

APPROVED AND SIGNED BY THE GOVERNOR

Date 3-31-82

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1982

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ENROLLED

Com. Sub. for
HOUSE BILL No. 1874

(By Mr. Shingleton + Mr. Riffe)

— ● —

Passed March 11, 1982

In Effect Ninety Days From Passage



ENROLLED
COMMITTEE SUBSTITUTE
FOR

H. B. 1874

(By MR. SHINGLETON and MR. RIFFLE)

[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
2 mutually exclusive and, if reasonably adaptable thereto, a
3 particular coverage may be included under one or more of
4 such definitions:

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

9 (b) Accident and Sickness—Accident and sickness in-
10 surance is insurance against bodily injury, disability or death
11 by accident or accidental means, or the expense thereof,
12 or against disability or expense resulting from sickness, and
13 insurance relating thereto;

14 (c) Fire—Fire insurance is insurance on real or personal
15 property of every kind and interest therein, against loss or
16 damage from any or all hazard or cause, and against loss
17 consequential upon such loss or damage, other than noncon-
18 tractual liability for any such loss or damage. Fire insurance
19 shall also include miscellaneous insurance as defined in para-
20 graph (12), subdivision (e) of this section.

21 (d) Marine—Marine insurance is insurance:

22 (1) Against any and all kinds of loss or damage to vessels,
23 craft, aircraft, cars, automobiles and vehicles of every kind,
24 as well as all goods, freight, cargoes, merchandise, effects,
25 disbursements, profits, moneys, bullion, precious stones, secur-
26 ities, choses in action, evidences of debt, valuable papers,
27 bottomry and respondentia interests and all other kinds of
28 property and interests therein, in respect to, appertaining to
29 or in connection with any and all risks or perils of navigation,
30 transit or transportation, including war risks, on or under
31 any seas or other waters, on land (above or below ground),
32 or in the air, or while being assembled, packed, crated, baled,

33 compressed or similarly prepared for shipment or while
34 awaiting the same or during any delays, storage, transship-
35 ment, or reshipment incident thereto, including marine build-
36 ers' risks and all personal property floater risks;

37 (2) Against any and all kinds of loss or damage to per-
38 son or to property in connection with or appertaining to a
39 marine, inland marine, transit or transportation insurance, in-
40 cluding liability for loss of or damage to either, arising out of or
41 in connection with the construction, repair, operation, main-
42 tenance or use of the subject matter of such insurance (but
43 not including life insurance or surety bonds nor insurance
44 against loss by reason of bodily injury to the person arising
45 out of the ownership, maintenance or use of automobiles);

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

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

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

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

66 (7) Marine protection and indemnity insurance, which
67 is insurance against, or against legal liability of the insured
68 for, loss, damage or expense arising out of, or incident to,
69 the ownership, operation, chartering, maintenance, use, re-

70 pair or construction of any vessel, craft or instrumentality
71 in use in ocean or inland waterways, including liability of
72 the insured for personal injury, illness or death or for loss
73 of or damage to the property of another person.

74 (e) Casualty—Casualty insurance includes:

75 (1) Vehicle insurance, which is insurance against loss
76 of or damage to any land vehicle or aircraft or any draft or
77 riding animal or to property while contained therein or
78 thereon or being loaded therein or therefrom, from any
79 hazard or cause, and against any loss, liability or expense
80 resulting from or incident to ownership, maintenance or use
81 of any such vehicle, aircraft or animal; together with insur-
82 ance against accidental death or accidental injury to in-
83 dividuals, including the named insured, while in, entering,
84 alighting from, adjusting, repairing or cranking, or caused
85 by being struck by any vehicle, aircraft or draft or riding
86 animal, if such insurance is issued as a part of insurance on
87 the vehicle, aircraft or draft or riding animal;

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

96 (3) Burglary and theft insurance, which is insurance
97 against loss or damage by burglary, theft, larceny, robbery,
98 forgery, fraud, vandalism, malicious mischief, confiscation,
99 or wrongful conversion, disposal or concealment, or from
100 any attempt at any of the foregoing, including supplemental
101 coverages for medical, hospital, surgical and funeral bene-
102 fits sustained by the named insured or other person as a
103 result of bodily injury during the commission of a burglary,
104 robbery or theft by another; also insurance against loss of
105 or damage to moneys, coins, bullion, securities, notes, drafts,
106 acceptances, or any other valuable papers and documents,
107 resulting from any cause;

108 (4) Personal property floater insurance, which is insur-
109 ance upon personal effects against loss or damage from
110 any cause;

