

By the Committee on Banking and Insurance; and Senator Burgess

597-02090-22

20221430c1

1 A bill to be entitled
2 An act relating to insolvent insurers; amending s.
3 624.4073, F.S.; revising a prohibition against certain
4 insolvent insurers' former officers or directors
5 serving as officers or directors of an insurer or
6 having direct or indirect control over certain
7 selection or appointment of officers or directors, to
8 allow such activities unless the Office of Insurance
9 Regulation enters a specified order; amending s.
10 627.072, F.S.; providing required factors to be used
11 in the determination and fixing of rates for premiums
12 paid to insolvent insurers for specified coverages;
13 amending s. 631.57, F.S.; authorizing insurers
14 remitting assessments to the Florida Insurance
15 Guaranty Association, Incorporated, to elect not to
16 recoup advances; revising a requirement for
17 information regarding assessment percentages which
18 must be specified by the Office of Insurance
19 Regulation in orders levying assessments; authorizing
20 the association to request that orders levying
21 assessments issued by the office authorize a certain
22 installment frequency for the remittance of advance
23 payments by insurers; revising the requirement that
24 certain insurers make payments, rather than initial
25 payments, on a certain basis; revising insurer
26 reconciliation reporting requirements; providing
27 reconciliation requirements for surcharges collected
28 from policyholders; requiring insurers to treat the
29 failure of an insured to pay a surcharge, rather than

597-02090-22

20221430c1

30 a recoupment charge, as a failure to pay the premium;
31 revising construction; amending s. 631.914, F.S.;
32 revising provisions relating to insurers' collection
33 of surcharges and payments of assessments to the
34 Florida Workers' Compensation Insurance Guaranty
35 Association, Incorporated; providing an effective
36 date.

37
38 Be It Enacted by the Legislature of the State of Florida:

39
40 Section 1. Section 624.4073, Florida Statutes, is amended
41 to read:

42 624.4073 Officers and directors of insolvent insurers.—Any
43 person who was an officer or director of an insurer doing
44 business in this state and who served in that capacity within
45 the 2-year period before the date the insurer became insolvent,
46 for any insolvency that occurs on or after July 1, 2002, may ~~not~~
47 thereafter serve as an officer or director of an insurer
48 authorized in this state or have direct or indirect control over
49 the selection or appointment of an officer or director through
50 contract, trust, or by operation of law, unless the office
51 enters an order pursuant to s. 624.310 demonstrating that the
52 ~~officer or director demonstrates that his or her personal~~
53 actions or omissions of the officer or director were ~~not~~ a
54 significant contributing cause to the insolvency.

55 Section 2. Subsection (1) of section 627.072, Florida
56 Statutes, is amended to read:

57 627.072 Making and use of rates.—

58 (1) As to workers' compensation and employer's liability

597-02090-22

20221430c1

59 insurance, the following factors must ~~shall~~ be used in the
60 determination and fixing of rates:

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

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

68 (c) The conflagration and catastrophe hazards;

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

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

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

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

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

80 Section 3. Paragraphs (c) and (f) through (i) of subsection
81 (3) of section 631.57, Florida Statutes, are amended to read:

82 631.57 Powers and duties of the association.—

83 (3)

84 (c) The Legislature finds and declares that all assessments
85 paid by an insurer or insurer group as a result of a levy by the
86 office, including assessments levied pursuant to paragraph (a)
87 and emergency assessments levied pursuant to paragraph (e),

597-02090-22

20221430c1

88 constitute advances of funds from the insurer to the
89 association. An insurer may fully recoup such advances by
90 applying the uniform assessment percentage levied by the office
91 to all policies of the same kind or line as were considered by
92 the office in determining the assessment liability of the
93 insurer or insurer group as set forth in paragraph (f). An
94 insurer remitting an assessment to the association as required
95 by subparagraph (f)1. or subparagraph (f)2. may elect not to
96 recoup advances.

97 1. Assessments levied under subparagraph (f)1. are paid
98 before policy surcharges are collected and result in a
99 receivable for policy surcharges collected in the future. This
100 amount, to the extent it is likely that it will be realized,
101 meets the definition of an admissible asset as specified in the
102 National Association of Insurance Commissioners' Statement of
103 Statutory Accounting Principles No. 4. The asset must ~~shall~~ be
104 established and recorded separately from the liability
105 regardless of whether it is based on a retrospective or
106 prospective premium-based assessment. If an insurer is unable to
107 fully recoup the amount of the assessment because of a reduction
108 in writings or withdrawal from the market, the amount recorded
109 as an asset must ~~shall~~ be reduced to the amount reasonably
110 expected to be recouped.

