

No. 1763

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WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1985



ENROLLED

HOUSE BILL No. 1763

(By ~~Mr.~~ Del. Riffle)



Passed April 2, 1985

In Effect Ninety Days From Passage



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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

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H. B. 1763

(By DELEGATE RIFFLE)

[Passed April 2, 1985; in effect ninety days from passage.]

AN ACT to amend article ten, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section nineteen-a; and to amend and reenact sections five, eight and eighteen, article twenty-six of said chapter, all relating to the rehabilitation and liquidation of insurers.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 10. REHABILITATION AND LIQUIDATION.

§33-10-19a. Priority of distribution.

1 The priority of distribution of claims from the insurer's
2 estate shall be in accordance with the order in which each class
3 of claims is herein set forth. Every claim in each class shall
4 be paid in full or adequate funds retained for such payment
5 before the members of the next class receive any payment. No
6 subclasses shall be established within any class. The order of
7 distribution shall be:

8 (a) Class I. The costs and expenses of administration,
9 including, but not limited to, the following:

10 (1) The actual and necessary costs of preserving or
11 recovering the assets of the insurer;

12 (2) Compensation for all services rendered in the
13 liquidation;

14 (3) Any necessary filing fees;

15 (4) The fees and mileage payable to witnesses;

16 (5) Reasonable attorney's fees; and

17 (6) The reasonable expenses of a guaranty association or
18 foreign guaranty association in handling claims.

19 (b) Class II. Debts due to employees for compensation
20 under the provisions of section twenty-seven of this article.

21 (c) Class III. All claims under the provisions of subsection
22 (a), section thirty-six of this article.

23 (d) Class IV. Claims under nonassessable policies for
24 unearned premium or other premium refunds and claims of
25 general creditors.

26 (e) Class V. Claims of the federal or any state or local
27 government. Claims, including those of any governmental
28 body for a penalty or forfeiture, shall be allowed in this class
29 only to the extent of the pecuniary loss sustained from the act,
30 transaction, or proceeding out of which the penalty or
31 forfeiture arose, with reasonable and actual costs occasioned
32 thereby. The remainder of such claims shall be postponed to
33 the class of claims under subdivision (h) of this section.

34 (f) Class VI. Claims filed late or any other claims other than
35 claims under subdivisions (g) and (h) of this section.

36 (g) Class VII. Surplus or contribution notes, or similar
37 obligations and premium refunds on assessable policies.
38 Payments to members of domestic mutual insurance compan-
39 ies shall be limited in accordance with law.

40 (h) Class VIII. The claims of shareholders or other owners.

**ARTICLE 26. WEST VIRGINIA INSURANCE GUARANTY ASSOCIA-
TION ACT.**

§33-26-5. Definitions.

1 As used in this article:

2 (1) "Account" means any one of the two accounts created
3 by section six of this article.

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

6 (3) "Commissioner" means the insurance commissioner of
7 West Virginia.

8 (4) "Covered claim" means an unpaid claim, including one
9 for unearned premiums other than retrospective premiums or
10 other premiums subject to adjustment after the date of
11 liquidation, which arises out of and is within the coverage of
12 an insurance policy to which this article applies and which
13 policy is in force at the time of the occurrence giving rise to
14 such unpaid claims if (a) the insurer issuing the policy becomes
15 an insolvent insurer after the effective date of this article and
16 (b) the claimant or insured is a resident of this state at the
17 time of the insured occurrence, or the property from which
18 the claim arises is permanently located in this state. "Covered
19 claim" shall not include (i) any amount in excess of the
20 applicable limits of coverage provided by an insurance policy
21 to which this article applies; nor (ii) any amount due any
22 reinsurer, insurer, insurance pool or underwriting association,
23 as subrogation recoveries or otherwise from an insolvent
24 insurer or the insured of an insolvent insurer to the extent of
25 coverage under the insured's policy.

26 (5) "Insolvent insurer" means an insurer (a) licensed to
27 transact insurance in this state either at the time the policy
28 was issued or when the insured event occurred and (b) against
29 whom an order of liquidation with a finding of insolvency has
30 been entered by a court of competent jurisdiction in the
31 insurer's state of domicile or of this state.

32 (6) "Member insurer" means any person who (a) writes any
33 kind of insurance to which this article applies under section
34 three of this article, including farmers' mutual fire insurance
35 companies and the exchange of reciprocal or interinsurance
36 contracts, and (b) is licensed to transact insurance in this state.

37 (7) "Net direct written premiums" means direct gross
38 premiums written in this state on insurance policies to which
39 this article applies, less return premiums thereon and dividends
40 paid or credited to policyholders on such direct business. "Net

41 direct written premiums” does not include premiums on
42 contracts between insurers or reinsurers.

43 (8) “Person” includes an individual, company, insurer,
44 association, organization, society, reciprocal, partnership,
45 syndicate, business trust, corporation, or any other legal entity.

46 (9) “Receiver” means receiver, liquidator, rehabilitator or
47 conservator as the context may require.

