

By the Committees on Appropriations; and Banking and Insurance;
and Senator Burgess

576-03556-22

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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; specifying requirements for insurers
17 electing not to recoup; revising a requirement for
18 information regarding assessment percentages which
19 must be specified by the Office of Insurance
20 Regulation in orders levying assessments; authorizing
21 the association to request that orders levying
22 assessments issued by the office authorize a certain
23 installment frequency for the remittance of advance
24 payments by insurers; revising the requirement that
25 certain insurers make payments, rather than initial
26 payments, on a certain basis; requiring insurers to
27 make quarterly payments to the association under
28 certain circumstances; revising insurer reconciliation
29 reporting requirements; providing reconciliation

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30 requirements for surcharges collected from
31 policyholders; requiring insurers to treat the failure
32 of an insured to pay a surcharge, rather than a
33 recoupment charge, as a failure to pay the premium;
34 revising construction; amending s. 631.914, F.S.;
35 revising provisions relating to insurers' collection
36 of surcharges and payments of assessments to the
37 Florida Workers' Compensation Insurance Guaranty
38 Association, Incorporated; providing an effective
39 date.

40
41 Be It Enacted by the Legislature of the State of Florida:

42
43 Section 1. Section 624.4073, Florida Statutes, is amended
44 to read:

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

58 Section 2. Subsection (1) of section 627.072, Florida

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59 Statutes, is amended to read:

60 627.072 Making and use of rates.—

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

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

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

71 (c) The conflagration and catastrophe hazards;

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

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

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

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

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

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

85 631.57 Powers and duties of the association.—

86 (3)

87 (c) The Legislature finds and declares that all assessments

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

100 1. Assessments levied under subparagraph (f)1. are paid
101 before policy surcharges are collected and result in a
102 receivable for policy surcharges collected in the future. This
103 amount, to the extent it is likely that it will be realized,
104 meets the definition of an admissible asset as specified in the
105 National Association of Insurance Commissioners' Statement of
106 Statutory Accounting Principles No. 4. The asset must ~~shall~~ be
107 established and recorded separately from the liability
108 regardless of whether it is based on a retrospective or
109 prospective premium-based assessment. If an insurer is unable to
110 fully recoup the amount of the assessment because of a reduction
111 in writings or withdrawal from the market, the amount recorded
112 as an asset must ~~shall~~ be reduced to the amount reasonably
113 expected to be recouped. If an insurer elects not to recoup, the
114 amount recorded as an asset must be reduced to zero.

115 2. Unless an insurer elects not to recoup, assessments
116 levied under subparagraph (f)2. are paid after policy surcharges

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117 are collected so that the recognition of assets is based on
118 actual premium written offset by the obligation to the
119 association. If an insurer elects not to recoup, no asset shall
120 be recorded.

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

124 a. In the order levying an assessment, the office shall
125 specify the actual percentage amount to be advanced to the
126 association and thereafter collected uniformly from all the
127 policyholders of insurers subject to the assessment and the date
128 on which the assessment year begins, which may not begin before
129 90 days after the association board certifies such an
130 assessment.

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

139 c. Insurers that have written insurance in the calendar
140 year before the year in which the assessment is certified by the
141 board shall make payments ~~an initial payment~~ based on the direct
142 written premium in this state for the classes protected by the
143 account from the previous calendar year as set forth in the
144 insurer's annual statement, multiplied by the uniform percentage
145 of premium specified in the order issued by the office. Insurers

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146 that have not written insurance in the previous calendar year in
147 any of the lines under the account which are being assessed, but
148 which are writing insurance as of, or after, the date the board
149 certifies the assessment to the office, shall pay an amount
150 based on a good faith estimate of the amount of direct written
151 premium anticipated to be written in the subject lines of
152 business for the assessment year, multiplied by the uniform
153 percentage of premium specified in the order issued by the
154 office.

155 d. Insurers shall file one or more ~~a~~ reconciliation reports
156 ~~report~~ with the association which indicate ~~indicates~~ the amount
157 of ~~the initial~~ payment to the association ~~before the assessment~~
158 ~~year~~, whether such amount was based on direct written premium
159 contained in a previous calendar year annual statement or a good
160 faith projection, the amount actually collected during the
161 assessment year, and such other information contained on a form
162 and schedule adopted by the association and provided to the
163 insurers in advance. If the insurer collected from policyholders
164 more surcharges than the amount initially paid, the insurer
165 shall pay the excess amount to the association. If the insurer
166 collected surcharges from policyholders in an amount that ~~which~~
167 is less than the amount initially paid to the association, the
168 association shall credit the insurer that amount against future
169 assessments. Such payment reconciliation report, and any payment
170 of excess amounts collected from policyholders, shall be
171 completed and remitted to the association within 90 days after
172 the end of the assessment year. The association shall send a
173 final reconciliation report on all insurers to the office within
174 120 days after each assessment year.

