

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1977



ENROLLED

HOUSE BILL No. 952

(By Mr. Shingleton & Mr. Shiflet)



PASSED March 23, 1977

In Effect ninety days from Passage

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H. B. 952

(By MR. SHINGLETON and MR. SHIFLET)

[Passed March 23, 1977; in effect ninety days from passage.]

AN ACT to amend chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article twenty-six-a, relating to the creation of a life and health insurance guaranty association; short title; purpose; scope of article; construction of article; definitions; creation of association; board of directors; powers and duties of association; assessments; plan of operation; duties and powers of commissioner of insurance; prevention of impairments; appointment of association nominee; miscellaneous provisions; examination of the association; annual reports; tax exemptions; immunity; and stay of court proceedings and re-opening default judgments.

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-a, 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 West
- 2 Virginia life and health insurance guaranty association act.

§33-26A-2. Purpose.

- 1 The purpose of this article is to protect policyowners,
- 2 insureds, beneficiaries, annuitants, payees, and assignees of

3 life insurance policies, health insurance policies, annuity con-
4 tracts, and supplemental contracts, subject to certain limita-
5 tions, against failure in the performance of contractual obliga-
6 tions due to the impairment of the insurer issuing such policies
7 or contracts. To provide this protection, (1) an association
8 of insurers is created to enable the guaranty of payment of
9 benefits and of continuation of coverages, (2) members of the
10 association are subject to assessment to provide funds to
11 carry out the purpose of this article, and (3) the association is
12 authorized to assist the commissioner, in the prescribed man-
13 ner, in the detection and prevention of insurer impairments.

§33-26A-3. Scope of article.

1 (a) This article shall apply to direct life insurance
2 policies, health insurance policies, annuity contracts, and
3 contracts supplemental to life and health insurance policies
4 and annuity contracts issued by persons licensed to transact
5 insurance in this state at any time.

6 (b) This article shall not apply to:

7 (1) Any such policies or contracts, or any part of such
8 policies or contracts, under which the risk is borne by the
9 policyholder;

10 (2) Any such policy or contract or part thereof assumed
11 by the impaired insurer under a contract of reinsurance,
12 other than reinsurance for which assumption certificates have
13 been issued.

§33-26A-4. Construction of article.

1 This article shall be liberally construed to effect the pur-
2 pose under section two of this article which shall constitute
3 an aid and guide to interpretation.

§33-26A-5. Definitions.

1 As used in this article:

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

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

7 (3) "Commissioner" means the commissioner of insurance
8 of this state.

9 (4) "Contractual obligation" means any obligation under
10 covered policies.

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

13 (6) "Impaired insurer" means (i) an insurer which after
14 the effective date of this article becomes insolvent and is
15 placed under a final order of liquidation, rehabilitation,
16 or conservation by a court of competent jurisdiction, or (ii)
17 an insurer deemed by the commissioner after the effective
18 date of this article to be unable or potentially unable to
19 fulfill its contractual obligations.

20 (7) "Member insurer" means any person authorized to
21 transact in this state any kind of insurance to which this
22 article applies under section three.

23 (8) "Premiums" means direct gross insurance premiums
24 and annuity considerations written on covered policies, less
25 return premiums and considerations thereon and dividends
26 paid or credited to policyholders on such direct business.
27 "Premiums" do not include premiums and considerations on
28 contracts between insurers and reinsurers. As used in section
29 nine "premiums" are those for the calendar year preceding the
30 determination of impairment.

31 (9) "Person" means any individual, corporation, partner-
32 ship, association or voluntary organization.

33 (10) "Resident" means any person who resides in this
34 state at the time the impairment is determined and to whom
35 contractual obligations are owed.

36 (11) "Health insurance" means accident and sickness in-
37 surance as defined in subsection (b), section ten, article one,
38 of this chapter.

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

1 (a) There is created a nonprofit legal entity to be known
2 as the West Virginia life and health insurance guaranty
3 association. All member insurers shall be and remain mem-

4 bers of the association as a condition of their authority to
5 transact insurance in this state. The association shall perform
6 its functions under the plan of operation established and
7 approved under section ten and shall exercise its powers
8 through a board of directors established under section seven.
9 For purposes of administration and assessment, the associa-
10 tion shall maintain the following three accounts:

- 11 (1) The health insurance account;
- 12 (2) The life insurance account; and
- 13 (3) The annuity account.

