

1 A bill to be entitled

2 An act relating to the Florida Insurance Guaranty
3 Association; amending s. 631.54, F.S.; defining the
4 term "assessment year"; amending s. 631.57, F.S.;
5 revising provisions relating to the levy of
6 assessments on insurers by the Florida Insurance
7 Guaranty Association; specifying conditions under
8 which such assessments are paid; revising procedures
9 and timeframes for the levying of the assessments;
10 revising provisions relating to assessments that are
11 premium and not subject to the premium tax; limiting
12 an insurer's liability for uncollectible emergency
13 assessments; deleting the requirement to file a final
14 accounting report documenting the recoupment; revising
15 an exemption for assessments; amending s. 631.64,
16 F.S.; requiring charges or recoupments to be displayed
17 separately on premium statements to policyholders and
18 prohibiting their inclusion in rates; amending ss.
19 627.727 and 631.55, F.S.; conforming cross-references;
20 providing an effective date.

21
22 Be It Enacted by the Legislature of the State of Florida:

23
24 Section 1. Subsections (2) through (9) of section 631.54,
25 Florida Statutes, are renumbered as subsections (3) through
26 (10), respectively, and a new subsection (2) is added to that

27 section to read:

28 631.54 Definitions.—As used in this part:

29 (2) "Assessment year" means the 12-month period, which may
 30 begin on the first day of any calendar quarter, whether January
 31 1, April 1, July 1, or October 1, as specified in an order
 32 issued by the office directing insurers to pay an assessment to
 33 the association.

34 Section 2. Subsections (3) and (4) of section 631.57,
 35 Florida Statutes, are amended to read:

36 631.57 Powers and duties of the association.—

37 (3) (a) To the extent necessary to secure ~~the~~ funds for the
 38 respective accounts for the payment of covered claims, to pay
 39 the reasonable costs to administer such accounts ~~the same~~, and
 40 ~~to the extent necessary~~ to secure the funds for the account
 41 specified in s. 631.55(2) (b) or to retire indebtedness,
 42 including, without limitation, the principal, redemption
 43 premium, if any, and interest on, and related costs of issuance
 44 of, bonds issued under s. 631.695 and the funding of ~~any~~
 45 reserves and other payments required under the bond resolution
 46 or trust indenture pursuant to which such bonds have been
 47 issued, the office, upon certification of the board of
 48 directors, shall levy assessments, in accordance with
 49 subparagraphs (f)1. or 2., initially estimated in the proportion
 50 that each insurer's net direct written premiums in this state in
 51 the classes protected by the account bears to the total of said
 52 net direct written premiums received in this state by all such

53 insurers for the preceding calendar year for the kinds of
54 insurance included within such account. Assessments shall be
55 remitted to and administered by the board of directors in the
56 manner specified by the approved plan and paragraph (f). Each
57 insurer so assessed shall have at least 30 days' written notice
58 as to the date the initial assessment payment is due and
59 payable. Every assessment shall be ~~made as~~ a uniform percentage
60 ~~applicable to the net direct written premiums of each insurer in~~
61 ~~the kinds of insurance included within the account in which the~~
62 ~~assessment is made~~. The assessments levied against any insurer
63 may ~~shall~~ not exceed in any one calendar year more than 2
64 percent of that insurer's net direct written premiums in this
65 state for the kinds of insurance included within such account
66 ~~during the calendar year next preceding the date of such~~
67 ~~assessments~~.

68 (b) If sufficient funds from such assessments, together
69 with funds previously raised, are not available in any one year
70 in the respective account to make all the payments or
71 reimbursements then owing to insurers, the funds available shall
72 be prorated and the unpaid portion ~~shall be~~ paid as soon
73 ~~thereafter~~ as funds become available.

74 (c) The Legislature finds and declares that all
75 assessments paid by an insurer or insurer group as a result of a
76 levy by the office, including assessments levied pursuant to
77 paragraph (a) and emergency assessments levied pursuant to
78 paragraph (e), constitute advances of funds from the insurer to

79 the association. An insurer may fully recoup such advances by
80 applying the uniform assessment percentage levied by the office
81 to all ~~a separate recoupment factor to the premium of~~ policies
82 of the same kind or line as were considered by the office in
83 determining the assessment liability of the insurer or insurer
84 group as set forth in paragraph (f).

85 1. Assessments levied under subparagraph (f)1. are paid
86 before policy surcharges are collected and result in a
87 receivable for policy surcharges collected in the future. This
88 amount, to the extent it is likely that it will be realized,
89 meets the definition of an admissible asset as specified in the
90 National Association of Insurance Commissioners' Statement of
91 Statutory Accounting Principles No. 4. The asset shall be
92 established and recorded separately from the liability
93 regardless of whether it is based on a retrospective or
94 prospective premium-based assessment. If an insurer is unable to
95 fully recoup the amount of the assessment because of a reduction
96 in writings or withdrawal from the market, the amount recorded
97 as an asset shall be reduced to the amount reasonably expected
98 to be recouped.

