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WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION, 1993



ENROLLED

Com. Sub. For
HOUSE BILL No. *2632*

(By Delegates *s. Phillips, Beane, Michael*
and L. White)



Passed *April 10,* 1993

In Effect *Ninety Days From* Passage

ENROLLED
COMMITTEE SUBSTITUTE
FOR
H. B. 2632

(By DELEGATES PHILLIPS, BEANE, MICHAEL AND L. WHITE)

[Passed April 10, 1993; in effect ninety days from passage.]

AN ACT to amend and reenact article twenty-six-a, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the life and health insurance guaranty association.

Be it enacted by the Legislature of West Virginia:

That article twenty-six-a, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 26A. WEST VIRGINIA LIFE AND HEALTH INSURANCE GUARANTY ASSOCIATION ACT.

§33-26A-1. Short title.

1 This article shall be known and may be cited as the
2 "West Virginia Life and Health Insurance Guaranty
3 Association Act."

§33-26A-2. Purpose of article and association of insurers.

1 (a) The purpose of this article is to protect, subject to
2 certain limitations, the persons specified in subsection
3 (a) of section three of this article against failure in the
4 performance of contractual obligations, under life and
5 health insurance policies and annuity contracts specified
6 in subsection (b) of section three of this article, because

7 of the impairment or insolvency of the member insurer
8 that issued the policies or contracts.

9 (b) To provide this protection, an association of
10 insurers is created to pay benefits and to continue
11 coverages as limited herein, and members of the
12 association are subject to assessment to provide funds to
13 carry out the purpose of this article.

§33-26A-3. Scope of article; policies and contracts covered; exclusions; extent of liability.

1 (a) This article shall provide coverage for the policies
2 and contracts specified in subsection (b) of this section:

3 (1) To persons who, regardless of where they reside,
4 are the beneficiaries, assignees or payees of the persons
5 covered under subdivision (2) below: *Provided*, That the
6 provisions of this subdivision shall not apply to nonres-
7 ident certificate holders under group policies or
8 contracts;

9 (2) To persons who are owners of or certificate holders
10 under such policies or contracts; or in the case of
11 unallocated annuity contracts, persons who are contract
12 holders, and who

13 (A) Are residents of the state; or

14 (B) Are not residents of this state, but only under all
15 of the following conditions:

16 (i) Such insurers which issued these policies or
17 contracts are domiciled in this state;

18 (ii) Such insurers never held a license or certificate
19 of authority in the state in which such person resides;

20 (iii) Such states have associations similar to the
21 association created by this article; and

22 (iv) The persons are not eligible for coverage by such
23 associations.

24 (b) Coverage as provided by this article shall be as
25 follows:

26 (1) This article shall provide coverage to the persons
27 specified in subsection (a) of this section for direct,

28 nongroup life, health, annuity and supplemental policies
29 or contracts, for certificates under direct group policies
30 and contracts, and for unallocated annuity contracts,
31 issued by member insurers, except as limited by this
32 article. Annuity contracts and certificates under group
33 annuity contracts include, but are not limited to,
34 guaranteed investment contracts, deposit administration
35 contracts, unallocated funding agreements, allocated
36 funding agreements, structured settlement agreements,
37 lottery contracts and any immediate or deferred annuity
38 contracts.

39 (2) This article shall not provide coverage for:

40 (A) Any portion of a policy or contract not guaranteed
41 by the insurer, or under which the risk is borne by the
42 policy or contract holder;

43 (B) Any policy or contract of reinsurance, unless
44 assumption certificates have been issued;

45 (C) Any portion of a policy or contract to the extent
46 that the rate of interest on which it is based:

47 (i) Averaged over the period of four years prior to the
48 date on which the association becomes obligated with
49 respect to such policy or contract, exceeds a rate of
50 interest determined by subtracting two percentage
51 points from Moody's Corporate Bond Yield Average
52 averaged for that same four-year period or for such
53 lesser period if the policy or contract was issued less
54 than four years before the association became obligated;
55 and

56 (ii) On and after the date on which the association
57 becomes obligated with respect to such policy or
58 contract, exceeds the rate of interest determined by
59 subtracting three percentage points from Moody's
60 Corporate Bond Yield Average as most recently
61 available;

62 (D) Any plan or program of an employer, association
63 or similar entity to provide life, health or annuity
64 benefits to its employees or members to the extent that
65 the plan or program is self-funded or uninsured,
66 including, but not limited to, benefits payable by an
67 employer, association or similar entity under:

68 (i) A multiple employer welfare arrangement as
69 defined in section 514 of the Employee Retirement
70 Income Security Act of 1974, as amended;

71 (ii) A minimum premium group insurance plan;

72 (iii) A stop-loss group insurance plan; or

73 (iv) An administrative services only contract;

74 (E) Any portion of a policy or contract to the extent
75 that it provides dividends or experience rating credits,
76 or provides that any fees or allowances be paid to any
77 person, including the policy or contract holder, in
78 connection with the service to or administration of the
79 policy or contract;

80 (F) Any policy or contract issued in this state by a
81 member insurer at a time when it was not licensed or
82 did not have a certificate of authority to issue the policy
83 or contract in this state;

84 (G) Any unallocated annuity contract issued to an
85 employee benefit plan protected under the federal
86 pension benefit guaranty corporation; and

87 (H) Any portion of any unallocated annuity contract
88 which is not issued to or in connection with a specific
89 employee, union or association of natural persons benefit
90 plan or a government lottery.

