WEST VIRGINIA CODE CHAPTER 33 ARTICLE 30

WV Legislature

§33-30-1. Legislative findings .

Mine subsidence in this state has resulted in great loss of home, shelter and property to the citizens of this state to the detriment of the health, safety and welfare of such citizens and programs for the alleviation of such problems constitute the carrying out a public purpose. The Legislature hereby declares that the loss of home, shelter and property constitute a detriment to the safety, health and welfare and constitute a public purpose for which this article is in response and is an attempt to alleviate the public detriment.

WV Legislature

§33-30-2. Purpose.

The purpose of this article is to make mine subsidence insurance available in a reasonable and equitable manner to all residents of this state through the office of the state Board of Risk and Insurance Management.

WV Legislature

§33-30-3. Definitions.

As used in this article:

(1) "Board" means the state Board of Risk and Insurance Management;

(2) "Mine subsidence" means loss to the structure caused by lateral or vertical movement, including collapse which results therefrom, of structures from collapse of man-made underground coal mines. It does not include loss caused by earthquake, landslide, volcanic eruption or collapse of storm and sewer drains and rapid transit tunnels;

(3) "Mine subsidence insurance fund" or "fund" means the fund established by this article within the office of the state Board of Risk and Insurance Management;

(4) "Policy" means a contract of insurance providing mine subsidence insurance;

(5) "Premium" means the gross rate charged policyholders for insurance provided by this article; and

(6) "Structure" means any dwelling, building or fixture permanently affixed to realty located in West Virginia, including basements, footings, foundations, septic systems and underground pipes directly servicing the dwelling or building. "Structure" shall not include driveways, sidewalks, parking lots, land, trees, plants, crops or agricultural field drainage tile.

WV Legislature

§33-30-4. Mine subsidence insurance fund.

(a) There is hereby established within the office of the state Board of Risk and Insurance Management a fund to be known as the "mine subsidence insurance fund." The board shall operate the fund pursuant to this article.

(b) The fund shall make available insurance coverage against losses arising out of or due to mine subsidence within this state as to any structure within this state.

(c) The moneys in the fund shall be derived from premiums for subsidence insurance collected on behalf of the board pursuant to this article. The board shall be empowered to invest the fund and first use the interest therefrom for claim payments and administration expenses.

(d) Premiums for subsidence insurance shall be established by the board, who shall periodically review the premium level and the experience data applicable to operation of the fund and make changes as required.

(e) Premiums shall be established at a rate or within a schedule of rates sufficient to satisfy all foreseeable claims upon the fund during the period of coverage, giving due consideration to relevant loss or claim experience or trends, to cover normal costs of operation of the fund by the board and provide a reasonable reserve fund for unexpected contingencies. Deviation from the premium set by the board shall not be allowed.

WV Legislature

§33-30-5. State support for mine subsidence insurance fund.

(a) The Legislature may appropriate to the mine subsidence insurance fund or the Governor may grant to the fund out of the Governor's civil contingency fund an amount not to exceed $500,000 to pay claims against the fund occurring prior to the accumulation of sufficient reserve to pay such claims and to provide a reasonable reserve fund for unexpected contingencies. The board shall determine adequacy and reasonableness of the reserve.

(b) In the absence of appropriations from the Legislature or grants from the Governor's civil contingency fund, the board may advance from its insurance fund sufficient amounts to pay claims against the mine subsidence fund. Any funds advanced by the board shall be repaid to the insurance fund.

WV Legislature

§33-30-6. Mine subsidence coverage; waivers.

(a) Beginning October 1, 1982, every insurance policy issued or renewed insuring on a direct basis a structure located in this state shall include, at a separately stated premium, insurance for loss occurring on or after October 1, 1982, caused by mine subsidence unless waived by the insured: A waiver is not required and the coverage may only be provided if requested by the insured in the following counties: Berkeley, Cabell, Calhoun, Hampshire, Hardy, Jackson, Jefferson, Monroe, Morgan, Pendleton, Pleasants, Ritchie, Roane, Wirt, and Wood.

(b) The effective date of a new policy or endorsement containing mine subsidence insurance coverage shall be on the thirtieth calendar day after the application date. The premium charged for coverage shall be set by the board:

(1) At no time may the deductible be less than $250 nor more than $500; and total insured value reinsured by the board may not exceed $200,000. In no event may the amount of mine subsidence reinsurance exceed the amount of the fire insurance on the structure.