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

103 (d) ~~No~~ State funds may not ~~of any kind shall~~ be allocated
104 or paid to the ~~said~~ association or any of its accounts.

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

124 ~~2.b.~~ ~~Any~~ Emergency assessments authorized under this
 125 paragraph shall be levied by the office upon insurers in
 126 accordance with subparagraph (f) ~~referred to in sub-subparagraph~~
 127 ~~a.~~, upon certification as to the need for such assessments by
 128 the board of directors. If ~~In the event~~ the board ~~of directors~~
 129 participates in the issuance of bonds in accordance with s.
 130 631.695, emergency assessments shall be levied in each year that

131 bonds issued under s. 631.695 and secured by such emergency
 132 assessments are outstanding, ~~in such~~ amounts up to such 2-
 133 percent limit as required in order to provide for the full and
 134 timely payment of the principal of, redemption premium, if any,
 135 and interest on, and related costs of issuance of, such bonds.
 136 The emergency assessments ~~provided for in this paragraph~~ are
 137 assigned and pledged to the municipality, county, or legal
 138 entity issuing bonds under s. 631.695 for the benefit of the
 139 holders of such bonds, ~~in order to enable such municipality,~~
 140 ~~county, or legal entity~~ to provide for the payment of the
 141 principal of, redemption premium, if any, and interest on such
 142 bonds, the cost of issuance of such bonds, and the funding of
 143 any reserves and other payments required under the bond
 144 resolution or trust indenture pursuant to which such bonds have
 145 been issued, without ~~the necessity of any~~ further action by the
 146 association, the office, or any other party. If ~~To the extent~~
 147 bonds are issued under s. 631.695 and the association determines
 148 to secure such bonds by a pledge of revenues received from the
 149 emergency assessments, such bonds, upon such pledge of revenues,
 150 shall be secured by and payable from the proceeds of such
 151 emergency assessments, and the proceeds of emergency assessments
 152 levied under this paragraph shall be remitted directly to and
 153 administered by the trustee or custodian appointed for such
 154 bonds.

155 3.e. Emergency assessments used to defease bonds issued
 156 under this part ~~paragraph~~ may be payable in a single payment or,

157 at the option of the association, may be payable in 12 monthly
158 installments with the first installment being due and payable at
159 the end of the month after an emergency assessment is levied and
160 subsequent installments being due by ~~not later than~~ the end of
161 each succeeding month.

162 ~~4.d.~~ If emergency assessments are imposed, the report
163 required by s. 631.695(7) must ~~shall~~ include an analysis of the
164 revenues generated from the emergency assessments imposed under
165 this paragraph.

166 ~~5.e.~~ If emergency assessments are imposed, the references
167 in sub-subparagraph (1)(a)3.b. and s. 631.695(2) and (7) to
168 assessments levied under paragraph (a) must ~~shall~~ include
169 emergency assessments imposed under this paragraph.

170 ~~6.2.~~ If the board of directors participates in the
171 issuance of bonds in accordance with s. 631.695, an annual
172 assessment under this paragraph shall continue while the bonds
173 issued with respect to which the assessment was imposed are
174 outstanding, including any bonds the proceeds of which were used
175 to refund bonds issued pursuant to s. 631.695, unless adequate
176 provision has been made for the payment of the bonds in the
177 documents authorizing the issuance of such bonds.

178 ~~3. Emergency assessments under this paragraph are not~~
179 ~~premium and are not subject to the premium tax, to any fees, or~~
180 ~~to any commissions. An insurer is liable for all emergency~~
181 ~~assessments that the insurer collects and shall treat the~~
182 ~~failure of an insured to pay an emergency assessment as a~~

183 ~~failure to pay the premium. An insurer is not liable for~~
184 ~~uncollectible emergency assessments.~~

185 (f) ~~The recoupment factor applied to policies in~~
186 ~~accordance with paragraph (c) shall be selected by the insurer~~
187 ~~or insurer group so as to provide for the probable recoupment of~~
188 ~~both assessments levied pursuant to paragraph (a) and emergency~~
189 ~~assessments over a period of 12 months, unless the insurer or~~
190 ~~insurer group, at its option, elects to recoup the assessment~~
191 ~~over a longer period. The recoupment factor shall apply to all~~
192 ~~policies of the same kind or line as were considered by the~~
193 ~~office in determining the assessment liability of the insurer or~~
194 ~~insurer group issued or renewed during a 12-month period. If the~~
195 ~~insurer or insurer group does not collect the full amount of the~~
196 ~~assessment during one 12-month period, the insurer or insurer~~
197 ~~group may apply recalculated recoupment factors to policies~~
198 ~~issued or renewed during one or more succeeding 12-month~~
199 ~~periods. If, at the end of a 12-month period, the insurer or~~
200 ~~insurer group has collected from the combined kinds or lines of~~
201 ~~policies subject to assessment more than the total amount of the~~
202 ~~assessment paid by the insurer or insurer group, the excess~~
203 ~~amount shall be disbursed as follows:~~

