



February 10, 2017

SENATE BILL No. 233

DIGEST OF SB 233 (Updated February 9, 2017 11:18 am - DI 97)

Citations Affected: IC 27-2.

Synopsis: Innocent coinsured. Defines "innocent coinsured". Prohibits certain actions by a property or casualty insurer with respect to property loss to the primary residence of an innocent coinsured unless those actions are otherwise allowed by law and applied to other insureds regardless of whether the other insureds are innocent coinsured. Specifies that the claim payment amount is the greater of the actual cost of repairs or the maximum limit of coverage. Provides for claim payment reduction based on factors including the innocent coinsured's ownership interest, mortgage or other lienholder payments, and the amount of property loss as a percentage of available insurance. Allows application of reasonable standards to rebut assertions that an insured is an innocent coinsured. Preserves subrogation rights under a policy of property or casualty insurer.

Effective: July 1, 2017.

Crider, Mrvan

January 9, 2017, read first time and referred to Committee on Insurance and Financial Institutions.
February 9, 2017, amended, reported favorably — Do Pass.

SB 233—LS 6852/DI 97



February 10, 2017

First Regular Session 120th General Assembly (2017)

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 2016 Regular Session of the General Assembly.

SENATE BILL No. 233

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 27-2-24 IS ADDED TO THE INDIANA CODE AS
2 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2017]:

4 **Chapter 24. Coverage With Innocent Coinsured**

5 **Sec. 1. This chapter applies to a policy of property or casualty**
6 **insurance that is entered into, amended, or renewed after June 30,**
7 **2017.**

8 **Sec. 2. As used in this chapter, "authorized agency" means the**
9 **following:**

10 (1) **The state fire marshal or a fire department acting under**
11 **IC 36-8-17.**

12 (2) **The superintendent of the state police.**

13 (3) **The prosecuting attorney responsible for prosecutions in**
14 **the county where damage to property occurs.**

15 (4) **The attorney general.**

16 (5) **An officer of a unit of local government whose duties**
17 **include the investigation of arson where damage to property**

SB 233—LS 6852/DI 97



- 1 occurs.
- 2 **Sec. 3. As used in this chapter, "available insurance proceeds"**
- 3 **means:**
- 4 (1) the proceeds payable under a policy of property or
- 5 casualty insurance:
- 6 (A) to an innocent coinsured; and
- 7 (B) based on a claim for property loss to the innocent
- 8 coinsured's primary residence; minus
- 9 (2) proceeds already paid under the policy of property or
- 10 casualty insurance to:
- 11 (A) the innocent coinsured for:
- 12 (i) emergency living expenses;
- 13 (ii) emergency action necessary to secure the premises of
- 14 the primary residence; and
- 15 (iii) action necessary to prevent further damage to the
- 16 premises of the primary residence; and
- 17 (B) a lienholder or mortgagee who is not under
- 18 investigation by an authorized agency;
- 19 in connection with the property loss described in subdivision
- 20 (1).
- 21 **Sec. 4. (a) As used in this chapter, "final settlement" means a**
- 22 **determination:**
- 23 (1) of the amount owed to an innocent coinsured by an
- 24 insurer:
- 25 (A) under the building coverage part of a policy of
- 26 property or casualty insurance; and
- 27 (B) for property loss to the innocent coinsured's primary
- 28 residence; and
- 29 (2) made by any of the following methods:
- 30 (A) Acceptance of a proof of loss by the insurer.
- 31 (B) Execution of a release by the innocent coinsured.
- 32 (C) Acceptance of an arbitration award by the innocent
- 33 coinsured and the insurer.
- 34 (D) Judgment of a court of competent jurisdiction.
- 35 (b) The term "final settlement" does not apply to damage or loss
- 36 related to contents, personal property, or another loss that is not
- 37 covered under the building coverage part of a policy of property or
- 38 casualty insurance.
- 39 **Sec. 5. As used in this chapter, "innocent coinsured" means an**
- 40 **individual who:**
- 41 (1) is insured under a policy of property or casualty
- 42 insurance;



