

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1970



ENROLLED

HOUSE BILL No. 579

(By Mr. Leibert)



PASSED February 11, 1970

In Effect Twenty days from Passage



FILED IN THE OFFICE
JOHN D. ROCKEFELLER, IV
SECRETARY OF STATE

THIS DATE 2-22-70

579

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House Bill No. 579
(By MR. SEIBERT)

[Passed February 11, 1970; in effect ninety days from passage.]

AN ACT to amend chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article twenty-six, providing for the creation of the West Virginia post-assessment insurance guaranty association; requiring insurance companies to be members of such association as a condition precedent to transacting business in the state of West Virginia; and providing for payment of claims against insolvent insurance companies and the assessment of the cost thereof among insurers.

Be it enacted by the Legislature of West Virginia:

That chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended

by adding thereto a new article, designated article twenty-six,
to read as follows:

**ARTICLE 26. WEST VIRGINIA POST-ASSESSMENT INSURANCE
GUARANTY ASSOCIATION.**

§33-26-1. Short title.

1 This article may be cited as the "West Virginia In-
2 surance Guaranty Association Act."

§33-26-2. Purpose.

1 The purpose of this article is to provide a mechanism
2 for the payment of covered claims under certain insur-
3 ance policies to avoid excessive delay in payment and
4 to avoid financial loss to claimants or policyholders be-
5 cause of the insolvency of an insurer, to assist in the
6 detection and prevention of insurer insolvencies, and to
7 provide an association to assess the cost of such protec-
8 tion among insurers.

§33-26-3. Scope.

1 This article shall apply to all kinds of direct insurance,
2 except life, title, surety, disability, credit, mortgage
3 guaranty, ocean marine, and workmen's compensation
4 insurance.

§33-26-4. Construction.

1 This article shall be liberally construed to effect the

2 purpose under section two of this article which shall
3 constitute an aid and guide to interpretation.

§33-26-5. Definitions.

1 As used in this article:

2 (1) "Account" means any one of the two accounts
3 created by section six of this article.

4 (2) "Association" means the West Virginia insurance
5 guaranty association created under section six of this
6 article.

7 (3) "Commissioner" means the insurance commis-
8 sioner of West Virginia.

9 (4) "Covered claim" means an unpaid claim, including
10 one for unearned premiums, which arises out of and is
11 within the coverage of an insurance policy to which
12 this article applies and which policy is in force at the
13 time of the occurrence giving rise to such unpaid claims
14 if (a) the insurer issuing the policy becomes an insolvent
15 insurer after the effective date of this article and (b)
16 the claimant or insured is a resident of this state at the
17 time of the insured occurrence, or the property from
18 which the claim arises is permanently located in this

19 state. "Covered claim" shall not include (i) any amount
20 in excess of the applicable limits of coverage provided
21 by an insurance policy to which this article applies; nor
22 (ii) any amount due any reinsurer, insurer, insurance
23 pool, or underwriting association, as subrogation recov-
24 eries or otherwise.

25 (5) "Insolvent insurer" means an insurer (a) author-
26 ized to transact insurance in this state either at the time
27 the policy was issued or when the insured event occurred
28 and (b) determined to be insolvent by a court of com-
29 petent jurisdiction.

30 (6) "Member insurer" means any person who (a)
31 writes any kind of insurance to which this article
32 applies under section three of this article, including
33 the exchange of reciprocal or interinsurance contracts,
34 and (b) is licensed to transact insurance in this state.

35 (7) "Net direct written premiums" means direct
36 gross premiums written in this state on insurance policies
37 to which this article applies, less return premiums
38 thereon and dividends paid or credited to policyholders
39 on such direct business. "Net direct written premiums"

40 does not include premiums on contracts between insurers
41 or reinsurers.

42 (8) "Person" includes an individual, company, in-
43 surer, association, organization, society, reciprocal, part-
44 nership, syndicate, business trust, corporation, or any
45 other legal entity.

46 (9) "Receiver" means receiver, liquidator, rehabili-
47 tator, or conservator as the context may require.

§33-26-6. Creation of the association.