14 (b) The association shall come under the immediate super-
15 vision of the commissioner and shall be subject to the applic-
16 able provisions of the insurance laws of this state.

§33-26A-7. Board of directors.

1 (a) The board of directors of the association shall
2 consist of not less than five nor more than nine members
3 serving terms as established in the plan of operation. The
4 members of the board shall be selected by member insurers
5 subject to the approval of the commissioner. Vacancies on
6 the board shall be filled for the remaining period of the
7 term in the manner described in the plan of operation. To
8 select the initial board of directors, and initially organize
9 the association, the commissioner shall give notice to all
10 member insurers of the time and place of the organizational
11 meeting. In determining voting rights at the organizational
12 meeting each member insurer shall be entitled to one vote in
13 person or by proxy. If the board of directors is not selected
14 within sixty days after notice of the organizational meeting,
15 the commissioner may appoint the initial members.

16 (b) In approving selections or in appointing members of
17 the board, the commissioner shall consider, among other
18 things, whether all member insurers are fairly represented.

19 (c) Members of the board may be reimbursed from the
20 assets of the association for expenses incurred by them as
21 members of the board of directors but members of the board
22 shall not otherwise be compensated by the association for
23 their services.

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

1 In addition to the powers and duties enumerated in other
2 sections of this article:

3 (a) If a domestic insurer is an impaired insurer, the
4 association may, prior to an order of liquidation or re-
5 habilitation, and subject to any conditions imposed by the
6 association other than those which impair the contractual
7 obligations of the impaired insurer, and approved by the
8 impaired insurer and the commissioner:

9 (1) Guarantee or reinsure, or cause to be guaranteed,
10 assumed, or reinsured, all the covered policies of the im-
11 paired insurer;

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

17 (3) Lend money to the impaired insurer.

18 (b) If a foreign or alien insurer is an impaired insurer,
19 the association may, prior to an order of liquidation, rehabilita-
20 tion, or conservation, with respect to the covered policies
21 of residents and subject to any conditions imposed by the
22 association other than those which impair the contractual
23 obligations of the impaired insurer, and approved by the
24 impaired insurer and the commissioner:

25 (1) Guarantee or reinsure, or cause to be guaranteed,
26 assumed, or reinsured, the impaired insurer's covered policies
27 of residents;

28 (2) Provide such moneys, pledges, notes, guarantees or
29 other means as are proper to effectuate subsection (b), sub-
30 division (1) of this section, and assure payment of the
31 impaired insurer's contractual obligations to residents pend-
32 ing action under subsection (b), subdivision (1); and

33 (3) Lend money to the impaired insurer.

34 (c) If a domestic insurer is an impaired insurer under
35 an order of liquidation or rehabilitation, the association

36 shall, subject to the approval of the commissioner, (1)
37 guarantee, assume, or reinsure, or cause to be guaranteed,
38 assumed or reinsured the covered policies of the impaired
39 insurer, (2) assure payment of the contractual obligations
40 of the impaired insurer, and (3) provide such moneys, pledges,
41 notes, guarantees, or other means as are reasonably necessary
42 to discharge such duties. If the association fails to act
43 within a reasonable period of time, the commissioner shall
44 have the powers and duties of the association under this
45 article with respect to such domestic impaired insurer.

46 (d) If a foreign or alien insurer is an impaired insurer
47 under an order of liquidation, rehabilitation, or conservation,
48 the association shall, subject to the approval of the com-
49 missioner:

50 (1) Guarantee, assume, or reinsure or cause to be guaran-
51 teed, assumed, or reinsured the covered policies of residents;

52 (2) Assure payment of the contractual obligations of the
53 impaired insurer to residents; and

54 (3) Provide such moneys, pledges, notes, guarantees, or
55 other means as are reasonably necessary to discharge such
56 duties. If the association fails to act within a reasonable
57 period of time, the commissioner shall have the powers and
58 duties of the association under this article with respect to
59 such foreign or alien impaired insurer.

60 (e) In carrying out its duties under subsections (c)
61 and (d) of this section, the association may request that
62 there be imposed policy liens, contract liens, moratoriums
63 on payments, or other similar means and such liens, mora-
64 toriums, or similar means may be imposed if the commis-
65 sioner:

66 (1) Finds that the amounts which can be assessed under
67 this article are less than the amounts needed to assure full
68 and prompt performance of the impaired insurer's contractual
69 obligations, or that the economic or financial conditions as
70 they affect member insurers are sufficiently adverse to ren-
71 der the imposition of policy or contract liens, moratoriums,
72 or similar means to be in the public interest; and

73 (2) Approves the specific policy liens, contract liens,
74 moratoriums, or similar means to be used.