204 1. The association, office, and insurers remitting
205 assessments pursuant to paragraph (a) or paragraph (e) must
206 comply with the following:

207 a. In the order levying an assessment, the office shall
208 specify the actual percentage amount to be collected uniformly

209 from all the policyholders of insurers subject to the assessment
210 and the date on which the assessment year begins, which may not
211 begin before 90 days after the association board certifies such
212 an assessment.

213 b. Insurers shall make an initial payment to the
214 association before the beginning of the assessment year on or
215 before the date specified in the order of the office.

216 c. Insurers that have written insurance in the calendar
217 year before the year in which the assessment is certified by the
218 board shall make an initial payment based on the net direct
219 written premium amount from the previous calendar year as set
220 forth in the insurers annual statement, multiplied by the
221 uniform percentage of premium specified in the order issued by
222 the office. Insurers that have not written insurance in the
223 previous calendar year in any of the lines under the account
224 which are being assessed, but which are writing insurance as of,
225 or after, the date the board certifies the assessment to the
226 office, shall pay an amount based on a good faith estimate of
227 the amount of net direct written premium anticipated to be
228 written in the subject lines of business for the assessment
229 year, multiplied by the uniform percentage of premium specified
230 in the order issued by the office.

231 d. Insurers shall file a reconciliation report with the
232 association which indicates the amount of the initial payment to
233 the association before the assessment year, whether such amount
234 was based on net direct written premium contained in a previous

235 calendar year annual statement or a good faith projection, the
236 amount actually collected during the assessment year, and such
237 other information contained on a form adopted by the association
238 and provided to the insurers in advance. If the insurer
239 collected from policyholders more than the amount initially
240 paid, the insurer shall pay the excess amount to the
241 association. If the insurer collected from policyholders an
242 amount which is less than the amount initially paid to the
243 association, the association shall credit the insurer that
244 amount against future assessments. Such payment reconciliation
245 report, and any payment of excess amounts collected from
246 policyholders, shall be completed and remitted to the
247 association within 90 days after the end of the assessment year.
248 The association shall send a final reconciliation report on all
249 insurers to the office within 120 days after each assessment
250 year.

251 e. Insurers remitting reconciliation reports under this
252 paragraph to the association are subject to s. 626.9541(1)(e).
253 ~~If the excess amount does not exceed 15 percent of the total~~
254 ~~assessment paid by the insurer or insurer group, the excess~~
255 ~~amount shall be remitted to the association within 60 days after~~
256 ~~the end of the 12-month period in which the excess recoupment~~
257 ~~charges were collected.~~

258 2. For assessments required under paragraph (a) or
259 paragraph (e), the association may use a monthly installment
260 method instead of the method described in sub-subparagraphs 1.b.

261 and c. or in combination thereof based on the association's
262 projected cash flow. If the association projects that it has
263 cash on hand for the payment of anticipated claims in the
264 applicable account for at least 6 months, the board may make an
265 estimate of the assessment needed and may recommend to the
266 office the assessment percentage that may be collected as a
267 monthly assessment. The office may, in the order levying the
268 assessment on insurers, specify that the assessment is due and
269 payable monthly as the funds are collected from insureds
270 throughout the assessment year, in which case the assessment
271 shall be a uniform percentage of premium collected during the
272 assessment year and shall be collected from all policyholders
273 with policies in the classes protected by the account. All
274 insurers shall collect the assessment without regard to whether
275 the insurers reported premium in the year preceding the
276 assessment. Insurers are not required to advance funds if the
277 association and the office elect to use the monthly installment
278 option. All funds collected shall be retained by the association
279 for the payment of current or future claims. This subparagraph
280 does not alter the obligation of an insurer to remit assessments
281 levied pursuant to this subsection to the association. If the
282 ~~excess amount exceeds 15 percent of the total assessment paid by~~
283 ~~the insurer or insurer group, the excess amount shall be~~
284 ~~returned to the insurer's or insurer group's current~~
285 ~~policyholders by refunds or premium credits. The association~~
286 ~~shall use any remitted excess recoupment amounts to reduce~~

287 ~~future assessments.~~

288 ~~(g) Amounts recouped pursuant to this subsection for~~
289 ~~assessments levied under paragraph (a) due to insolvencies on or~~
290 ~~after July 1, 2010, are considered premium solely for premium~~
291 ~~tax purposes and are not subject to fees or commissions.~~

292 ~~However,~~ Insurers shall treat the failure of an insured to pay a
293 recoupment charge as a failure to pay the premium.

