WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1970

ENROLLED

HOUSE BILL No. 579

(By Mr. )

PASSED February 11, 1970

In Effect

FILED IN THE OFFICE
JOHN D. ROCKEFELLER, IV
SECRETARY OF STATE
THIS DATE 2-12-70
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 Insurance Guaranty Association Act."

§33-26-2. Purpose.

1 The purpose of this article is to provide a mechanism for the payment of covered claims under certain insurance policies to avoid excessive delay in payment and to avoid financial loss to claimants or policyholders because of the insolvency of an insurer, to assist in the detection and prevention of insurer insolvencies, and to provide an association to assess the cost of such protection among insurers.


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

§33-26-4. Construction.

1 This article shall be liberally construed to effect the
purpose under section two of this article which shall constitute an aid and guide to interpretation.

§33-26-5. Definitions.

As used in this article:

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

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

(3) "Commissioner" means the insurance commissioner of West Virginia.

(4) "Covered claim" means an unpaid claim, including one for unearned premiums, which arises out of and is within the coverage of an insurance policy to which this article applies and which policy is in force at the time of the occurrence giving rise to such unpaid claims if (a) the insurer issuing the policy becomes an insolvent insurer after the effective date of this article and (b) the claimant or insured is a resident of this state at the time of the insured occurrence, or the property from which the claim arises is permanently located in this
state. "Covered claim" shall not include (i) any amount in excess of the applicable limits of coverage provided by an insurance policy to which this article applies; nor (ii) any amount due any reinsurer, insurer, insurance pool, or underwriting association, as subrogation recoveries or otherwise.

(5) "Insolvent insurer" means an insurer (a) authorized to transact insurance in this state either at the time the policy was issued or when the insured event occurred and (b) determined to be insolvent by a court of competent jurisdiction.

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

(7) "Net direct written premiums" means direct gross premiums written in this state on insurance policies to which this article applies, less return premiums thereon and dividends paid or credited to policyholders on such direct business. "Net direct written premiums"
does not include premiums on contracts between insurers or reinsurers.

(8) "Person" includes an individual, company, insurer, association, organization, society, reciprocal, partnership, syndicate, business trust, corporation, or any other legal entity.

(9) "Receiver" means receiver, liquidator, rehabilitator, or conservator as the context may require.

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

There is created a nonprofit unincorporated legal entity to be known as the West Virginia insurance guaranty association. All insurers defined as member insurers in section five of this article shall be and remain members of the association as a condition of their authority to transact insurance in this state. The association shall perform its functions under a plan of operation established and approved under section nine of this article and shall exercise its powers through a board of directors established under section seven of this article. For purposes of administration and assessment, the association shall establish and maintain two separate accounts:
Enr. H. B. No. 579]

13 (a) The automobile insurance account; and (b) the account for all other insurance to which this article applies.

§33-26-7. Board of directors.

1 (1) The board of directors of the association shall consist of not less than five nor more than nine persons serving terms as established in the plan of operation.

2 The members of the board shall be selected by member insurers subject to the approval of the commissioner.

3 Vacancies on the board shall be filled for the remaining period of the term in the same manner as initial appointments. If no members are selected within sixty days after the effective date of this article, the commissioner may appoint the initial members of the board of directors.

4 (2) In approving selections to the board, the commissioner shall consider among other things whether all member insurers are fairly represented.

5 (3) 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.

