

No. 1334



WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1985

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

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Com. Sub. for
HOUSE BILL No. 1334.....

(By Mr. Del. Springston & Del. Leary.....)



Passed April 13, 1985

In Effect July 1, 1985 Passage

ENROLLED
COMMITTEE SUBSTITUTE
FOR
H. B. 1334
(By DELEGATE SPRINGSTON and DELEGATE LEARY)

[Passed April 13, 1985; in effect July 1, 1985.]

AN ACT to repeal section eleven, article thirty, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections three, four, six, seven, eight, ten, twelve and thirteen of said article, all generally relating to mine subsidence insurance; definition; mine subsidence; waivers; insurance fund; mine subsidence coverage; providing for waiver in certain counties; a waiting period; limited right of insurers to refuse to provide subsidence coverage; refusing coverage where damage is in progress; reinsurance agreements; adjustment of losses and administration of the fund; payment of losses; right of recourse; subrogation.

Be it enacted by the Legislature of West Virginia:

That section eleven, article thirty, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that sections three, four, six, seven, eight, ten, twelve and thirteen of said article be amended and reenacted to read as follows:

ARTICLE 30. MINE SUBSIDENCE INSURANCE.

§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 the 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
8 earthquake, landslide, volcanic eruption or collapse of storm
9 and sewer drains and rapid transit tunnels;
- 10 (3) "Mine subsidence insurance fund" or "fund" means the
11 fund established by this article within the office of the state
12 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 located in West Virginia,
19 including basements, footings, foundations, septic systems and
20 underground pipes directly servicing the dwelling or building.
21 "Structure" shall not include driveways, sidewalks, parking
22 lots, land, trees, plants, crops or agricultural field drainage tile.

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

- 1 (a) There is hereby established within the office of the state
2 board of risk and insurance management a fund to be known
3 as the "mine subsidence insurance fund." The board shall
4 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. The board shall be empowered to
11 invest the fund and first use the interest therefrom for claim
12 payments and administration expenses.
- 13 (d) Premiums for subsidence insurance shall be established
14 by the board, who shall periodically review the premium level
15 and the experience data applicable to operation of the fund

16 and make changes as required.

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

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

1 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 shall
4 include, at a separately stated premium, insurance for loss
5 occurring on or after October first, one thousand nine hundred
6 eighty-two, caused by mine subsidence unless waived by the
7 insured: *Provided*, That no waiver shall be required and such
8 coverage shall only be provided if requested by the insured in
9 the following counties: Berkeley, Cabell, Calhoun, Hampshire,
10 Hardy, Jackson, Jefferson, Monroe, Morgan, Pendleton,
11 Pleasants, Ritchie, Roane, Wirt, Wood, *Provided, however*,
12 That the effective date of a new policy or endorsement
13 containing mine subsidence insurance coverage shall be on the
14 thirtieth calendar day after the application date. The premium
15 charged for coverage shall be set by the board. The loss
16 coverage shall be the loss in excess of two percent of the
17 policy's total insured value, but at no time shall the deductible
18 be less than two hundred fifty dollars nor more than five
19 hundred dollars; and total insured value reinsured by the
20 board shall not exceed seventy-five thousand dollars:
21 *Provided, further*, That in no event shall the amount of mine
22 subsidence reinsurance exceed the amount of the fire insurance
23 on the structure.

§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, until
3 necessary repairs are made; or (2) where the insurer has
4 declined, nonrenewed or canceled all coverage under a policy
5 for underwriting reasons unrelated to mine subsidence:

6 *Provided*, That an insurer shall refuse to provide subsidence
7 coverage on a structure which evidences a loss or damage in
8 progress.

9 Any dispute arising under this section shall be subject to the
10 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 state
2 shall enter into a reinsurance agreement with the board in
3 which each insurer agrees to cede to the board one hundred
4 percent, up to seventy-five thousand dollars, of any subsidence
5 insurance coverage issued and, in consideration of the ceding
6 commission retained by the insurer, agree to absorb all
7 expenses of the insurer necessary for sale of policies and any
8 administration duties of the mine subsidence insurance
9 program imposed upon it pursuant to the terms of the
10 reinsurance agreement. The board is authorized to undertake
11 adjustment of losses and administer the fund, or it may
12 provide in a reinsurance agreement that the insurer do so. The
13 board shall agree to reimburse the insurer from the fund for
14 all amounts paid policyholders for claims resulting from mine
15 subsidence and shall pay from the fund all costs of admin-
16 istration incurred by the board but an insurer is not required
17 to pay any claim for any loss insured under this article except
18 to the extent that the amount available in the mine subsidence
19 insurance fund, as maintained pursuant to sections four and
20 five of this article, is sufficient to reimburse the insurer for
21 such claim under this section, and without moral obligation.

§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 receiveing
3 the loss report, pay the insurer all amounts due out of the
4 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.

12 Upon payment of the claim of an insured from the fund, the
13 insured shall be deemed to have waived any cause of action
14 for damages caused by subsidence to the extent of the payment
15 from the fund.

§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 consistent
4 with this article.

5 The board may require an insurer to attempt recovery from
6 a policyholder for the amounts paid to such policyholder if,
7 in the judgment of the board, the policyholder was not entitled
8 to the amounts paid because of fraud or violation of the policy
9 conditions. The costs of such recovery attempt shall be borne
10 by the board. Any dispute under this section shall be subject
11 to the hearing and appeal provisions of article two of this
12 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.

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

Narrett Edelman

Chairman Senate Committee

Floyd Fuller

Chairman House Committee

Originating in the House.

Takes effect July 1, 1985.

Judd C. Mills

Clerk of the Senate

Donald J. Kopp

Clerk of the House of Delegates

Sam Tenenbaum

President of the Senate

Joseph P. Albright

Speaker of the House of Delegates

The within *approved* this the *2nd*
May
day of _____, 1985.

Aruba Thayer Jr.

Governor

PRESENTED TO THE
GOVERNOR

Date 4/19/85

Time 7:23p.m.