(c) Recovery paid to the policyholder for an incurred covered loss, whether received before or after submission of the loss to the insurer, must first be applied to property damages. If a source other than the mine subsidence fund provides payment to an insured for a loss insured by the mine subsidence insurance program, the fund is only liable up to the statutory limit of reinsurance for the portion of the loss not covered by the other sources.

WV Legislature

§33-30-7. Limited right of insurers to refuse to provide subsidence coverage.

An insurer may refuse to provide subsidence coverage (1) on a structure evidencing unrepaired subsidence damage, until necessary repairs are made; or (2) where the insurer has declined, nonrenewed or canceled all coverage under a policy for underwriting reasons unrelated to mine subsidence: Provided, That an insurer shall refuse to provide subsidence coverage on a structure which evidences a loss or damage in progress.

Any dispute arising under this section shall be subject to the hearing and appeal provisions of article two of this chapter.

WV Legislature

§33-30-8. Reinsurance agreements.

All companies authorized to write fire insurance in this state shall enter into a reinsurance agreement with the board in which each insurer agrees to cede to the board one hundred percent, up to $200.000, of any subsidence insurance coverage issued and, in consideration of the ceding commission retained by the insurer, agree to absorb all expenses of the insurer necessary for sale of policies and any administration duties of the mine subsidence insurance program imposed upon it pursuant to the terms of the reinsurance agreement. The board is authorized to undertake adjustment of losses and administer the fund, or it may provide in a reinsurance agreement that the insurer do so. The board shall agree to reimburse the insurer from the fund for all amounts paid policyholders for claims resulting from mine subsidence and shall pay from the fund all costs of administration incurred by the board but an insurer is not required to pay any claim for any loss insured under this article except to the extent that the amount available in the mine subsidence insurance fund, as maintained pursuant to sections four and five of this article, is sufficient to reimburse the insurer for such claim under this section, and without moral obligation.

WV Legislature

§33-30-9. Distribution of premium.

The proportion of total subsidence insurance premiums collected by each insurer which shall be retained by the insurer as a ceding commission shall be fixed by the board. The remainder of such premiums shall be remitted by the insurer to the board within forty-five days after the end of each calendar quarter.

WV Legislature

§33-30-10. Payment of losses.

(a) Pursuant to the reinsurance agreements, authorized by this article, the board shall, within ninety days after receiving the loss report, pay the insurer all amounts due out of the fund.

(b) No claim of an insured shall be paid by an insurer in respect of a loss covered by mine subsidence insurance prior to February 15, 1983. On and after February 15, 1983, all claims of insureds shall be paid within one hundred twenty days after proof of loss is presented to an insurer unless otherwise agreed by the insurer and claimant. Upon payment of the claim of an insured from the fund, the insured shall be deemed to have waived any cause of action for damages caused by subsidence to the extent of the payment from the fund.

WV Legislature

§33-30-11.

Repealed.

Acts, 1985 Reg. Sess., Ch. 109.

WV Legislature

§33-30-12. Right of recourse.

(a) Except in the case of fraud by an insurer, the board does not have any right of recourse against the insurer and the insurer may settle losses in the customary manner consistent with this article.

(b) The board may require an insurer to attempt recovery from a policyholder for the amounts paid to such policyholder if, in the judgment of the board, the policyholder was not entitled to the amounts paid because of fraud or violation of the policy conditions. The costs of such recovery attempt shall be borne by the board. Any dispute under this section shall be subject to the hearing and appeal provisions of article two of this chapter.

(c) The Legislature hereby finds the duties and responsibilities of insurers under this article are to facilitate the availability of mine subsidence coverage in the state through and on behalf of the board; therefore, a policyholder may not bring a cause of action or any other action against the insurer for claims which have been reported to the board arising out of or relating to this article.

WV Legislature

§33-30-13. Subrogation.

Each insurer issuing mine subsidence insurance policies in this state has the right of subrogation.

The board may exercise the right of subrogation.

WV Legislature

§33-30-14. Powers of board.

The board has the power, duty and responsibility to establish and maintain the fund and supervise in all respects, consistent with the provisions of this article, the operation and management of the mine subsidence insurance program established in this article and to do all things necessary or convenient to accomplish the purpose of this article.

WV Legislature

§33-30-15. Rules and regulations.

The board is authorized to promulgate and adopt such rules and regulations relating to mine subsidence insurance as are necessary to effectuate the provisions of this article. Such rules and regulations shall be promulgated and adopted pursuant to the provisions of chapter twenty-nine-a of this code.

WV Legislature