January 25, 2013

SENATE BILL No. 431

DIGEST OF SB 431 (Updated January 24, 2013 11:55 am - DI 97)

Citations Affected: IC 27-6.

Synopsis: Property and casualty guaranty association. Makes changes to the law concerning the Indiana property and casualty insurance guaranty association, including changes affecting the definitions, the composition of the board of directors, coverage under the association and other insurance coverage, the treatment of a high net worth insured, and the venue for actions involving the association. Makes conforming amendments.

Effective: July 1, 2013.

Paul

January 10, 2013, read first time and referred to Committee on Insurance.
January 24, 2013, amended, reported favorably — Do Pass.

Copy

January 25, 2013

First Regular Session 118th General Assembly (2013)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type.~~

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~*this style type*~~ reconciles conflicts between statutes enacted by the 2012 Regular Session of the General Assembly.

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SENATE BILL No. 431

A BILL FOR AN ACT to amend the Indiana Code concerning insurance.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 27-6-8-0.1, AS ADDED BY P.L.220-2011, SECTION 432, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 0.1. **(a)** The amendments made to sections 4 and 7 of this chapter by P.L.163-1988 apply to cases involving an order of liquidation entered after June 30, 1988. For cases involving an order of liquidation entered before July 1, 1988, the laws that apply are sections 4 and 7 of this chapter, as in effect before July 1, 1988, as if P.L.163-1988 had not been enacted.

(b) The amendments made to sections 4, 5, 6, 7, 8, 11, and 11.5 of this chapter during the 2013 regular session of the general assembly do not apply to the following:

(1) A member insurer that has been placed under an order of rehabilitation or liquidation before July 1, 2013.

(2) The association's obligations under this chapter with respect to a covered claim filed by a claimant or member insurer that has a coverage date before July 1, 2013.

The law of this chapter that applies to a member insurer described

in subdivision (1) or to the association's obligations described in subdivision (2) is the law of this chapter as in effect before July 1, 2013, as if the amendments made to sections 4, 5, 6, 7, 8, 11, and 11.5 of this chapter during the 2013 regular session of the general assembly had not been made.

SECTION 2. IC 27-6-8-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 4. As used in this chapter, unless otherwise provided:

(1) The term "account" means any one (1) of the three (3) accounts created by section 5 of this chapter.

(2) The term "association" means the Indiana Insurance Guaranty Association created by section 5 of this chapter.

(3) The term "commissioner" means the commissioner of insurance of this state.

(4) The term "covered claim" means an unpaid claim which arises out of and is within the coverage and not in excess of the applicable limits of an insurance policy to which this chapter applies issued by an insurer, if the insurer becomes an insolvent insurer after the effective date (January 1, 1972) of this chapter and (a) the claimant or insured is a resident of this state at the time of the insured event or (b) the property from which the claim arises is permanently located in this state. "Covered claim" shall be limited as provided in section 7 of this chapter, and shall not include **the following:**

~~(1)~~ **(A)** Any amount due any reinsurer, insurer, insurance pool, or underwriting association, as subrogation recoveries or otherwise. However, a claim for any such amount, asserted against a person insured under a policy issued by an insurer which has become an insolvent insurer, which if it were not a claim by or for the benefit of a reinsurer, insurer, insurance pool or underwriting association, would be a "covered claim" may be filed directly with the receiver or liquidator of the insolvent insurer, but in no event may any such claim be asserted in any legal action against the insured of such insolvent insurer. ~~nor~~

~~(2)~~ **(B)** Any supplementary obligation including but not limited to adjustment fees and expenses, attorney fees and expenses, court costs, interest and bond premiums, whether arising as a policy benefit or otherwise, prior to the appointment of a liquidator. ~~nor~~

~~(3)~~ **(C)** Any unpaid claim that is ~~not both filed within one (1) year after an order of liquidation and permitted to share in~~

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~~liquidation distributions under IC 27-9-3-33 if the insolvent insurer is a domestic insurer or in accordance with the applicable provisions of the law of the state of domicile if the insolvent insurer is not a domestic insurer; nor~~ **filed with the association after the final date set by the court for the filing of claims against the liquidator or receiver of an insolvent insurer. For the purpose of filing a claim under this clause, notice of a claim to the liquidator of the insolvent insurer is considered to be notice to the association or the agent of the association and a list of claims must be periodically submitted to the association (or another state's association that is similar to the association) by the liquidator.**

~~(4) any claim by a person whose net worth at the time an insured event occurred was more than five million dollars ($5,000,000); nor~~

(D) A claim that is excluded under section 11.5 of this chapter due to the high net worth of an insured.

