

1                                   A bill to be entitled  
 2           An act relating to insolvent insurers; amending s.  
 3           627.072, F.S.; providing required factors to be used  
 4           in the determination and fixing of rates for premiums  
 5           paid to insolvent insurers for specified coverages;  
 6           amending s. 631.57, F.S.; authorizing insurers to  
 7           elect not to recoup advance assessments paid to the  
 8           Florida Insurance Guaranty Association, Incorporated;  
 9           revising provisions relating to payments of  
 10          assessments and insurers' reconciliation reports to  
 11          the association; requiring insurers to treat insureds'  
 12          failure to pay surcharges, rather than recoupment  
 13          charges, as failure to pay premiums; revising  
 14          construction; providing that insurers are liable for  
 15          surcharges and are not liable for uncollectible  
 16          surcharges, rather than emergency assessments;  
 17          deleting a requirement that insurers treat insureds'  
 18          failure to pay emergency assessments as failure to pay  
 19          premiums; amending s. 631.914, F.S.; revising  
 20          provisions relating to insurers' collection of  
 21          surcharges and payments of assessments to the Florida  
 22          Workers' Compensation Insurance Guaranty Association,  
 23          Incorporated; providing an effective date.

24  
 25    Be It Enacted by the Legislature of the State of Florida:

26  
27 Section 1. Paragraphs (b) through (g) of subsection (1) of  
28 section 627.072, Florida Statutes, are redesignated as  
29 paragraphs (c) through (h), respectively, and a new paragraph  
30 (b) is added to that subsection, to read:

31 627.072 Making and use of rates.—

32 (1) As to workers' compensation and employer's liability  
33 insurance, the following factors shall be used in the  
34 determination and fixing of rates:

35 (b) The impact resulting from the past loss experience and  
36 prospective loss experience for insurers whose data are missing  
37 from statewide experience due to insolvency. Prior reported data  
38 for such insurers and all other relevant information may be used  
39 to assess the impact on rates;

40 Section 2. Paragraph (c) and paragraphs (f) through (i) of  
41 subsection (3) of section 631.57, Florida Statutes, are amended  
42 to read:

43 631.57 Powers and duties of the association.—

44 (3)

45 (c) The Legislature finds and declares that all  
46 assessments paid by an insurer or insurer group as a result of a  
47 levy by the office, including assessments levied pursuant to  
48 paragraph (a) and emergency assessments levied pursuant to  
49 paragraph (e), constitute advances of funds from the insurer to  
50 the association. An insurer may fully recoup such advances by

51 applying the uniform assessment percentage levied by the office  
52 to all policies of the same kind or line as were considered by  
53 the office in determining the assessment liability of the  
54 insurer or insurer group as set forth in paragraph (f). An  
55 insurer remitting an assessment to the association as required  
56 by subparagraph (f)1. or subparagraph (f)2. may elect to not  
57 recoup advances.

58 1. Assessments levied under subparagraph (f)1. are paid  
59 before policy surcharges are collected and result in a  
60 receivable for policy surcharges collected in the future. This  
61 amount, to the extent it is likely that it will be realized,  
62 meets the definition of an admissible asset as specified in the  
63 National Association of Insurance Commissioners' Statement of  
64 Statutory Accounting Principles No. 4. The asset shall be  
65 established and recorded separately from the liability  
66 regardless of whether it is based on a retrospective or  
67 prospective premium-based assessment. If an insurer is unable to  
68 fully recoup the amount of the assessment because of a reduction  
69 in writings or withdrawal from the market, the amount recorded  
70 as an asset shall be reduced to the amount reasonably expected  
71 to be recouped.

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

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

79 a. In the order levying an assessment, the office shall  
80 specify the actual percentage amount to be advanced to the  
81 association and thereafter collected uniformly from all the  
82 policyholders of insurers subject to the assessment and the date  
83 on which the assessment year begins, which may not begin before  
84 90 days after the association board certifies such an  
85 assessment.

86 b. Insurers shall make an initial payment to the  
87 association before the beginning of the assessment year on or  
88 before the date specified in the order of the office. Each  
89 insurer shall have at least 30 days' written notice as to the  
90 date on which the initial assessment payment is due and payable.  
91 The association may request that the order issued by the office  
92 authorize insurers to remit the advance payments in quarterly  
93 installments throughout the assessment year.