294 (h) Assessments levied under this subsection are levied
295 upon insurers. This subsection does not create a cause of action
296 by a policyholder with respect to the levying of, or a
297 policyholder's duty to pay, such assessments.

298 (i) Assessments levied under this subsection are not
299 premium and are not subject to the premium tax, to any fees, or
300 to any commissions. An insurer is liable for any emergency
301 assessments that the insurer collects and shall treat the
302 failure of an insured to pay an emergency assessment as a
303 failure to pay the premium. An insurer is not liable for
304 uncollectible emergency assessments.

305 ~~(h) At least 15 days before applying the recoupment factor~~
306 ~~to any policies, the insurer or insurer group shall file with~~
307 ~~the office a statement for informational purposes only setting~~
308 ~~forth the amount of the recoupment factor and an explanation of~~
309 ~~how the recoupment factor will be applied. Such statement shall~~
310 ~~include documentation of the assessment paid by the insurer or~~
311 ~~insurer group and the arithmetic calculations supporting the~~
312 ~~recoupment factor. The insurer or insurer group may use the~~

313 ~~recoupment factor at any time after the expiration of the 15-day~~
314 ~~period. The insurer or insurer group need submit only one~~
315 ~~informational statement for all lines of business using the same~~
316 ~~recoupment factor.~~

317 ~~(i) No later than 90 days after the insurer or insurer~~
318 ~~group has completed the recoupment process, the insurer or~~
319 ~~insurer group shall file with the office, for information~~
320 ~~purposes only, a final accounting report documenting the~~
321 ~~recoupment. The report shall provide the amounts of assessments~~
322 ~~paid by the insurer or insurer group, the amounts and~~
323 ~~percentages recouped by year from each affected line of~~
324 ~~business, and the direct written premium subject to recoupment~~
325 ~~by year. The insurer or insurer group need submit only one~~
326 ~~report for all lines of business using the same recoupment~~
327 ~~factor.~~

328 (4) The office department may exempt or temporarily defer
329 any insurer from any regular or emergency assessment if the
330 office finds that the insurer is impaired or insolvent or if an
331 assessment would result in such insurer's financial statement
332 reflecting an amount of capital or surplus less than the sum of
333 the minimum amount required by any jurisdiction in which the
334 insurer is authorized to transact insurance.

335 Section 3. Section 631.64, Florida Statutes, is amended to
336 read:

337 631.64 Recognition of assessments ~~in rates.~~ Charges or
338 recoupments shall be separately displayed on premium statements

339 to enable policyholders to determine the amount charged for
340 association assessments but may not be included in rates filed
341 and approved by the office. The rates and premiums charged for
342 insurance policies to which this part applies may include
343 amounts sufficient to recoup a sum equal to the amounts paid to
344 the association by the member insurer less any amounts returned
345 to the member insurer by the association, and such rates shall
346 not be deemed excessive because they contain an amount
347 reasonably calculated to recoup assessments paid by the member
348 insurer.

349 Section 4. Subsection (5) of section 627.727, Florida
350 Statutes, is amended to read:

351 627.727 Motor vehicle insurance; uninsured and
352 underinsured vehicle coverage; insolvent insurer protection.—

353 (5) Any person having a claim against an insolvent insurer
354 as defined in s. 631.54(6) under ~~the provisions of~~ this section
355 shall present such claim for payment to the Florida Insurance
356 Guaranty Association only. In the event of a payment to a ~~any~~
357 person in settlement of a claim arising under ~~the provisions of~~
358 this section, the association is not subrogated or entitled to
359 ~~any~~ recovery against the claimant's insurer. The association,
360 however, has the rights of recovery as set forth in chapter 631
361 in the proceeds recoverable from the assets of the insolvent
362 insurer.

363 Section 5. Subsection (1) of section 631.55, Florida
364 Statutes, is amended to read:

365 631.55 Creation of the association.—

366 (1) There is created a nonprofit corporation to be known
367 as the "Florida Insurance Guaranty Association, Incorporated."
368 All insurers defined as member insurers in s. 631.54(7) shall be
369 members of the association as a condition of their authority to
370 transact insurance in this state, and, further, as a condition
371 of such authority, an insurer must ~~shall~~ agree to reimburse the
372 association for all claim payments the association makes on the
373 ~~said~~ insurer's behalf if such insurer is subsequently
374 rehabilitated. The association shall perform its functions under
375 a plan of operation established and approved under s. 631.58 and
376 shall exercise its powers through a board of directors
377 established under s. 631.56. The corporation shall have all
378 those powers granted or permitted nonprofit corporations, as
379 provided in chapter 617.

380 Section 6. This act shall take effect July 1, 2015.