



Reprinted
February 5, 2013

SENATE BILL No. 431

DIGEST OF SB 431 (Updated February 4, 2013 2:37 pm - DI 84)

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.
February 4, 2013, read second time, amended, ordered engrossed.

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SB 431—LS 7066/DI 97+



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:

- 1 SECTION 1. IC 27-6-8-0.1, AS ADDED BY P.L.220-2011,
2 SECTION 432, IS AMENDED TO READ AS FOLLOWS
3 [EFFECTIVE JULY 1, 2013]: Sec. 0.1. **(a)** The amendments made to
4 sections 4 and 7 of this chapter by P.L.163-1988 apply to cases
5 involving an order of liquidation entered after June 30, 1988. For cases
6 involving an order of liquidation entered before July 1, 1988, the laws
7 that apply are sections 4 and 7 of this chapter, as in effect before July
8 1, 1988, as if P.L.163-1988 had not been enacted.
9 **(b) The amendments made to sections 4, 5, 6, 7, 8, 11, and 11.5**
10 **of this chapter during the 2013 regular session of the general**
11 **assembly do not apply to the following:**
12 **(1) A member insurer that has been placed under an order of**
13 **rehabilitation or liquidation before July 1, 2013.**
14 **(2) The association's obligations under this chapter with**
15 **respect to a covered claim filed by a claimant or member**
16 **insurer that has a coverage date before July 1, 2013.**
17 **The law of this chapter that applies to a member insurer described**

SB 431—LS 7066/DI 97+



1 in subdivision (1) or to the association's obligations described in
2 subdivision (2) is the law of this chapter as in effect before July 1,
3 2013, as if the amendments made to sections 4, 5, 6, 7, 8, 11, and
4 11.5 of this chapter during the 2013 regular session of the general
5 assembly had not been made.

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

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

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

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

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

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

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

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

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

13 (4) any claim by a person whose net worth at the time an
 14 insured event occurred was more than five million dollars
 15 (\$5,000,000); nor

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

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

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

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

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

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

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



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

14 (6) (7) The term "member insurer" means any person who is
 15 licensed or holds a certificate of authority under IC 27-1-6-18 or
 16 IC 27-1-17-1 to transact in Indiana any kind of insurance for
 17 which coverage is provided under section 3 of this chapter,
 18 including the exchange of reciprocal or inter-insurance contracts.
 19 The term includes any insurer whose license or certificate of
 20 authority to transact such insurance in Indiana may have been
 21 suspended, revoked, not renewed, or voluntarily surrendered. A
 22 "member insurer" does not include farm mutual insurance
 23 companies organized and operating pursuant to IC 27-5.1 other
 24 than a company to which IC 27-5.1-2-6 applies.

25 (7) (8) The term "net direct written premiums" means direct gross
 26 premiums written in this state on insurance policies to which this
 27 chapter applies, less return premiums thereon and dividends paid
 28 or credited to policyholders on such direct business. "Net direct
 29 premiums written" does not include premiums on contracts
 30 between insurers or reinsurers.

31 (8) (9) The term "person" means an individual, **an aggregation**
 32 **of individuals, a corporation, limited liability company, a**
 33 **partnership, reciprocal or inter-insurance exchange, association,**
 34 **or voluntary organization: or another entity.**

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



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

- 5 (1) The worker's compensation insurance account.
- 6 (2) The automobile insurance account.
- 7 (3) The account for all other insurance to which this chapter
 8 applies.

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

- 17 ~~(1) One (1) person representing the American Insurance~~
 18 ~~Association.~~
- 19 ~~(2) One (1) person representing the Alliance of American~~
 20 ~~Insurers.~~
- 21 ~~(3) One (1) person representing the National Association of~~
 22 ~~Independent Insurers.~~
- 23 ~~(4) One (1) person representing the National Association of~~
 24 ~~Mutual Insurance Companies.~~
- 25 ~~(5) One (1) person representing the Insurance Institute of Indiana.~~
- 26 ~~(6) Three (3) persons representing the:~~
 27 ~~(A) domestic stock companies;~~
 28 ~~(B) domestic mutual companies; or~~
 29 ~~(C) domestic reciprocal insurers;~~
 30 ~~with not more than two (2) persons representing any category.~~
- 31 ~~(7) One (1) person representing independent unaffiliated stock,~~
 32 ~~fire, and casualty companies to be appointed by the~~
 33 ~~commissioner.~~