75 Before being obligated under subsections (c) and (d) of
76 this section, the association may request that there be imposed
77 temporary moratoriums or liens on payments of cash values and
78 policy loans and such temporary moratoriums and liens may be
79 imposed if they are approved by the commissioner.

80 (f) The association shall have no liability under this
81 section for any covered policy of a foreign or alien insurer
82 whose domiciliary jurisdiction or state of entry provides by
83 statute or regulation, for residents of this state protection
84 substantially similar to that provided by this article for
85 residents of other states.

86 (g) The association may render assistance and advice to
87 the commissioner, upon his request, concerning rehabilitation,
88 payment of claims, continuations of coverage, or the per-
89 formance of other contractual obligations of any impaired
90 insurer.

91 (h) The association shall have standing to appear before
92 any court in this state with jurisdiction over an impaired
93 insurer concerning which the association is or may become
94 obligated under this article. Such standing shall extend to
95 all matters germane to the powers and duties of the associa-
96 tion, including, but not limited to, proposals for reinsuring
97 or guaranteeing the covered policies of the impaired insurer
98 and the determination of the covered policies and contractual
99 obligations.

100 (i) Any person receiving benefits under this article shall
101 be deemed to have assigned his rights under the covered
102 policy to the association to the extent of the benefits received
103 because of this article whether the benefits are payments of
104 contractual obligations or continuation of coverage. The
105 association may require an assignment to it of such rights
106 by any payee, policy or contract owner, beneficiary, insured
107 or annuitant as a condition precedent to the receipt of any
108 rights or benefits conferred by this article upon such person.
109 The association shall be subrogated to these rights against
110 the assets of any impaired insurer.

111 The subrogation rights of the association under this sub-
112 section shall have the same priority against the assets of the
113 impaired insurer as that possessed by the person entitled to
114 receive benefits under this article.

115 (j) The contractual obligations of the impaired insurer
116 for which the association becomes or may become liable shall
117 be as great as but no greater than the contractual obligations
118 of the impaired insurer would have been in the absence
119 of an impairment unless such obligations are reduced as
120 permitted by subsection (e) of this section, but the associa-
121 tion shall have no liability with respect to any portion of
122 a covered policy to the extent that the death benefit coverage
123 on any one life exceeds an aggregate of three hundred thousand
124 dollars.

125 (k) The association may:

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

128 (2) Sue or be sued, including taking any legal actions
129 necessary or proper for recovery of any unpaid assessments
130 under section nine.

131 (3) Borrow money to effect the purposes of this article.
132 Any notes or other evidence of indebtedness of the association
133 not in default shall be legal investments for domestic in-
134 surers and may be carried as admitted assets.

135 (4) Employ or retain such persons as are necessary to
136 handle the financial transactions of the association, and to
137 perform such other functions as become necessary or proper
138 under this article.

139 (5) Negotiate and contract with any liquidator, rehabilita-
140 tor, conservator, or ancillary receiver to carry out the powers
141 and duties of the association.

142 (6) Take such legal action as may be necessary to avoid
143 payment of improper claims.

144 (7) Exercise, for the purposes of this article and to the
145 extent approved by the commissioner, the powers of a
146 domestic life or health insurer, but in no case may the associa-

147 tion issue insurance policies or annuity contracts other than
148 those issued to perform the contractual obligations of the
149 impaired insurer.

§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,
3 the board of directors shall assess the member insurers,
4 separately for each account, at such times and for such
5 amounts as the board finds necessary. The board shall
6 collect the assessments after thirty days written notice to
7 the member insurers before payment is due.

8 (b) There shall be three classes of assessments, as fol-
9 lows:

10 (1) Class A assessments shall be made for the purpose
11 of meeting administrative costs and other general expenses
12 not related to a particular impaired insurer.

13 (2) Class B assessments shall be made to the extent
14 necessary to carry out the powers and duties of the associa-
15 tion under section eight with regard to an impaired domestic
16 insurer.

17 (3) Class C assessments shall be made to the extent
18 necessary to carry out the powers and duties of the associa-
19 tion under section eight with regard to an impaired foreign
20 or alien insurer.