1 There is created a nonprofit unincorporated legal en-
2 tity to be known as the West Virginia insurance guaranty
3 association. All insurers defined as member insurers in
4 section five of this article shall be and remain members
5 of the association as a condition of their authority to
6 transact insurance in this state. The association shall
7 perform its functions under a plan of operation estab-
8 lished and approved under section nine of this article
9 and shall exercise its powers through a board of direc-
10 tors established under section seven of this article. For
11 purposes of administration and assessment, the associa-
12 tion shall establish and maintain two separate accounts:

13 (a) The automobile insurance account; and (b) the ac-
14 count for all other insurance to which this article ap-
15 plies.

§33-26-7. Board of directors.

1 (1) The board of directors of the association shall
2 consist of not less than five nor more than nine persons
3 serving terms as established in the plan of operation.
4 The members of the board shall be selected by member
5 insurers subject to the approval of the commissioner.
6 Vacancies on the board shall be filled for the remaining
7 period of the term in the same manner as initial appoint-
8 ments. If no members are selected within sixty days
9 after the effective date of this article, the commissioner
10 may appoint the initial members of the board of directors.

11 (2) In approving selections to the board, the commis-
12 sioner shall consider among other things whether all
13 member insurers are fairly represented.

14 (3) Members of the board may be reimbursed from
15 the assets of the association for expenses incurred by
16 them as members of the board of directors.

§33-26-8. Powers and duties of the association.

1 (1) The association shall:

2 (a) Be obligated to the extent of the covered claims
3 existing prior to the determination of insolvency, and
4 for such claims arising within thirty days after the de-
5 termination of insolvency, but such obligation shall in-
6 clude only that amount of each covered claim which is
7 in excess of one hundred dollars and is less than three
8 hundred thousand dollars. In no event shall the associa-
9 tion be obligated to a policyholder or claimant in an
10 amount in excess of the obligations of the insolvent
11 insurer under the policy from which the claim arises.

12 (b) Be deemed the insurer to the extent of its obliga-
13 tion on the covered claims and to such extent shall have
14 all rights, duties, defenses, and obligations of the in-
15 solvent insurer as if the insurer had not become insolvent.

16 (c) Allocate claims paid and expenses incurred among
17 the two accounts separately, and assess member insurers
18 separately for each account amounts necessary to pay
19 the obligations of the association under subdivision (a)
20 of this subsection subsequent to an insolvency, the ex-

21 penses of handling covered claims subsequent to an in-
22 solvency, the cost of examinations under section thirteen
23 of this article, and other expenses authorized by this
24 article. The assessments of each member insurer shall
25 be in the proportion that the net direct written premiums
26 of the member insurer for the preceding calendar year on
27 the kinds of insurance in the account bears to the net
28 direct written premiums of all member insurers for the
29 preceding calendar year on the kinds of insurance in
30 the account. Each member insurer shall be notified of
31 the assessment not later than thirty days before it is due.
32 No member insurer may be assessed in any one year on
33 any account an amount greater than two percent of that
34 member insurer's net direct written premiums for the
35 preceding calendar year on the kinds of insurance in the
36 account. If the maximum assessment, together with the
37 other assets of the association in any account, does not
38 provide in any one year in any account an amount suffi-
39 cient to make all necessary payments from that account,
40 the funds available shall be prorated and the unpaid
41 portion shall be paid as soon thereafter as funds become

42 available. The association may exempt or defer, in whole
43 or in part, the assessment of any member insurer, if the
44 assessment would cause the member insurer's financial
45 statement to reflect the amounts of capital or surplus less
46 than the minimum amounts required for a certificate
47 of authority by any jurisdiction in which the member
48 insurer is authorized to transact insurance. Each member
49 insurer may set off against any assessment, authorized
50 payments made on covered claims and expenses incurred
51 in the payment of such claims by the member insurer if
52 they are chargeable to the account for which the assess-
53 ment is made.

54 (d) Investigate claims brought against the association
55 and adjust, compromise, settle, and pay covered claims
56 to the extent of the association's obligation and deny all
57 other claims and may review settlements, releases and
58 judgments to which the insolvent insurer or its insureds
59 were parties to determine the extent to which such settle-
60 ments, releases and judgments may be properly con-
61 tested.

62 (e) Notify such persons as the commissioner directs

63 under section ten, subsection (2) of this article.

