

IC 27-6-8

Chapter 8. Property and Casualty Insurance and Guaranty Association Law

IC 27-6-8-0.1

Application of certain amendments to chapter

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.

As added by P.L.220-2011, SEC.432. Amended by P.L.52-2013, SEC.1.

IC 27-6-8-1

Short title

Sec. 1. (Short Title) This chapter may be cited as the "Indiana Insurance Guaranty Association Law of 1971."

(Formerly: Acts 1971, P.L.390, SEC.1.)

IC 27-6-8-2

Purpose

Sec. 2. (Purpose) The purpose of this chapter is to provide a mechanism for the payment of claims under certain insurance policies to avoid excessive delay in payment and to avoid excessive financial loss to claimants or policyholders because of the insolvency of an insurer, to assist in the detection and prevention of insurer insolvencies, and to provide an association to assess the cost of this protection among insurers.

(Formerly: Acts 1971, P.L.390, SEC.1.)

IC 27-6-8-3

Scope

Sec. 3. This chapter applies to all kinds of direct insurance except:

(1) life, annuity, health, or disability insurance;

- (2) mortgage guaranty, financial guaranty, or other forms of insurance offering protection against investment risks;
 - (3) fidelity or surety bonds, or any other bonding obligations;
 - (4) credit insurance, vendors' single interest insurance, or collateral protection insurance or similar insurance with the primary purpose of protecting the interests of a creditor arising out of a creditor-debtor transaction;
 - (5) warranty or service contract insurance;
 - (6) title insurance;
 - (7) ocean marine insurance;
 - (8) a transaction between a person or an affiliate of a person and an insurer or an affiliate of an insurer that involves the transfer of investment or credit risk without a transfer of insurance risk;
 - (9) insurance provided by or guaranteed by a government entity;
- and
- (10) insurance written on a retroactive basis to cover known losses for which a claim has already been made and the claim is known to the insurer at the time the insurance is bound.

(Formerly: Acts 1971, P.L.390, SEC.1.) As amended by P.L.163-1988, SEC.1; P.L.31-1988, SEC.20.

IC 27-6-8-4

Definitions

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:
 - (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.

(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.

(C) Any unpaid claim that is 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.

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

(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.

(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.

(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.

(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.

(9) The term "person" means an individual, an aggregation of individuals, a corporation, a partnership, or another entity.

(Formerly: Acts 1971, P.L.390, SEC.1; Acts 1973, P.L.279, SEC.1.) As amended by Acts 1977, P.L.281, SEC.5; P.L.163-1988, SEC.2; P.L.8-1993, SEC.422; P.L.255-1995, SEC.7; P.L.129-2003, SEC.12; P.L.52-2013, SEC.2.

IC 27-6-8-5

Creation of the association

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(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 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.

(Formerly: Acts 1971, P.L.390, SEC.1.) As amended by P.L.252-1985, SEC.221; P.L.28-1988, SEC.83; P.L.52-2013, SEC.3.

IC 27-6-8-6

Board of directors

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 must be selected by member insurers, subject to the approval of 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.

(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. *(Formerly: Acts 1971, P.L.390, SEC.1.) As amended by P.L.252-1985, SEC.222; P.L.233-1999, SEC.6 and P.L.268-1999, SEC.16; P.L.52-2013, SEC.4.*

IC 27-6-8-7

Powers and duties of the association

Sec. 7. (a) The association shall do all of the following:

(1) Be obligated to pay covered claims existing 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 order of liquidation, or before the insured replaces the policy or causes its cancellation, if the insured does so within thirty (30) days of the order of liquidation. The obligation shall be satisfied by paying to the claimant an amount 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, 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 claim arises.

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 the claimant had 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.

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 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.

(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.

(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 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 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.

(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.

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

(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.

(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.

(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 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:

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

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

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

(4) Sue or be sued.