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

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

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

129 (8) Credit insurance, which is insurance against loss or
130 damage resulting from failure of debtors to pay their ob-
131 ligations to the insured. Credit insurance shall include loss
132 of income insurance which is insurance against the failure
133 of a debtor to pay his or her monthly obligation due to
134 involuntary loss of employment. For the purpose of this defini-
135 tion, involuntary loss of employment means unemployment
136 which has occurred as a result of, but not limited to, individual
137 or mass layoffs, general strikes or lockouts;

138 (9) Malpractice insurance, which is insurance against legal
139 liability of the insured, and against loss, damage or expense
140 incidental to a claim of such liability, and including medical,
141 hospital, surgical and funeral benefits to injured persons,
142 irrespective of legal liability of the insured, arising out of
143 the death, injury or disablement of any person, or arising
144 out of damage to the economic interest of any person, as

145 the result of negligence in rendering expert, fiduciary or pro-
146 fessional service;

147 (10) Entertainment insurance, which is insurance in-
148 demnifying the producer of any motion picture, television,
149 radio, theatrical, sport, spectacle, entertainment or similar
150 production, event or exhibition against loss from interrup-
151 tion, postponement or cancellation thereof due to death,
152 accidental injury, or sickness of performers, participants, direc-
153 tors or other principals;

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

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

162 (f) Surety—Surety insurance includes:

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

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

173 (3) Insurance indemnifying banks, bankers, brokers, finan-
174 cial or moneyed corporations or associations against loss,
175 resulting from any cause, of bills of exchange, notes, bonds,
176 securities, evidence of debt, deeds, mortgages, warehouse
177 receipts or other valuable papers, documents, money, pre-
178 cious metals and articles made therefrom, jewelry, watches,
179 necklaces, bracelets, gems, precious and semiprecious stones,
180 including any loss while they are being transported in armored
181 motor vehicles or by messenger, but not including any other

182 risks or transportation or navigation, and also insurance
183 against loss or damage to such an insured's premises or to
184 his furnishings, fixtures, equipment, safes and vaults therein,
185 caused by burglary, robbery, theft, vandalism or malicious
186 mischief, or any attempt to commit such crimes; and

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

ARTICLE 30. MINE SUBSIDENCE INSURANCE.

§33-30-1. Legislative findings.

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

§33-30-2. Purpose.

1 The purpose of this article is to make mine subsidence in-
2 surance available in a reasonable and equitable manner to
3 all residents of this state through the office of the state board
4 of risk and insurance management.

§33-30-3. Definitions.

1 As used in this article:

2 (1) "Board" means the state board of risk and insurance
3 management;

4 (2) "Mine subsidence" means loss to a structure caused by
5 lateral or vertical movement, including collapse which results
6 therefrom, of structures from collapse of man-made under-
7 ground coal mines. It does not include loss caused by earth-
8 quake, landslide, volcanic eruption or collapse of storm and
9 sewer drains and rapid transit tunnels;

10 (3) "Mine subsidence insurance fund" or "fund" means the
11 the fund established by this article within the office of the
12 state board of risk and insurance management;

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

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

17 (6) "Structure" means any dwelling, building or fixture
18 permanently affixed to realty, but does not include land,
19 trees, plants, crops or industrial and commercial buildings.

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

1 (a) There is hereby established within the office of the
2 state board of insurance and risk management a fund to be
3 known as the "mine subsidence insurance fund." The board
4 shall operate the fund pursuant to this article.

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

8 (c) The moneys in the fund shall be derived from premiums
9 for subsidence insurance collected on behalf of the board
10 pursuant to this article.

11 (d) Premiums for subsidence insurance shall be estab-
12 lished by the board, who shall periodically review the pre-
13 mium level and the experience data applicable to operation
14 of the fund and make changes as required.

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

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

1 (a) The Legislature may appropriate to the mine subsidence

2 insurance fund or the governor may grant to the fund out of
3 the governor's civil contingency fund an amount not to exceed
4 five hundred thousand dollars to pay claims against the fund
5 occurring prior to the accumulation of sufficient reserve to
6 pay such claims and to provide a reasonable reserve fund
7 for unexpected contingencies. The board shall determine
8 adequacy and reasonableness of the reserve.

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

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

1 (a) Beginning the first day of October, one thousand nine
2 hundred eighty-two, every insurance policy issued or renewed
3 insuring on a direct basis a structure located in this state
4 shall include, at a separately stated premium, insurance for
5 loss occurring on or after October first, one thousand nine
6 hundred eighty-two, caused by mine subsidence unless waived
7 in writing by the insured. The premium charged for coverage
8 shall be the same as the premium level set by the board.
9 The loss covered shall be the loss in excess of two percent
10 of the policy's total insured value, but at no time shall the
11 deductible be less than two hundred fifty dollars nor more
12 than five hundred dollars; and total insured value reinsured
13 by the commissioner shall not exceed fifty thousand dollars.