~~(5)~~ A ~~claim against a person insured by an insolvent insurer if the person's net worth at the time an insured event occurred was more than fifty million dollars ($50,000,000); nor~~

~~(6)~~ **(E)** Any claim by a person who directly or indirectly controls, is controlled, or is under common control with an insolvent insurer on December 31 of the year before the order of liquidation.

All covered claims filed in the liquidation proceedings shall be referred immediately to the association by the liquidator for processing as provided in this chapter.

(5) The term "high net worth insured" means the following:

(A) For purposes of section 11.5(a) of this chapter, an insured that has a net worth (including the aggregate net worth of the insured and all subsidiaries and affiliates of the insured, calculated on a consolidated basis) that exceeds twenty-five million dollars ($25,000,000) on December 31 of the year immediately preceding the year in which the insurer becomes an insolvent insurer.

(B) For purposes of section 11.5(b) of this chapter, an insured that has a net worth (including the aggregate net worth of the insured and all subsidiaries and affiliates of the insured, calculated on a consolidated basis) that exceeds fifty million dollars ($50,000,000) on December 31 of the year immediately preceding the year in which the insurer becomes an insolvent insurer.

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~~(5)~~ **(6)** The term "insolvent insurer" means (a) a member insurer holding a valid certificate of authority to transact insurance in this state either at the time the policy was issued or when the insured event occurred and (b) against whom a final order of liquidation, with a finding of insolvency, to which there is no further right of appeal, has been entered by a court of competent jurisdiction in the company's state of domicile. "Insolvent insurer" shall not be construed to mean an insurer with respect to which an order, decree, judgment or finding of insolvency whether preliminary or temporary in nature or order to rehabilitation or conservation has been issued by any court of competent jurisdiction prior to January 1, 1972 or which is adjudicated to have been insolvent prior to that date.

~~(6)~~ **(7)** The term "member insurer" means any person who is licensed or holds a certificate of authority under IC 27-1-6-18 or IC 27-1-17-1 to transact in Indiana any kind of insurance for which coverage is provided under section 3 of this chapter, including the exchange of reciprocal or inter-insurance contracts. The term includes any insurer whose license or certificate of authority to transact such insurance in Indiana may have been suspended, revoked, not renewed, or voluntarily surrendered. A "member insurer" does not include farm mutual insurance companies organized and operating pursuant to IC 27-5.1 other than a company to which IC 27-5.1-2-6 applies.

~~(7)~~ **(8)** The term "net direct written premiums" means direct gross premiums written in this state on insurance policies to which this chapter applies, less return premiums thereon and dividends paid or credited to policyholders on such direct business. "Net direct premiums written" does not include premiums on contracts between insurers or reinsurers.

~~(8)~~ **(9)** The term "person" means an individual, **an aggregation of individuals, a** corporation, ~~limited liability company,~~ **a** partnership, ~~reciprocal or inter-insurance exchange, association, or voluntary organization.~~ **or another entity.**

SECTION 3. IC 27-6-8-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 5. There is created a nonprofit unincorporated legal entity to be known as the Indiana Insurance Guaranty Association (referred to in this chapter as the "association"). All insurers defined as member insurers in section ~~4(6)~~ **4(7)** of this chapter shall be and remain members of the association as a condition of their authority to transact insurance in this state. The association shall perform its functions under a plan of operation established and

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approved under section 8 of this chapter and shall exercise its powers through a board of directors established under section 6 of this chapter. For purposes of administration and assessment, the association shall be divided into three (3) separate accounts:

(1) The worker's compensation insurance account.

(2) The automobile insurance account.

(3) The account for all other insurance to which this chapter applies.

SECTION 4. IC 27-6-8-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 6. (a) The board of directors of the association shall consist of nine (9) **persons serving terms as established in the association's plan of operation. The directors who represent** member insurers ~~one (1) of whom shall~~ **must** be selected by ~~or from among each of the following groups representative of~~ member insurers, ~~such selection to be~~ subject to the approval of the commissioner.

