WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1982

ENROLLED

Com. Sub. for
HOUSE BILL No. 1874

(By Mr. Shingleston & Mr. Raffle)

Passed March 11, 1982

In Effect Ninety Days from Passage
AN ACT to amend and reenact section ten, article one, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said chapter by adding thereto a new article, designated article thirty, all relating to the establishment and maintenance, under the supervision and control of state board of risk and insurance management, of a certain mine subsidence insurance program; requiring insurers in the state to provide certain mine subsidence insurance to their policyholders; providing for the establishment and maintenance of a mine subsidence insurance fund supported by certain insurance premiums and payments and permissive advancement of state moneys; providing findings, purpose and definitions; giving insurers a limited right to refuse to provide said coverage; providing for reinsurance agreements, distribution of premiums, payments of losses, reporting, subrogation and a right of recourse.

Be it enacted by the Legislature of West Virginia:

That section ten, article one, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said chapter be further amended
by adding thereto a new article, designated article thirty, all to read as follows:

ARTICLE 1. DEFINITIONS.

§33-1-10. Kinds of insurance defined.

1 The following definitions of kinds of insurance are not mutually exclusive and, if reasonably adaptable thereto, a particular coverage may be included under one or more of such definitions:

2 (a) Life Insurance—Life insurance is insurance on human lives including endowment benefits, additional benefits in the event of death or dismemberment by accident or accidental means, additional benefits for disability, and annuities;

3 (b) Accident and Sickness—Accident and sickness insurance is insurance against bodily injury, disability or death by accident or accidental means, or the expense thereof, or against disability or expense resulting from sickness, and insurance relating thereto;

4 (c) Fire—Fire insurance is insurance on real or personal property of every kind and interest therein, against loss or damage from any or all hazard or cause, and against loss consequential upon such loss or damage, other than noncontractual liability for any such loss or damage. Fire insurance shall also include miscellaneous insurance as defined in paragraph (12), subdivision (e) of this section.

5 (d) Marine—Marine insurance is insurance:

6 (1) Against any and all kinds of loss or damage to vessels, craft, aircraft, cars, automobiles and vehicles of every kind, as well as all goods, freight, cargoes, merchandise, effects, disbursements, profits, moneys, bullion, precious stones, securities, choses in action, evidences of debt, valuable papers, bottomry and respondentia interests and all other kinds of property and interests therein, in respect to, appertaining to or in connection with any and all risks or perils of navigation, transit or transportation, including war risks, on or under any seas or other waters, on land (above or below ground), or in the air, or while being assembled, packed, crated, baled.
compressed or similarly prepared for shipment or while
awaiting the same or during any delays, storage, transshipment,
or reshipment incident thereto, including marine builders' risks and all personal property floater risks;

(2) Against any and all kinds of loss or damage to person or to property in connection with or appertaining to a marine, inland marine, transit or transportation insurance, including liability for loss of or damage to either, arising out of or in connection with the construction, repair, operation, maintenance or use of the subject matter of such insurance (but not including life insurance or surety bonds nor insurance against loss by reason of bodily injury to the person arising out of the ownership, maintenance or use of automobiles);

(3) Against any and all kinds of loss or damage to precious stones, jewels, jewelry, gold, silver and other precious metals, whether used in business or trade or otherwise and whether the same be in course of transportation or otherwise;

(4) Against any and all kinds of loss or damage to bridges, tunnels and other instrumentalities of transportation and communication (excluding buildings, their furniture and furnishings, fixed contents and supplies held in storage) unless fire, windstorm, sprinkler leakage, hail, explosion, earthquake, riot or civil commotion or any or all of them are the only hazards to be covered;

(5) Against any and all kinds of loss or damage to piers, wharves, docks and ships, excluding the risks of fire, windstorm, sprinkler leakage, hail, explosion, earthquake, riot and civil commotion and each of them;

(6) Against any and all kinds of loss or damage to other aids to navigation and transportation, including dry docks and marine railways, dams and appurtenant facilities for control of waterways; and

(7) Marine protection and indemnity insurance, which is insurance against, or against legal liability of the insured for, loss, damage or expense arising out of, or incident to, the ownership, operation, chartering, maintenance, use, re-
pair or construction of any vessel, craft or instrumentality in use in ocean or inland waterways, including liability of the insured for personal injury, illness or death or for loss of or damage to the property of another person.