94 c. Insurers that have written insurance in the calendar  
95 year before the year in which the assessment is certified by the  
96 board shall make payments ~~an initial payment~~ based on the direct  
97 written premium in this state for the classes protected by the  
98 account from the previous calendar year as set forth in the  
99 insurer's annual statement, multiplied by the uniform percentage  
100 of premium specified in the order issued by the office. Insurers

101 that have not written insurance in the previous calendar year in  
 102 any of the lines under the account which are being assessed, but  
 103 which are writing insurance as of, or after, the date the board  
 104 certifies the assessment to the office, shall pay an amount  
 105 based on a good faith estimate of the amount of direct written  
 106 premium anticipated to be written in the subject lines of  
 107 business for the assessment year, multiplied by the uniform  
 108 percentage of premium specified in the order issued by the  
 109 office.

110 d. Insurers shall file one or more a reconciliation  
 111 reports ~~report~~ with the association which indicate ~~indicates~~ the  
 112 amount of ~~the initial~~ payment to the association ~~before the~~  
 113 ~~assessment year~~, whether such amount was based on direct written  
 114 premium contained in a previous calendar year annual statement  
 115 or a good faith projection, the amount actually collected during  
 116 the assessment year, and such other information contained on a  
 117 form and schedule adopted by the association and provided to the  
 118 insurers in advance. If the insurer collected from policyholders  
 119 more surcharges than the amount initially paid, the insurer  
 120 shall pay the excess amount to the association. If the insurer  
 121 collected surcharges from policyholders in an amount that ~~which~~  
 122 is less than the amount initially paid to the association, the  
 123 association shall credit the insurer that amount against future  
 124 assessments. Such payment reconciliation report, and any payment  
 125 of excess amounts collected from policyholders, shall be

126 completed and remitted to the association within 90 days after  
127 the end of the assessment year. The association shall send a  
128 final reconciliation report on all insurers to the office within  
129 120 days after each assessment year.

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

132 2. For assessments required under paragraph (a) or  
133 paragraph (e), the association may use a quarterly installment  
134 method instead of the method described in sub-subparagraphs 1.b.  
135 and c. or in combination thereof based on the association's  
136 projected cash flow. If the association projects that it has  
137 cash on hand for the payment of anticipated claims in the  
138 applicable account for at least 6 months, the board may make an  
139 estimate of the assessment needed and may recommend to the  
140 office the assessment percentage that may be collected as a  
141 quarterly assessment. The office may, in the order levying the  
142 assessment on insurers, specify that the assessment is due and  
143 payable quarterly as the funds are collected from insureds  
144 throughout the assessment year, in which case the assessment  
145 shall be a uniform percentage of premium collected during the  
146 assessment year and shall be collected from all policyholders  
147 with policies in the classes protected by the account. All  
148 insurers shall collect the assessment without regard to whether  
149 the insurers reported premium in the year preceding the  
150 assessment. Insurers are not required to advance funds if the

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151 association and the office elect to use the quarterly  
152 installment option. All funds collected shall be retained by the  
153 association for the payment of current or future claims. This  
154 subparagraph does not alter the obligation of an insurer to  
155 remit assessments levied pursuant to this subsection to the  
156 association. Insurers shall file one or more reconciliation  
157 reports with the association which indicate the amount actually  
158 collected during the assessment year, and such other information  
159 contained on a form and schedule adopted by the association and  
160 provided to the insurers in advance.

161 (g) Insurers shall treat the failure of an insured to pay  
162 a surcharge ~~recoupment charge~~ as a failure to pay the premium.

163 (h) Assessments levied under this subsection are levied  
164 upon insurers. This subsection does not create a cause of action  
165 by a policyholder with respect to the levying of, or a  
166 policyholder's duty to pay, such assessments and related  
167 surcharges.

