

CHAPTER 2020-54

Senate Bill No. 540

An act relating to insurance guaranty associations; creating s. 626.8621, F.S.; authorizing certain guaranty association employees to adjust losses for the Florida Insurance Guaranty Association if certain conditions are met; amending s. 631.54, F.S.; redefining the term “net direct written premiums” as “direct written premiums” and revising the definition of that term; amending s. 631.57, F.S.; deleting a calculation of initial estimated assessments levied by the Office of Insurance Regulation on insurers in the Florida Insurance Guaranty Association; providing that a notice requirement for initial assessments applies to emergency assessments; revising the frequency of payable installments for assessments if an installment method is elected by the association; revising the basis of calculating initial payments of assessments for certain insurers; conforming a provision to changes made by the act; amending ss. 625.012, 631.59, and 631.912, F.S.; conforming provisions to changes made by the act; amending s. 631.914, F.S.; deleting a calculation of initial estimated assessments levied by the office on insurers in the Florida Workers’ Compensation Insurance Guaranty Association; revising the method for calculating assessments; authorizing the association to audit certain reports by insurers and self-insurance funds; specifying a requirement for the office in levying policy surcharges; revising a procedure for collecting policy surcharges; revising an installment method of payments to apply to policy surcharges rather than to assessments; revising requirements if the association elects to require insurers to remit assessments before surcharging policies; revising a requirement for annual reconciliation reports by insurers; revising construction; revising the applicability of premium taxes, fees, and commissions; providing an effective date.

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

Section 1. Section 626.8621, Florida Statutes, is created to read:

626.8621 Adjustments by guaranty association employees.—

(1) An employee of the Florida Insurance Guaranty Association, created under part II of chapter 631, may adjust losses for the association if such employee holds, or has held within the past 10 years, licensure in this state which allows for the adjustment of such losses.

(2) An employee of a guaranty association established by another state whose insurance regulators are members of the National Association of Insurance Commissioners may adjust losses for the Florida Insurance Guaranty Association. The authorization for such employees to adjust losses must be included in a contract with the Florida Insurance Guaranty Association and the employee’s guaranty association or association’s authorized representative. The Florida Insurance Guaranty Association

shall contract only for employees of other state guaranty associations who maintain the appropriate experience and training for adjusting such claims.

Section 2. Subsection (9) of section 631.54, Florida Statutes, is amended to read:

631.54 Definitions.—As used in this part:

(9) “~~Net Direct written premiums~~” means direct gross premiums written in this state on insurance policies to which this part applies, less return premiums thereon ~~and dividends paid or credited to policyholders on such direct business.~~ The term “Net direct written premiums” does not include premiums on contracts between insurers or reinsurers.

Section 3. Paragraphs (a), (e), and (f) of subsection (3) of section 631.57, Florida Statutes, are amended to read:

631.57 Powers and duties of the association.—

(3)(a) To the extent necessary to secure funds for the respective accounts for the payment of covered claims, to pay the reasonable costs to administer such accounts, and to secure funds for the account specified in s. 631.55(2)(b) or to retire indebtedness, including, without limitation, the principal, redemption premium, if any, and interest on, and related costs of issuance of, bonds issued under s. 631.695 and the funding of reserves and other payments required under the bond resolution or trust indenture pursuant to which such bonds have been issued, the office, upon certification of the board of directors, shall levy assessments, in accordance with subparagraph (f)1. or subparagraph (f)2., ~~initially estimated in the proportion that each insurer’s net direct written premiums in this state in the classes protected by the account bears to the total of said net direct written premiums received in this state by all such insurers for the preceding calendar year for the kinds of insurance included within such account.~~ Assessments shall be remitted to and administered by the board of directors in the manner specified by the approved plan and paragraph (f). ~~Each insurer so assessed shall have at least 30 days’ written notice as to the date the initial assessment payment is due and payable.~~ Every assessment shall be a uniform percentage. The assessments levied against any insurer may not exceed in any one calendar year more than 2 percent of that insurer’s net direct written premiums in this state for the kinds of insurance included within such account.