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-
penses of handling covered claims subsequent to an in-
solvency, the cost of examinations under section thirteen
of this article, and other expenses authorized by this
article. The assessments of each member insurer shall
be in the proportion that the net direct written premiums
of the member insurer for the preceding calendar year on
the kinds of insurance in the account bears to the net
direct written premiums of all member insurers for the
preceding calendar year on the kinds of insurance in
the account. Each member insurer shall be notified of
the assessment not later than thirty days before it is due.
No member insurer may be assessed in any one year on
any account an amount greater than two percent of that
member insurer's net direct written premiums for the
preceding calendar year on the kinds of insurance in the
account. If the maximum assessment, together with the
other assets of the association in any account, does not
provide in any one year in any account an amount suffi-
cient to make all necessary payments from that account,
the funds available shall be prorated and the unpaid
portion shall be paid as soon thereafter as funds become
available. The association may exempt or defer, in whole or in part, the assessment of any member insurer, if the assessment would cause the member insurer's financial statement to reflect the amounts of capital or surplus less than the minimum amounts required for a certificate of authority by any jurisdiction in which the member insurer is authorized to transact insurance. Each member insurer may set off against any assessment, authorized payments made on covered claims and expenses incurred in the payment of such claims by the member insurer if they are chargeable to the account for which the assessment is made.

(d) Investigate claims brought against the association and adjust, compromise, settle, and pay covered claims to the extent of the association's obligation and deny all other claims and may review settlements, releases and judgments to which the insolvent insurer or its insureds were parties to determine the extent to which such settlements, releases and judgments may be properly contested.

(e) Notify such persons as the commissioner directs
under section ten, subsection (2) of this article.

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

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

(2) The association may:

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

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

(c) Sue or be sued.

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

(e) Perform such other acts as are necessary or proper to effectuate the purpose of this article.
(f) Refund to the member insurers in proportion to the contribution of each member insurer to an account that amount by which the assets of the account exceed the liabilities, if, at the end of any calendar year, the board of directors finds that the assets of the association in any account exceed the liabilities of that account as estimated by the board of directors for the coming year.


1   (1) The association shall:

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

3    (b) If the association fails to submit a suitable plan of operation within ninety days following the effective date of this article or if at any time thereafter the association fails to submit suitable amendments to the plan, the commissioner shall, after notice and hearing, adopt and promulgate such reasonable rules as are necessary
or advisable to effectuate the provisions of this article. Such rules shall continue in force until modified by the commissioner or superseded by a plan submitted by the association and approved by the commissioner. All such rules shall be promulgated in accordance with the provisions of chapter twenty-nine-a of this code.

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

(3) The plan of operation shall:

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

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

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

(d) Establish procedures by which claims may be filed with the association and establish acceptable forms of proof of covered claims. Notice of claims to the receiver of the insolvent insurer shall be deemed notice
to the association or its agent and a list of such claims
shall be periodically submitted to the association or sim-
ilar organization in another state by the receiver.
(e) Establish regular places and times for meetings
of the board of directors.
(f) Establish procedures for records to be kept of all
financial transactions of the association, its agents, and
the board of directors.
(g) Provide that any member insurer aggrieved by
a final action or decision of the association may appeal
to the commissioner within thirty days after the action
or decision.
(h) Establish the procedures whereby selections for
the board of directors will be submitted to the commis-
sioner.
(i) Contain additional provisions necessary or proper
for the execution of the powers and duties of the asso-
ciation.
(4) The plan of operation may provide that any or
all powers and duties of the association, except those
under section eight, subsection (1), subdivision (c), and
section eight, subsection (2), subdivision (b) of this article are delegated to a corporation, association or other organization which performs or will perform functions similar to those of this association, or its equivalent, in two or more states. Such a corporation, association or organization shall be reimbursed as a servicing facility would be reimbursed and shall be paid for its performance of any other functions of the association. A delegation under this subsection shall take effect only with the approval of both the board of directors and the commissioner, and may be made only to a corporation, association, or organization which extends protection not substantially less favorable and effective than that provided by this article.

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

(1) The commissioner shall:

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

(b) Upon request of the board of directors, provide
the association a statement of the net direct written
premiums of each member insurer.

(2) The commissioner may:

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

(b) Suspend or revoke, after notice and hearing,
the certificate of authority to transact insurance in this
state of any member insurer which fails to pay an
assessment when due or fails to comply with the plan
of operation. As an alternative, the commissioner may
levy a fine on any member insurer which fails to pay an
assessment when due. Such fine shall not exceed five
percent of the unpaid assessment per month, except that
no fine shall be less than one hundred dollars per
month.
(c) Revoke the designation of any servicing facility if he finds claims are being handled unsatisfactorily.