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

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

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

*(Formerly: Acts 1971, P.L.390, SEC.1; Acts 1975, P.L.280, SEC.2.)
As amended by Acts 1977, P.L.281, SEC.6; P.L.163-1988, SEC.3;
P.L.3-1990, SEC.95; P.L.1-1998, SEC.150; P.L.52-2013, SEC.5.*

IC 27-6-8-8

Plan of operation

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 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)(3) and 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.

(Formerly: Acts 1971, P.L.390, SEC.1.) As amended by P.L.252-1985, SEC.223; P.L.52-2013, SEC.6.

IC 27-6-8-9

Powers and duties of commissioner

Sec. 9. (a) The commissioner shall:

(i) Notify the association of the existence of an insolvent insurer not later than three (3) working days after the commissioner receives an order of liquidation.

(ii) Upon request of the board of directors, provide the association with a statement of the net direct written premiums of each member insurer.

(b) The commissioner may:

(i) Require that the association notify the insureds of the insolvent insurer and any other interested parties of the order of liquidation and of their rights under this chapter. This notification shall be by mail at their last known address, where available, but if sufficient information for notification by mail is not available, notice by publication in a newspaper of general circulation in all counties in which the insolvent insurer transacted insurance business shall be sufficient.

(ii) Require each insurance producer of the insolvent insurer to give prompt written notice by first class mail of such insolvency and the rights of the insured under this chapter to each insured of the insolvent insurer for whom the insurance producer is insurance producer of record, at such insured's last known address.

(iii) Suspend or revoke, after notice and hearing, the certificate of authority to transact insurance in this state of any member insurer which fails to pay an assessment when due or fails to comply with the plan of operation. As an alternative, the commissioner may levy a fine on any member insurer which fails to pay an assessment when due. The fine shall not exceed five percent (5%) of the unpaid assessment per month, except

that no fine shall be less than one hundred dollars (\$100) per month.

(iv) Revoke the designation of any servicing facility if the commissioner finds claims are being handled unsatisfactorily.

(v) Any final action or order of the commissioner under this chapter shall be subject to judicial review in a court of competent jurisdiction.

(Formerly: Acts 1971, P.L.390, SEC.1.) As amended by P.L.163-1988, SEC.4; P.L.178-2003, SEC.41.

IC 27-6-8-10

Effect of paid claims

Sec. 10. (Effect of Paid Claims) (a) Any person recovering under this chapter shall be deemed to have assigned the person's rights under the policy to the association to the extent of the person's recovery from the association. Every insured or claimant seeking the protection of this chapter shall cooperate with the association to the same extent as the person would have been required to cooperate with the insolvent insurer. The association shall have no cause of action against the insured of the insolvent insurer for any sums it has paid out except such causes of action as the insolvent insurer would have had if such sums had been paid by the insolvent insurer. In the case of an insolvent insurer operating on a plan with assessment liability, payments of claims of the association shall not operate to reduce the liability of insureds to the receiver, liquidator, or statutory successor for unpaid assessments previously made and no assessment shall be thereafter made for the purpose of reimbursing the association.

(b) The receiver, liquidator, or statutory successor of an insolvent insurer shall be bound by settlements of covered claims by the association or a similar organization in another state functioning pursuant to IC 27-6-8-8(d). The court having jurisdiction shall grant such claims priority equal to that which the claimant would have been entitled in the absence of this chapter against the assets of the insolvent insurer. The expenses of the association or similar organization in handling claims shall be accorded the same priority as the liquidator's expenses.

(c) The association shall periodically file with the receiver or liquidator of the insolvent insurer statements of the covered claims paid by the association and estimates of anticipated claims on the association which shall preserve the rights of the association against the assets of the insolvent insurer.

(d) The association shall have a right to recover from the insurance producer of record any part of the paid claim for unearned premium that represents unearned commission to the insurance producer.

(Formerly: Acts 1971, P.L.390, SEC.1.) As amended by Acts 1977, P.L.281, SEC.7; P.L.178-2003, SEC.42.

IC 27-6-8-11

Nonduplication of recovery

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.