- 1 **(2) did not have knowledge of, cooperate in, or intentionally**
- 2 **contribute to a property loss that was caused or arranged by**
- 3 **another individual who:**
- 4 **(A) is also insured under the policy of property or casualty**
- 5 **insurance; and**
- 6 **(B) either:**
- 7 **(i) died; or**
- 8 **(ii) has been charged with a crime based on a court**
- 9 **finding that there is probable cause to believe that the**
- 10 **individual committed the crime;**
- 11 **in connection with the circumstances that caused the**
- 12 **property loss;**
- 13 **(3) signs a sworn affidavit attesting that the individual did not**
- 14 **have knowledge of, cooperate in, or intentionally contribute**
- 15 **to the property loss; and**
- 16 **(4) cooperates in:**
- 17 **(A) the investigation and resolution of the claim for the**
- 18 **property loss;**
- 19 **(B) any police investigation related to the property loss;**
- 20 **and**
- 21 **(C) any criminal prosecution of the individual that caused**
- 22 **or arranged the property loss.**
- 23 **Sec. 6. As used in this chapter, "insurer" means an insurance**
- 24 **company that issues or delivers a policy of property or casualty**
- 25 **insurance.**
- 26 **Sec. 7. As used in this chapter, "property or casualty insurance"**
- 27 **means a type of insurance described in Class 2 and Class 3 of**
- 28 **IC 27-1-5-1. However, the term does not mean insurance described**
- 29 **in Class 2(a) of IC 27-1-5-1.**
- 30 **Sec. 8. (a) An insurer may not deny, exclude, or limit payment**
- 31 **of a claim made:**
- 32 **(1) by an innocent coinsured;**
- 33 **(2) for coverage of a property loss to the primary residence of**
- 34 **the innocent coinsured; and**
- 35 **(3) under a policy of property or casualty insurance;**
- 36 **unless the denial, exclusion, or limitation of payment is otherwise**
- 37 **allowed by law and applied to the innocent coinsured in the same**
- 38 **manner and to the same extent as the denial, exclusion, or**
- 39 **limitation of payment is applied by the insurer to all other**
- 40 **insureds, regardless of whether an insured is an innocent**
- 41 **coinsured.**
- 42 **(b) An insurer shall pay the following on a claim described in**



- 1 subsection (a):
- 2 (1) The actual cost of repair or replacement of the property
- 3 that is the subject of the claim if the actual cost of repair or
- 4 replacement is less than or equal to the maximum limit of
- 5 coverage under the policy of property or casualty insurance.
- 6 (2) The maximum limit of coverage under the policy of
- 7 property or casualty insurance if the actual cost of repair or
- 8 replacement of the property that is the subject of the claim is
- 9 greater than the maximum limit of coverage under the policy
- 10 of property or casualty insurance.
- 11 (c) This section does not require an insurer to make payment on
- 12 a claim described in subsection (a) in an amount that is greater
- 13 than the amount applicable to the part of the damaged property to
- 14 which the innocent coinsured is entitled under a decree of
- 15 dissolution of marriage between the innocent coinsured and the
- 16 individual described in section 5(2) of this chapter.
- 17 (d) This section does not require an insurer to do the following:
- 18 (1) Make payment to an innocent coinsured on a claim
- 19 described in subsection (a) in an amount that exceeds:
- 20 (A) the innocent coinsured's ownership interest in the
- 21 property; minus
- 22 (B) any payment by the insurer to a mortgagee or another
- 23 lienholder with a secured interest in the property.
- 24 (2) Make payment to another coinsured for the part of a loss
- 25 for which the insurer has already made payment to the
- 26 innocent coinsured.
- 27 **Sec. 9. An insurer may not:**
- 28 (1) refuse to renew;
- 29 (2) refuse to issue; or
- 30 (3) add a surcharge or rating factor to a premium for;
- 31 a policy of property or casualty insurance solely on the basis that
- 32 an insured or a prospective insured under the policy of property or
- 33 casualty insurance has been an innocent coinsured.
- 34 **Sec. 10. This chapter does not require an insurer that issued a**
- 35 **policy of property or casualty insurance to pay a claim to an**
- 36 **innocent coinsured if the final settlement for the property loss is**
- 37 **less than sixty percent (60%) of available insurance proceeds**
- 38 **under the policy.**
- 39 **Sec. 11. This chapter does not prohibit an insurer from**
- 40 **application of reasonable standards of proof to rebut an assertion**
- 41 **that an individual meets the requirements to be considered an**
- 42 **innocent coinsured under section 5 of this chapter.**



1 **Sec. 12. This chapter does not affect an insurer's right of**
2 **subrogation under a policy of property or casualty insurance to**
3 **recover payments made from the person that is responsible for the**
4 **property loss.**



COMMITTEE REPORT

Madam President: The Senate Committee on Insurance and Financial Institutions, to which was referred Senate Bill No. 233, 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, line 8, after "2." insert **"As used in this chapter, "authorized agency" means the following:**

- (1) The state fire marshal or a fire department acting under IC 36-8-17.
- (2) The superintendent of the state police.
- (3) The prosecuting attorney responsible for prosecutions in the county where damage to property occurs.
- (4) The attorney general.
- (5) An officer of a unit of local government whose duties include the investigation of arson where damage to property occurs.