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

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

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

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

SB 431—LS 7066/DI 97+



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

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

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

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

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

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

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

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

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

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

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1 **claim arises.**
 2 (1) In the case of claims arising from bodily injury, sickness, or
 3 disease, including death resulting therefrom, except claims under
 4 IC 22-3 or similar state or federal laws providing benefits for
 5 occupational injury or disease, the amount for which the
 6 association shall be obligated shall not exceed the claimant's
 7 reasonable expenses incurred for necessary medical, surgical,
 8 x-ray, and dental services, including prosthetic devices and
 9 necessary ambulance, hospital, professional nursing, and funeral
 10 services, and any amounts actually lost by reason of the claimant's
 11 inability to work and earn wages or salary or their equivalent that
 12 would otherwise have been earned in the normal course of such
 13 injured claimant's employment, to which may be added at the
 14 discretion of the association a sum not to exceed one thousand
 15 dollars (\$1,000) for all other costs and expenses incurred by the
 16 claimant prior to the insolvency. In the case of a claim for
 17 wrongful death, the foregoing obligation of the association shall,
 18 in addition to the limits set forth above, be subject to the
 19 limitations provided by the wrongful death statutes of the state.
 20 Such amounts which are legally payable because of the death of
 21 a claimant shall be paid to the claimant's estate, to the claimant's
 22 father or mother or guardian, to the surviving spouse or children,
 23 or to the next of kin as set out in IC 34-23-1 and IC 34-23-2.
 24 The amount for which the association shall be obligated may also
 25 include payments in fact made to others, not members of
 26 claimant's household, which were reasonably incurred to obtain
 27 from such other persons ordinary and necessary services for the
 28 production of income in lieu of those services the claimant would
 29 have performed for ~~himself~~ **the claimant** had ~~he~~ **the claimant** not
 30 been injured.
 31 In the case of claims arising from bodily injury, sickness, or
 32 disease, including those in which death results, under IC 22-3 or
 33 similar state or federal laws providing benefits for occupational
 34 injury or disease, the association is obligated only to the extent
 35 provided under IC 22-3.
 36 (2) A third party having a covered claim against any insured of an
 37 insolvent member insurer may file such claim in the liquidation
 38 proceeding under IC 27-9-3 if such insolvent member insurer is
 39 a domestic insurer and pursuant to the applicable provisions of
 40 law of the state of domicile if such insolvent member insurer is
 41 not a domestic insurer. The liquidator shall immediately refer said
 42 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 indemnify 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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1 provide in any one (1) year in any account an amount sufficient to
 2 make all necessary payments from that account, the funds
 3 available shall be prorated and the unpaid portion shall be paid as
 4 soon thereafter as funds become available. The association may
 5 exempt or defer, in whole or in part, the assessment of any
 6 member insurer, if the assessment would cause the member
 7 insurer's financial statement to reflect amounts of capital or
 8 surplus less than the minimum amounts required for a certificate
 9 of authority by any jurisdiction in which the member insurer is
 10 authorized to transact insurance. However, during the period of
 11 deferment no dividends shall be paid to shareholders or
 12 policyholders by a company whose assessment has been deferred.
 13 A deferred assessment shall be paid when such payment will not
 14 reduce capital or surplus below required minimums. Such
 15 payments shall be refunded to those companies whose
 16 assessments were increased as the result of such deferment, or at
 17 the option of any such company, shall be credited to future
 18 assessments against such company.

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

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

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

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

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

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

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

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

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

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

13 (iv) (4) Sue or be sued.

