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CS/HB 1023

2022 Legislature

1
 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 providing calculations of insurers' assets under
 10 specified circumstances; revising provisions relating
 11 to payments of assessments and insurers'
 12 reconciliation reports to the association; requiring
 13 insurers to pay assessments to the association, rather
 14 than to collect such assessments; specifying the
 15 payments that certain insurers must make to the
 16 association; requiring insurers to treat insureds'
 17 failure to pay surcharges, rather than recoupment
 18 charges, as failure to pay premiums; revising
 19 construction; providing that insurers are liable for
 20 surcharges and are not liable for uncollectible
 21 surcharges, rather than emergency assessments;
 22 deleting a requirement that insurers treat insureds'
 23 failure to pay emergency assessments as failure to pay
 24 premiums; amending s. 631.914, F.S.; revising
 25 provisions relating to insurers' collection of

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26 surcharges and payments of assessments to the Florida
 27 Workers' Compensation Insurance Guaranty Association,
 28 Incorporated; providing an effective date.

29
 30 Be It Enacted by the Legislature of the State of Florida:

31
 32 Section 1. Paragraphs (b) through (g) of subsection (1) of
 33 section 627.072, Florida Statutes, are redesignated as
 34 paragraphs (c) through (h), respectively, and a new paragraph
 35 (b) is added to that subsection, to read:

36 627.072 Making and use of rates.—

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

40 (b) The impact resulting from the past loss experience and
 41 prospective loss experience for insurers whose data are missing
 42 from statewide experience due to insolvency. Prior reported data
 43 for such insurers and all other relevant information may be used
 44 to assess the impact on rates;

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

48 631.57 Powers and duties of the association.—

49 (3)

50 (c) The Legislature finds and declares that all

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51 assessments paid by an insurer or insurer group as a result of a
52 levy by the office, including assessments levied pursuant to
53 paragraph (a) and emergency assessments levied pursuant to
54 paragraph (e), constitute advances of funds from the insurer to
55 the association. An insurer may fully recoup such advances by
56 applying the uniform assessment percentage levied by the office
57 to all policies of the same kind or line as were considered by
58 the office in determining the assessment liability of the
59 insurer or insurer group as set forth in paragraph (f). An
60 insurer remitting an assessment to the association as required
61 by subparagraph (f)1. or subparagraph (f)2. may elect to not
62 recoup advances.

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

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76 | to be recouped. If an insurer elects not to recoup advances, the
 77 | amount recorded as an asset shall be reduced to zero.

78 | 2. Assessments levied under subparagraph (f)2. are paid
 79 | after policy surcharges are collected so that the recognition of
 80 | assets is based on actual premium written offset by the
 81 | obligation to the association. If an insurer elects not to
 82 | recoup advances, the amount recorded as an asset shall be
 83 | reduced to zero.

84 | (f)1. The association, office, and insurers remitting
 85 | assessments pursuant to paragraph (a) or paragraph (e) must
 86 | comply with the following:

87 | a. In the order levying an assessment, the office shall
 88 | specify the actual percentage amount to be advanced to the
 89 | association and thereafter collected uniformly from all the
 90 | policyholders of insurers subject to the assessment and the date
 91 | on which the assessment year begins, which may not begin before
 92 | 90 days after the association board certifies such an
 93 | assessment.

94 | b. Insurers shall make an initial payment to the
 95 | association before the beginning of the assessment year on or
 96 | before the date specified in the order of the office. Each
 97 | insurer shall have at least 30 days' written notice as to the
 98 | date on which the initial assessment payment is due and payable.
 99 | The association may request that the order issued by the office
 100 | authorize insurers to remit the advance payments in quarterly

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101 installments.

