

By Senator Burgess

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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
7 remitting assessments to the Florida Insurance
8 Guaranty Association, Incorporated, to elect not to
9 recoup advances; revising a requirement for
10 information regarding assessment percentages which
11 must be specified by the Office of Insurance
12 Regulation in orders levying assessments; authorizing
13 the association to request that orders levying
14 assessments issued by the office authorize a certain
15 installment frequency for the remittance of advance
16 payments by insurers; revising the requirement that
17 certain insurers make payments, rather than initial
18 payments, on a certain basis; revising insurer
19 reconciliation reporting requirements; providing
20 reconciliation requirements for surcharges collected
21 from policyholders; requiring insurers to treat the
22 failure of an insured to pay a surcharge, rather than
23 a recoupment charge, as a failure to pay the premium;
24 revising construction; amending s. 631.914, F.S.;
25 revising provisions relating to insurers' collection
26 of surcharges and payments of assessments to the
27 Florida Workers' Compensation Insurance Guaranty
28 Association, Incorporated; providing an effective
29 date.

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

Section 1. Subsection (1) of section 627.072, Florida Statutes, is amended to read:

627.072 Making and use of rates.—

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

(a) The past loss experience and prospective loss experience within and outside this state;

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

(c) The conflagration and catastrophe hazards;

(d) ~~(e)~~ A reasonable margin for underwriting profit and contingencies;

(e) ~~(d)~~ Dividends, savings, or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members, or subscribers;

(f) ~~(e)~~ Investment income on unearned premium reserves and loss reserves;

(g) ~~(f)~~ Past expenses and prospective expenses, both those countrywide and those specifically applicable to this state; and

(h) ~~(g)~~ All other relevant factors, including judgment factors, within and outside this state.

Section 2. Paragraphs (c) and (f) through (i) of subsection

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59 (3) of section 631.57, Florida Statutes, are amended to read:

60 631.57 Powers and duties of the association.—

61 (3)

62 (c) The Legislature finds and declares that all assessments
63 paid by an insurer or insurer group as a result of a levy by the
64 office, including assessments levied pursuant to paragraph (a)
65 and emergency assessments levied pursuant to paragraph (e),
66 constitute advances of funds from the insurer to the
67 association. An insurer may fully recoup such advances by
68 applying the uniform assessment percentage levied by the office
69 to all policies of the same kind or line as were considered by
70 the office in determining the assessment liability of the
71 insurer or insurer group as set forth in paragraph (f). An
72 insurer remitting an assessment to the association as required
73 by subparagraph (f)1. or subparagraph (f)2. may elect not to
74 recoup advances.

75 1. Assessments levied under subparagraph (f)1. are paid
76 before policy surcharges are collected and result in a
77 receivable for policy surcharges collected in the future. This
78 amount, to the extent it is likely that it will be realized,
79 meets the definition of an admissible asset as specified in the
80 National Association of Insurance Commissioners' Statement of
81 Statutory Accounting Principles No. 4. The asset must ~~shall~~ be
82 established and recorded separately from the liability
83 regardless of whether it is based on a retrospective or
84 prospective premium-based assessment. If an insurer is unable to
85 fully recoup the amount of the assessment because of a reduction
86 in writings or withdrawal from the market, the amount recorded
87 as an asset must ~~shall~~ be reduced to the amount reasonably

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88 expected to be recouped.

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

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

96 a. In the order levying an assessment, the office shall
97 specify the actual percentage amount to be advanced to the
98 association and thereafter collected uniformly from all the
99 policyholders of insurers subject to the assessment and the date
100 on which the assessment year begins, which may not begin before
101 90 days after the association board certifies such an
102 assessment.

103 b. Insurers shall make an initial payment to the
104 association before the beginning of the assessment year on or
105 before the date specified in the order of the office. Each
106 insurer shall have at least 30 days' written notice as to the
107 date on which the initial assessment payment is due and payable.
108 The association may request that the order issued by the office
109 authorize insurers to remit the advance payments in four
110 quarterly installments throughout the assessment year.

111 c. Insurers that have written insurance in the calendar
112 year before the year in which the assessment is certified by the
113 board shall make payments ~~an initial payment~~ based on the direct
114 written premium in this state for the classes protected by the
115 account from the previous calendar year as set forth in the
116 insurer's annual statement, multiplied by the uniform percentage

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117 of premium specified in the order issued by the office. Insurers
118 that have not written insurance in the previous calendar year in
119 any of the lines under the account which are being assessed, but
120 which are writing insurance as of, or after, the date the board
121 certifies the assessment to the office, shall pay an amount
122 based on a good faith estimate of the amount of direct written
123 premium anticipated to be written in the subject lines of
124 business for the assessment year, multiplied by the uniform
125 percentage of premium specified in the order issued by the
126 office.