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

115 (f)1. The association, office, and insurers remitting
116 assessments pursuant to paragraph (a) or paragraph (e) must

597-02090-22

20221430c1

117 comply with the following:

118 a. In the order levying an assessment, the office shall
119 specify the actual percentage amount to be advanced to the
120 association and thereafter collected uniformly from all the
121 policyholders of insurers subject to the assessment and the date
122 on which the assessment year begins, which may not begin before
123 90 days after the association board certifies such an
124 assessment.

125 b. Insurers shall make an initial payment to the
126 association before the beginning of the assessment year on or
127 before the date specified in the order of the office. Each
128 insurer shall have at least 30 days' written notice as to the
129 date on which the initial assessment payment is due and payable.
130 The association may request that the order issued by the office
131 authorize insurers to remit the advance payments in four
132 quarterly installments throughout the assessment year.

133 c. Insurers that have written insurance in the calendar
134 year before the year in which the assessment is certified by the
135 board shall make payments ~~an initial payment~~ based on the direct
136 written premium in this state for the classes protected by the
137 account from the previous calendar year as set forth in the
138 insurer's annual statement, multiplied by the uniform percentage
139 of premium specified in the order issued by the office. Insurers
140 that have not written insurance in the previous calendar year in
141 any of the lines under the account which are being assessed, but
142 which are writing insurance as of, or after, the date the board
143 certifies the assessment to the office, shall pay an amount
144 based on a good faith estimate of the amount of direct written
145 premium anticipated to be written in the subject lines of

597-02090-22

20221430c1

146 business for the assessment year, multiplied by the uniform
147 percentage of premium specified in the order issued by the
148 office.

149 d. Insurers shall file one or more ~~a~~ reconciliation reports
150 ~~report~~ with the association which indicate ~~indicates~~ the amount
151 of ~~the initial~~ payment to the association ~~before the assessment~~
152 ~~year~~, whether such amount was based on direct written premium
153 contained in a previous calendar year annual statement or a good
154 faith projection, the amount actually collected during the
155 assessment year, and such other information contained on a form
156 and schedule adopted by the association and provided to the
157 insurers in advance. If the insurer collected from policyholders
158 more surcharges than the amount initially paid, the insurer
159 shall pay the excess amount to the association. If the insurer
160 collected surcharges from policyholders in an amount that ~~which~~
161 is less than the amount initially paid to the association, the
162 association shall credit the insurer that amount against future
163 assessments. Such payment reconciliation report, and any payment
164 of excess amounts collected from policyholders, shall be
165 completed and remitted to the association within 90 days after
166 the end of the assessment year. The association shall send a
167 final reconciliation report on all insurers to the office within
168 120 days after each assessment year.

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

171 2. For assessments required under paragraph (a) or
172 paragraph (e), the association may use a quarterly installment
173 method instead of the method described in sub-subparagraphs 1.b.
174 and c. or in combination thereof based on the association's

597-02090-22

20221430c1

175 projected cash flow. If the association projects that it has
176 cash on hand for the payment of anticipated claims in the
177 applicable account for at least 6 months, the board may make an
178 estimate of the assessment needed and may recommend to the
179 office the assessment percentage that may be collected as a
180 quarterly assessment. The office may, in the order levying the
181 assessment on insurers, specify that the assessment is due and
182 payable quarterly as the funds are collected from insureds
183 throughout the assessment year, in which case the assessment
184 shall be a uniform percentage of premium collected during the
185 assessment year and shall be collected from all policyholders
186 with policies in the classes protected by the account. All
187 insurers shall collect the assessment without regard to whether
188 the insurers reported premium in the year preceding the
189 assessment. Insurers are not required to advance funds if the
190 association and the office elect to use the quarterly
191 installment option. All funds collected shall be retained by the
192 association for the payment of current or future claims. This
193 subparagraph does not alter the obligation of an insurer to
194 remit assessments levied pursuant to this subsection to the
195 association. Insurers shall file one or more reconciliation
196 reports with the association which indicate the amount actually
197 collected during the assessment year and such other information
198 using a form and schedule adopted by the association and
199 provided to the insurers in advance.