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

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

1 An insurer may refuse to provide subsidence coverage (1)
2 on a structure evidencing unrepaired subsidence damage,
3 until necessary repairs are made; or (2) where the insurer
4 has declined, non renewed, or canceled all coverage under
5 a policy for underwriting reasons unrelated to mine subsidence.

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

§33-30-8. Reinsurance agreements.

1 All companies authorized to write fire insurance in this
2 state shall enter into a reinsurance agreement with the board
3 in which each insurer agrees to cede to the board one hundred
4 percent, up to fifty thousand dollars, of any subsidence in-
5 surance coverage issued and, in consideration of the ceding
6 commission retained by the insurer, agree to undertake ad-
7 justment of losses, and payment of taxes, and to absorb all
8 other expenses of the insurer necessary for sale of policies and
9 administration of the mine subsidence insurance program.
10 The board shall agree to reimburse insurer from the fund for
11 all amounts paid policyholders for claims resulting from
12 subsidence and shall pay from the fund all costs of administra-
13 tion incurred by the board but an insurer is not required
14 to pay any claim for any loss insured under this article except
15 to the extent that the amount available in the mine subsidence
16 insurance fund, as maintained pursuant to sections four and
17 five of this article, is sufficient to reimburse the insurer for such
18 claim under this section, and without moral obligation.

§33-30-9. Distribution of premium.

1 The proportion of total subsidence insurance premiums col-
2 lected by each insurer which shall be retained by the insurer
3 as a ceding commission shall be fixed by the board. The re-
4 mainder of such premiums shall be remitted by the insurer to
5 the board within forty-five days after the end of each calendar
6 quarter.

§33-30-10. Payment of losses.

- 1 (a) Pursuant to the reinsurance agreements, authorized by
2 this article, the board shall, within ninety days after receiving
3 the loss report required by section eleven of this article pay the
4 insurer all amounts due out of the fund.
- 5 (b) No claim of an insured shall be paid by an insurer in
6 respect of a loss covered by mine subsidence insurance prior
7 to February fifteenth, one thousand nine hundred eighty-three.

8 On and after February fifteenth, one thousand nine hundred
9 eighty-three, all claims of insureds shall be paid within one
10 hundred twenty days after proof of loss is presented to an
11 insurer unless otherwise agreed by the insurer and claimant.

§33-30-11. Reporting.

1 Every insurer must report at times designated by the
2 board the amounts of premiums collected and shall report
3 semiannually on dates established by the board and itemized
4 list of all losses paid, including the policy number and loca-
5 tion of structures insured pursuant to this article and reinsured
6 by the commissioner.

§33-30-12. Right of recourse.

1 Except in the case of fraud by an insurer, the board does
2 not have any right of recourse against the insurer and the
3 insurer may settle losses in the customary manner.

4 The board may require an insurer to attempt recovery from
5 a policyholder for the amounts paid to such policyholder if, in
6 the judgment of the board, the policyholder was not entitled to
7 the amounts paid because of fraud or violation of the policy
8 conditions. The costs of such recovery attempt shall be borne
9 equally by the insurer and the board.

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

§33-30-13. Subrogation.

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

3 The board may exercise the right of subrogation.

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

§33-30-14. Powers of board.

1 The board has the power, duty and responsibility to estab-
2 lish and maintain the fund and supervise in all respects, con-

3 sistent with the provisions of this article, the operation and
4 management of the mine subsidence insurance program estab-
5 lished in this article and to do all things necessary or conven-
6 ient to accomplish the purpose of this article.

§33-30-15. Rules and regulations.

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

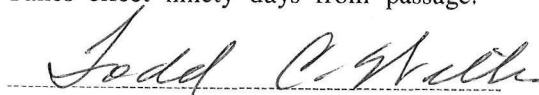
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.


Chairman Senate Committee



Chairman House Committee

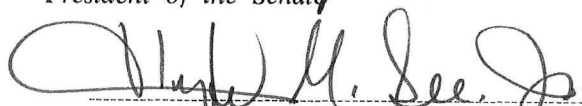
Originating in the House.

Takes effect ninety days from passage.


Clerk of the Senate


Clerk of the House of Delegates


President of the Senate


Speaker House of Delegates

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


Governor

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SECY. OF STATE