91 (c) The benefits for which the association may become
92 liable shall in no event exceed the lesser of:

93 (1) The contractual obligations for which the insurer
94 is liable or would have been liable if it were not an
95 impaired or insolvent insurer; or

96 (2)(A) With respect to any one life, regardless of the
97 number of policies or contracts:

98 (i) Three hundred thousand dollars in life insurance
99 death benefits, but no more than one hundred thousand
100 dollars in net cash surrender and net cash withdrawal
101 values for life insurance;

102 (ii) One hundred thousand dollars in health insurance
103 benefits, including any net cash surrender and net cash

104 withdrawal values;

105 (iii) One hundred thousand dollars in the present
106 value of annuity benefits, including net cash surrender
107 and net cash withdrawal values;

108 (B) With respect to each individual participating in a
109 governmental retirement plan established under section
110 401, 403(b) or 457 of the United States Internal Revenue
111 Code covered by an unallocated annuity contract or the
112 beneficiaries of each such individual if deceased, in the
113 aggregate, one hundred fifty thousand dollars in present
114 value annuity benefits, including net cash surrender and
115 net cash withdrawal values: *Provided*, That in no event
116 shall the association be liable to expend more than three
117 hundred thousand dollars in the aggregate with respect
118 to any one individual under paragraphs 2 (A) and (B)
119 above;

120 (C) With respect to any one contract holder covered
121 by any unallocated annuity contract not included in
122 subsection (2) (B) of this section one million dollars in
123 benefits, irrespective of the number of contracts held by
124 that contract holder.

125 (d) The liability of the association is strictly limited
126 by the express terms of the covered policies and
127 contracts and by the provisions of this article and shall
128 not in any event include any amount in excess of the
129 applicable limits of coverage provided by the contracts
130 or policies as limited by this article. The association is
131 not liable for any extra contractual damages, claims,
132 fees of any kind whatsoever, including interest, except
133 as specifically provided by the terms of the policies or
134 contracts as limited by this article.

§33-26A-4. Construction of article.

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.

§33-26A-5. Definitions.

1 As used in this article:

2 (1) "Account" means either of the two accounts
3 created under section six of this article.

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

7 (3) "Commissioner" means the commissioner of insur-
8 ance of this state.

9 (4) "Contractual obligation" means any obligation
10 under a policy or contract or certificate under a group
11 policy or contract, or portion thereof for which coverage
12 is provided under section three of this article.

13 (5) "Covered policy" means any policy or contract
14 within the scope of this article under section three of this
15 article.

16 (6) "Impaired insurer" means a member insurer
17 which, after the effective date of this article, is not an
18 insolvent insurer, and (1) is deemed by the commissioner
19 to be potentially unable to fulfill its contractual
20 obligations or (2) is placed under an order of rehabil-
21 itation or conservation by a court of competent
22 jurisdiction.

23 (7) "Insolvent insurer" means a member insurer
24 which, after the effective date of this article, is placed
25 under an order of liquidation by a court of competent
26 jurisdiction with a finding of insolvency.

27 (8) "Member insurer" means any insurer licensed or
28 which holds a certificate of authority to transact in this
29 state any kind of insurance for which coverage is
30 provided under section three of this article, and includes
31 any insurer whose license or certificate of authority in
32 this state may have been suspended, revoked, not
33 renewed or voluntarily withdrawn, and includes non-
34 profit service corporations as defined in article twenty-
35 four of this chapter and health care corporations as
36 defined in article twenty-five of this chapter: *Provided,*
37 That the term "member insurer" does not include:

38 (A) A health maintenance organization;

39 (B) A fraternal benefit society;

40 (C) A mandatory state polling plan;

41 (D) A mutual assessment company or any entity that
42 operates on an assessment basis;

43 (E) An insurance exchange; or

44 (F) Any entity similar to any of the above.

45 (9) "Moody's Corporate Bond Yield Average" means
46 the monthly average corporates as published by Moody's
47 Investors Service, Inc., or any successor thereto.

48 (10) "Person" means any individual, corporation,
49 partnership, association or voluntary organization.

50 (11) "Premiums" means amounts received on covered
51 policies or contracts less premiums, considerations and
52 deposits returned thereon, and less dividends and
53 experience credits thereon. "Premiums" does not include
54 any amounts received for any policies or contracts or for
55 the portions of any policies or contracts for which
56 coverage is not provided under subsection (b) of section
57 three of this article, except that assessable premium
58 shall not be reduced on account of paragraph (C),
59 subdivision (2), subsection (b) of section three of this
60 article relating to interest limitations and subdivision
61 (2), subsection (c) of section three of this article relating
62 to limitations with respect to any one individual, any one
63 participant and any one contract holder: *Provided*, That
64 "premiums" shall not include any premiums in excess
65 of one million dollars on any unallocated annuity
66 contract not issued under a government retirement plan
67 established under section 401, 403 (b) or 457 of the
68 United States Internal Revenue Code.

69 (12) "Resident" means any person who resides in this
70 state at the time a member insurer is determined to be
71 an impaired or insolvent insurer and to whom a
72 contractual obligation is owed. A person may be a
73 resident of only one state, which in the case of a person
74 other than a natural person shall be its principal place
75 of business.

76 (13) "Health insurance" means accident and sickness
77 insurance as defined in subsection (b), section ten,
78 article one of this chapter.

79 (14) "Supplemental contract" means any agreement
80 entered into for the distribution of policy or contract
81 proceeds.

82 (15) "Unallocated annuity contract" means any an-
83 nuity contract or group annuity certificate which is not
84 issued to and owned by an individual, except to the
85 extent of any annuity benefits guaranteed to an individ-
86 ual by an insurer under such contract or certificate.

**§33-26A-6. Creation of association; required accounts;
supervision of commissioner; meetings and
records.**

1 (a) There is created a nonprofit legal entity to be
2 known as the West Virginia life and health insurance
3 guaranty association. All member insurers shall be and
4 remain members of the association as a condition of
5 their authority to transact insurance in this state. The
6 association shall perform its functions under the plan of
7 operation established and approved under section ten of
8 this article and shall exercise its powers through a
9 board of directors established under section seven of this
10 article. For purposes of administration and assessment,
11 the association shall maintain the following two
12 accounts:

13 (1) The life insurance and annuity account which
14 includes the following subaccounts:

15 (A) Life insurance account;

16 (B) Annuity account; and

17 (C) Unallocated annuity account which shall include
18 contracts qualified under section 403 (b) of the United
19 States Internal Revenue Code.

20 (2) The health insurance account.

21 (b) The association shall come under the immediate
22 supervision of the commissioner and shall be subject to
23 the applicable provisions of the insurance laws of this
24 state. Meetings or records of the association may be
25 opened to the public upon majority vote of the board of
26 directors of the association.