~~(1) One (1) person representing the American Insurance Association.~~

~~(2) One (1) person representing the Alliance of American Insurers.~~

~~(3) One (1) person representing the National Association of Independent Insurers.~~

~~(4) One (1) person representing the National Association of Mutual Insurance Companies.~~

~~(5) One (1) person representing the Insurance Institute of Indiana.~~

~~(6) Three (3) persons representing the:~~

~~(A) domestic stock companies;~~

~~(B) domestic mutual companies; or~~

~~(C) domestic reciprocal insurers;~~

~~with not more than two (2) persons representing any category.~~

~~(7) One (1) person representing independent unaffiliated stock, fire, and casualty companies to be appointed by the commissioner.~~

(b) Not more than one (1) member insurer in a group of insurers under the same management or ownership shall serve as a director at the same time.

(c) Directors shall serve such terms as shall be established in the plan of operation.

(d) Vacancies on the board shall be filled for the remaining period of the term in the same manner as the initial selection.

(e) If no directors are selected by March 1, 1972, the commissioner may appoint the initial members of the board of directors.

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(f) In approving selections to the board, the commissioner shall consider among other things whether all member insurers are fairly represented.

(g) Directors may be reimbursed from the assets of the association for expenses incurred by them as members of the board of directors.

SECTION 5. IC 27-6-8-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 7. (a) The association shall **do all of the following:**

~~(i)~~ **(1)** Be obligated to ~~the extent of the~~ **to pay** covered claims ~~as defined herein~~ existing ~~at the time of~~ **before** the order of liquidation, or arising within thirty (30) days after the order of liquidation, or before the policy expiration date if less than thirty (30) days after the ~~determination,~~ **order of liquidation,** or before the insured replaces the policy or causes its cancellation, if ~~he~~ **the insured** does so within thirty (30) days of the ~~determination. This~~ **order of liquidation. The** obligation shall ~~include only that amount of each covered claim which is less than one hundred thousand dollars ($100,000). In no event shall the association be obligated to a policyholder or~~ **be satisfied by paying to the** claimant ~~in~~ an amount ~~in excess of the applicable limits provided in the policy from which the claim arises, nor shall the association be obligated in an amount in excess of three hundred thousand dollars ($300,000) per policy for all claims arising out of one (1) occurrence. The~~ **as follows:**

(A) The full amount of a covered claim for benefits under worker's compensation insurance.

(B) With respect to a claim for the return of unearned premium, ~~is limited to~~ the lesser of:

(i) eighty percent (80%) of the paid but unearned premium; or

(ii) six hundred fifty dollars ($650) multiplied by the number of months or partial months remaining in the policy term, not to exceed twelve (12) months.

(C) An amount not to exceed three hundred thousand dollars ($300,000) per covered claim. For purposes of this clause, all claims of any kind that arise out of or are related to the bodily injury to or death of one (1) person constitute a single claim, regardless of the number of claims made or the number of claimants.

The association is not, in any event, obligated to pay a claimant any amount in excess of the obligation of the insolvent insurer under the policy or coverage from which the

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claim arises.

~~(1) In the case of claims arising from bodily injury, sickness, or disease, including death resulting therefrom, except claims under IC 22-3 or similar state or federal laws providing benefits for occupational injury or disease, the amount for which the association shall be obligated shall not exceed the claimant's reasonable expenses incurred for necessary medical, surgical, x-ray, and dental services, including prosthetic devices and necessary ambulance, hospital, professional nursing, and funeral services, and any amounts actually lost by reason of the claimant's inability to work and earn wages or salary or their equivalent that would otherwise have been earned in the normal course of such injured claimant's employment, to which may be added at the discretion of the association a sum not to exceed one thousand dollars ($1,000) for all other costs and expenses incurred by the claimant prior to the insolvency.~~ In the case of a claim for wrongful death, the foregoing obligation of the association shall, in addition to the limits set forth above, be subject to the limitations provided by the wrongful death statutes of the state. Such amounts which are legally payable because of the death of a claimant shall be paid to the claimant's estate, to the claimant's father or mother or guardian, to the surviving spouse or children, or to the next of kin as set out in IC 34-23-1 and IC 34-23-2.

The amount for which the association shall be obligated may also include payments in fact made to others, not members of claimant's household, which were reasonably incurred to obtain from such other persons ordinary and necessary services for the production of income in lieu of those services the claimant would have performed for ~~himself~~ **the claimant** had ~~he~~ **the claimant** not been injured.