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

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

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

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

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

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

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

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1 **County, Indiana. However, the association may waive this**
2 **venue for a particular action.**
3 SECTION 6. IC 27-6-8-8 IS AMENDED TO READ AS FOLLOWS
4 [EFFECTIVE JULY 1, 2013]: Sec. 8. (a)(i) The association shall
5 submit to the commissioner a plan of operation and any amendments
6 thereto necessary or suitable to assure the fair, reasonable, and
7 equitable administration of the association. The plan of operation and
8 amendments thereto shall become effective upon approval in writing
9 by the commissioner.
10 (ii) If the association fails to submit a suitable plan of operation by
11 March 31, 1972, or if at any time thereafter the association fails to
12 submit suitable amendments to the plan, the commissioner shall, after
13 notice and hearing, adopt and promulgate reasonable rules as are
14 necessary or advisable to effectuate the provisions of this chapter. Such
15 rules shall continue in force until modified by the commissioner or
16 superseded by a plan submitted by the association and approved by the
17 commissioner.
18 (b) All member insurers shall comply with the plan of operation.
19 (c) The plan of operation shall:
20 (i) Establish the procedures whereby all the powers and duties of
21 the association under section 7 of this chapter will be performed.
22 (ii) Establish procedures for handling assets of the association.
23 (iii) Establish the amount and method of reimbursing members of
24 the board of directors under section 6 of this chapter.
25 (iv) Establish procedures by which claims may be filed with the
26 association by the liquidator and establish acceptable forms of
27 proof of covered claims. Notice of claims to the receiver or
28 liquidator of the insolvent insurer shall be deemed notice to the
29 association or its agent and a list of these claims shall be
30 periodically submitted to the association or similar organization
31 in another state by the receiver or liquidator.
32 (v) Establish regular places and times for meetings of the board
33 of directors.
34 (vi) Establish procedures for records to be kept of financial
35 transactions of the association, its agents, and the board of
36 directors.
37 (vii) Provide that any member insurer aggrieved by any final
38 action or decision of the association may appeal to the
39 commissioner within thirty (30) days after the action or decision.
40 (viii) Establish the procedures whereby selections for the board of
41 directors will be submitted to the commissioner.
42 (ix) Contain additional provisions necessary or proper for the

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1 execution of the powers and duties of the association.

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

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

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

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

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

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

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

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

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

41 **(A) policy written by an insolvent insurer; or**

42 **(B) life insurance policy.**



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

11 SECTION 8. IC 27-6-8-11.5 IS ADDED TO THE INDIANA CODE
 12 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 13 1, 2013]: **Sec. 11.5. (a) The association is not obligated to pay a first
 14 party claim by a high net worth insured described in section
 15 4(5)(A) of this chapter.**

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

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

- 22 (1) **would otherwise be a covered claim;**
- 23 (2) **is an obligation to or on behalf of a person who has a net
 24 worth greater than the net worth allowed by the insurance
 25 guaranty association law of the state of residence of the
 26 claimant at the time specified by the applicable law of the
 27 state of residence of the claimant; and**
- 28 (3) **has been denied by the association of the state of residence
 29 of the claimant on the basis described in subdivision (2).**

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

- 33 (1) **on a confidential basis; and**
- 34 (2) **in the application of this section.**

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

- 38 (1) **any other association that is similar to the association; and**
 - 39 (2) **the liquidator for an insolvent insurer;**
- 40 **on the same confidential basis.**

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

- 42 (1) **requested under the procedures established under**

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1 subsection (d); and
2 (2) available;
3 the association may, until the time that the financial information is
4 provided to the association, consider the insured to be a high net
5 worth insured for purposes of subsections (a) and (b).
6 (g) In an action contesting the applicability of this section to an
7 insured that refuses to provide financial information under the
8 procedures established under subsection (d), the insured bears the
9 burden of proof concerning the insured's net worth at the relevant
10 time. If the insured fails to prove that the insured's net worth at the
11 relevant time was less than the applicable amount set forth in
12 section 4(5)(A) or 4(5)(B) of this chapter, the court shall award to
13 the association the association's full costs, expenses, and reasonable
14 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.

 SENATE MOTION

Madam President: I move that Senate Bill 431 be amended to read as follows:

Page 3, line 18, strike "A".

Page 6, line 9, after "of the" delete "to".

Page 12, line 3, reset in roman "section".

Page 12, line 3, delete "sections".

Page 14, line 12, delete "4(A)(5) or 4(A)(6)" and insert "**4(5)(A) or 4(5)(B)**".

(Reference is to SB 431 as printed January 25, 2013.)

PAUL