102 c. Insurers that have written insurance in the calendar
 103 year before the year in which the assessment is certified by the
 104 board shall make payments ~~an initial payment~~ based on the direct
 105 written premium in this state for the classes protected by the
 106 account from the previous calendar year as set forth in the
 107 insurer's annual statement, multiplied by the uniform percentage
 108 of premium specified in the order issued by the office. Insurers
 109 that have not written insurance in the previous calendar year in
 110 any of the lines under the account which are being assessed, but
 111 which are writing insurance as of, or after, the date the board
 112 certifies the assessment to the office, shall pay an amount
 113 based on a good faith estimate of the amount of direct written
 114 premium anticipated to be written in the subject lines of
 115 business for the assessment year, multiplied by the uniform
 116 percentage of premium specified in the order issued by the
 117 office.

118 d. Insurers shall file one or more ~~a~~ reconciliation
 119 reports ~~report~~ with the association which indicate ~~indicates~~ the
 120 amount of ~~the initial~~ payment to the association ~~before the~~
 121 ~~assessment year~~, whether such amount was based on direct written
 122 premium contained in a previous calendar year annual statement
 123 or a good faith projection, the amount actually collected during
 124 the assessment year, and such other information contained on a
 125 form and schedule adopted by the association and provided to the

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126 insurers in advance. If the insurer collected from policyholders
127 more surcharges than the amount initially paid, the insurer
128 shall pay the excess amount to the association. If the insurer
129 collected surcharges from policyholders in an amount that ~~which~~
130 is less than the amount initially paid to the association, the
131 association shall credit the insurer that amount against future
132 assessments. Such payment reconciliation report, and any payment
133 of excess amounts collected from policyholders, shall be
134 completed and remitted to the association within 90 days after
135 the end of the assessment year. The association shall send a
136 final reconciliation report on all insurers to the office within
137 120 days after each assessment year.

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

140 2. For assessments required under paragraph (a) or
141 paragraph (e), the association may use a quarterly installment
142 method instead of the method described in sub-subparagraphs 1.b.
143 and c. or in combination thereof based on the association's
144 projected cash flow. If the association projects that it has
145 cash on hand for the payment of anticipated claims in the
146 applicable account for at least 6 months, the board may make an
147 estimate of the assessment needed and may recommend to the
148 office the assessment percentage that may be collected as a
149 quarterly assessment. The office may, in the order levying the
150 assessment on insurers, specify that the assessment is due and

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151 payable quarterly as the funds are collected from insureds
 152 throughout the assessment year, in which case the assessment
 153 shall be a uniform percentage of premium collected during the
 154 assessment year and shall be collected from all policyholders
 155 with policies in the classes protected by the account.

156 a. All insurers shall pay ~~collect~~ the assessment to the
 157 association without regard to whether the insurers reported
 158 premium in the year preceding the assessment.

159 b. Insurers are not required to advance funds if the
 160 association and the office elect to use the quarterly
 161 installment option.

162 c. An insurer that elects not to recoup the assessment
 163 shall make quarterly payments to the association equal to the
 164 amount of premium written in the previous quarter for the
 165 classes protected by the account, multiplied by the uniform
 166 percentage of premium specified in the order issued by the
 167 office.

168 d. All funds paid to the association ~~collected~~ shall be
 169 retained by the association for the payment of current or future
 170 claims.

171 e. Insurers shall file one or more reconciliation reports
 172 with the association which indicate the amount actually
 173 collected during the assessment year, and such other information
 174 contained on a form and schedule adopted by the association and
 175 provided to the insurers in advance.

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176
 177 This subparagraph does not alter the obligation of an insurer to
 178 remit assessments levied pursuant to this subsection to the
 179 association.

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

182 (h) Assessments levied under this subsection are levied
 183 upon insurers. This subsection does not create a cause of action
 184 by a policyholder with respect to the levying of, or a
 185 policyholder's duty to pay, such assessments and related
 186 surcharges.