§33-26A-7. Board of directors; members; vacancies; voting rights; appointment and reimbursement.

1 (a) The board of directors of the association shall
2 consist of not less than five nor more than nine member
3 insurers serving terms as established in the plan of
4 operation. The members of the board shall be selected
5 by member insurers subject to the approval of the
6 commissioner. Vacancies on the board shall be filled for
7 the remaining period of the term by a majority vote of
8 the remaining board members, subject to the approval
9 of the commissioner.

10 (b) To select the initial board of directors, and
11 initially organize the association, the commissioner shall
12 give notice to all member insurers of the time and place
13 of the organizational meeting. In determining voting
14 rights at the organizational meeting each member
15 insurer shall be entitled to one vote in person or by
16 proxy. If the board of directors is not selected within
17 sixty days after notice of the organizational meeting, the
18 commissioner may appoint the initial members.

19 (c) In approving selections or in appointing members
20 to the board, the commissioner shall consider, among
21 other things, whether all member insurers are fairly
22 represented.

23 (d) Members of the board may be reimbursed from
24 the assets of the association for expenses incurred by
25 them as members of the board of directors but members
26 of the board shall not otherwise be compensated by the
27 association for their services.

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

1 (a) If a member insurer is an impaired domestic
2 insurer, the association may, in its discretion, and
3 subject to any conditions imposed by the association that
4 do not impair the contractual obligations of the im-
5 paired insurer, that are approved by the commissioner,
6 and that are, except in cases of court-ordered conserva-
7 tion or rehabilitation, also approved by the impaired
8 insurer:

9 (1) Guarantee, assume, or reinsure, or cause to be
10 guaranteed, assumed or reinsured, any or all the
11 covered policies or contracts of the impaired insurer;

12 (2) Provide such moneys, pledges, notes, guarantees or
13 other means as are proper to effectuate subdivision (1)
14 of this subsection and assure payment of the contractual
15 obligations of the impaired insurer pending action
16 under said subdivision (1); or

17 (3) Loan money to the impaired insurer.

18 (b)(1) If a member insurer is an impaired insurer,
19 whether domestic, foreign or alien, and the insurer is
20 not paying claims timely, then subject to the precondi-
21 tions specified in subdivision (2) of this subsection, the
22 association shall, in its discretion, either:

23 (A) Take any of the actions specified in subsection (a)
24 of this section, subject to the conditions therein; or

25 (B) Provide substitute benefits in lieu of the contrac-
26 tual obligations of the impaired insurer solely for health
27 claims, periodic annuity benefit payments, death
28 benefits, supplemental benefits, and cash withdrawals
29 for policy or contract owners who petition therefor
30 under claims of emergency or hardship in accordance
31 with standards proposed by the association and ap-
32 proved by the commissioner.

33 (2) The association shall be subject to the require-
34 ments of subdivision (1) of this subsection only if:

35 (A) The laws of the impaired insurer's state of
36 domicile provide that until all payments of or on account
37 of the impaired insurer's contractual obligations by all
38 guaranty associations, along with all expenses thereof
39 and interest on all payments and expenses, shall have
40 been repaid to the guaranty associations or a plan of
41 repayment by the impaired insurer shall have been
42 approved by the guaranty associations:

43 (i) The delinquency proceeding shall not be dismissed;

44 (ii) Neither the impaired insurer nor its assets shall
45 be returned to the control of its shareholders or private
46 management;

47 (iii) It shall not be permitted to solicit or accept new
48 business or have any suspended or revoked license
49 restored; and

50 (B)(i) If the impaired insurer is a domestic insurer, it
51 has been placed under an order of rehabilitation by a
52 court of competent jurisdiction in this state; or

53 (ii) The impaired insurer is a foreign or alien insurer;

54 (I) It has been prohibited from soliciting or accepting
55 new business in this state;

56 (II) Its certificate of authority has been suspended or
57 revoked in this state; and

58 (III) A petition for rehabilitation or liquidation has
59 been filed in a court of competent jurisdiction in its state
60 of domicile by the commissioner of the state.

61 (c) If a member insurer is an insolvent insurer, the
62 association shall, in its discretion, either:

63 (1) (A) Guarantee, assume or reinsure, or cause to be
64 guaranteed, assumed or reinsured, the policies or
65 contracts of the insolvent insurer; or

66 (B) Assure payment of the contractual obligations of
67 the insolvent insurer; and

68 (C) Provide moneys, pledges, guarantees, or other
69 means as are reasonably necessary to discharge such
70 duties; or

71 (2) With respect only to life and health insurance
72 policies, provide benefits and coverages in accordance
73 with subsection (d) of this section.

74 (d) When proceeding under (b)(1)(B) or (c)(2) of this
75 section, the association shall, with respect to only life
76 and health insurance policies:

77 (1) Assure payment of benefits for premiums identical
78 to the premiums and benefits, except for terms of
79 conversion and renewability, that would have been
80 payable under the policies of the insolvent insurer, for
81 claims incurred:

82 (A) With respect to group policies, not later than the

83 earlier of the next renewal date under such policies or
84 contracts or forty-five days, but in no event less than
85 thirty days, after the date on which the association
86 becomes obligated with respect to such policies;

87 (B) With respect to individual policies, not later than
88 the earlier of the next renewal date, if any, under these
89 policies or one year, but in no event less than thirty days,
90 from the date on which the association becomes obli-
91 gated with respect to such policies;

92 (2) Make diligent efforts to provide all known ins-
93 sureds or group policyholders with respect to group
94 policies thirty days' notice of the termination of the
95 benefits provided; and

96 (3) With respect to individual policies, make available
97 to each known insured, or owner if other than the
98 insured, and with respect to an individual formerly
99 insured under a group policy who is not eligible for
100 replacement group coverage, make available substitute
101 coverage on an individual basis in accordance with the
102 provisions of subdivision (4) of this subsection, if the
103 insureds had a right under law or the terminated policy
104 to convert coverage to individual coverage or to continue
105 an individual policy in force until a specified age or for
106 a specified time, during which the insurer had no right
107 unilaterally to make changes in any provision of the
108 policy or had a right only to make changes in premium
109 by class.

