WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1985

ENROLLED

Com. Sub. for
HOUSE BILL No. 1334

(By Mr. Del. Springer & Del. 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article thirty, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that sections three, four, six, seven, eight, ten, twelve and thirteen of said article be amended and reenacted to read as follows: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:

(1) “Board” means the state board of risk and insurance management;

(2) “Mine subsidence” means loss to the structure caused by lateral or vertical movement, including collapse which results therefrom, of structures from collapse of man-made underground coal mines. It does not include loss caused by earthquake, 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 located in West Virginia, including basements, footings, foundations, septic systems and underground pipes directly servicing the dwelling or building. “Structure” shall not include driveways, sidewalks, parking lots, land, trees, plants, crops or agricultural field drainage tile.

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

(a) There is hereby established within the office of the state board of risk and insurance 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. The board shall be empowered to invest the fund and first use the interest therefrom for claim payments and administration expenses.

(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.

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

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 by the insured: Provided, That no waiver shall be required and such coverage shall only be provided if requested by the insured in the following counties: Berkeley, Cabell, Calhoun, Hampshire, Hardy, Jackson, Jefferson, Monroe, Morgan, Pendleton, Pleasants, Ritchie, Roane, Wirt, Wood, Provided, however, That the effective date of a new policy or endorsement containing mine subsidence insurance coverage shall be on the thirtieth calendar day after the application date. The premium charged for coverage shall be set by the board. The loss coverage 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 board shall not exceed seventy-five thousand dollars: Provided, further, That in no event shall the amount of mine subsidence reinsurance exceed the amount of the fire insurance on the structure.

§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, nonrenewed or canceled all coverage under a policy for underwriting reasons unrelated to mine subsidence:
Provided, That an insurer shall refuse to provide subsidence coverage on a structure which evidences a loss or damage in progress.

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 seventy-five thousand dollars, of any subsidence insurance coverage issued and, in consideration of the ceding commission retained by the insurer, agree to absorb all expenses of the insurer necessary for sale of policies and any administration duties of the mine subsidence insurance program imposed upon it pursuant to the terms of the reinsurance agreement. The board is authorized to undertake adjustment of losses and administer the fund, or it may provide in a reinsurance agreement that the insurer do so. The board shall agree to reimburse the insurer from the fund for all amounts paid policyholders for claims resulting from mine 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.

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

§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 consistent with this article.

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 by 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.

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 July 1, 1985.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within bill is hereby approved this the day of , 1985.

Governor
PRESENTED TO THE
GOVERNOR
Date 4/19/65
Time 7:30 p.m.