168 (i) Assessments levied under this subsection are not  
169 premium and are not subject to the premium tax, to any fees, or  
170 to any commissions. An insurer is liable for any surcharges  
171 ~~emergency assessments~~ that the insurer collects and ~~shall treat~~  
172 ~~the failure of an insured to pay an emergency assessment as a~~  
173 ~~failure to pay the premium. An insurer~~ is not liable for  
174 uncollectible surcharges ~~emergency assessments.~~

175 Section 3. Paragraphs (c) and (d) of subsection (1) and

176 paragraph (c) of subsection (4) of section 631.914, Florida  
 177 Statutes, are amended to read:

178 631.914 Assessments.—

179 (1)

180 (c) The office shall levy the uniform surcharge percentage  
 181 on all policies of the same kind or line as were considered by  
 182 the office in determining the assessment liability of the  
 183 insurer. Member insurers shall collect policy surcharges at a  
 184 uniform percentage rate on new and renewal policies issued and  
 185 effective during the assessment year ~~period of 12 months~~  
 186 beginning on January 1, April 1, July 1, or October 1, whichever  
 187 is the first day of the following calendar quarter as specified  
 188 in an order issued by the office. The policy surcharge may not  
 189 begin until 90 days after the board of directors certifies the  
 190 assessment.

191 (d) The association may use a pass-through ~~an installment~~  
 192 method to require the insurer to remit the policy surcharge as  
 193 collected or may require the insurer to remit the assessment to  
 194 the association before collecting the policy surcharge.

195 1. If the association elects to use the pass-through  
 196 ~~installment~~ method, the office may, in the order levying the  
 197 assessment on insurers, specify that the policy surcharge is due  
 198 and payable quarterly as collected throughout the assessment  
 199 year. Insurers shall collect policy surcharges at a uniform  
 200 percentage rate specified by order as described in paragraph



201 (c). Insurers are not required to advance funds if the  
202 association and the office elect to use the pass-through  
203 ~~installment~~ option. Assessments levied under this subparagraph  
204 are paid after policy surcharges are collected, and the  
205 recognition of assets is based on actual policy surcharges  
206 collected offset by the obligation to the association.

207 2. If the association elects to require insurers to remit  
208 the assessment before surcharging the policy, the following  
209 shall apply:

210 a. On or before the date specified in the order of the  
211 office, insurers shall make an initial advance payment to the  
212 association of the percentage specified in the order multiplied  
213 by the insurer's direct written premiums received in this state  
214 for the preceding calendar year for the kinds of insurance  
215 included within such account before the beginning of the  
216 assessment year. The board may authorize an insurer to pay an  
217 assessment in a single payment or on a quarterly basis, based on  
218 cash-flow needs.

219 b. The levy order shall provide each insurer so assessed  
220 at least 30 days' written notice of the date the initial  
221 assessment payment is due and payable by the insurer.

222 c. Insurers shall collect policy surcharges at a uniform  
223 percentage rate specified by the order, as described in  
224 paragraph (c).

225 d. Assessments levied under this subparagraph and paid by

226 an insurer constitute advances of funds from the insurer to the  
 227 association and result in a receivable for policy surcharges to  
 228 be billed in the future. The amount of billed policy surcharges,  
 229 to the extent it is likely that it will be realized, meets the  
 230 definition of an admissible asset as specified in the National  
 231 Association of Insurance Commissioners' Statement of Statutory  
 232 Accounting Principles No. 4. The asset shall be established and  
 233 recorded separately from the liability. If an insurer is unable  
 234 to fully recoup the amount of the assessment, the amount  
 235 recorded as an asset shall be reduced to the amount reasonably  
 236 expected to be recouped.

237 3. Insurers must submit a reconciliation report to the  
 238 association within 120 days after the end of the 12-month  
 239 assessment year period and annually thereafter for a period of 2  
 240 ~~3~~ years. The report must indicate the amount of the initial  
 241 payment or installment payments made to the association and the  
 242 amount of policy surcharges collected for the assessment year.  
 243 If the insurer's reconciled obligation is more than the amount  
 244 paid to the association, the insurer shall pay the excess policy  
 245 surcharges collected to the association. If the insurer's  
 246 reconciled obligation is less than the initial amount paid to  
 247 the association, the association shall return the overpayment to  
 248 the insurer.

249 (4)

250 ~~(c) The board may allow an insurer to pay an assessment on~~

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251 | ~~a quarterly basis.~~

252 |       Section 4. This act shall take effect July 1, 2022.