(e)1. In addition to assessments authorized in paragraph (a), and to the extent necessary to secure the funds for the account specified in s. 631.55(2)(b) for the direct payment of covered claims of insurers rendered insolvent by the effects of a hurricane and to pay the reasonable costs to administer such claims, or to retire indebtedness, including, without limitation, the principal, redemption premium, if any, and interest on, and related costs of issuance of, bonds issued under s. 631.695 and the funding of any reserves and other payments required under the bond resolution or trust indenture pursuant to which such bonds have been

issued, the office, upon certification of the board of directors, shall levy emergency assessments upon insurers holding a certificate of authority. The emergency assessments levied against any insurer may not exceed in any one calendar year more than 2 percent of that insurer's net written premiums in this state for the kinds of insurance within the account specified in s. 631.55(2)(b).

2. Emergency assessments authorized under this paragraph shall be levied by the office upon insurers in accordance with paragraph (f), upon certification as to the need for such assessments by the board of directors. If the board participates in the issuance of bonds in accordance with s. 631.695, emergency assessments shall be levied in each year that bonds issued under s. 631.695 and secured by such emergency assessments are outstanding in amounts up to such 2-percent limit as required in order to provide for the full and timely payment of the principal of, redemption premium, if any, and interest on, and related costs of issuance of, such bonds. The emergency assessments are assigned and pledged to the municipality, county, or legal entity issuing bonds under s. 631.695 for the benefit of the holders of such bonds in order to provide for the payment of the principal of, redemption premium, if any, and interest on such bonds, the cost of issuance of such bonds, and the funding of any reserves and other payments required under the bond resolution or trust indenture pursuant to which such bonds have been issued, without further action by the association, the office, or any other party. If bonds are issued under s. 631.695 and the association determines to secure such bonds by a pledge of revenues received from the emergency assessments, such bonds, upon such pledge of revenues, shall be secured by and payable from the proceeds of such emergency assessments, and the proceeds of emergency assessments levied under this paragraph shall be remitted directly to and administered by the trustee or custodian appointed for such bonds.

3. Emergency assessments used to defease bonds issued under this part may be payable in a single payment or, at the option of the association, may be payable in quarterly ~~12 monthly~~ installments, with the first installment being due and payable at the end of the month after an emergency assessment is levied and subsequent installments being due by the end of each succeeding month.

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

5. If emergency assessments are imposed, the references in sub-paragraph (1)(a)3.b. and s. 631.695(2) and (7) to assessments levied under paragraph (a) must include emergency assessments imposed under this paragraph.

6. If the board of directors participates in the issuance of bonds in accordance with s. 631.695, an annual assessment under this paragraph shall continue while the bonds issued with respect to which the assessment

was imposed are outstanding, including any bonds the proceeds of which were used to refund bonds issued pursuant to s. 631.695, unless adequate provision has been made for the payment of the bonds in the documents authorizing the issuance of such bonds.

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

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

b. Insurers shall make an initial payment to the association before the beginning of the assessment year on or before the date specified in the order of the office. Each insurer shall have at least 30 days' written notice as to the date on which the initial assessment payment is due and payable.

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

d. Insurers shall file a reconciliation report with the association which indicates the amount of the initial payment to the association before the assessment year, whether such amount was based on ~~net~~ direct written premium contained in a previous calendar year annual statement or a good faith projection, the amount actually collected during the assessment year, and such other information contained on a form adopted by the association and provided to the insurers in advance. If the insurer collected from policyholders more than the amount initially paid, the insurer shall pay the excess amount to the association. If the insurer collected from policyholders an amount which is less than the amount initially paid to the association, the association shall credit the insurer that amount against future assessments. Such payment reconciliation report, and any payment of excess amounts collected from policyholders, shall be completed and remitted to the association within 90 days after the end of the assessment year. The association shall send a final reconciliation report on all insurers to the office within 120 days after each assessment year.

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

2. For assessments required under paragraph (a) or paragraph (e), the association may use a quarterly ~~monthly~~ installment method instead of the method described in sub-subparagraphs 1.b. and c. or in combination thereof based on the association’s projected cash flow. If the association projects that it has cash on hand for the payment of anticipated claims in the applicable account for at least 6 months, the board may make an estimate of the assessment needed and may recommend to the office the assessment percentage that may be collected as a quarterly ~~monthly~~ assessment. The office may, in the order levying the assessment on insurers, specify that the assessment is due and payable quarterly ~~monthly~~ as the funds are collected from insureds throughout the assessment year, in which case the assessment shall be a uniform percentage of premium collected during the assessment year and shall be collected from all policyholders with policies in the classes protected by the account. All insurers shall collect the assessment without regard to whether the insurers reported premium in the year preceding the assessment. Insurers are not required to advance funds if the association and the office elect to use the quarterly ~~monthly~~ installment option. All funds collected shall be retained by the association for the payment of current or future claims. This subparagraph does not alter the obligation of an insurer to remit assessments levied pursuant to this subsection to the association.

