

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.