(b) Any person having a claim against an insurer shall, in accordance with subsection (c), be required first to exhaust all coverage provided by any other insurance policy, 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.

(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.

(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.

(Formerly: Acts 1971, P.L.390, SEC.1.) As amended by P.L.28-1988, SEC.84; P.L.52-2013, SEC.7.

IC 27-6-8-11.5

High net worth insureds; financial information

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 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(5)(A) or 4(5)(B) 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.

As added by P.L.52-2013, SEC.8.

IC 27-6-8-12

Prevention of insolvencies

Sec. 12. To aid in the detection and prevention of insurer insolvencies:

(1) Every member insurer shall file with the National Association of Insurance Commissioners for use in their Early Warning System on or before March 1, of each year a financial statement of the same type and content as required by IC 27-1-20-21.

(2) It shall be the duty of the commissioner:

(A) To notify the commissioners of all of the other states, territories of the United States, and the District of Columbia in which a member insurer is licensed to do business when he takes any of the following actions against a member insurer:

(i) revocation of license;

(ii) suspension of license;
(iii) makes any formal order that such company restrict its premium writing, obtain additional contributions to surplus, withdraw from the state, reinsure all or any part of its business, or an increase in capital, surplus, or any other account for the security of policyholders or creditors. Such notice shall be mailed to all commissioners within thirty (30) days following the action taken or the date on which such action occurs.

(B) To report to the board of directors when he has taken any of the actions set forth in (A) of this paragraph or has received a report from any other commissioner indicating that any such action has been taken in another state. Such report to the board of directors shall contain all significant details of the action taken or the report received from another commissioner.

(C) To report to the board of directors when he has reasonable cause to believe from any examination, whether completed or in process, of any member company, that such company may be insolvent or in a financial condition hazardous to the policyholders or the public.

(3) The commissioner may seek the advice and recommendations of the board of directors concerning any matter affecting his duties and responsibilities regarding the financial condition of member companies and companies seeking admission to transact insurance business in this state.

(4) The board of directors may, upon majority vote, make reports and recommendations to the commissioner upon any matter germane to the solvency, liquidation, rehabilitation, or conservation of any member insurer or germane to the solvency of any company seeking to do an insurance business in this state. Such reports and recommendations shall not be considered public documents.

(5) The board of directors may, upon majority vote, request that the commissioner order an examination of any member insurer which the board in good faith believes may be in a financial condition hazardous to the policyholders or the public. Within thirty (30) days of the receipt of such request, the commissioner shall begin such examination. The examination may be conducted as a National Association of Insurance Commissioners examination or may be conducted by such persons as the commissioner designates provided such persons are qualified insurance accountants or actuaries. The cost of such examination shall be paid by the association and the examination report shall be treated as are other examination reports. In no event shall such examination report be released to the board of directors prior to its release to the public, but this shall not preclude the commissioner from complying with subsection (1). The commissioner shall notify the board of directors when the examination is completed. The request for an

examination shall be kept on file by the commissioner but it shall not be open to public inspection prior to the release of the examination report to the public.

(6) The board of directors may, upon majority vote, make recommendations to the commissioner for the detection and prevention of insurer insolvencies.

(Formerly: Acts 1971, P.L.390, SEC.1.) As amended by Acts 1977, P.L.281, SEC.8; P.L.163-1988, SEC.5.

IC 27-6-8-13

Examination of the association

Sec. 13. (Examination of the Association) The Association shall be subject to examination and regulation by the commissioner. The board of directors shall submit, not later than March 30th of each year, a financial report for the preceding calendar year in a form approved by the commissioner.

(Formerly: Acts 1971, P.L.390, SEC.1.)

IC 27-6-8-14

Tax exemption

Sec. 14. (Tax Exemption) The association shall be exempt from payment of all fees and all taxes levied by this state or any of its subdivisions except taxes levied on real or personal property.

(Formerly: Acts 1971, P.L.390, SEC.1.)