110 (4)(A) In providing the substitute coverage required
111 under subdivision (3) of this subsection, the association
112 may offer either to reissue the terminated coverage or
113 to issue an alternative policy.

114 (B) Alternative or reissued policies shall be offered
115 without requiring evidence of insurability, and shall not
116 provide for any waiting period or exclusion that would
117 not have applied under the terminated policy.

118 (C) The association may reinsure any alternative or
119 reissued policy.

120 (5)(A) Alternative policies adopted by the association
121 shall be subject to the approval of the commissioner. The

122 association may adopt alternative policies of various
123 types for future issuance without regard to any partic-
124 ular impairment or insolvency.

125 (B) Alternative policies shall contain at least the
126 minimum statutory provisions required in this state and
127 provide benefits that shall not be unreasonable in
128 relation to the premium charged. The association shall
129 set the premium in accordance with a table of rates
130 which it shall adopt. The premium shall reflect the
131 amount of insurance to be provided and the age and
132 class of risk of each insured, but shall not reflect any
133 changes in the health of the insured after the original
134 policy was last underwritten.

135 (C) Any alternative policy issued by the association
136 shall provide coverage of a type similar to that of the
137 policy issued by the impaired or insolvent insurer, as
138 determined by the association.

139 (6) If the association elects to reissue terminated
140 coverage at a premium rate different from that charged
141 under the terminated policy, the premium shall be set
142 by the association in accordance with the amount of
143 insurance provided and the age and class of risk, subject
144 to approval of the commissioner or by a court of
145 competent jurisdiction.

146 (7) The association's obligations with respect to
147 coverage under any policy of the impaired or insolvent
148 insurer or under any reissued or alternative policy shall
149 cease on the date that the coverage or policy is replaced
150 by another similar policy by the policyholder, the
151 insured or the association.

152 (e) When proceeding under subsection (b)(1)(B) or (C)
153 of this section with respect to any policy or contract
154 carrying guaranteed minimum interest rates, the
155 association shall assure the payment or crediting of a
156 rate of interest consistent with subsection (b)(2)(C) of
157 section three of this article.

158 (f) Nonpayment of premium within thirty-one days
159 after the date required under the terms of any guaran-
160 teed, assumed, alternative or reissued policy or contract

161 or substitute coverage shall terminate the association's
162 obligations under such policy or coverage under this
163 article with respect to such policy or coverage, except
164 with respect to any claims incurred or any net cash
165 surrender value which may be due in accordance with
166 the provisions of this article.

167 (g) Premiums due for coverage after entry of an order
168 of liquidation of an insolvent insurer shall belong to and
169 be payable at the direction of the association, and the
170 association shall be liable for unearned premiums due
171 to policy or contract owners arising after the entry of
172 the order.

173 (h) The protection provided by this article shall not
174 apply where any guaranty protection is provided to
175 residents of this state by the laws of the domiciliary
176 state or jurisdiction of the impaired or insolvent insurer
177 other than this state.

178 (i) In carrying out its duties under subsections (b) and
179 (c) of this section, the association may, subject to
180 approval by the court:

181 (1) Impose permanent policy or contract liens in
182 connection with any guarantee, assumption or reinsur-
183 ance agreement, if the association finds that the
184 amounts which can be assessed under this article are
185 less than the amounts needed to assure full and prompt
186 performance of the association's duties under this
187 article, or that the economic or financial conditions as
188 they affect member insurers are sufficiently adverse to
189 render the imposition of such permanent policy or
190 contract liens, to be in the public interest;

191 (2) Impose temporary moratoriums or liens on pay-
192 ments of cash values and policy loans, or any other right
193 to withdraw funds held in conjunction with policies or
194 contracts, in addition to any contractual provisions for
195 deferral of cash or policy loan value.

196 (j) If the association fails to act within a reasonable
197 period of time as provided in subsections (b)(1)(B), (c)
198 and (d) of this section, the commissioner shall have the
199 powers and duties of the association under this article

200 with respect to impaired or insolvent insurers.

201 (k) The association may render assistance and advice
202 to the commissioner, upon his request, concerning
203 rehabilitation, payment of claims, continuance of
204 coverage, or the performance of other contractual
205 obligations of any impaired or insolvent insurer.

206 (l) The association shall have standing to appear
207 before any court in this state with jurisdiction over an
208 impaired or insolvent insurer concerning which the
209 association is or may become obligated under this
210 article. Standing shall extend to all matters germane to
211 the powers and duties of the association, including, but
212 not limited to, proposals for reinsuring, modifying, or
213 guaranteeing the policies or contracts of the impaired
214 or insolvent insurer and the determination of the policies
215 or contracts and contractual obligations. The association
216 shall also have the right to appear or intervene before
217 a court in another state with jurisdiction over an
218 impaired or insolvent insurer for which the association
219 is or may become obligated or with jurisdiction over a
220 third party against whom the association may have
221 rights through subrogation of the insurer's
222 policyholders.

223 (m)(1) Any person receiving benefits under this
224 article shall be deemed to have assigned the rights
225 under, and any causes of action relating to, the covered
226 policy or contract to the association to the extent of the
227 benefits received because of this article, whether the
228 benefits are payments of or on account of contractual
229 obligations, continuation of coverage or provision of
230 substitute or alternative coverages. The association may
231 require an assignment to it of such rights and cause of
232 action by any payee, policy or contract owner, benefi-
233 ciary, insured or annuitant as a condition precedent to
234 the receipt of any right or benefits conferred by this
235 article upon such person.

236 (2) The subrogation rights of the association under
237 this subsection shall have the same priority against the
238 assets of the impaired or insolvent insurer as that
239 possessed by the person entitled to receive benefits

240 under this article.

241 (3) In addition to subdivisions (1) and (2) above, the
242 association shall have all common law rights of subro-
243 gation and any other equitable or legal remedy which
244 would have been available to the impaired or insolvent
245 insurer or holder of a policy or contract with respect to
246 such policy or contracts.