In the case of claims arising from bodily injury, sickness, or disease, including those in which death results, under IC 22-3 or similar state or federal laws providing benefits for occupational injury or disease, the association is obligated only to the extent provided under IC 22-3.

~~(2)~~ A third party having a covered claim against any insured of an insolvent member insurer may file such claim in the liquidation proceeding under IC 27-9-3 if such insolvent member insurer is a domestic insurer and pursuant to the applicable provisions of law of the state of domicile if such insolvent member insurer is not a domestic insurer. The liquidator shall immediately refer said claim to the association to process as provided in this chapter

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unless the claimant shall within thirty (30) days from the date of filing said claim in the liquidation proceeding, file with the commissioner as liquidator a written demand that said claim be processed in liquidation proceedings as a claim not covered by this chapter.

~~(ii)~~ **(2)** Be deemed the insurer to the extent of its obligation on the covered claims as limited by this chapter and to this extent shall have all rights, duties, and obligations of the insolvent insurer as if the insurer had not become insolvent, including those relating to reinsurance contracts and treaties entered into by the insolvent insurer. However, the association's obligation to defend any insured of the insolvent insurer or to indemnity against the costs of such defense terminates as soon as the claimant or claimants have been paid all benefits that they are entitled to under this chapter.

~~(iii)~~ **(3)** Allocate claims paid and expenses incurred among the three (3) accounts separately, and assess member insurers separately for each account amounts necessary to pay the obligation of the association under ~~paragraph (i) of this subsection~~ **subdivision (1)** subsequent to an insolvency, the expenses of handling covered claims subsequent to an insolvency, the cost of examination under IC 27-6-8-12 and other expenses authorized by this chapter. The assessments of each member insurer shall be on a uniform percentage basis in the proportion that the net direct written premiums in this state of the member insurer for the preceding calendar year on the kinds of insurance in the account bears to the net direct written premiums of all member insurers for the preceding calendar year on the kinds of insurance in the account. However, in addition to the pro rata assessments already described, an assessment may be made against each member insurer in a stated amount up to fifty dollars ($50) per year for the purpose of paying the administrative expenses of the association. There shall be no assessment for any account so long as assets held in such account are sufficient to cover all estimated payments for liquidation in process under such account. Each member insurer shall be notified of the assessment not later than thirty (30) days before it is due. No member insurer may be assessed in any year on any account an amount greater than one percent (1%) of that member insurer's net direct written premiums in this state for the preceding calendar year on the kinds of insurance in the account. If the maximum assessment, together with the other assets of the association in any account, does not

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provide in any one (1) year in any account an amount sufficient to make all necessary payments from that account, the funds available shall be prorated and the unpaid portion shall be paid as soon thereafter as funds become available. The association may exempt or defer, in whole or in part, the assessment of any member insurer, if the assessment would cause the member insurer's financial statement to reflect amounts of capital or surplus less than the minimum amounts required for a certificate of authority by any jurisdiction in which the member insurer is authorized to transact insurance. However, during the period of deferment no dividends shall be paid to shareholders or policyholders by a company whose assessment has been deferred. A deferred assessment shall be paid when such payment will not reduce capital or surplus below required minimums. Such payments shall be refunded to those companies whose assessments were increased as the result of such deferment, or at the option of any such company, shall be credited to future assessments against such company.

~~(iv)~~ **(4)** Investigate, adjust, compromise, settle, and pay covered claims to the extent of the association's obligation and deny all other claims and may review settlements, releases, and judgments to which the insolvent insurer or its insured were parties to determine the extent to which such settlements, releases, and judgments may be properly contested, and as appropriate to contest them.

~~(v)~~ **(5)** Notify such persons as the commissioner directs under IC 27-6-8-9(b)(i).

~~(vi)~~ **(6)** Handle claims through its employees or through one (1) or more insurers or other persons designated as servicing facilities. Designation of a servicing facility is subject to the approval of the commissioner, but such designation may be declined by a member insurer.

~~(vii)~~ **(7)** Reimburse each servicing facility for obligations of the association paid by the facility and for expenses incurred by the facility while handling claims on behalf of the association and shall pay the other expenses of the association authorized by this chapter. Any unreimbursed obligation of the association to a member insurer designated a servicing facility shall constitute an admitted asset of such member insurer.

