
WEST VIRGINIA CODE CHAPTER 33
ARTICLE 20A

WV Legislature

§33-20A-1. Short title.

This article shall be known and may be cited as the "West Virginia Essential Insurance Coverage Act."

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§33-20A-2. Intent and purpose.

To provide for a mechanism whereby the commissioner may establish insurance plans to make available insurance coverages to persons who do not have coverages available to them in the voluntary insurance market.

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§33-20A-3. West Virginia essential insurance association.

(a) The commissioner shall establish a nonprofit unincorporated legal entity to be known as the West Virginia essential insurance association to make fire and extended coverage insurance available to any person having an insurable interest in habitational or commercial property situated in this state who is equitably entitled to but unable to secure such insurance in the voluntary insurance market. Participation shall be required of all insurers doing any insurance business in this state of the kinds covered by the association as a condition of their authority to transact insurance in this state.

(b) The association shall perform its functions under a plan of operation established by regulation promulgated by the commissioner pursuant to chapter twenty-nine-a, article three of this code.

(c) If the commissioner finds after a public hearing that in any part of this state any other kind of essential insurance coverage is not readily available in the voluntary insurance market and that the public interest requires such availability, he may by regulation promulgate plans to provide such coverage through the association for any risks in this state which are equitably entitled to but unable to secure such insurance in the voluntary insurance market. Participation shall be required of all insurers doing any insurance business in this state of the kinds covered by the association as a condition of their authority to transact insurance in this state.

§33-20A-4. Board of directors.

(a) The administrative powers of the association shall be vested in a board of directors consisting of not less than five nor more than nine members serving terms as established in the plan of operation. The members of the board shall be appointed by the commissioner with due consideration given to the composition of the membership of the association and to the interests of the insured who are provided essential insurance coverage by the association.

(b) Members of the board may be reimbursed from the assets of the association for expenses incurred by them as members of the board of directors and for reasonable and equitable compensation as may be prescribed by the terms of the plan of organization.

(c) The board of directors of the association shall submit to the commissioner a plan of organization for the association and make suitable or necessary amendments thereto to assure the fair, reasonable, and equitable administration of the association. The plan of organization shall become effective upon approval in writing by the commissioner.

(d) If the association fails to submit a suitable plan of organization within a reasonable period of time, or if at any time thereafter the association fails to submit suitable amendments to the plan, the commissioner shall promulgate a plan as necessary or advisable to effectuate the provisions of this article.

§33-20A-5. General powers.

(a) The association has, for purposes of this article and to the extent approved by the commissioner, the general powers and authority granted under the laws of this state to insurers licensed to transact the kinds of insurance as defined in chapter thirty-three, article one of this code.

(b) The association may take any necessary action to make available necessary insurance including, but not limited to, the following:

(1) Assess participating insurers amounts necessary to pay the obligations of the association, administration expenses, the cost of examinations and other expenses authorized under this article. The assessment of each member insurer for the kind or kinds of insurance designated in the plan shall be in the proportion that the net direct written premiums of the member insurer for the preceding calendar year bear to the net direct written premiums of all members for the preceding calendar year. A member insurer may not be assessed in any year an amount greater than five percent of his net direct written premiums for the preceding calendar year. Each member insurer shall be allowed a premium tax credit at the rate of twenty percent per year for five successive years following termination of the association. Each member insurer shall be allowed a premium tax credit at the rate of twenty percent per year for five successive years following payment of the assessment by the member insurer for any deficit in the plan.

(2) Enter into such contracts as are necessary or proper to carry out the provisions and purposes of the provisions of this article.

(3) Sue or be sued, including taking legal action necessary to recover any assessments for, on behalf of, or against participant insurers.

(4) Investigate claims brought against the fund and adjust, compromise, settle, and pay covered claims to the extent of the association's obligation and deny all other claims. Claims may be processed through the association's employees or through one or more member insurers or other persons designated as servicing facilities. Designation of a service facility is subject to the approval of the commissioner, but such designation may be declined by a member insurer.

(5) Classify risks as may be applicable and equitable.

(6) Establish appropriate rates, rate classifications and rating adjustments, and file such rates with the commissioner as may be required. Rates, rating plans and any provision for recoupment shall be based upon the association's loss and expense experience and investment income from unearned premium and loss reserves. Premium rates, including initial premiums, shall be on an actuarially sound basis and shall be calculated to be self-supporting.

(7) Administer any type of reinsurance program for or on behalf of the association or any participating carriers.

(8) Pool risks among participating carriers.

(9) Issue and market through agents, policies of insurance providing coverage required by this article in its own name or on behalf of participating carriers.

(10) Administer separate pools, separate accounts, or other plans as may be deemed appropriate for separate carriers or groups of carriers.

(11) Invest, reinvest and administer all funds and moneys held by the association.

(12) Borrow funds needed by the association to effect the purposes of this section.

(13) Develop, effectuate and promulgate any loss prevention programs aimed at the best interests of the association and the insured public.

(14) Operate and administer any combination of plans, pools, reinsurance arrangements or other mechanisms as deemed appropriate to best accomplish the fair and equitable operation of the association for the purposes of making available essential insurance coverage.

(15) Provide for the method of recoupment of deficits that may be incurred by any plan pursuant to the plan of operation. In no event shall a deficit incurred by the association be charged directly or indirectly to any person other than insurers under its fire and extended coverage or essential insurance policy. The provisions of article seventeen, section nine of this chapter shall not apply to this article.

§33-20A-6. Powers of commissioner and association.

The commissioner and the association may:

- (a) Give consideration to the need for adequate and readily accessible coverage, to alternative methods of improving the market affected, to the preferences of the insurers and agents, to the inherent limitations of the insurance mechanism to the need for reasonable underwriting standards, and to the requirement of reasonable loss prevention measures.
- (b) Establish procedures that will create minimum interference with the voluntary market.
- (c) Spread the burden imposed by the facility equitably and efficiently.
- (d) Establish procedures for applicants and participants to have grievances reviewed.
- (e) Take all reasonable and necessary steps to dissolve the association at the earliest date when essential insurance becomes readily available in the private market. The dissolution of the association, including its assets and liabilities, shall be accomplished under the supervision of the commissioner in an equitable and reasonable manner.

§33-20A-7. Immunity from liability.

There is no liability on the part of, and no cause of action of any nature against, the association or its agents or employees, members of the board, or the commissioner or his representatives for any good faith performance of their powers and duties under this article.

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