21 (c) The amount of any Class A assessment for each
22 account shall be determined by the board. The amount of any
23 Class B or C assessment shall be divided among the accounts
24 in the proportion that the premiums received by the impaired
25 insurer on the policies covered by each account bears to the
26 premiums received by such insurer on all covered policies.

27 Class A and Class C assessments against member insur-
28 ers for each account shall be in the proportion that the
29 premiums received on business in this state by each assessed
30 member insurer on policies covered by each account bears to
31 such premiums received on business in this state by all
32 assessed member insurers.

33 Class B assessments for each account shall be made
34 separately for each state in which the impaired domestic
35 insurer was authorized to transact insurance at any time, in
36 the proportion that the premiums received on business in
37 such state by the impaired insurer on policies covered by
38 such account bears to such premiums received in all such
39 states by the impaired insurer. The assessments against
40 member insurers shall be in the proportion that the premiums
41 received on business in each such state by each assessed
42 member insurer on policies covered by each account bears to
43 such premiums received on business in each state by all as-
44 sessed member insurers.

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

53 (d) The association may abate or defer, in whole or in
54 part, the assessment of a member insurer if, in the opinion
55 of the board, payment of the assessment would endanger the
56 ability of the member insurer to fulfill its contractual
57 obligations. The total of all assessments upon a member
58 insurer for each account shall not in any one calendar year
59 exceed two percent of such insurer's premiums in this state
60 on the policies covered by the account.

61 (e) In the event an assessment against a member insurer
62 is abated, or deferred, in whole or in part, because of
63 the limitations set forth in subsection (d) of this section,
64 the amount by which such assessment is abated or deferred,
65 shall be assessed against the other member insurers in a
66 manner consistent with the basis for assessments set forth
67 in this section. If the maximum assessment, together with
68 the other assets of the association in either account, does
69 not provide in any one year in either account an amount
70 sufficient to carry out the responsibilities of the association,

71 the necessary additional funds shall be assessed as soon
72 thereafter as permitted by this article.

73 (f) The board may, by an equitable method as established
74 in the plan of operation, refund to member insurers, in propor-
75 tion to the contribution of each insurer to that account, the
76 amount by which the assets of the account exceed the amount
77 the board finds is necessary to carry out during the coming
78 year the obligations of the association with regard to that
79 amount, including assets accruing from net realized gains and
80 income from investments. A reasonable amount may be re-
81 tained in any account to provide funds for the continuing ex-
82 penses of the association and for future losses if refunds are
83 impractical.

84 (g) It shall be proper for any member insurer, in deter-
85 mining its premium rates and policyowner dividends as to
86 any kind of insurance within the scope of this article, to con-
87 sider the amount reasonably necessary to meet its assessment
88 obligations under this article.

89 (h) The association shall issue to each insurer paying an
90 assessment under this article a certificate of contribution, in a
91 form prescribed by the commissioner, for the amount so paid.
92 All outstanding certificates shall be of equal dignity and prior-
93 ity without reference to amounts or dates of issue. A certifi-
94 cate of contribution may be shown by the insurer in its finan-
95 cial statement as an asset in such form and for such amount,
96 if any, and period of time as the commissioner may approve.

§33-26A-10. Plan of operation.

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

7 If the association fails to submit a suitable plan of opera-
8 tion within one hundred eighty days following the effective
9 date of this article or if at any time thereafter the association
10 fails to submit suitable amendments to the plan, the com-

11 missioner shall, after notice and hearing, adopt and promulgate
12 such reasonable rules as are necessary or advisable to
13 effectuate the provisions of this article. Such rules shall con-
14 tinue in force until modified by the commissioner or superseded
15 by a plan submitted by the association and approved by the
16 commissioner.

17 (b) All member insurers shall comply with the plan of
18 operation.

19 (c) The plan of operation shall, in addition to requirements
20 enumerated elsewhere in this article:

21 (1) Establish procedures for handling the assets of the
22 association;

23 (2) Establish the amount and method of reimbursing
24 members of the board of directors under section seven of
25 this article;

26 (3) Establish regular places and times for meetings of
27 the board of directors;

28 (4) Establish procedures for records to be kept of all
29 financial transactions of the association, its agents, and the
30 board of directors;

31 (5) Establish the procedures whereby selections for the
32 board of directors will be made and submitted to the
33 commissioner;

34 (6) Establish any additional procedures for assessments
35 under section nine of this article; and

36 (7) Contain additional provisions necessary or proper for
37 the execution of the powers and duties of the associa-
38 tion.