IC 27-6-8-15

Recoupment of assessments; tax credits

Sec. 15. (a) Member insurers, which during any preceding calendar year shall have paid one (1) or more assessments levied pursuant to section 7 of this chapter, shall be allowed a credit against premium taxes, adjusted gross income taxes, or any combination thereof upon revenue or income of member insurers which may be imposed by the state, up to twenty percent (20%) of the assessment described in section 7 of this chapter for each calendar year following the year the assessment was paid until the aggregate of all assessments paid to the guaranty association shall have been offset by either credits against such taxes or refunds from the association. The provisions herein are applicable to all assessments levied after the passage of this article.

(b) To the extent a member insurer elects not to utilize the tax credits authorized by subsection (a), the member insurer may utilize the provisions of subsection (c) as a secondary method of recoupment.

(c) The rates and premiums charged for insurance policies to which this chapter applies shall include amounts sufficient to recoup a sum equal to the amounts paid to the association by the member insurer less any amounts returned to the member insurer by the association and the rates shall not be deemed excessive because they contain an amount reasonably calculated to recoup assessments paid by the member insurer.

(Formerly: Acts 1971, P.L.390, SEC.1.) As amended by Acts 1977, P.L.281, SEC.9; P.L.163-1986, SEC.1; P.L.192-2002(ss), SEC.167.

IC 27-6-8-16

Immunity

Sec. 16. (Immunity) There shall be no liability on the part of and no cause of action of any nature shall arise against any member insurer, the association or its agents or employees, the board of directors, or the commissioner or his representatives for any action taken by them in the performance of their powers and duties under this chapter.

(Formerly: Acts 1971, P.L.390, SEC.1.)

IC 27-6-8-17

Stay of proceedings; reopening of default judgments

Sec. 17. (Stay of Proceedings; Reopening of Default Judgments) All proceedings in which the insolvent insurer is a party or is obligated to defend a party in court in this state shall be stayed for up to six (6) months and such additional time thereafter as may be determined by the court from the date the insolvency is determined or an ancillary proceeding is instituted in the state whichever is later to permit proper defense by the association of all pending causes of action. As to any covered claims arising from a judgment under any decision, verdict or finding based on the default of the insolvent insurer or its failure to defend an insured, the association either on its own behalf or on behalf of such insured may apply to have the judgment, order, decision, verdict or finding set aside by the same court or administrator that made the judgment, order, decision, verdict or findings and shall be permitted to defend against the claim on the merits.

(Formerly: Acts 1971, P.L.390, SEC.1; Acts 1973, P.L.279, SEC.2.)

IC 27-6-8-18

Records of insolvent insurers; access; copies

Sec. 18. The liquidator, receiver, or statutory successor of an insolvent insurer covered by this chapter shall permit access by the board or its authorized representative to such of the insolvent insurers records which are necessary for the board in carrying out its functions under this chapter with regard to covered claims. In addition, the liquidator, receiver, or statutory successor shall provide the board or its representative with copies of such records upon the request by the board and at the expense of the board.

(Formerly: Acts 1971, P.L.390, SEC.1; Acts 1973, P.L.279, SEC.3.)

IC 27-6-8-19

Advertising

Sec. 19. No person, including an insurer, insurance producer, or affiliate of an insurer, shall make, publish, disseminate, circulate, or place before the public, or cause, directly or indirectly, to be made, published, disseminated, circulated or placed before the public, in

any newspaper, magazine or other publication, or in the form of a notice, circular, pamphlet, letter or poster, or over any radio station or television station, or in any other way, any advertisement, announcement or statement which uses the existence of the insurance guaranty association of this state for the purpose of sales, solicitation, or inducement to purchase any form of insurance covered by the Indiana insurance guaranty association law. However, this section does not apply to Indiana insurance guaranty association or to any other entity which does not sell or solicit insurance.

(Formerly: Acts 1973, P.L.279, SEC.4.) As amended by Acts 1977, P.L.281, SEC.10; P.L.178-2003, SEC.43.