247 (n) The association may:

248 (1) Enter into such contracts as are necessary or
249 proper to carry out the provisions and purposes of this
250 article;

251 (2) Sue or be sued, including taking any legal actions
252 necessary or proper to recover any unpaid assessments
253 under section nine of this article and to settle claims or
254 potential claims against it;

255 (3) Borrow money to effect the purpose of this article;
256 any notes or other evidence of indebtedness of the
257 association not in default shall be legal investments for
258 domestic insurers and may be carried as admitted
259 assets;

260 (4) Employ or retain such persons as are necessary to
261 handle the financial transactions of the association, and
262 to perform such other functions as become necessary or
263 proper under this article;

264 (5) Take such legal action as may be necessary to
265 avoid payment of improper claims;

266 (6) Exercise, for the purposes of this article and to the
267 extent approved by the commissioner, the powers of a
268 domestic life or health insurer, but in no case may the
269 association issue insurance policies or annuity contracts
270 other than those issued to perform its obligations under
271 this article.

272 (o) The association may join an organization of one or
273 more other state associations of similar purposes, to
274 further the purposes and administer the powers and
275 duties of the association.

§33-26A-9. Assessments.

1 (a) For the purpose of providing the funds necessary
2 to carry out the powers and duties of the association, the
3 board of directors shall assess the member insurers,
4 separately for each account, at such time and for such
5 amounts as the board finds necessary. Assessments shall
6 be due not less than thirty days after prior written
7 notice to the member insurers and shall accrue interest
8 at ten percent per annum on and after the due date.

9 (b) There shall be two assessments, as follows:

10 (1) Class A assessments shall be made for the purpose
11 of meeting administrative and legal costs and other
12 expenses and examinations conducted under the author-
13 ity of subsection (e) of section twelve, of this article.
14 Class A assessments may be made whether or not
15 related to a particular impaired or insolvent insurer.

16 (2) Class B assessments shall be made to the extent
17 necessary to carry out the powers and duties of the
18 association under section eight with regard to an
19 impaired or insolvent insurer.

20 (c)(1) The amount of any Class A assessment shall be
21 determined by the board and may be made on a pro rata
22 or non-pro rata basis. If pro rata, the board may provide
23 that it be credited against future Class B assessments.
24 A non-pro rata assessment shall not exceed one hundred
25 fifty dollars per member insurer in any one calendar
26 year. The amount of any Class B assessment shall be
27 allocated for assessment purposes among the accounts
28 pursuant to an allocation formula which may be based
29 on the premiums or reserves of the impaired or insolvent
30 insurer or any other standard deemed by the board in
31 its sole discretion as being fair and reasonable under the
32 circumstances.

33 (2) Class B assessments against member insurers for
34 each account and subaccount shall be in the proportion
35 that the premiums received on business in this state by
36 each assessed member insurer on policies or contracts
37 covered by each account for the three most recent
38 calendar years for which information is available
39 preceding the year in which the insurer became
40 impaired or insolvent, as the case may be, bears to such

41 premiums received on business in this state for such
42 calendar years by all assessed member insurers.

43 (3) Assessments for funds to meet the requirements of
44 the association with respect to an impaired or insolvent
45 insurer shall not be made until necessary to implement
46 the purposes of this article. Classification of assessments
47 under subsection (b) of this section and computation of
48 assessments under this subsection shall be made with
49 reasonable degree of accuracy, recognizing that exact
50 determinations may not always be possible.

51 (d) The association may abate or defer, in whole or in
52 part, the assessment of a member insurer if, in the
53 opinion of the board, payment of the assessment would
54 endanger the ability of the member insurer to fulfill its
55 contractual obligations. In the event an assessment
56 against a member insurer is abated, or deferred, in
57 whole or in part, the amount by which such assessment
58 is abated or deferred may be assessed against the other
59 member insurers in a manner consistent with the basis
60 for assessments set forth in this section.

61 (e)(1) The total of all assessments upon a member
62 insurer for the life and annuity account and for each
63 subaccount thereunder shall not in any one calendar
64 year exceed two percent and for the health account shall
65 not in any one calendar year exceed two percent of such
66 insurer's average premiums received in this state on the
67 policies and contracts covered by the account during the
68 three calendar years preceding the year in which the
69 insurer became an impaired or insolvent insurer. If the
70 maximum assessment, together with the other assets of
71 the association in any account, does not provide in any
72 one year in either account an amount sufficient to carry
73 out the responsibilities of the association, the necessary
74 additional funds shall be assessed as soon thereafter as
75 permitted by this article.

76 (2) The board may provide in the plan of operation a
77 method of allocating funds among claims, whether
78 relating to one or more impaired or insolvent insurers,
79 when the maximum assessment will be insufficient to
80 cover anticipated claims.

81 (3) If a one percent assessment for any subaccount of
82 the life and annuity account in any one year does not
83 provide an amount sufficient to carry out the responsi-
84 bilities of the association, then pursuant to subdivision
85 (2), subsection (c) of this section, the board shall assess
86 all subaccounts of the life and annuity account for the
87 necessary additional amount, subject to the maximum
88 stated in subdivision (1), subsection (e) of this section.

89 (f) The board may, by an equitable method as estab-
90 lished in the plan of operation, refund to member
91 insurers, in proportion to the contribution of each
92 insurer to that account, the amount by which the assets
93 of the account exceed the amount the board finds is
94 necessary to carry out during the coming year the
95 obligations of the association with regard to that
96 account, including assets accruing from assignment,
97 subrogation, net realized gains and income from
98 investments. A reasonable amount may be retained in
99 any account to provide funds for the continuing expenses
100 of the association and for future losses.

101 (g) It shall be proper for any member insurer, in
102 determining its premium rates and policy owner
103 dividends as to any kind of insurance within the scope
104 of this article, to consider the amount reasonably
105 necessary to meet its assessment obligations under this
106 article.