(c) Casualty—Casualty insurance includes:

(1) Vehicle insurance, which is insurance against loss of or damage to any land vehicle or aircraft or any draft or riding animal or to property while contained therein or thereon or being loaded therein or therefrom, from any hazard or cause, and against any loss, liability or expense resulting from or incident to ownership, maintenance or use of any such vehicle, aircraft or animal; together with insurance against accidental death or accidental injury to individuals, including the named insured, while in, entering, alighting from, adjusting, repairing or cranking, or caused by being struck by any vehicle, aircraft or draft or riding animal, if such insurance is issued as a part of insurance on the vehicle, aircraft or draft or riding animal;

(2) Liability insurance, which is insurance against legal liability for the death, injury or disability of any human being, or for damage to property; and provisions for medical, hospital, surgical, disability benefits to injured persons and funeral and death benefits to dependents, beneficiaries or personal representatives of persons killed, irrespective of legal liability of the insured, when issued as an incidental coverage with or supplemental to liability insurance;

(3) Burglary and theft insurance, which is insurance against loss or damage by burglary, theft, larceny, robbery, forgery, fraud, vandalism, malicious mischief, confiscation, or wrongful conversion, disposal or concealment, or from any attempt at any of the foregoing, including supplemental coverages for medical, hospital, surgical and funeral benefits sustained by the named insured or other person as a result of bodily injury during the commission of a burglary, robbery or theft by another; also insurance against loss of or damage to moneys, coins, bullion, securities, notes, drafts, acceptances, or any other valuable papers and documents, resulting from any cause;
(4) Personal property floater insurance, which is insurance upon personal effects against loss or damage from any cause;

(5) Glass insurance, which is insurance against loss or damage to glass, including its lettering, ornamentation and fittings;

(6) Boiler and machinery insurance, which is insurance against any liability and loss or damage to property or interest resulting from accidents to or explosion of boilers, pipes, pressure containers, machinery or apparatus, and to make inspection of and issue certificates of inspection upon boilers, machinery and apparatus of any kind, whether or not insured;

(7) Leakage and fire extinguishing equipment insurance, which is insurance against loss or damage to any property or interest caused by the breakage or leakage of sprinklers, hoses, pumps and other fire extinguishing equipment or apparatus, water mains, pipes and containers, or by water entering through leaks or openings in buildings, and insurance against loss or damage to such sprinklers, hoses, pumps and other fire extinguishing equipment or apparatus;

(8) Credit insurance, which is insurance against loss or damage resulting from failure of debtors to pay their obligations to the insured. Credit insurance shall include loss of income insurance which is insurance against the failure of a debtor to pay his or her monthly obligation due to involuntary loss of employment. For the purpose of this definition, involuntary loss of employment means unemployment which has occurred as a result of, but not limited to, individual or mass layoffs, general strikes or lockouts;

(9) Malpractice insurance, which is insurance against legal liability of the insured, and against loss, damage or expense incidental to a claim of such liability, and including medical, hospital, surgical and funeral benefits to injured persons, irrespective of legal liability of the insured, arising out of the death, injury or disablement of any person, or arising out of damage to the economic interest of any person, as
the result of negligence in rendering expert, fiduciary or professional service;

(10) Entertainment insurance, which is insurance indemnifying the producer of any motion picture, television, radio, theatrical, sport, spectacle, entertainment or similar production, event or exhibition against loss from interruption, postponement or cancellation thereof due to death, accidental injury, or sickness of performers, participants, directors or other principals;

(11) Mine subsidence insurance, as provided for in article thirty of this chapter; and

(12) Miscellaneous insurance, which is insurance against any other kind of loss, damage or liability properly a subject of insurance and not within any other kind of insurance as defined in this chapter, if such insurance is not disapproved by the commissioner as being contrary to law or public policy.

(f) Surety—Surety insurance includes:

(1) Fidelity insurance, which is insurance guaranteeing the fidelity of persons holding positions of public or private trust;

(2) Insurance guaranteeing the performance of contracts, other than insurance policies, and guaranteeing and executing bonds, undertakings and contracts of suretyship: Provided, That surety insurance does not include the guaranteeing and executing of bonds by professionals bondsmen in criminal cases, or by individuals not in the business of becoming a surety for compensation upon bonds.