127 d. Insurers shall file one or more ~~a~~ reconciliation reports
128 ~~report~~ with the association which indicate ~~indicates~~ the amount
129 of ~~the initial~~ payment to the association ~~before the assessment~~
130 ~~year~~, whether such amount was based on direct written premium
131 contained in a previous calendar year annual statement or a good
132 faith projection, the amount actually collected during the
133 assessment year, and such other information contained on a form
134 and schedule adopted by the association and provided to the
135 insurers in advance. If the insurer collected from policyholders
136 more surcharges than the amount initially paid, the insurer
137 shall pay the excess amount to the association. If the insurer
138 collected surcharges from policyholders in an amount that ~~which~~
139 is less than the amount initially paid to the association, the
140 association shall credit the insurer that amount against future
141 assessments. Such payment reconciliation report, and any payment
142 of excess amounts collected from policyholders, shall be
143 completed and remitted to the association within 90 days after
144 the end of the assessment year. The association shall send a
145 final reconciliation report on all insurers to the office within

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146 120 days after each assessment year.

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

149 2. For assessments required under paragraph (a) or
150 paragraph (e), the association may use a quarterly installment
151 method instead of the method described in sub-subparagraphs 1.b.
152 and c. or in combination thereof based on the association's
153 projected cash flow. If the association projects that it has
154 cash on hand for the payment of anticipated claims in the
155 applicable account for at least 6 months, the board may make an
156 estimate of the assessment needed and may recommend to the
157 office the assessment percentage that may be collected as a
158 quarterly assessment. The office may, in the order levying the
159 assessment on insurers, specify that the assessment is due and
160 payable quarterly as the funds are collected from insureds
161 throughout the assessment year, in which case the assessment
162 shall be a uniform percentage of premium collected during the
163 assessment year and shall be collected from all policyholders
164 with policies in the classes protected by the account. All
165 insurers shall collect the assessment without regard to whether
166 the insurers reported premium in the year preceding the
167 assessment. Insurers are not required to advance funds if the
168 association and the office elect to use the quarterly
169 installment option. All funds collected shall be retained by the
170 association for the payment of current or future claims. This
171 subparagraph does not alter the obligation of an insurer to
172 remit assessments levied pursuant to this subsection to the
173 association. Insurers shall file one or more reconciliation
174 reports with the association which indicate the amount actually

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175 collected during the assessment year and such other information
176 using a form and schedule adopted by the association and
177 provided to the insurers in advance.

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

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

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

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

195 631.914 Assessments.—

196 (1)

197 (c) The office shall levy the uniform surcharge percentage
198 on all policies of the same kind or line as were considered by
199 the office in determining the assessment liability of the
200 insurer. Member insurers shall collect policy surcharges at a
201 uniform percentage rate on new and renewal policies issued and
202 effective during the assessment year ~~period of 12 months~~
203 beginning on January 1, April 1, July 1, or October 1, whichever

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204 is the first day of the following calendar quarter as specified
205 in an order issued by the office. The policy surcharge may not
206 begin until 90 days after the board of directors certifies the
207 assessment.

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

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

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

227 a. On or before the date specified in the order of the
228 office, insurers shall make an initial advance payment to the
229 association of the percentage specified in the order multiplied
230 by the insurer's direct written premiums received in this state
231 for the preceding calendar year for the kinds of insurance
232 included within such account before the beginning of the

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233 assessment year. The board may authorize an insurer to pay an
234 assessment in a single payment or on a quarterly basis, based on
235 cash-flow needs.

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

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

242 d. Assessments levied under this subparagraph and paid by
243 an insurer constitute advances of funds from the insurer to the
244 association and result in a receivable for policy surcharges to
245 be billed in the future. The amount of billed policy surcharges,
246 to the extent it is likely that it will be realized, meets the
247 definition of an admissible asset as specified in the National
248 Association of Insurance Commissioners' Statement of Statutory
249 Accounting Principles No. 4. The asset shall be established and
250 recorded separately from the liability. If an insurer is unable
251 to fully recoup the amount of the assessment, the amount
252 recorded as an asset shall be reduced to the amount reasonably
253 expected to be recouped.

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

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262 surcharges collected to the association. If the insurer's
263 reconciled obligation is less than the initial amount paid to
264 the association, the association shall return the overpayment to
265 the insurer.

266 (4)

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

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