64 (f) Handle claims through its employees or through
65 one or more insurers or other persons designated as
66 servicing facilities. Designation of a servicing facility
67 is subject to the approval of the commissioner, but such
68 designation may be declined by a member insurer.

69 (g) Reimburse each servicing facility for obligations
70 of the association paid by the facility and for expenses
71 incurred by the facility while handling claims on behalf
72 of the association and shall pay the other expenses of
73 the association authorized by this article.

74 (2) The association may:

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

77 (b) Borrow funds necessary to effect the purposes of
78 this article in accord with the plan of operation.

79 (c) Sue or be sued.

80 (d) Negotiate and become a party to such contracts
81 as are necessary to carry out the purpose of this article.

82 (e) Perform such other acts as are necessary or proper
83 to effectuate the purpose of this article.

84 (f) Refund to the member insurers in proportion to
85 the contribution of each member insurer to an account
86 that amount by which the assets of the account exceed
87 the liabilities, if, at the end of any calendar year, the
88 board of directors finds that the assets of the association
89 in any account exceed the liabilities of that account as
90 estimated by the board of directors for the coming year.

§33-26-9. Plan of operation.

1 (1) The association shall:

2 (a) Submit to the commissioner a plan of operation
3 and any amendments thereto necessary or suitable to
4 assure the fair, reasonable, and equitable administration
5 of the association. The plan of operation and any amend-
6 ments thereto shall become effective upon approval in
7 writing by the commissioner.

8 (b) If the association fails to submit a suitable plan
9 of operation within ninety days following the effective
10 date of this article or if at any time thereafter the asso-
11 ciation fails to submit suitable amendments to the plan,
12 the commissioner shall, after notice and hearing, adopt
13 and promulgate such reasonable rules as are necessary

14 or advisable to effectuate the provisions of this article.
15 Such rules shall continue in force until modified by the
16 commissioner or superseded by a plan submitted by the
17 association and approved by the commissioner. All such
18 rules shall be promulgated in accordance with the pro-
19 visions of chapter twenty-nine-a of this code.

20 (2) All member insurers shall comply with the plan
21 of operation.

22 (3) The plan of operation shall:

23 (a) Establish the procedures whereby all the powers
24 and duties of the association under section eight of this
25 article will be performed.

26 (b) Establish procedures for handling assets of the
27 association.

28 (c) Establish the amount and method of reimbursing
29 members of the board of directors under section seven
30 of this article.

31 (d) Establish procedures by which claims may be
32 filed with the association and establish acceptable forms
33 of proof of covered claims. Notice of claims to the re-
34 ceiver of the insolvent insurer shall be deemed notice

35 to the association or its agent and a list of such claims
36 shall be periodically submitted to the association or sim-
37 ilar organization in another state by the receiver.

38 (e) Establish regular places and times for meetings
39 of the board of directors.

40 (f) Establish procedures for records to be kept of all
41 financial transactions of the association, its agents, and
42 the board of directors.

43 (g) Provide that any member insurer aggrieved by
44 a final action or decision of the association may appeal
45 to the commissioner within thirty days after the action
46 or decision.

47 (h) Establish the procedures whereby selections for
48 the board of directors will be submitted to the commis-
49 sioner.

50 (i) Contain additional provisions necessary or proper
51 for the execution of the powers and duties of the asso-
52 ciation.

53 (4) The plan of operation may provide that any or
54 all powers and duties of the association, except those
55 under section eight, subsection (1), subdivision (c), and

56 section eight, subsection (2), subdivision (b) of this ar-
57 ticle are delegated to a corporation, association or other
58 organization which performs or will perform functions
59 similar to those of this association, or its equivalent, in
60 two or more states. Such a corporation, association or
61 organization shall be reimbursed as a servicing facility
62 would be reimbursed and shall be paid for its perfor-
63 mance of any other functions of the association. A dele-
64 gation under this subsection shall take effect only with
65 the approval of both the board of directors and the com-
66 missioner, and may be made only to a corporation, asso-
67 ciation, or organization which extends protection not
68 substantially less favorable and effective than that pro-
69 vided by this article.

§33-26-10. Duties and powers of the commissioner.

1 (1) The commissioner shall:

2 (a) Notify the association of the existence of an
3 insolvent insurer not later than three days after he
4 receives notice of the determination of the insolvency.