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

177 2. For assessments required under paragraph (a) or
178 paragraph (e), the association may use a quarterly installment
179 method instead of the method described in sub-subparagraphs 1.b.
180 and c. or in combination thereof based on the association's
181 projected cash flow. If the association projects that it has
182 cash on hand for the payment of anticipated claims in the
183 applicable account for at least 6 months, the board may make an
184 estimate of the assessment needed and may recommend to the
185 office the assessment percentage that may be collected as a
186 quarterly assessment. The office may, in the order levying the
187 assessment on insurers, specify that the assessment is due and
188 payable quarterly as the funds are collected from insureds
189 throughout the assessment year, in which case the assessment
190 shall be a uniform percentage of premium collected during the
191 assessment year and shall be collected from all policyholders
192 with policies in the classes protected by the account. All
193 insurers shall collect the assessment without regard to whether
194 the insurers reported premium in the year preceding the
195 assessment. Insurers are not required to advance funds if the
196 association and the office elect to use the quarterly
197 installment option. All funds collected shall be retained by the
198 association for the payment of current or future claims. This
199 subparagraph does not alter the obligation of an insurer to
200 remit assessments levied pursuant to this subsection to the
201 association. Notwithstanding this subparagraph, an insurer may
202 elect not to collect from policyholders, in which case such
203 insurer must make quarterly payments to the association equal to

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204 the amount of premium written in the previous quarter for
205 policies in the classes protected by the account multiplied by
206 the uniform percentage of premium set forth in the order levying
207 the assessment. Insurers shall file one or more reconciliation
208 reports with the association which indicate the amount actually
209 collected during the assessment year and such other information
210 using a form and schedule adopted by the association and
211 provided to the insurers in advance.

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

214 (h) Assessments levied under this subsection are levied
215 upon insurers. This subsection does not create a cause of action
216 by a policyholder with respect to the levying of, or a
217 policyholder's duty to pay, such assessments and related
218 surcharges.

219 (i) Assessments levied under this subsection are not
220 premium and are not subject to the premium tax, to any fees, or
221 to any commissions. An insurer is liable for any surcharges
222 ~~emergency assessments~~ that the insurer collects and ~~shall treat~~
223 ~~the failure of an insured to pay an emergency assessment as a~~
224 ~~failure to pay the premium. An insurer is not liable for~~
225 uncollectible surcharges ~~emergency assessments.~~

226 Section 4. Paragraphs (c) and (d) of subsection (1) and
227 paragraph (c) of subsection (4) of section 631.914, Florida
228 Statutes, are amended to read:

229 631.914 Assessments.—

230 (1)

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

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233 the office in determining the assessment liability of the
234 insurer. Member insurers shall collect policy surcharges at a
235 uniform percentage rate on new and renewal policies issued and
236 effective during the assessment year ~~period of 12 months~~
237 beginning on January 1, April 1, July 1, or October 1, whichever
238 is the first day of the following calendar quarter as specified
239 in an order issued by the office. The policy surcharge may not
240 begin until 90 days after the board of directors certifies the
241 assessment.

242 (d) The association may use a pass-through ~~an installment~~
243 method to require the insurer to remit the policy surcharge as
244 collected or may require the insurer to remit the assessment to
245 the association before collecting the policy surcharge.

246 1. If the association elects to use the pass-through
247 ~~installment~~ method, the office may, in the order levying the
248 assessment on insurers, specify that the policy surcharge is due
249 and payable quarterly as collected throughout the assessment
250 year. Insurers shall collect policy surcharges at a uniform
251 percentage rate specified by order as described in paragraph
252 (c). Insurers are not required to advance funds if the
253 association and the office elect to use the pass-through
254 ~~installment~~ option. Assessments levied under this subparagraph
255 are paid after policy surcharges are collected, and the
256 recognition of assets is based on actual policy surcharges
257 collected offset by the obligation to the association.

258 2. If the association elects to require insurers to remit
259 the assessment before surcharging the policy, the following
260 shall apply:

261 a. On or before the date specified in the order of the

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262 office, insurers shall make an initial advance payment to the
263 association of the percentage specified in the order multiplied
264 by the insurer's direct written premiums received in this state
265 for the preceding calendar year for the kinds of insurance
266 included within such account before the beginning of the
267 assessment year. The board may authorize an insurer to pay an
268 assessment in a single payment or on a quarterly basis, based on
269 cash-flow needs.

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

273 c. Insurers shall collect policy surcharges at a uniform
274 percentage rate specified by the order, as described in
275 paragraph (c).

276 d. Assessments levied under this subparagraph and paid by
277 an insurer constitute advances of funds from the insurer to the
278 association and result in a receivable for policy surcharges to
279 be billed in the future. The amount of billed policy surcharges,
280 to the extent it is likely that it will be realized, meets the
281 definition of an admissible asset as specified in the National
282 Association of Insurance Commissioners' Statement of Statutory
283 Accounting Principles No. 4. The asset shall be established and
284 recorded separately from the liability. If an insurer is unable
285 to fully recoup the amount of the assessment, the amount
286 recorded as an asset shall be reduced to the amount reasonably
287 expected to be recouped.

288 3. Insurers must submit a reconciliation report to the
289 association within 120 days after the end of the 12-month
290 assessment year ~~period~~ and annually thereafter for a period of 2

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291 3 years. The report must indicate the amount of the initial
292 payment or installment payments made to the association and the
293 amount of policy surcharges collected for the assessment year.
294 If the insurer's reconciled obligation is more than the amount
295 paid to the association, the insurer shall pay the excess policy
296 surcharges collected to the association. If the insurer's
297 reconciled obligation is less than the initial amount paid to
298 the association, the association shall return the overpayment to
299 the insurer.

300 (4)

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

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