

CHAPTER 2016-170

Committee Substitute for Committee Substitute for Senate Bill No. 828

An act relating to insurance guaranty association assessments; amending s. 631.914, F.S.; requiring the Office of Insurance Regulation to levy assessments for certain purposes; revising and providing requirements for the levy of assessments; requiring insurers and self-insurance funds to report certain premiums; requiring insurers to collect policy surcharges and pay assessments to the association; revising requirements for reporting premium for assessment calculations; revising and providing requirements and limitations for remittance of assessments to the association; providing an effective date.

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

Section 1. Section 631.914, Florida Statutes, is amended to read:

631.914 Assessments.—

(1)(a) To the extent necessary to secure the funds for the payment of covered claims, and also to pay the reasonable costs to administer the same, the Office of Insurance Regulation department, upon certification by the board, shall levy assessments on each insurer initially estimated in the proportion that the insurer's net direct written premiums in this state bears to the total of said net direct written premiums received in this state by all such workers' compensation insurers for the preceding calendar year. Assessments levied against insurers and self-insurance funds pursuant to this paragraph must be computed and levied on the basis of the full policy premium value on the net direct written premium amount as set forth in the state for workers' compensation insurance without consideration of any applicable discount or credit for deductibles. Insurers and self-insurance funds must report premiums in compliance with this paragraph. Assessments shall be remitted to and administered by the board of directors in the manner specified by the approved plan of operation and paragraph (d). ~~The board shall give each insurer so assessed at least 30 days' written notice of the date the assessment is due and payable.~~ Each assessment shall be a uniform percentage applicable to the net direct written premiums of each insurer writing workers' compensation insurance.

~~1. Beginning July 1, 1997, Assessments levied against insurers and, other than self-insurance funds, shall not exceed in any calendar year more than 2 percent of that insurer's net direct written premiums in this state for workers' compensation insurance during the calendar year next preceding the date of such assessments.~~

(b) Member insurers shall collect surcharges at a uniform percentage rate on new and renewal policies issued and effective during the period of 12

months beginning on January 1, April 1, July 1, or October 1, whichever is the first day of the following calendar quarter as specified in an order issued by the office directing insurers to pay an assessment to the association. The surcharge may not begin until 90 days after the board of directors certifies the assessment.

~~2. Beginning July 1, 1997, assessments levied against self-insurance funds shall not exceed in any calendar year more than 1.50 percent of that self-insurance fund's net direct written premiums in this state for workers' compensation insurance during the calendar year next preceding the date of such assessments.~~

~~3. Beginning July 1, 2003, assessments levied against insurers and self-insurance funds pursuant to this paragraph are computed and levied on the basis of the full policy premium value on the net direct premiums written in the state for workers' compensation insurance during the calendar year next preceding the date of the assessment without taking into account any applicable discount or credit for deductibles. Insurers and self-insurance funds must report premiums in compliance with this subparagraph.~~

~~(b) Assessments shall be included as an appropriate factor in the making of rates.~~

~~(c)1. Effective July 1, 1999, If assessments otherwise authorized in paragraph (a) are insufficient to make all payments on reimbursements then owing to claimants in a calendar year, then upon certification by the board, the office department shall levy additional assessments of up to 1.5 percent of the insurer's net direct written premiums in this state during the calendar year next preceding the date of such assessments against insurers to secure the necessary funds.~~

(d) The association may use an installment method to require the insurer to remit the assessment as premium is written or may require the insurer to remit the assessment to the association before collecting the policyholder surcharge. If the assessment is remitted before the surcharge is collected, the assessment remitted must be based on an estimate of the assessment due based on the proportion of each insurer's net direct written premium in this state for the preceding calendar year as described in paragraph (a) and adjusted following the end of the 12-month period during which the assessment is levied.

1. If the association elects to use the installment method, the office may, in the order levying the assessment on insurers, specify that the assessment is due and payable quarterly as premium is written throughout the assessment year. Insurers shall collect surcharges at a uniform percentage rate specified by order as described in paragraph (b). Insurers are not required to advance funds if the association and the office elect to use the installment option. Assessments levied under this subparagraph are paid after policy surcharges are collected, and the recognition of assets is based on actual premium written offset by the obligation to the association.

2. If the association elects to require insurers to remit the assessment before surcharging the policyholder, the following shall apply:

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

b. Insurers shall collect surcharges at a uniform percentage rate specified by the order, as described in paragraph (b).

c. Assessments levied under this subparagraph are paid before policy surcharges are billed and result in a receivable for policy surcharges to be billed in the future. The amount of billed surcharges, to the extent it is likely that it will be realized, meets the definition of an admissible asset as specified in the National Association of Insurance Commissioners' Statement of Statutory Accounting Principles No. 4. The asset shall be established and recorded separately from the liability. If an insurer is unable to fully recoup the amount of the assessment, the amount recorded as an asset shall be reduced to the amount reasonably expected to be recouped.

3. Insurers must submit a reconciliation report to the association within 120 days after the end of the 12-month assessment period and annually thereafter for a period of three years. The report must indicate the amount of the initial payment or installment payments made to the association and the amount of written premium pursuant to paragraph (a) for the assessment year. If the insurer's reconciled assessment obligation is more than the amount paid to the association, the insurer shall pay the excess surcharges collected to the association. If the insurer's reconciled assessment obligation is less than the initial amount paid to the association, the association shall return the overpayment to the insurer.

(2) Assessments levied under this section are not premium and are not subject to any premium tax, fees, or commissions. Insurers shall treat the failure of an insured to pay assessment-related surcharges as a failure to pay premium. An insurer is not liable for any uncollectible assessment-related surcharges.

(3) Assessments levied under this section may be levied only upon insurers. This section does not create a cause of action by a policyholder with respect to the levying of an assessment or a policyholder's duty to pay assessment-related surcharges.

~~2. To assure that insurers paying assessments levied under this paragraph continue to charge rates that are neither inadequate nor excessive, each insurer that is to be assessed pursuant to this paragraph, or a licensed rating organization to which the insurer subscribes, may make, within 90 days after being notified of such assessments, a rate filing for workers' compensation coverage pursuant to ss. 627.072 and 627.091. If the filing reflects a percentage rate change equal to the difference between the rate of such assessment and the rate of the previous year's assessment under~~

~~this paragraph, the filing shall consist of a certification so stating and shall be deemed approved when made. Any rate change of a different percentage shall be subject to the standards and procedures of ss. 627.072 and 627.091.~~

(4)(2)(a) The board may exempt any insurer from an assessment if, in the opinion of the office department, an assessment would result in such insurer’s financial statement reflecting an amount of capital or surplus less than the minimum amount required by any jurisdiction in which the insurer is authorized to transact insurance.

(b) The board may temporarily defer, in whole or in part, assessments against an insurer if, in the opinion of the office department, payment of the assessment would endanger the ability of the insurer to fulfill its contractual obligations. In the case of a self-insurance fund, the trustees of the fund determined to be endangered must immediately levy an assessment upon the members of that self-insurance fund in an amount sufficient to pay the assessments to the corporation.

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

Section 2. This act shall take effect July 1, 2016.

Approved by the Governor April 1, 2016.

Filed in Office Secretary of State April 1, 2016.