5 (b) Upon request of the board of directors, provide

6 the association a statement of the net direct written
7 premiums of each member insurer.

8 (2) The commissioner may:

9 (a) Require that the association notify the insureds
10 of the insolvent insurer and any other interested parties
11 of the determination of insolvency and of their rights
12 under this article. Such notification shall be by mail
13 at their last known address, where available, but if
14 sufficient information for notification by mail is not
15 available, notice by publication in a newspaper of general
16 circulation shall be sufficient.

17 (b) Suspend or revoke, after notice and hearing,
18 the certificate of authority to transact insurance in this
19 state of any member insurer which fails to pay an
20 assessment when due or fails to comply with the plan
21 of operation. As an alternative, the commissioner may
22 levy a fine on any member insurer which fails to pay an
23 assessment when due. Such fine shall not exceed five
24 percent of the unpaid assessment per month, except that
25 no fine shall be less than one hundred dollars per
26 month.

27 (c) Revoke the designation of any servicing facility
28 if he finds claims are being handled unsatisfactorily.

29 (3) Any final order of the commissioner under this
30 article shall be subject to judicial review as provided
31 by section fourteen, article two of this chapter.

§33-26-11. Effect of paid claims.

1 (1) Any person recovering under this article shall
2 be deemed to have assigned his rights under the policy
3 to the association to the extent of his recovery from the
4 association. Every insured or claimant seeking the pro-
5 tection of this article shall cooperate with the associa-
6 tion to the same extent as such person would have been
7 required to cooperate with the insolvent insurer. The
8 association shall have no cause of action against the
9 insured of the insolvent insurer for any sums it has
10 paid out except such causes of action as the insolvent
11 insurer would have had if such sums had been paid by
12 the insolvent insurer. In the case of an insolvent in-
13 surer operating on a plan whereby insurance policies
14 with assessment liability have been issued to insureds,
15 payments of claims by the association shall not operate

16 to reduce the liability of such insureds to the receiver
17 for unpaid assessments.

18 (2) The receiver of an insolvent insurer shall be
19 bound by settlements of covered claims by the associa-
20 tion or a similar organization in another state, subject
21 to the approval of the court having jurisdiction of the
22 receivership. The court having jurisdiction shall grant
23 such claims priority equal to that to which the claimant
24 would have been entitled, in the absence of this article,
25 against the assets of the insolvent insurer. The expenses
26 of the association or similar organization in handling
27 claims shall be accorded the same priority as the re-
28 ceiver's expenses.

29 (3) The association shall periodically file with the
30 receiver of the insolvent insurer statements of the cov-
31 ered claims paid by the association and estimates of
32 anticipated claims against the association which shall
33 preserve the rights of the association against the assets
34 of the insolvent insurer.

§33-26-12. Nonduplication of recovery.

1 (1) Any person having a claim against a solvent in-

2 surer under any provision in an insurance policy other
3 than a policy of an insolvent insurer, which is also a
4 covered claim, shall be required to exhaust first his right
5 under such solvent insurer's policy. Any amount pay-
6 able on a covered claim under this article shall be re-
7 duced by the amount of any recovery under such solvent
8 insurer's policy.

9 (2) Any person having a claim which may be recov-
10 ered under more than one insurance guaranty associa-
11 tion or its equivalent shall seek recovery first from the
12 association of the place of residence of the insured ex-
13 cept that if it is a first party claim for damage to prop-
14 erty with a permanent location, he shall seek recovery
15 first from the association of the location of the property.
16 Any recovery under this article shall be reduced by the
17 amount of the recovery from any other insurance guar-
18 anty association or its equivalent.

§33-26-13. Prevention of insolvencies.

1 To aid in the detection and prevention of insurer in-
2 solvencies:

3 (1) It shall be the duty of the board of directors,

4 upon majority vote, to notify the commissioner of any
5 information indicating that any member insurer may
6 be insolvent or in a financial condition hazardous to the
7 policyholders or the public.