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

1 (1) The association shall:

2 (a) Be obligated to the extent of the covered claims existing
3 prior to the determination of insolvency, and for such claims
4 arising within thirty days after the determination of insolvency,
5 but such obligation shall include only that amount of each
6 covered claim which is in excess of one hundred dollars and
7 is less than three hundred thousand dollars. In no event shall
8 the association be obligated to a policyholder or claimant in
9 an amount in excess of the obligations of the insolvent insurer
10 under the policy from which the claim arises. Notwithstanding
11 any other provision of this article, a covered claim shall not
12 include any claim filed with the guaranty fund after the final
13 date set by the court for the filing of claims against the
14 liquidator or receiver of an insolvent insurer, nor shall any
15 default judgment or stipulated judgment against the insolvent
16 insurer, or against the insured of an insolvent insurer, be
17 binding against the association.

18 (b) Be deemed the insurer to the extent of its obligation on
19 the covered claims and to such extent shall have all rights,
20 duties, defenses and obligations of the insolvent insurer as if
21 the insurer had not become insolvent.

22 (c) Allocate claims paid and expenses incurred among the
23 two accounts separately, and assess member insurers separately
24 for each account amounts necessary to pay the obligations of
25 the association under subdivision (a) of this subsection
26 subsequent to an insolvency, the expenses of handling covered
27 claims subsequent to an insolvency, the cost of examinations
28 under section thirteen of this article, and other expenses
29 authorized by this article. The assessments of each member
30 insurer shall be in the proportion that the net direct written
31 premiums of the member insurer for the preceding calendar

32 year on the kinds of insurance in the account bears to the net
33 direct written premiums of all member insurers for the
34 preceding calendar year on the kinds of insurance in the
35 account. Each member insurer shall be notified of the
36 assessment not later than thirty days before it is due. No
37 member insurer may be assessed in any one year on any
38 account an amount greater than two percent of that member
39 insurer's net direct written premiums for the preceding
40 calendar year on the kinds of insurance in the account. If the
41 maximum assessment, together with the other assets of the
42 association in any account, does not provide in any one year
43 in any account an amount sufficient to make all necessary
44 payments from that account, the funds available shall be
45 prorated and the unpaid portion shall be paid as soon
46 thereafter as funds become available. The association may
47 exempt or defer, in whole or in part, the assessment of any
48 member insurer, if the assessment would cause the member
49 insurer's financial statement to reflect the amounts of capital
50 or surplus less than the minimum amounts required for a
51 certificate of authority by any jurisdiction in which the
52 member insurer is authorized to transact insurance. Each
53 member insurer may set off against any assessment, authorized
54 payments made on covered claims and expenses incurred in
55 the payment of such claims by the member insurer if they are
56 chargeable to the account for which the assessment is made.

57 (d) Investigate claims brought against the association and
58 adjust, compromise, settle and pay covered claims to the extent
59 of the association's obligation and deny all other claims and
60 may review settlements, releases and judgments to which the
61 insolvent insurer or its insureds were parties to determine the
62 extent to which such settlements, releases and judgments may
63 be properly contested.

64 (e) Notify such persons as the commissioner directs under
65 subsection (2), section ten of this article.

66 (f) Handle claims through its employees or through one or
67 more insurers or other persons designated as servicing
68 facilities. Designation of a servicing facility is subject to the
69 approval of the commissioner, but such designation may be
70 declined by a member insurer.

71 (g) Reimburse each servicing facility for obligations of the

72 association paid by the facility and for expenses incurred by
73 the facility while handling claims on behalf of the association
74 and shall pay the other expenses of the association authorized
75 by this article.

76 (2) The association may:

77 (a) Employ or retain such persons as are necessary to handle
78 claims and perform other duties of the association.

79 (b) Borrow funds necessary to effect the purposes of this
80 article in accord with the plan of operation.

81 (c) Sue or be sued.

82 (d) Negotiate and become a party to such contracts as are
83 necessary to carry out the purpose of this article.

84 (e) Perform such other acts as are necessary or proper to
85 effectuate the purpose of this article.

86 (f) Refund to the member insurers in proportion to the
87 contribution of each member insurer to an account that
88 amount by which the assets of the account exceed the
89 liabilities, if, at the end of any calendar year, the board of
90 directors finds that the assets of the association in any account
91 exceed the liabilities of that account as estimated by the board
92 of directors for the coming year.

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

1 All proceedings in which the insolvent insurer is a party or
2 obligated to defend a party in any court in this state shall be
3 stayed for six months from the date the proof of claims
4 provided for in section eighteen, article ten of this chapter is
5 filed with the receiver to permit proper defense by the
6 association of all pending causes of action. As to any covered
7 claims arising from a judgment under any order, decision,
8 verdict or finding based on the default of the insolvent insurer
9 or its wrongful failure to defend an insured, the association
10 either on its own behalf or on behalf of such insured may
11 apply to have such judgment, order, decision, verdict or
12 finding set aside by the same court or administrator that made
13 such judgment, order, decision, verdict or finding and shall be
14 permitted to defend against such claim on the merits.

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

Robert W. Quinn

Chairman Senate Committee

Floyd Fuller

Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

Todd C. Vich

Clerk of the Senate

Donald L. Hoop

Clerk of the House of Delegates

Dan Tomlin

President of the Senate

Joseph Albright

Speaker of the House of Delegates

The within *approved* this the *12th* day of *April*, 1985.

Arch A. Moore, Jr.

Governor



PRESENTED TO THE
GOVERNOR

Date 4/10/85

Time 9:32A.m.