~~(viii)~~ **(8)** Be entitled to and permitted to examine all claims, files, and records of an insolvent insurer at such times and to such extent as necessary or appropriate to obtain information regarding

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covered claims individually and in the aggregate, and to establish such procedures as appropriate to obtain prompt notice of all covered claims and information pertaining thereto during the course of liquidation.

(b) The association may **do the following:**

~~(i)~~ **(1)** Appear in, defend, and appeal any action on a covered claim, but ~~it~~ **the association** shall have no obligation to pay any amount in excess of the provisions of IC 27-6-8-7.

~~(ii)~~ **(2)** Employ or retain such persons as are necessary to handle claims and perform other duties of the association.

~~(iii)~~ **(3)** Borrow funds necessary to effect the purposes of this chapter in accord with the plan of operation.

~~(iv)~~ **(4)** Sue or be sued.

~~(v)~~ **(5)** Negotiate and become a party to any contracts as are necessary to carry out the purpose of this chapter.

~~(vi)~~ **(6)** Perform such other acts as are necessary or proper to effectuate the purpose of this chapter.

~~(vii)~~ **(7)** Refund to the then member insurers in proportion to the contribution of each such member insurer to that account that amount by which the assets of the account exceed the liabilities if, at the end of the calendar year, the board of directors finds that the assets of the association in any account exceed the liabilities of that account as estimated by the board of directors for the coming year, provided that the association may retain as a reserve fund from the excess of the assets over liabilities at the end of any calendar year an amount not to exceed ten percent (10%) of such excess assets of such account. Any such reserve fund or earnings from its investment shall be used only for the payment of covered claims and authorized association expenses. Upon appropriate action by the board of directors such reserve fund shall be refunded to the then member insurers in proportion to the total contribution of each such member insurer to such account.

(c) The following apply with respect to an action involving the association:

(1) Except for an action by the receiver, an action related to or arising out of this chapter against the association must be brought in an Indiana court.

(2) Indiana courts have exclusive jurisdiction over all actions against the association related to or arising out of this chapter.

(3) The exclusive venue for an action by or against the association is in the Marion County Circuit Court, Marion

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County, Indiana. However, the association may waive this venue for a particular action.

SECTION 6. IC 27-6-8-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 8. (a)(i) The association shall submit to the commissioner a plan of operation and any amendments thereto necessary or suitable to assure the fair, reasonable, and equitable administration of the association. The plan of operation and amendments thereto shall become effective upon approval in writing by the commissioner.

(ii) If the association fails to submit a suitable plan of operation by March 31, 1972, or if at any time thereafter the association fails to submit suitable amendments to the plan, the commissioner shall, after notice and hearing, adopt and promulgate reasonable rules as are necessary or advisable to effectuate the provisions of this chapter. Such rules shall continue in force until modified by the commissioner or superseded by a plan submitted by the association and approved by the commissioner.

(b) All member insurers shall comply with the plan of operation.

(c) The plan of operation shall:

(i) Establish the procedures whereby all the powers and duties of the association under section 7 of this chapter will be performed.

(ii) Establish procedures for handling assets of the association.

(iii) Establish the amount and method of reimbursing members of the board of directors under section 6 of this chapter.

(iv) Establish procedures by which claims may be filed with the association by the liquidator and establish acceptable forms of proof of covered claims. Notice of claims to the receiver or liquidator of the insolvent insurer shall be deemed notice to the association or its agent and a list of these claims shall be periodically submitted to the association or similar organization in another state by the receiver or liquidator.

(v) Establish regular places and times for meetings of the board of directors.

(vi) Establish procedures for records to be kept of financial transactions of the association, its agents, and the board of directors.

(vii) Provide that any member insurer aggrieved by any final action or decision of the association may appeal to the commissioner within thirty (30) days after the action or decision.

(viii) Establish the procedures whereby selections for the board of directors will be submitted to the commissioner.

(ix) Contain additional provisions necessary or proper for the

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execution of the powers and duties of the association.

(d) The plan of operation may provide that any or all powers and duties of the association, except those under ~~section 7(a)(iii)~~ **sections 7(a)(3)** and ~~7(b)(iii)~~ **7(b)(3)** of this chapter, are delegated to a corporation, association, or other organization which performs or will perform functions similar to those of this association, or its equivalent, in two (2) or more states. Such a corporation, association, or organization shall be reimbursed as a servicing facility would be reimbursed and shall be paid for its performance of any other functions of the association. A delegation under this subsection shall take effect only with the approval of both the board of directors and the commissioner, and may be made only to a corporation, association, or organization which extends protection not substantially less favorable and effective than that provided by this chapter.