8 (2) The board of directors may, upon majority vote,
9 request that the commissioner order an examination of
10 any member insurer which the board in good faith
11 believes may be in a financial condition hazardous to the
12 policyholders or the public. Within thirty days of the
13 receipt of such request, the commissioner shall begin
14 such examination. The examination may be conducted
15 as a national association of insurance commissioners'
16 examination or may be conducted by such persons as
17 the commissioner designates. The cost of such examina-
18 tion shall be paid by the association and the examination
19 report shall be treated as are other examination reports.
20 In no event shall such examination report be released
21 to the board of directors prior to its release to the public,
22 but this shall not preclude the commissioner from com-
23 plying with subsection three of this section. The com-
24 missioner shall notify the board of directors when the

25 examination is completed. The request for an examina-
26 tion shall be kept on file by the commissioner but it
27 shall not be open to public inspection prior to the release
28 of the examination report to the public.

29 (3) It shall be the duty of the commissioner to report
30 to the board of directors when he has reasonable cause
31 to believe that any member insurer examined or being
32 examined at the request of the board of directors may
33 be insolvent or in a financial condition hazardous to the
34 policyholders or the public.

35 (4) The board of directors may, upon majority vote,
36 make reports and recommendations to the commissioner
37 upon any matter germane to the solvency, liquidation,
38 rehabilitation or conservation of any member insurer.
39 Such reports and recommendations shall not be con-
40 sidered public documents.

41 (5) The board of directors may, upon majority vote,
42 make recommendations to the commissioner for the de-
43 tection and prevention of insurer insolvencies.

44 (6) The board of directors shall, at the conclusion of
45 any insurer insolvency in which the association was

46 obligated to pay covered claims, prepare a report on the
47 history and causes of such insolvency, based on the in-
48 formation available to the association, and submit such
49 report to the commissioner.

§33-26-14. Examination of the association.

1 The association shall be subject to examination and
2 regulation by the commissioner. The board of directors
3 shall submit, not later than March thirtieth of each year,
4 a financial report for the preceding calendar year, in a
5 form approved by the commissioner.

§33-26-15. Tax exemption.

1 The association shall be exempt from payment of all
2 fees and all taxes levied by this state or any of its sub-
3 divisions except taxes levied on real or personal prop-
4 erty.

§33-26-16. Recognition of assessments in rates.

1 The rates and premiums charged for insurance policies
2 to which this article applies shall include amounts suf-
3 ficient to recoup a sum equal to the amounts paid to the
4 association by the member insurer less any amounts re-
5 turned to the member insurer by the association and

6 such rates shall not be deemed excessive because they
7 contain an amount reasonably calculated to recoup
8 assessments paid by the member insurer.

§33-26-17. Immunity.

1 There shall be no liability on the part of and no cause
2 of action of any nature shall arise against any member
3 insurer, the association or its agents or employees, the
4 board of directors, or the commissioner or his repre-
5 sentatives for any action taken by them in the exercise
6 and performance of their powers and duties under this
7 article.

§33-26-18. Stay of proceedings; reopening of default judgments.

1 All proceedings in which the insolvent insurer is a
2 party or obligated to defend a party in any court in this
3 state shall be stayed for sixty days from the date the
4 insolvency is determined to permit proper defense by
5 the association of all pending causes of action. As to any
6 covered claims arising from a judgment under any order,
7 decision, verdict or finding based on the default of the
8 insolvent insurer or its wrongful failure to defend an

9 insured, the association either on its own behalf or on
10 behalf of such insured may apply to have such judgment,
11 order, decision, verdict or finding set aside by the same
12 court or administrator that made such judgment, order,
13 decision, verdict or finding and shall be permitted to de-
14 fend against such claim on the merits.

§33-26-19. Severability.

1 In the event any part or provision of this article be
2 held to be unconstitutional by any court of competent
3 jurisdiction, such holding and decision of the court shall
4 not affect the validity and constitutionality of the
5 remaining parts and provisions of this article.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

William Tongue
Chairman Senate Committee

Phillip J. Rutledge
Chairman House Committee

Originated in the House.

Takes effect ninety days from passage.

Thomas Myles
Clerk of the Senate

C. A. Blankenship
Clerk of the House of Delegates

Ludwig
President of the Senate

Sam F. Brawley
Speaker House of Delegates

The within approved this the 16th
day of February, 1970.

Arch A. Shaare Jr.
Governor

PRESENTED TO THE
GOVERNOR

Date 2/13/70
Time 4:42 p.m.

RECEIVED

FEB 17 11 00 AM '70

OFFICE OF
THE GOVERNOR
STATE OF CALIFORNIA