obligation  
242 of an insurer to remit assessments levied pursuant to this  
243 subsection to the association.

244 Section 4. Paragraph (b) of subsection (15) of section  
245 625.012, Florida Statutes, is amended to read:

246 625.012 "Assets" defined.—In any determination of the  
247 financial condition of an insurer, there shall be allowed as  
248 "assets" only such assets as are owned by the insurer and which  
249 consist of:

250 (15)

251 (b) Assessments levied as ~~monthly~~ installments pursuant to  
252 s. 631.57(3)(e)3. or s. 631.914 which are paid after policy  
253 surcharges are collected so that the recognition of assets is  
254 based on actual premium written offset by the obligation to the  
255 Florida Insurance Guaranty Association or the Florida Workers'  
256 Compensation Insurance Guaranty Association, Incorporated.

257 Section 5. Subsection (3) of section 631.59, Florida  
258 Statutes, is amended to read:

259 631.59 Duties and powers of department and office.—

260 (3) The office shall, upon request of the board of  
261 directors, provide the association with a statement of the ~~net~~

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262 direct written premiums of each member insurer.

263 Section 6. Subsection (1) of section 631.912, Florida  
264 Statutes, is amended to read:

265 631.912 Board of directors.—

266 (1) The board of directors of the corporation shall consist  
267 of 11 persons, 1 of whom is the insurance consumer advocate  
268 appointed under s. 627.0613 or designee and 1 of whom is  
269 designated by the Chief Financial Officer. The department shall  
270 appoint to the board 6 persons selected by private carriers from  
271 among the 20 workers' compensation insurers with the largest  
272 amount of ~~net~~ direct written premium as determined by the  
273 department, and 2 persons selected by the self-insurance funds.  
274 The Governor shall appoint one person who has commercial  
275 insurance experience. At least two of the private carriers shall  
276 be foreign carriers authorized to do business in this state. The  
277 board shall elect a chairperson from among its members. The  
278 Chief Financial Officer may remove any board member for cause.  
279 Each board member shall be appointed to serve a 4-year term and  
280 may be reappointed. A vacancy on the board shall be filled for  
281 the remaining period of the term in the same manner by which the  
282 original appointment was made.

283 Section 7. Subsections (1), (2), and (3) of section  
284 631.914, Florida Statutes, are amended to read:

285 631.914 Assessments.—

286 (1) (a) To the extent necessary to secure the funds for the  
287 payment of covered claims, and also to pay the reasonable costs  
288 to administer the same, the Office of Insurance Regulation, upon  
289 certification by the board, shall levy assessments on each  
290 insurer ~~initially estimated in the proportion that the insurer's~~

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291 ~~net direct written premiums in this state bears to the total of~~  
292 ~~said net direct written premiums received in this state by all~~  
293 ~~such workers' compensation insurers for the preceding calendar~~  
294 ~~year.~~ Assessments levied against insurers and self-insurance  
295 funds pursuant to this paragraph must be computed and levied on  
296 the basis of ~~the full policy premium value on the net direct~~  
297 ~~written premium amount as set forth in the state for workers'~~  
298 ~~compensation insurance without consideration of any applicable~~  
299 ~~discount or credit for deductibles.~~ An insurer's direct written  
300 premium calculated for the purposes of determining the insurer's  
301 assessment or policy surcharge may not be reduced by any  
302 discount or credit for deductibles in a policy or by any premium  
303 adjustment to a retrospectively rated policy. Insurers and self-  
304 insurance funds must report premiums in compliance with this  
305 paragraph, and the association may audit the reports.  
306 Assessments shall be remitted to and administered by the board  
307 of directors in the manner specified by the approved plan of  
308 operation and paragraph (d). ~~Each assessment shall be a uniform~~  
309 ~~percentage applicable to the net direct written premiums of each~~  
310 ~~insurer writing workers' compensation insurance.~~ Assessments  
311 levied against insurers and self-insurance funds shall not  
312 exceed in any calendar year more than 2 percent of that  
313 insurer's ~~net~~ direct written premiums in this state for workers'  
314 compensation insurance.

315 (c) ~~(b)~~ The office shall levy the uniform surcharge  
316 percentage on all policies of the same kind or line as were  
317 considered by the office in determining the assessment liability  
318 of the insurer. Member insurers shall collect policy surcharges  
319 at a uniform percentage rate on new and renewal policies issued

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320 and effective during the period of 12 months beginning on  
321 January 1, April 1, July 1, or October 1, whichever is the first  
322 day of the following calendar quarter as specified in an order  
323 issued by the office ~~directing insurers to pay an assessment to~~  
324 ~~the association~~. The policy surcharge may not begin until 90  
325 days after the board of directors certifies the assessment.