107 (h) The association shall issue to each insurer paying
108 an assessment under this article, other than Class A
109 assessment, a certificate of contribution, in a form
110 prescribed by the commissioner, for the amount of the
111 assessment so paid. All outstanding certificates shall be
112 of equal dignity and priority without reference to
113 amounts or dates of issue. A certificate of contribution
114 may be shown by the insurer in its financial statement
115 as an asset in such form and for such amount, if any,
116 and period of time as the commissioner may approve.

§33-26A-10. Plan of operation.

1 (a) The association shall submit to the commissioner
2 a plan of operation and any amendments thereto
3 necessary or suitable to assure the fair, reasonable and

4 equitable administration of the association. The plan of
5 operation and any amendments thereto shall become
6 effective upon the commissioner's written approval or
7 unless he has not disapproved of the same within thirty
8 days.

9 (b) If the association fails to submit a suitable plan of
10 operation within one hundred eighty days following the
11 effective date of this article or if at any time thereafter
12 the association fails to submit suitable amendments to
13 the plan, the commissioner shall, after notice and
14 hearing, adopt and promulgate such reasonable rules as
15 are necessary or advisable to effectuate the provisions
16 of this article. Such rules shall continue in force until
17 modified by the commissioner or superseded by a plan
18 submitted by the association and approved by the
19 commissioner.

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

22 (d) The plan of operation shall, in addition to require-
23 ments enumerated elsewhere in this article:

24 (1) Establish procedures for handling the assets of the
25 association;

26 (2) Establish the amount and method of reimbursing
27 members of the board of directors under section seven
28 of this article;

29 (3) Establish regular places and times for meetings
30 including telephone conference calls of the board of
31 directors;

32 (4) Establish procedures for records to be kept of all
33 financial transactions of the association, its agents, and
34 the board of directors;

35 (5) Establish the procedures whereby selections for
36 the board of directors will be made and submitted to the
37 commissioner;

38 (6) Establish any additional procedures for assess-
39 ments under section nine of this article; and

40 (7) Contain additional provisions necessary or proper

41 for the execution of the powers and duties of the
42 association.

43 (e) The plan of operation may provide that any or all
44 powers and duties of the association, except those under
45 subdivision (3), subsection (m), section eight, and section
46 nine of this article, are delegated to a corporation,
47 association, or other organization which performs or will
48 perform functions similar to those of this association, or
49 its equivalent, in two or more states. Such a corporation,
50 association or organization shall be reimbursed for any
51 payments made on behalf of the association and shall be
52 paid for its performance of any function of the associ-
53 ation. A delegation under this subsection shall take
54 effect only with the approval of both the board of
55 directors and the commissioner, and may be made only
56 to a corporation, association or organization which
57 extends protection not substantially less favorable and
58 effective than that provided by this article.

§33-26A-11. Duties and powers of commissioner of insurance.

1 In addition to the duties and powers enumerated
2 elsewhere in this article:

3 (a) The commissioner shall:

4 (1) Upon request of the board of directors, provide the
5 association with a statement of the premiums in this and
6 any other appropriate states for each member insurer;

7 (2) When an impairment is declared and the amount
8 of the impairment is determined, serve a demand upon
9 the impaired insurer to make good the impairment
10 within a reasonable time. Notice to the impaired insurer
11 shall constitute notice to its shareholders, if any; the
12 failure of the insurer to promptly comply with the
13 demand shall not excuse the association from the
14 performance of its powers and duties under this article;
15 and

16 (3) In any liquidation or rehabilitation proceeding
17 involving a domestic insurer, be appointed as the
18 liquidator or rehabilitator.

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

29 (c) Any action of the board of directors or the
30 association may be appealed to the commissioner by any
31 member insurer if such appeal is taken within sixty
32 days of the final action being appealed. If a member
33 company is appealing an assessment, the amount
34 assessed shall be paid to the association and available
35 to meet association obligations during the pendency of
36 an appeal. If the appeal on the assessment is upheld, the
37 amount paid in error or excess shall be returned to the
38 member company. Any final action or order of the
39 commissioner shall be subject to judicial review in a
40 court of competent jurisdiction.

41 (d) The liquidator, rehabilitator or conservator of any
42 impaired insurer may notify all interested persons of the
43 effect of this article.

**§33-26A-12. Prevention of insolvencies; duties of commis-
sioner; coordination with board of direc-
tors; duties of the board of directors;
requested examinations; procedures and
reports.**

1 To aid in the detection and prevention of insurer
2 insolvencies or impairments:

3 (a) It shall be the duty of the commissioner:

4 (1) To notify the commissioners of all the other states,
5 territories of the United States and the District of
6 Columbia when he takes any of the following actions
7 against a member insurer:

8 (A) Revocation of license;

9 (B) Suspension of license; or

10 (C) Makes any formal order that such company
11 restrict its premium writing, obtain additional contri-
12 butions to surplus, withdraw from the state, reinsure all
13 or any part of its business, or increase capital, surplus
14 or any other account for the security of policyholders or
15 creditors: *Provided*, That such notice shall be mailed to
16 all commissioners within thirty days following the
17 action taken or the date on which the action occurs.

18 (2) To report to the board of directors when he or she
19 has taken any of the actions set forth in subdivision (1)
20 of subsection (a) of this section or has received a report
21 from any other commissioner indicating that any such
22 action has been taken in another state. Such report to
23 the board of directors shall contain all significant details
24 of the action taken or the report received from another
25 commissioner.

26 (3) To report to the board of directors when he or she
27 has reasonable cause to believe from any examination,
28 whether completed or in process, of any member
29 company that the company may be an impaired or
30 insolvent insurer.

31 (4) To furnish to the board of directors the national
32 association of insurance commissioners (NAIC) insu-
33 rance regulatory information system (IRIS) ratios and
34 listings of companies not included in the ratios deve-
35 loped by the national association of insurance commis-
36 sioners, and the board may use the information con-
37 tained therein in carrying out its duties and responsi-
38 bilities under this section. The report and the informa-
39 tion contained therein shall be kept confidential by the
40 board of directors until it is made public by the
41 commissioner or other lawful authority.