39 (d) The plan of operation may provide that any or all
40 powers and duties of the association, except those under
41 section eight, subsection (k), subdivision (3) and section
42 nine of this article, are delegated to a corporation, as-
43 sociation, or other organization which performs or will per-
44 form functions similar to those of this association, or its
45 equivalent, in two or more states. Such a corporation, associa-
46 tion, or organization shall be reimbursed for any payments

47 made on behalf of the association and shall be paid for
48 its performance of any function of the association. A delega-
49 tion under this subsection shall take effect only with the
50 approval of both the board of directors and the commis-
51 sioner, and may be made only to a corporation, association, or
52 organization which extends protection not substantially less
53 favorable and effective than that provided by this article.

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

1 (a) In addition to the duties and powers enumerated
2 elsewhere in this article the commissioner shall:

3 (1) Notify the board of directors of the existence of
4 an impaired insurer not later than three days after a
5 determination of impairment is made or he receives notice of
6 impairment;

7 (2) Upon request of the board of directors, provide the
8 association with a statement of the premiums in the appro-
9 priate states for each member insurer; and

10 (3) When an impairment is declared and the amount of
11 the impairment is determined, serve a demand upon the im-
12 paired insurer to make good the impairment within a reason-
13 able time. Notice to the impaired insurer shall constitute notice
14 to its shareholders, if any. The failure of the insurer to prompt-
15 ly comply with such demand shall not excuse the association
16 from the performance of its powers and duties under this
17 article.

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

27 (c) Any action of the board of directors or the association
28 may be appealed to the commissioner by any member insurer
29 if such appeal is taken within thirty days of the action being

30 appealed. Any final action or order of the commissioner shall
31 be subject to judicial review in a court of competent jurisdic-
32 tion.

33 (d) The liquidator, rehabilitator, or conservator of any
34 impaired insurer may notify all interested persons of the effect
35 of this article.

§33-26A-12. Prevention of impairments.

1 (a) To aid in the detection and prevention of insurer
2 impairments the board of directors shall, upon majority
3 vote, notify the commissioner of any information indicating
4 any member insurer may be unable or potentially unable to
5 fulfill its contractual obligations.

6 (b) The board of directors may, upon majority vote,
7 request that the commissioner order an examination of any
8 member insurer which the board in good faith believes may
9 be unable or potentially unable to fulfill its contractual
10 obligations. The commissioner may conduct such examination.
11 The examination may be conducted as a national association
12 of insurance commissioners examination or may be conducted
13 by such persons as the commissioner designates. The cost of
14 such examination shall be paid by the association and the
15 examination report shall be treated as are other examination
16 reports. In no event shall such examination report be
17 released to the board of directors of the association prior
18 to its release to the public, but this shall not excuse the
19 commissioner from his obligation to comply with subsection
20 (c) of this section. The commissioner shall notify the
21 board of directors when the examination is completed. The
22 request for examination shall be kept on file by the com-
23 missioner, but it shall not be open to public inspection prior
24 to the release of the examination report to the public and
25 shall be released at that time only if the examination dis-
26 closes that the examined insurer is unable or potentially
27 unable to meet its contractual obligations.

28 (c) The commissioner shall report to the board of
29 directors when he has reasonable cause to believe that any
30 member insurer examined at the request of the board of

31 directors may be unable or potentially unable to fulfill its
32 contractual obligations.

33 (d) The board of directors may, upon majority vote, make
34 reports and recommendations to the commissioner upon any
35 matter germane to the solvency, liquidation, rehabilitation or
36 conservation of any member insurer. Such reports and recom-
37 mendations shall not be considered public documents.

38 (e) The board of directors may, upon majority vote,
39 make recommendations to the commissioner for the detection
40 and prevention of insurer impairments.

41 (f) The board of directors shall, at the conclusion of
42 any insurer impairment in which the association carried out
43 its duties under this article or exercised any of its powers
44 under this article, prepare a report on the history and
45 causes of such impairment, based on the information
46 available to the association, and submit such report to the
47 commissioner.

§33-26A-13. Appointment of association nominee.

1 The association may recommend a natural person to serve
2 as a special deputy to act for the commissioner and under
3 his supervision in the liquidation, rehabilitation, or conserva-
4 tion 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 an
3 impaired insurer operating under a plan with assessment
4 liability.