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

§33-26-11. Effect of paid claims.

(1) Any person recovering under this article shall be deemed to have assigned his rights under the policy to the association to the extent of his recovery from the association. Every insured or claimant seeking the protection of this article shall cooperate with the association to the same extent as such person would have been required to cooperate with the insolvent insurer. The association shall have no cause of action against the insured of the insolvent insurer for any sums it has paid out except such causes of action as the insolvent insurer would have had if such sums had been paid by the insolvent insurer. In the case of an insolvent insurer operating on a plan whereby insurance policies with assessment liability have been issued to insureds, payments of claims by the association shall not operate
to reduce the liability of such insureds to the receiver
for unpaid assessments.

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

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

§33-26-12. Nonduplication of recovery.

(1) Any person having a claim against a solvent in-
(2) Any person having a claim which may be recovered under more than one insurance guaranty association or its equivalent shall seek recovery first from the association of the place of residence of the insured except that if it is a first party claim for damage to property with a permanent location, he shall seek recovery first from the association of the location of the property. Any recovery under this article shall be reduced by the amount of the recovery from any other insurance guaranty association or its equivalent.


(1) It shall be the duty of the board of directors,
upon majority vote, to notify the commissioner of any information indicating that any member insurer may be insolvent or in a financial condition hazardous to the policyholders or the public.

(2) The board of directors may, upon majority vote, request that the commissioner order an examination of any member insurer which the board in good faith believes may be in a financial condition hazardous to the policyholders or the public. Within thirty days of the receipt of such request, the commissioner shall begin such examination. The examination may be conducted as a national association of insurance commissioners' examination or may be conducted by such persons as the commissioner designates. The cost of such examination shall be paid by the association and the examination report shall be treated as are other examination reports. In no event shall such examination report be released to the board of directors prior to its release to the public, but this shall not preclude the commissioner from complying with subsection three of this section. The commissioner shall notify the board of directors when the
examination is completed. The request for an examination shall be kept on file by the commissioner but it shall not be open to public inspection prior to the release of the examination report to the public.

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

(4) The board of directors may, upon majority vote, make reports and recommendations to the commissioner upon any matter germane to the solvency, liquidation, rehabilitation or conservation of any member insurer. Such reports and recommendations shall not be considered public documents.

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

(6) The board of directors shall, at the conclusion of any insurer insolvency in which the association was
obligated to pay covered claims, prepare a report on the
history and causes of such insolvency, based on the in-
formation available to the association, and submit such
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.


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

§33-26-17. Immunity.

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

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

All proceedings in which the insolvent insurer is a
party or obligated to defend a party in any court in this
state shall be stayed for sixty days from the date the
insolvency is determined to permit proper defense by
the association of all pending causes of action. As to any
covered claims arising from a judgment under any order,
decision, verdict or finding based on the default of the
insolvent insurer or its wrongful failure to defend an
insured, the association either on its own behalf or on behalf of such insured may apply to have such judgment, order, decision, verdict or finding set aside by the same court or administrator that made such judgment, order, decision, verdict or finding and shall be permitted to defend against such claim on the merits.


In the event any part or provision of this article be held to be unconstitutional by any court of competent jurisdiction, such holding and decision of the court shall not affect the validity and constitutionality of the remaining parts and provisions of this article.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

[Signatures]

William Toone
Chairman Senate Committee

Phillip J. Rutledge
Chairman House Committee

Originated in the House.

Takes effect ninety days from passage.

[Signatures]

Jesse H. Mays
Clerk of the Senate

O.A. Blankenship
Clerk of the House of Delegates

[Signatures]

[Signatures]

President of the Senate

[Signatures]

Speaker House of Delegates

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

[Signatures]

Governor
PRESENTED TO THE
GOVERNOR

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