326 (b) ~~(e)~~ If assessments otherwise authorized in paragraph (a)  
327 are insufficient to make all payments on reimbursements then  
328 owing to claimants in a calendar year, then upon certification  
329 by the board, the office shall levy additional assessments of up  
330 to 1.5 percent of the insurer's ~~net~~ direct written premiums in  
331 this state.

332 (d) The association may use an installment method to  
333 require the insurer to remit the policy surcharge ~~assessment~~ as  
334 collected premium is written or may require the insurer to remit  
335 the assessment to the association before collecting the policy  
336 ~~policyholder~~ surcharge. ~~If the assessment is remitted before the~~  
337 ~~surcharge is collected, the assessment remitted must be based on~~  
338 ~~an estimate of the assessment due based on the proportion of~~  
339 ~~each insurer's net direct written premium in this state for the~~  
340 ~~preceding calendar year as described in paragraph (a) and~~  
341 ~~adjusted following the end of the 12-month period during which~~  
342 ~~the assessment is levied.~~

343 1. If the association elects to use the installment method,  
344 the office may, in the order levying the assessment on insurers,  
345 specify that the policy surcharge ~~assessment~~ is due and payable  
346 quarterly as collected premium is written throughout the  
347 assessment year. Insurers shall collect policy surcharges at a  
348 uniform percentage rate specified by order as described in

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349 paragraph (c) ~~(b)~~. Insurers are not required to advance funds if  
350 the association and the office elect to use the installment  
351 option. Assessments levied under this subparagraph are paid  
352 after policy surcharges are collected, and the recognition of  
353 assets is based on actual policy surcharges collected ~~premium~~  
354 ~~written~~ offset by the obligation to the association.

355 2. If the association elects to require insurers to remit  
356 the assessment before surcharging the policy ~~policyholder~~, the  
357 following shall apply:

358 a. On or before the date specified in the order of the  
359 office, insurers shall make an initial payment to the  
360 association of the percentage specified in the order multiplied  
361 by the insurer's direct written premiums received in this state  
362 for the preceding calendar year for the kinds of insurance  
363 included within such account before the beginning of the  
364 assessment year.

365 ~~b.a.~~ The levy order shall provide each insurer so assessed  
366 at least 30 days' written notice of the date the initial  
367 assessment payment is due and payable by the insurer.

368 ~~c.b.~~ Insurers shall collect policy surcharges at a uniform  
369 percentage rate specified by the order, as described in  
370 paragraph (c) ~~(b)~~.

371 ~~d.e.~~ Assessments levied under this subparagraph and are  
372 paid by an insurer constitute advances of funds from the insurer  
373 to the association ~~before policy surcharges are billed~~ and  
374 result in a receivable for policy surcharges to be billed in the  
375 future. The amount of billed policy surcharges, to the extent it  
376 is likely that it will be realized, meets the definition of an  
377 admissible asset as specified in the National Association of

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378 Insurance Commissioners' Statement of Statutory Accounting  
379 Principles No. 4. The asset shall be established and recorded  
380 separately from the liability. If an insurer is unable to fully  
381 recoup the amount of the assessment, the amount recorded as an  
382 asset shall be reduced to the amount reasonably expected to be  
383 recouped.

384 3. Insurers must submit a reconciliation report to the  
385 association within 120 days after the end of the 12-month  
386 assessment period and annually thereafter for a period of 3  
387 years. The report must indicate the amount of the initial  
388 payment or installment payments made to the association and the  
389 amount of policy surcharges collected ~~written premium pursuant~~  
390 ~~to paragraph (a)~~ for the assessment year. If the insurer's  
391 reconciled ~~assessment~~ obligation is more than the amount paid to  
392 the association, the insurer shall pay the excess policy  
393 surcharges collected to the association. If the insurer's  
394 reconciled ~~assessment~~ obligation is less than the initial amount  
395 paid to the association, the association shall return the  
396 overpayment to the insurer.

397 (2) Policy surcharges collected ~~Assessments levied~~ under  
398 this section are not premium and are not subject to any premium  
399 tax, fees, or commissions. Insurers shall treat the failure of  
400 an insured to pay policy ~~assessment-related~~ surcharges as a  
401 failure to pay premium. An insurer is not liable for any  
402 uncollectible policy ~~assessment-related~~ surcharges levied  
403 pursuant to this section.

404 (3) Assessments levied under this section may be levied  
405 only upon insurers. This section does not create a cause of  
406 action by a policyholder with respect to the levying of an

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407 assessment or a policyholder's duty to pay assessment-related  
408 policy surcharges.

409 Section 8. This act shall take effect July 1, 2020.