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

202 (h) Assessments levied under this subsection are levied
203 upon insurers. This subsection does not create a cause of action

597-02090-22

20221430c1

204 by a policyholder with respect to the levying of, or a
205 policyholder's duty to pay, such assessments and related
206 surcharges.

207 (i) Assessments levied under this subsection are not
208 premium and are not subject to the premium tax, to any fees, or
209 to any commissions. An insurer is liable for any surcharges
210 ~~emergency assessments~~ that the insurer collects and ~~shall treat~~
211 ~~the failure of an insured to pay an emergency assessment as a~~
212 ~~failure to pay the premium. An insurer is not liable for~~
213 uncollectible surcharges ~~emergency assessments~~.

214 Section 4. Paragraphs (c) and (d) of subsection (1) and
215 paragraph (c) of subsection (4) of section 631.914, Florida
216 Statutes, are amended to read:

217 631.914 Assessments.—

218 (1)

219 (c) The office shall levy the uniform surcharge percentage
220 on all policies of the same kind or line as were considered by
221 the office in determining the assessment liability of the
222 insurer. Member insurers shall collect policy surcharges at a
223 uniform percentage rate on new and renewal policies issued and
224 effective during the assessment year ~~period of 12 months~~
225 beginning on January 1, April 1, July 1, or October 1, whichever
226 is the first day of the following calendar quarter as specified
227 in an order issued by the office. The policy surcharge may not
228 begin until 90 days after the board of directors certifies the
229 assessment.

230 (d) The association may use a pass-through ~~an installment~~
231 method to require the insurer to remit the policy surcharge as
232 collected or may require the insurer to remit the assessment to

597-02090-22

20221430c1

233 the association before collecting the policy surcharge.

234 1. If the association elects to use the pass-through
235 ~~installment~~ method, the office may, in the order levying the
236 assessment on insurers, specify that the policy surcharge is due
237 and payable quarterly as collected throughout the assessment
238 year. Insurers shall collect policy surcharges at a uniform
239 percentage rate specified by order as described in paragraph
240 (c). Insurers are not required to advance funds if the
241 association and the office elect to use the pass-through
242 ~~installment~~ option. Assessments levied under this subparagraph
243 are paid after policy surcharges are collected, and the
244 recognition of assets is based on actual policy surcharges
245 collected offset by the obligation to the association.

246 2. If the association elects to require insurers to remit
247 the assessment before surcharging the policy, the following
248 shall apply:

249 a. On or before the date specified in the order of the
250 office, insurers shall make an initial advance payment to the
251 association of the percentage specified in the order multiplied
252 by the insurer's direct written premiums received in this state
253 for the preceding calendar year for the kinds of insurance
254 included within such account before the beginning of the
255 assessment year. The board may authorize an insurer to pay an
256 assessment in a single payment or on a quarterly basis, based on
257 cash-flow needs.

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

261 c. Insurers shall collect policy surcharges at a uniform

597-02090-22

20221430c1

262 percentage rate specified by the order, as described in
263 paragraph (c).

264 d. Assessments levied under this subparagraph and paid by
265 an insurer constitute advances of funds from the insurer to the
266 association and result in a receivable for policy surcharges to
267 be billed in the future. The amount of billed policy surcharges,
268 to the extent it is likely that it will be realized, meets the
269 definition of an admissible asset as specified in the National
270 Association of Insurance Commissioners' Statement of Statutory
271 Accounting Principles No. 4. The asset shall be established and
272 recorded separately from the liability. If an insurer is unable
273 to fully recoup the amount of the assessment, the amount
274 recorded as an asset shall be reduced to the amount reasonably
275 expected to be recouped.

276 3. Insurers must submit a reconciliation report to the
277 association within 120 days after the end of the 12-month
278 assessment year period and annually thereafter for a period of 2
279 3 years. The report must indicate the amount of the initial
280 payment or installment payments made to the association and the
281 amount of policy surcharges collected for the assessment year.
282 If the insurer's reconciled obligation is more than the amount
283 paid to the association, the insurer shall pay the excess policy
284 surcharges collected to the association. If the insurer's
285 reconciled obligation is less than the initial amount paid to
286 the association, the association shall return the overpayment to
287 the insurer.

288 (4)

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

597-02090-22

20221430c1

291

Section 5. This act shall take effect July 1, 2022.