Sec. 3. As used in this chapter, "available insurance proceeds" means:

- (1) the proceeds payable under a policy of property or casualty insurance:
 - (A) to an innocent coinsured; and
 - (B) based on a claim for property loss to the innocent coinsured's primary residence; minus
- (2) proceeds already paid under the policy of property or casualty insurance to:
 - (A) the innocent coinsured for:
 - (i) emergency living expenses;
 - (ii) emergency action necessary to secure the premises of the primary residence; and
 - (iii) action necessary to prevent further damage to the premises of the primary residence; and
 - (B) a lienholder or mortgagee who is not under investigation by an authorized agency;
 in connection with the property loss described in subdivision (1).

Sec. 4. (a) As used in this chapter, "final settlement" means a determination:

- (1) of the amount owed to an innocent coinsured by an insurer:
 - (A) under the building coverage part of a policy of property or casualty insurance; and



- (B) for property loss to the innocent coinsured's primary residence; and
- (2) made by any of the following methods:
- (A) Acceptance of a proof of loss by the insurer.
- (B) Execution of a release by the innocent coinsured.
- (C) Acceptance of an arbitration award by the innocent coinsured and the insurer.
- (D) Judgment of a court of competent jurisdiction.

(b) The term "final settlement" does not apply to damage or loss related to contents, personal property, or another loss that is not covered under the building coverage part of a policy of property or casualty insurance.

Sec. 5."

Page 1, line 12, delete "cooperate in" and insert "**have knowledge of, cooperate in,**".

Page 2, line 7, after "not" insert "**have knowledge of,**".

Page 2, line 8, after "in" insert ",".

Page 2, line 17, delete "3." and insert "**6.**".

Page 2, line 20, delete "4." and insert "**7.**".

Page 2, line 24, delete "5. (a) Except as provided in subsection (b), an" and insert "**8. (a) An**".

Page 2, line 27, delete ";" and insert "**to the primary residence of the innocent coinsured;**".

Page 2, line 28, delete "." and insert ";
unless the denial, exclusion, or limitation of payment is otherwise allowed by law and applied to the innocent coinsured in the same manner and to the same extent as the denial, exclusion, or limitation of payment is applied by the insurer to all other insureds, regardless of whether an insured is an innocent coinsured.".

Page 2, delete lines 29 through 38, begin a new paragraph and insert:

"(b) An insurer shall pay the following on a claim described in subsection (a):

- (1) **The actual cost of repair or replacement of the property that is the subject of the claim if the actual cost of repair or replacement is less than or equal to the maximum limit of coverage under the policy of property or casualty insurance.**
- (2) **The maximum limit of coverage under the policy of property or casualty insurance if the actual cost of repair or replacement of the property that is the subject of the claim is greater than the maximum limit of coverage under the policy**



of property or casualty insurance."

Page 2, line 39, delete "(2) Make any", begin a new paragraph and insert:

"(c) This section does not require an insurer to make".

Page 2, line 39, after "(a)" insert **"in an amount"**.

Page 3, line 2, delete "2(2)" and insert **"5(2)"**.

Page 3, between lines 2 and 3, begin a new paragraph and insert:

"(d) This section does not require an insurer to do the following:

(1) Make payment to an innocent coinsured on a claim described in subsection (a) in an amount that exceeds:

(A) the innocent coinsured's ownership interest in the property; minus

(B) any payment by the insurer to a mortgagee or another lienholder with a secured interest in the property.

(2) Make payment to another coinsured for the part of a loss for which the insurer has already made payment to the innocent coinsured."

Page 3, line 3, delete "6." and insert **"9."**

Page 3, after line 9, begin a new paragraph and insert:

"Sec. 10. This chapter does not require an insurer that issued a policy of property or casualty insurance to pay a claim to an innocent coinsured if the final settlement for the property loss is less than sixty percent (60%) of available insurance proceeds under the policy.

Sec. 11. This chapter does not prohibit an insurer from application of reasonable standards of proof to rebut an assertion that an individual meets the requirements to be considered an innocent coinsured under section 5 of this chapter.

Sec. 12. This chapter does not affect an insurer's right of subrogation under a policy of property or casualty insurance to recover payments made from the person that is responsible for the property loss."

and when so amended that said bill do pass.

(Reference is to SB 233 as introduced.)

HOLDMAN, Chairperson

Committee Vote: Yeas 9, Nays 0.

