

## CHAPTER 2022-139

### Committee Substitute for House Bill No. 1023

An act relating to insolvent insurers; amending s. 627.072, F.S.; providing required factors to be used in the determination and fixing of rates for premiums paid to insolvent insurers for specified coverages; amending s. 631.57, F.S.; authorizing insurers to elect not to recoup advance assessments paid to the Florida Insurance Guaranty Association, Incorporated; providing calculations of insurers' assets under specified circumstances; revising provisions relating to payments of assessments and insurers' reconciliation reports to the association; requiring insurers to pay assessments to the association, rather than to collect such assessments; specifying the payments that certain insurers must make to the association; requiring insurers to treat insureds' failure to pay surcharges, rather than recoupment charges, as failure to pay premiums; revising construction; providing that insurers are liable for surcharges and are not liable for uncollectible surcharges, rather than emergency assessments; deleting a requirement that insurers treat insureds' failure to pay emergency assessments as failure to pay premiums; amending s. 631.914, F.S.; revising provisions relating to insurers' collection of surcharges and payments of assessments to the Florida Workers' Compensation Insurance Guaranty Association, Incorporated; providing an effective date.

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

Section 1. Paragraphs (b) through (g) of subsection (1) of section 627.072, Florida Statutes, are redesignated as paragraphs (c) through (h), respectively, and a new paragraph (b) is added to that subsection, to read:

627.072 Making and use of rates.—

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

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

Section 2. Paragraph (c) and paragraphs (f) through (i) of subsection (3) of section 631.57, Florida Statutes, are amended to read:

631.57 Powers and duties of the association.—

(3)

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

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

1. Assessments levied under subparagraph (f)1. are paid before policy surcharges are collected and result in a receivable for policy surcharges collected in the future. This amount, 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 regardless of whether it is based on a retrospective or prospective premium-based assessment. If an insurer is unable to fully recoup the amount of the assessment because of a reduction in writings or withdrawal from the market, the amount recorded as an asset shall be reduced to the amount reasonably expected to be recouped. If an insurer elects not to recoup advances, the amount recorded as an asset shall be reduced to zero.

2. Assessments levied under subparagraph (f)2. 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 association. If an insurer elects not to recoup advances, the amount recorded as an asset shall be reduced to zero.

(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 advanced to the association and thereafter 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. The association may request that the order issued by the office authorize insurers to remit the advance payments in quarterly installments.

c. Insurers that have written insurance in the calendar year before the year in which the assessment is certified by the board shall make payments ~~an initial payment~~ based on the direct written premium in this state for the classes protected by the account 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 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 one or more a reconciliation reports ~~report~~ with the association which indicate ~~indicates~~ the amount of the ~~initial~~ payment to the association ~~before the assessment year~~, whether such amount was based on 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 and schedule adopted by the association and provided to the insurers in advance. If the insurer collected from policyholders more surcharges than the amount initially paid, the insurer shall pay the excess amount to the association. If the insurer collected surcharges from policyholders in an amount ~~that~~ 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 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 assessment. The office may, in the order levying the assessment on insurers, specify that the assessment is due and payable quarterly 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.

a. All insurers shall pay ~~collect~~ the assessment to the association without regard to whether the insurers reported premium in the year preceding the assessment.

b. Insurers are not required to advance funds if the association and the office elect to use the quarterly installment option.

c. An insurer that elects not to recoup the assessment shall make quarterly payments to the association equal to the amount of premium written in the previous quarter for the classes protected by the account, multiplied by the uniform percentage of premium specified in the order issued by the office.

d. All funds paid to the association collected shall be retained by the association for the payment of current or future claims.

e. Insurers shall file one or more reconciliation reports with the association which indicate the amount actually collected during the assessment year, and such other information contained on a form and schedule adopted by the association and provided to the insurers in advance.

This subparagraph does not alter the obligation of an insurer to remit assessments levied pursuant to this subsection to the association.

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

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

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

Section 3. Paragraphs (c) and (d) of subsection (1) and paragraph (c) of subsection (4) of section 631.914, Florida Statutes, are amended to read:

631.914 Assessments.—

(1)

(c) 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 assessment year ~~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. The policy surcharge may not begin until 90 days after the board of directors certifies the assessment.

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

1. If the association elects to use the ~~pass-through installment~~ method, the office may, in the order levying the assessment on insurers, specify that the policy surcharge is due and payable quarterly as collected throughout the assessment year. Insurers shall collect policy surcharges at a uniform percentage rate specified by order as described in paragraph (c). Insurers are not required to advance funds if the association and the office elect to use the ~~pass-through 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 offset by the obligation to the association.

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

a. On or before the date specified in the order of the office, insurers shall make an initial advance 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. The board may authorize an insurer to pay an assessment in a single payment or on a quarterly basis, based on cash-flow needs.

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

d. Assessments levied under this subparagraph and paid by an insurer constitute advances of funds from the insurer to the association 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 ~~year period~~ and annually thereafter for a period of 2 ~~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 for the assessment year. If the

insurer's reconciled 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 obligation is less than the initial amount paid to the association, the association shall return the overpayment to the insurer.

(4)

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

Section 4. This act shall take effect July 1, 2022.

Approved by the Governor May 25, 2022.

Filed in Office Secretary of State May 25, 2022.