42 (b) The commissioner may seek the advice and
43 recommendations of the board of directors concerning
44 any matter affecting his or her duties and responsibil-
45 ities regarding the financial condition of member
46 insurers and companies seeking admission to transact
47 insurance business in this state.

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

56 (d) It shall be the duty of the board of directors, upon
57 majority vote, to notify the commissioner of any
58 information indicating any member insurer may be an
59 impaired or insolvent insurer.

60 (e) The board of directors may, upon majority vote,
61 request that the commissioner order an examination of
62 any member insurer which the board in good faith
63 believes may be an impaired or insolvent insurer.
64 Within thirty days of the receipt of a request, the
65 commissioner shall begin an examination. The examina-
66 tion may be conducted as a national association of
67 insurance commissioner's examination or may be
68 conducted by persons that the commissioner designates.
69 The cost of such examination shall be paid by the
70 association and the examination report shall be treated
71 as other examination reports. In no event shall the
72 examination report be released to the board of directors
73 prior to its release to the public, but this shall not
74 preclude the commissioner from complying with subsec-
75 tion (a) of this section. The commissioner shall notify the
76 board of directors when the examination is completed.
77 The request for an examination shall be kept on file by
78 the commissioner, but it shall not be open to public
79 inspection prior to the release of the examination report
80 to the public.

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

84 (g) The board of directors shall, at the conclusion of
85 any insurer insolvency in which the association was
86 obligated to pay covered claims, prepare a report to the
87 commissioner containing such information as it may

88 have in its possession bearing on the history and causes
89 of such insolvency. The board shall cooperate with the
90 boards of directors of guaranty associations in other
91 states in preparing a report on the history and causes
92 of insolvency of a particular insurer, and may adopt by
93 reference any report prepared by such other associa-
94 tions.

§33-26A-13. Appointment of special deputy.

1 The association may recommend a natural person to
2 serve as a special deputy to act for the commissioner and
3 under his or her supervision in the liquidation, rehabil-
4 itation or conservation of any member insurer.

§33-26A-14. Miscellaneous provisions.

1 (a) Nothing in this article shall be construed to reduce
2 the liability for unpaid assessments of the insureds of
3 an impaired or insolvent insurer operating under a plan
4 with assessment liability.

5 (b) Records shall be kept of all negotiations and
6 meetings in which the association or its representatives
7 are involved to discuss the activities of the association
8 in carrying out its powers and duties under section eight
9 of this article. Records of such negotiations or meetings
10 shall be made public only upon the termination of a
11 liquidation, rehabilitation or conservation proceeding
12 involving the impaired or insolvent insurer, upon the
13 termination of the impairment or insolvency of the
14 insurer, or upon the order of a court of competent
15 jurisdiction. Nothing in this subsection shall limit the
16 duty of the association to render a report of its activities
17 under section fifteen of this article.

18 (c) For the purpose of carrying out its obligations
19 under this article, the association shall be deemed to be
20 a creditor of the impaired or insolvent insurer to the
21 extent of assets attributable to covered policies reduced
22 by any amounts to which the association is entitled as
23 assignee or subrogee pursuant to subsection (m), section
24 eight of this article. All assets of the impaired or
25 insolvent insurer attributable to covered policies shall be
26 used to continue all covered policies and pay all

27 contractual obligations of the impaired or insolvent
28 insurer as required by this article. Assets attributable
29 to covered policies, as used in this subsection, are that
30 proportion of the assets which the reserves that should
31 have been established for the policies bear to the
32 reserves that should have been established for all
33 policies of insurance written by the impaired or
34 insolvent insurer.

35 (d) (1) Prior to the termination of any liquidation,
36 rehabilitation or conservation proceeding, the court may
37 take into consideration the contributions of the respec-
38 tive parties, including the association, the shareholders
39 and policy owners of the insolvent insurer, and any other
40 party with a bona fide interest, in making an equitable
41 distribution of the ownership rights of such insolvent
42 insurer. In making such a determination, consideration
43 shall be given to the welfare of the policyholders of the
44 continuing or successor insurer.

45 (2) No distribution to stockholders, if any, of an
46 impaired or insolvent insurer shall be made until and
47 unless the total amount of valid claims of the association
48 with interest thereon for funds expended in carrying out
49 its powers and duties under section eight of this article
50 with respect to the insurer have been fully recovered by
51 the association.

52 (e) (1) If an order for liquidation or rehabilitation of
53 an insurer domiciled in this state has been entered, the
54 receiver appointed under such order shall have a right
55 to recover on behalf of the insurer, from any affiliate
56 that controlled it, the amount of distributions other than
57 stock dividends paid by the insurer on its capital stock
58 made at any time during the five years preceding the
59 petition for liquidation or rehabilitation subject to the
60 limitations of this subsection.

61 (2) Distribution shall not be recoverable if the insurer
62 shows that when paid the distribution was lawful and
63 reasonable, and that the insurer did not know and could
64 not reasonably have known that the distribution might
65 adversely affect the ability of the insurer to fulfill its
66 contractual obligations.

67 (3) Any person who, as an affiliate, controlled the
68 insurer at the time the distributions were paid shall be
69 liable up to the amount of distributions he or she
70 received. Any person who, as an affiliate, controlled the
71 insurer at the time the distributions were declared, shall
72 be liable up to the amount of distributions he or she
73 would have received if they had been paid immediately.
74 If two or more persons are liable with respect to the
75 same distributions, they shall be jointly and severally
76 liable.

77 (4) The maximum amount recoverable under this
78 subsection shall be the amount required in excess of all
79 other available assets of the impaired or insolvent
80 insurer to pay the contractual obligations of the
81 impaired or insolvent insurer.

82 (5) If any person under subdivision (3) is insolvent, all
83 its affiliates that controlled it at the time the distribu-
84 tion was paid shall be jointly and severally liable for any
85 resulting deficiency in the amount recovered from the
86 insolvent affiliate.

§33-26A-15. Examination of association; annual report.

1 The association shall be subject to examination and
2 regulation by the commissioner. The board of directors
3 shall submit to the commissioner, not later than the first
4 day of May of each year, a financial report for the
5 preceding calendar year in a form approved by the
6 commissioner and a report of its activities during the
7 preceding calendar year.