SECTION 7. IC 27-6-8-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 11. **(a) For purposes of this section, "coverage provided by any other insurance policy" includes:**

(1) coverage under an insured health plan, a health maintenance organization, a hospital plan corporation, a professional health service corporation, or a disability insurance policy; and

(2) any amount payable by or on behalf of a self-insurer.

However, the term does not include coverage under a life insurance policy.

~~(a)~~ **(b)** Any person having a claim against an insurer ~~under any provision in an insurance policy other than a policy of an insolvent insurer which is also a covered claim,~~ shall, **in accordance with subsection (c),** be required **first** to exhaust ~~first the person's right under the~~ **all coverage provided by any other insurance** policy, ~~Any amount payable on a~~ **including the right to a defense under the other insurance policy, if the claim under the other insurance policy arises from the same facts, injury, or loss that gave rise to the** covered claim **against the association** under this chapter. ~~shall be reduced by the amount of recovery under the insurance policy.~~

(c) The requirement to exhaust coverage provided by any other insurance policy under subsection (b):

(1) applies regardless of whether the other insurance policy is written by a member insurer; and

(2) does not apply to a right under a:

(A) policy written by an insolvent insurer; or

(B) life insurance policy.

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~~(b)~~ **(d)** Any person having a claim which may be recovered under more than one (1) insurance guaranty association or its equivalent shall seek recovery first from the association of the place of residence of the insured except that if it is a first party claim for damage to property with a permanent location, the person shall seek recovery first from the association of the location of the property, and if it is a worker's compensation claim, the person shall seek recovery first from the association of the residence of the claimant. Any recovery under this chapter shall be reduced by the amount of recovery from any other insurance guaranty association or its equivalent.

SECTION 8. IC 27-6-8-11.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: **Sec. 11.5. (a) The association is not obligated to pay a first party claim by a high net worth insured described in section 4(5)(A) of this chapter.**

(b) The association has the right to recover from a high net worth insured described in section 4(5)(B) of this chapter all amounts paid by the association to or on behalf of the high net worth insured, regardless of whether the amounts were paid for indemnity, defense, or otherwise.

(c) The association is not obligated to pay a claim that:

(1) would otherwise be a covered claim;

(2) is an obligation to or on behalf of a person who has a net worth greater than the net worth allowed by the insurance guaranty association law of the state of residence of the claimant at the time specified by the applicable law of the state of residence of the claimant; and

(3) has been denied by the association of the state of residence of the claimant on the basis described in subdivision (2).

(d) The association shall establish reasonable procedures, subject to the approval of the commissioner, for requesting financial information from insureds:

(1) on a confidential basis; and

(2) in the application of this section.

(e) The procedures established under subsection (d) must provide for sharing of the financial information obtained from insureds with:

(1) any other association that is similar to the association; and

(2) the liquidator for an insolvent insurer;

on the same confidential basis.

(f) If an insured refuses to provide financial information that is:

(1) requested under the procedures established under

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subsection (d); and

(2) available;

the association may, until the time that the financial information is provided to the association, consider the insured to be a high net worth insured for purposes of subsections (a) and (b).

(g) In an action contesting the applicability of this section to an insured that refuses to provide financial information under the procedures established under subsection (d), the insured bears the burden of proof concerning the insured's net worth at the relevant time. If the insured fails to prove that the insured's net worth at the relevant time was less than the applicable amount set forth in section 4(A)(5) or 4(A)(6) of this chapter, the court shall award to the association the association's full costs, expenses, and reasonable attorney's fees incurred in contesting the claim.

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COMMITTEE REPORT

Madam President: The Senate Committee on Insurance, to which was referred Senate Bill No. 431, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, between lines 16 and 17, begin a new line blocked left and insert:

"**The law of this chapter that applies to a member insurer described in subdivision (1) or to the association's obligations described in subdivision (2) is the law of this chapter as in effect before July 1, 2013, as if the amendments made to sections 4, 5, 6, 7, 8, 11, and 11.5 of this chapter during the 2013 regular session of the general assembly had not been made.**".

and when so amended that said bill do pass.

(Reference is to SB 431 as introduced.)

PAUL, Chairperson

Committee Vote: Yeas 8, Nays 0.

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