(3) Insurance indemnifying banks, bankers, brokers, financial or moneyed corporations or associations against loss, resulting from any cause, of bills of exchange, notes, bonds, securities, evidence of debt, deeds, mortgages, warehouse receipts or other valuable papers, documents, money, precious metals and articles made therefrom, jewelry, watches, necklaces, bracelets, gems, precious and semiprecious stones, including any loss while they are being transported in armored motor vehicles or by messenger, but not including any other
risks or transportation or navigation, and also insurance
against loss or damage to such an insured's premises or to
his furnishings, fixtures, equipment, safes and vaults therein,
caused by burglary, robbery, theft, vandalism or malicious
mischief, or any attempt to commit such crimes; and

(4) Title insurance, which is insurance of owners of
property or others having an interest therein, or liens or en-
cumbrances thereon, against loss by encumbrance, defective
title, invalidity or adverse claim to title.

ARTICLE 30. MINE SUBSIDENCE INSURANCE.

§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.

§33-30-2. Purpose.

The purpose of this article is to make mine subsidence in-
surance 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.

§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 a structure caused by
lateral or vertical movement, including collapse which results
therefrom, of structures from collapse of man-made under-
ground coal mines. It does not include loss caused by earth-
quake, 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, but does not include land, trees, plants, crops or industrial and commercial buildings.

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

(a) There is hereby established within the office of the state board of insurance and risk 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.

(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.

§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 five hundred thousand dollars 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.

§33-30-6. Mine subsidence coverage; exemption from waivers in writing.

(a) Beginning the first day of October, one thousand nine hundred eighty-two, 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 first, one thousand nine hundred eighty-two, caused by mine subsidence unless waived in writing by the insured. The premium charged for coverage shall be the same as the premium level set by the board. The loss covered shall be the loss in excess of two percent of the policy's total insured value, but at no time shall the deductible be less than two hundred fifty dollars nor more than five hundred dollars; and total insured value reinsured by the commissioner shall not exceed fifty thousand dollars.

(b) The board may designate by regulation or rule certain counties in this state where the insured therein may waive mine subsidence insurance coverage by means other than the writing required by subsection (a) of this section.

§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, non renewed, or canceled all coverage under a policy for underwriting reasons unrelated to mine subsidence.
Any dispute arising under this section shall be subject to the hearing and appeal provisions of article two of this chapter.


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 fifty thousand dollars, of any subsidence insurance coverage issued and, in consideration of the ceding commission retained by the insurer, agree to undertake adjustment of losses, and payment of taxes, and to absorb all other expenses of the insurer necessary for sale of policies and administration of the mine subsidence insurance program. The board shall agree to reimburse insurer from the fund for all amounts paid policyholders for claims resulting from 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.


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.

§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 required by section eleven of this article 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 fifteenth, one thousand nine hundred eighty-three.
On and after February fifteenth, one thousand nine hundred eighty-three, 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.


Every insurer must report at times designated by the board the amounts of premiums collected and shall report semiannually on dates established by the board and itemized list of all losses paid, including the policy number and location of structures insured pursuant to this article and reinsured by the commissioner.

§33-30-12. Right of recourse.

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.

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 equally by the insurer and the board.

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


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

The board may exercise the right of subrogation.

Every insurer shall include in its semiannual reports an itemized list of all losses in subrogation and shall remit to the board all moneys, less expenses, recovered as the result of subrogation actions.


The board has the power, duty and responsibility to establish and maintain the fund and supervise in all respects, con-
sistent with the provisions of this article, the operation and
management of the mine subsidence insurance program estab-
lished in this article and to do all things necessary or conven-
ient to accomplish the purpose of this article.


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 pur-
suant to the provisions of chapter twenty-nine-a of this code.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

[Signature]
Chairman Senate Committee

[Signature]
Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

[Signature]
Clerk of the Senate

[Signature]
Clerk of the House of Delegates

[Signature]
President of the Senate

[Signature]
Speaker House of Delegates

The within is approved this the 31 day of March, 1982.

[Signature]
Governor