187 (i) Assessments levied under this subsection are not
 188 premium and are not subject to the premium tax, to any fees, or
 189 to any commissions. An insurer is liable for any surcharges
 190 ~~emergency assessments~~ that the insurer collects and ~~shall treat~~
 191 ~~the failure of an insured to pay an emergency assessment as a~~
 192 ~~failure to pay the premium. An insurer is not liable for~~
 193 uncollectible surcharges ~~emergency assessments~~.

194 Section 3. Paragraphs (c) and (d) of subsection (1) and
 195 paragraph (c) of subsection (4) of section 631.914, Florida
 196 Statutes, are amended to read:

197 631.914 Assessments.—

198 (1)

199 (c) The office shall levy the uniform surcharge percentage
 200 on all policies of the same kind or line as were considered by

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201 the office in determining the assessment liability of the
202 insurer. Member insurers shall collect policy surcharges at a
203 uniform percentage rate on new and renewal policies issued and
204 effective during the assessment year ~~period of 12 months~~
205 beginning on January 1, April 1, July 1, or October 1, whichever
206 is the first day of the following calendar quarter as specified
207 in an order issued by the office. The policy surcharge may not
208 begin until 90 days after the board of directors certifies the
209 assessment.

210 (d) The association may use a pass-through ~~an installment~~
211 method to require the insurer to remit the policy surcharge as
212 collected or may require the insurer to remit the assessment to
213 the association before collecting the policy surcharge.

214 1. If the association elects to use the pass-through
215 ~~installment~~ method, the office may, in the order levying the
216 assessment on insurers, specify that the policy surcharge is due
217 and payable quarterly as collected throughout the assessment
218 year. Insurers shall collect policy surcharges at a uniform
219 percentage rate specified by order as described in paragraph
220 (c). Insurers are not required to advance funds if the
221 association and the office elect to use the pass-through
222 ~~installment~~ option. Assessments levied under this subparagraph
223 are paid after policy surcharges are collected, and the
224 recognition of assets is based on actual policy surcharges
225 collected offset by the obligation to the association.

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226 2. If the association elects to require insurers to remit
 227 the assessment before surcharging the policy, the following
 228 shall apply:

229 a. On or before the date specified in the order of the
 230 office, insurers shall make an initial advance payment to the
 231 association of the percentage specified in the order multiplied
 232 by the insurer's direct written premiums received in this state
 233 for the preceding calendar year for the kinds of insurance
 234 included within such account before the beginning of the
 235 assessment year. The board may authorize an insurer to pay an
 236 assessment in a single payment or on a quarterly basis, based on
 237 cash-flow needs.

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

241 c. Insurers shall collect policy surcharges at a uniform
 242 percentage rate specified by the order, as described in
 243 paragraph (c).

244 d. Assessments levied under this subparagraph and paid by
 245 an insurer constitute advances of funds from the insurer to the
 246 association and result in a receivable for policy surcharges to
 247 be billed in the future. The amount of billed policy surcharges,
 248 to the extent it is likely that it will be realized, meets the
 249 definition of an admissible asset as specified in the National
 250 Association of Insurance Commissioners' Statement of Statutory

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251 Accounting Principles No. 4. The asset shall be established and
252 recorded separately from the liability. If an insurer is unable
253 to fully recoup the amount of the assessment, the amount
254 recorded as an asset shall be reduced to the amount reasonably
255 expected to be recouped.

256 3. Insurers must submit a reconciliation report to the
257 association within 120 days after the end of the 12-month
258 assessment year period and annually thereafter for a period of 2
259 ~~3~~ years. The report must indicate the amount of the initial
260 payment or installment payments made to the association and the
261 amount of policy surcharges collected for the assessment year.
262 If the insurer's reconciled obligation is more than the amount
263 paid to the association, the insurer shall pay the excess policy
264 surcharges collected to the association. If the insurer's
265 reconciled obligation is less than the initial amount paid to
266 the association, the association shall return the overpayment to
267 the insurer.

268 (4)

269 ~~(c) The board may allow an insurer to pay an assessment on~~
270 ~~a quarterly basis.~~

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