Section 4. Paragraph (b) of subsection (15) of section 625.012, Florida Statutes, is amended to read:

625.012 “Assets” defined.—In any determination of the financial condition of an insurer, there shall be allowed as “assets” only such assets as are owned by the insurer and which consist of:

(15)

(b) Assessments levied as ~~monthly~~ installments pursuant to s. 631.57(3)(e)3. or s. 631.914 which are paid after policy surcharges are collected so that the recognition of assets is based on actual premium written offset by the obligation to the Florida Insurance Guaranty Association or the Florida Workers’ Compensation Insurance Guaranty Association, Incorporated.

Section 5. Subsection (3) of section 631.59, Florida Statutes, is amended to read:

631.59 Duties and powers of department and office.—

(3) The office shall, upon request of the board of directors, provide the association with a statement of the ~~net~~ direct written premiums of each member insurer.

Section 6. Subsection (1) of section 631.912, Florida Statutes, is amended to read:

631.912 Board of directors.—

(1) The board of directors of the corporation shall consist of 11 persons, 1 of whom is the insurance consumer advocate appointed under s. 627.0613 or designee and 1 of whom is designated by the Chief Financial Officer. The department shall appoint to the board 6 persons selected by private carriers from among the 20 workers' compensation insurers with the largest amount of net direct written premium as determined by the department, and 2 persons selected by the self-insurance funds. The Governor shall appoint one person who has commercial insurance experience. At least two of the private carriers shall be foreign carriers authorized to do business in this state. The board shall elect a chairperson from among its members. The Chief Financial Officer may remove any board member for cause. Each board member shall be appointed to serve a 4-year term and may be reappointed. A vacancy on the board shall be filled for the remaining period of the term in the same manner by which the original appointment was made.

Section 7. Subsections (1), (2), and (3) of section 631.914, Florida Statutes, are 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, 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.~~ An insurer's direct written premium calculated for the purposes of determining the insurer's assessment or policy surcharge may not be reduced by any discount or credit for deductibles in a policy or by any premium adjustment to a retrospectively rated policy. Insurers and self-insurance funds must report premiums in compliance with this paragraph, and the association may audit the reports. 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). ~~Each assessment shall be a uniform percentage applicable to the net direct written premiums of each insurer writing workers' compensation insurance.~~ Assessments levied against insurers and 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.

~~(c)(b)~~ The office shall levy the uniform surcharge percentage on all policies of the same kind or line as were considered by the office in determining the assessment liability of the insurer. Member insurers shall collect policy 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 policy surcharge may not begin until 90 days after the board of directors certifies the assessment.

~~(b)(e)~~ 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 shall levy additional assessments of up to 1.5 percent of the insurer's net direct written premiums in this state.

(d) The association may use an installment method to require the insurer to remit the policy surcharge assessment as collected premium is written or may require the insurer to remit the assessment to the association before collecting the policy 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 policy surcharge assessment is due and payable quarterly as collected premium is written throughout the assessment year. Insurers shall collect policy surcharges at a uniform percentage rate specified by order as described in paragraph (c) ~~(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 policy surcharges collected premium written offset by the obligation to the association.

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

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

b.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.

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

~~d.e.~~ Assessments levied under this subparagraph and are paid by an insurer constitute advances of funds from the insurer to the association before ~~policy surcharges are billed~~ and result in a receivable for policy surcharges to be billed in the future. The amount of billed policy 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 3 years. The report must indicate the amount of the initial payment or installment payments made to the association and the amount of policy surcharges collected ~~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 policy 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) Policy surcharges collected ~~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 policy ~~assessment-related~~ surcharges as a failure to pay premium. An insurer is not liable for any uncollectible policy ~~assessment-related~~ surcharges levied pursuant to this section.

(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 policy surcharges.

Section 8. This act shall take effect July 1, 2020.

Approved by the Governor June 20, 2020.

Filed in Office Secretary of State June 20, 2020.