§33-26A-16. Tax exemptions.

1 The association shall be exempt from payment of all
2 fees and all taxes levied by this state or any of its
3 subdivisions, except taxes levied on real property.

§33-26A-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 or its agents or employees, the association or its
4 agents or employees, members of the board of directors,
5 or the commissioner or his or her representatives, for

6 any action or omission by them in the performance of
7 their powers and duties under this article. Such
8 immunity shall extend to the participation in any
9 organization of one or more other state associations of
10 similar purposes and to any such organization and its
11 agents or employees.

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

1 All proceedings in which the impaired or insolvent
2 insurer is a party in any court in this state shall be
3 stayed sixty days from the date an order of liquidation,
4 rehabilitation or conservation is final to permit proper
5 legal action by the association on any matters germane
6 to its powers or duties. As to a judgment under any
7 decision, order, verdict or finding based on default the
8 association may apply to have the judgment set aside by
9 the same court that made the judgment and shall be
10 permitted to defend against the suit on the merits.

§33-26A-19. Prohibited advertisement of insurance guaranty association act in insurance sales; notice to policyholders.

1 (a) A person, including any insurer, agent or affiliate
2 of an insurer shall not make, publish, disseminate,
3 circulate or place before the public, or cause directly or
4 indirectly, to be made, published, disseminated, circu-
5 lated or placed before the public, in any newspaper,
6 magazine or other publication, or in the form of a notice,
7 circular, pamphlet, letter or poster, or over any radio
8 station or television station, or in any other way, any
9 advertisement, announcement or statement, written or
10 oral, which uses the existence of the insurance guaranty
11 association of this state for the purpose of sales,
12 solicitation or inducement to purchase any form of
13 insurance covered by the West Virginia life and health
14 insurance guaranty association act: *Provided*, That this
15 section shall not apply to the association or any other
16 entity which does not sell or solicit insurance.

17 (b) Within one hundred eighty days of the effective
18 date of this section, the association shall prepare a
19 summary document describing the general purposes

20 and current limitations of the act and complying with
21 subsection (c) of this section. This document should be
22 submitted to the commissioner for approval. Sixty days
23 after receiving such approval, no insurer may deliver a
24 policy or contract described in subdivision (1) of
25 subsection (b) of section three of this article to a policy
26 or contract holder unless the document is delivered to
27 the policy or contract holder prior to or at the time of
28 delivery of the policy or contract except if subsection (d)
29 of this section applies. The document should also be
30 available upon request by a policyholder. The distribu-
31 tion, delivery, or contents or interpretation of this
32 document shall not mean that either the policy or the
33 contract of the holder thereof would be covered in the
34 event of the impairment or insolvency of a member
35 insurer. The description document shall be revised by
36 the association as amendments to the act may require.
37 Failure to receive this document does not give the
38 policyholder, contract holder, certificate holder or
39 insured any greater rights than those stated in this
40 article.

41 (c) The document prepared under subsection (b) of
42 this section shall contain a clear and conspicuous
43 disclaimer on its face. The commissioner shall promul-
44 gate a rule establishing the form and content of the
45 disclaimer. The disclaimer shall:

46 (1) State the name and address of the association and
47 insurance department;

48 (2) Prominently warn the policy or contract holder
49 that the association may not cover the policy or, if
50 coverage is available, it will be subject to substantial
51 limitations and exclusions and conditioned on continued
52 residence in the state;

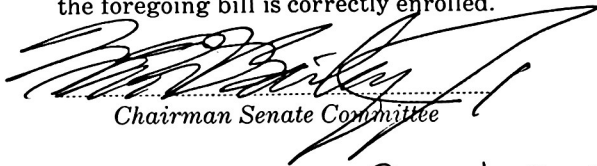
53 (3) State that the insurer and its agents are prohibited
54 by law from using the existence of the association for
55 the purpose of sales, solicitation or inducement to
56 purchase any form of insurance;

57 (4) Emphasize that the policy or contract holder
58 should not rely on coverage under the association when
59 selecting an insurer;

60 (5) Provide other information as directed by the
61 commissioner.

62 (d) An insurer or agent may not deliver a policy or
63 contract described in subdivision (1) of subsection (b) of
64 section three of this article and excluded under para-
65 graph (A), subdivision (2), subsection (b) of section three
66 of this article from coverage under this article unless the
67 insurer or agent, prior to or at the time of delivery, gives
68 the policy or contract holder a separate written notice
69 which clearly and conspicuously discloses that the policy
70 or contract is not covered by the association. The
71 commissioner shall by rule specify the form and content
72 of the notice, which rules shall be promulgated on or
73 before the second day of August, one thousand nine
74 hundred ninety-three.

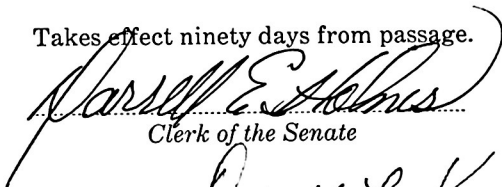
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.


.....
Chairman Senate Committee


.....
Chairman House Committee

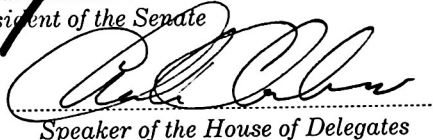
Originating in the House.

Takes effect ninety days from passage.

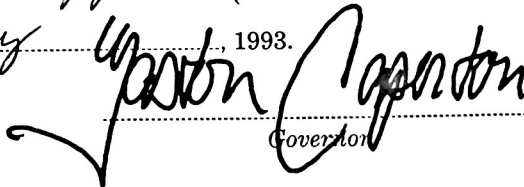

.....
Clerk of the Senate


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Clerk of the House of Delegates


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President of the Senate


.....
Speaker of the House of Delegates

The within is approved this the 11th
day of May, 1993.


.....
Governor

PRESENTED TO THE

GOVERNOR

Date 4/29/93

Time 11:30 am