ENROLLED

HOUSE BILL No. 1763

(By Mr. Dal. 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 estate shall be in accordance with the order in which each class of claims is herein set forth. Every claim in each class shall be paid in full or adequate funds retained for such payment before the members of the next class receive any payment. No subclasses shall be established within any class. The order of distribution shall be:

8 (a) Class I. The costs and expenses of administration, including, but not limited to, the following:
The actual and necessary costs of preserving or recovering the assets of the insurer;
(2) Compensation for all services rendered in the liquidation;
(3) Any necessary filing fees;
(4) The fees and mileage payable to witnesses;
(5) Reasonable attorney's fees; and
(6) The reasonable expenses of a guaranty association or foreign guaranty association in handling claims.

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

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

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

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

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

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

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

ARTICLE 26. WEST VIRGINIA INSURANCE GUARANTY ASSOCIATION ACT.

§33-26-5. Definitions.

As used in this article:
(1) "Account" means any one of the two accounts created by section six of this article.

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

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

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

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

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

(7) "Net direct written premiums" means direct gross premiums written in this state on insurance policies to which this article applies, less return premiums thereon and dividends paid or credited to policyholders on such direct business. "Net
direct written premiums" does not include premiums on contracts between insurers or reinsurers.

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

(9) "Receiver" means receiver, liquidator, rehabilitator or conservator as the context may require.


(1) The association shall:

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

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

(c) Allocate claims paid and expenses incurred among the two accounts separately, and assess member insurers separately for each account amounts necessary to pay the obligations of the association under subdivision (a) of this subsection subsequent to an insolvency, the expenses of handling covered claims subsequent to an insolvency, the cost of examinations under section thirteen of this article, and other expenses authorized by this article. The assessments of each member insurer shall be in the proportion that the net direct written premiums of the member insurer for the preceding calendar
year on the kinds of insurance in the account bears to the net
direct written premiums of all member insurers for the
preceding calendar year on the kinds of insurance in the
account. Each member insurer shall be notified of the
assessment not later than thirty days before it is due. No
member insurer may be assessed in any one year on any
account an amount greater than two percent of that member
insurer's net direct written premiums for the preceding
calendar year on the kinds of insurance in the account. If the
maximum assessment, together with the other assets of the
association in any account, does not provide in any one year
in any account an amount sufficient to make all necessary
payments from that account, the funds available shall be
prorated and the unpaid portion shall be paid as soon
thereafter as funds become available. The association may
exempt or defer, in whole or in part, the assessment of any
member insurer, if the assessment would cause the member
insurer's financial statement to reflect the amounts of capital
or surplus less than the minimum amounts required for a
certificate of authority by any jurisdiction in which the
member insurer is authorized to transact insurance. Each
member insurer may set off against any assessment, authorized
payments made on covered claims and expenses incurred in
the payment of such claims by the member insurer if they are
chargeable to the account for which the assessment is made.

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

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

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

(g) Reimburse each servicing facility for obligations of the
association paid by the facility and for expenses incurred by
the facility while handling claims on behalf of the association
and shall pay the other expenses of the association authorized
by this article.

(2) The association may:

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

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

(c) Sue or be sued.

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

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

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


All proceedings in which the insolvent insurer is a party or
obligated to defend a party in any court in this state shall be
stayed for six months from the date the proof of claims
provided for in section eighteen, article ten of this chapter is
filed with the receiver to permit proper defense by the
association of all pending causes of action. As to any covered
claims arising from a judgment under any order, decision,
verdict or finding based on the default of the insolvent insurer
or its wrongful failure to defend an insured, the association
either on its own behalf or on behalf of such insured may
apply to have such judgment, order, decision, verdict or
finding set aside by the same court or administrator that made
such judgment, order, decision, verdict or finding and shall be
permitted to defend against such claim on the merits.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate 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 of the House of Delegates

The within ................ this the 13th day of ........................., 1985.

Governor