5 (b) Records shall be kept of all negotiations and meet-
6 ings in which the association or its representatives are
7 involved to discuss the activities of the association in carry-
8 ing out its powers and duties under section eight. Records of
9 such negotiations or meetings shall be made public only
10 upon the termination of a liquidation, rehabilitation, or con-
11 versation proceeding involving the impaired insurer, upon the
12 termination of the impairment of the insurer, or upon the
13 order of a court of competent jurisdiction. Nothing in this
14 subsection shall limit the duty of the association to render a

15 report of its activities under section fifteen of this article.

16 (c) For the purpose of carrying out its obligations
17 under this article, the association shall be deemed to be
18 a creditor of the impaired insurer to the extent of assets
19 attributable to covered policies reduced by any amounts to
20 which the association is entitled as subrogee pursuant to
21 section eight, subsection (i) of this article. All assets of
22 the impaired insurer attributable to covered policies shall be
23 used to continue all covered policies and pay all contractual
24 obligations of the impaired insurer as required by this article.
25 Assets attributable to covered policies, as used in this sub-
26 section, is that proportion of the assets which the reserves that
27 should have been established for such policies bear to the
28 reserve that should have been established for all policies of
29 insurance written by the impaired insurer.

30 (d) Prior to the termination of any liquidation, rehabilita-
31 tion, or conservation proceeding, the court may take into
32 consideration the contributions of the respective parties, in-
33 cluding the association, the shareholders and policyowners of
34 the impaired insurer, and any other party with a bona fide
35 interest, in making an equitable distribution of the ownership
36 rights of such impaired insurer. In such a determination, con-
37 sideration shall be given to the welfare of the policyholders
38 of the continuing or successor insurer. No distribution to
39 stockholders, if any, of an impaired insurer shall be made
40 until and unless the total amount of assessments levied by the
41 association with respect to such insurer have been fully re-
42 covered by the association.

43 (e) It shall be a prohibited unfair trade practice for any
44 person to make use in any manner of the protection afforded
45 by this article in the sale of insurance.

46 (f) If an order for liquidation or rehabilitation of an in-
47 surer domiciled in this state has been entered, the receiver
48 appointed under such order shall have a right to recover on
49 behalf of the insurer, from any affiliate that controlled it, the
50 amount of distributions other than stock dividends paid by the
51 insurer on its capital stock made at any time during the five
52 years preceding the petition for liquidation or rehabilitation

53 subject to the limitations of this subsection. No such dividend
 54 shall be recoverable if the insurer shows that when paid the
 55 distribution was lawful and reasonable, and that the insurer
 56 did not know and could not reasonably have known that the
 57 distribution might adversely affect the ability of the insurer to
 58 fulfill its contractual obligations. Any person who, as an
 59 affiliate, controlled the insurer at the time the distributions
 60 were paid shall be liable up to the amount of distributions he
 61 received. Any person who, as an affiliate, controlled the in-
 62 surer at the time the distributions were declared, shall be
 63 liable up to the amount of distributions he would have re-
 64 ceived if they had been paid immediately. If two persons are
 65 liable with respect to the same distributions, they shall be
 66 jointly and severally liable. The maximum amount recover-
 67 able under this subsection shall be the amount needed in
 68 excess of all other available assets of the impaired insurer to
 69 pay the contractual obligations of the impaired insurer. If
 70 any person is liable as an affiliate who controlled the insurer,
 71 its affiliates that controlled it at the time the dividend was
 72 paid shall be jointly and severally liable for any resulting
 73 deficiency in the amount recovered from the insolvent affiliate.

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3/11/08
 §33-26^A-15. **Examination of the association; annual report.**

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

5 the commissioner or his representatives, for any action
6 taken by them in the performance of their powers and duties
7 under this article.

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

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

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

James L. Davis
Chairman Senate Committee

Lawrence C. Thurston
Chairman House Committee

Originated in the House.

Takes effect ninety days from passage.

J. C. Dillon Jr
Clerk of the Senate

C. A. Blankenship
Clerk of the House of Delegates

W. F. Brotherton
President of the Senate

Donald L. Kopp
Speaker House of Delegates

The within is approved this the 28
day of March, 1977.

John D. Rorhyll
Governor

APPROVED AND SIGNED BY THE GOVERNOR

RECEIVED

MAR 26 10 35 AM '77

OFFICE OF THE GOVERNOR

Date March 28, 1977

Time 2:00 p.m.

RECEIVED

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OFFICE
SECY. OF STATE