

NO 565

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1986



ENROLLED

Committee Substitute for
SENATE BILL NO. 565

(By Senator Tankovich, Mr. President et al)



PASSED March 7, 1986

In Effect 90 days from Passage



ENROLLED
COMMITTEE SUBSTITUTE
FOR
Senate Bill No. 565

(SENATORS TONKOVICH, MR. PRESIDENT (BY REQUEST) AND HARMAN,
original sponsors)

[Passed March 7, 1986; in effect ninety days from passage.]

AN ACT to amend chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article twenty-a, relating to insurance; the West Virginia essential insurance coverage act of 1986; purposes; West Virginia essential insurance association; board of directors; general powers; powers of commissioner and association; immunity from liability.

Be it enacted by the Legislature of West Virginia:

That chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article twenty-a, to read as follows:

ARTICLE 20A. WEST VIRGINIA ESSENTIAL INSURANCE COVERAGE ACT.

§33-20A-1. Short title.

- 1 This article shall be known and may be cited as the "West
- 2 Virginia Essential Insurance Coverage Act."

§33-20A-2. Intent and purpose.

1 To provide for a mechanism whereby the commissioner
2 may establish insurance plans to make available insurance
3 coverages to persons who do not have coverages available to
4 them in the voluntary insurance market.

§33-20A-3. West Virginia essential insurance association.

1 (a) The commissioner shall establish a nonprofit
2 unincorporated legal entity to be known as the West
3 Virginia essential insurance association to make fire and
4 extended coverage insurance available to any person
5 having an insurable interest in habitational or commercial
6 property situated in this state who is equitably entitled to
7 but unable to secure such insurance in the voluntary
8 insurance market. Participation shall be required of all
9 insurers doing any insurance business in this state of the
10 kinds covered by the association as a condition of their
11 authority to transact insurance in this state.

12 (b) The association shall perform its functions under a
13 plan of operation established by regulation promulgated by
14 the commissioner pursuant to chapter twenty-nine-a,
15 article three of this code.

16 (c) If the commissioner finds after a public hearing that
17 in any part of this state any other kind of essential insurance
18 coverage is not readily available in the voluntary insurance
19 market and that the public interest requires such
20 availability, he may by regulation promulgate plans to
21 provide such coverage through the association for any risks
22 in this state which are equitably entitled to but unable to
23 secure such insurance in the voluntary insurance market.
24 Participation shall be required of all insurers doing any
25 insurance business in this state of the kinds covered by the
26 association as a condition of their authority to transact
27 insurance in this state.

§33-20A-4. Board of directors.

1 (a) The administrative powers of the association shall
2 be vested in a board of directors consisting of not less than
3 five nor more than nine members serving terms as
4 established in the plan of operation. The members of the
5 board shall be appointed by the commissioner with due
6 consideration given to the composition of the membership

7 of the association and to the interests of the insured who are
8 provided essential insurance coverage by the association.

9 (b) Members of the board may be reimbursed from the
10 assets of the association for expenses incurred by them as
11 members of the board of directors and for reasonable and
12 equitable compensation as may be prescribed by the terms
13 of the plan of organization.

14 (c) The board of directors of the association shall submit
15 to the commissioner a plan of organization for the
16 association and make suitable or necessary amendments
17 thereto to assure the fair, reasonable and equitable
18 administration of the association. The plan of organization
19 shall become effective upon approval in writing by the
20 commissioner.

21 (d) If the association fails to submit a suitable plan of
22 organization within a reasonable period of time, or if at any
23 time thereafter the association fails to submit suitable
24 amendments to the plan, the commissioner shall
25 promulgate a plan as necessary or advisable to effectuate
26 the provisions of this article.

§33-20A-5. General powers.

1 (a) The association has, for purposes of this article and
2 to the extent approved by the commissioner, the general
3 powers and authority granted under the laws of this state to
4 insurers licensed to transact the kinds of insurance as
5 defined in chapter thirty-three, article one of this code.

6 (b) The association may take any necessary action to
7 make available necessary insurance including, but not
8 limited to, the following:

9 (1) Assess participating insurers amounts necessary to
10 pay the obligations of the association, administration
11 expenses, the cost of examinations and other expenses
12 authorized under this article. The assessment of each
13 member insurer for the kind or kinds of insurance
14 designated in the plan shall be in the proportion that the net
15 direct written premiums of the member insurer for the
16 preceding calendar year bear to the net direct written
17 premiums of all members for the preceding calendar year. A
18 member insurer may not be assessed in any year an amount
19 greater than five percent of his net direct written premiums
20 for the preceding calendar year. Each member insurer shall

21 be allowed a premium tax credit at the rate of twenty
22 percent per year for five successive years following
23 termination of the association.

24 (2) Enter into such contracts as are necessary or proper
25 to carry out the provisions and purposes of the provisions of
26 this article.

27 (3) Sue or be sued, including taking legal action
28 necessary to recovery any assessments for, on behalf of, or
29 against participant insurers.

30 (4) Investigate claims brought against the fund and
31 adjust, compromise, settle and pay covered claims to the
32 extent of the association's obligation and deny all other
33 claims. Claims may be processed through the association's
34 employees or through one or more member insurers or other
35 persons designated as servicing facilities. Designation of a
36 service facility is subject to the approval of the
37 commissioner, but such designation may be declined by a
38 member insurer.

39 (5) Classify risks as may be applicable and equitable.

40 (6) Establish appropriate rates, rate classifications and
41 rating adjustments, and file such rates with the
42 commissioner as may be required. Rates, rating plans and
43 any provision for recoupment shall be based upon the
44 association's loss and expense experience and investment
45 income from unearned premium and loss reserves. Premium
46 rates, including initial premiums, shall be on an actuarially
47 sound basis and shall be calculated to be self-supporting.

48 (7) Administer any type of reinsurance program for or
49 on behalf of the association or any participating carriers.

50 (8) Pool risks among participating carriers.

51 (9) Issue and market through agents, policies of
52 insurance providing coverage required by this article in its
53 own name or on behalf of participating carriers.

54 (10) Administer separate pools, separate accounts, or
55 other plans as may be deemed appropriate for separate
56 carriers or groups of carriers.

57 (11) Invest, reinvest and administer all funds and
58 moneys held by the association.

59 (12) Borrow funds needed by the association to effect
60 the purposes of this section.

61 (13) Develop, effectuate and promulgate any loss
62 prevention programs aimed at the best interests of the
63 association and the insured public.

64 (14) Operate and administer any combination of plans,
65 pools, reinsurance arrangements or other mechanisms as
66 deemed appropriate to best accomplish the fair and
67 equitable operation of the association for the purposes of
68 making available essential insurance coverage.

69 (15) Provide for the method of recoupment of deficits
70 that may be incurred by any plan pursuant to the plan of
71 operation. In no event shall a deficit incurred by the
72 association be charged directly or indirectly to any person
73 other than insureds under its fire and extended coverage or
74 essential insurance policy.

§33-20A-6. Powers of commissioner and association.

1 The commissioner and the association may:

2 (a) Give consideration to the need for adequate and
3 readily accessible coverage, to alternative methods of
4 improving the market affected, to the preferences of the
5 insurers and agents, to the inherent limitations of the
6 insurance mechanism to the need for reasonable
7 underwriting standards, and to the requirement of
8 reasonable loss prevention measures.

9 (b) Establish procedures that will create minimum
10 interference with the voluntary market.

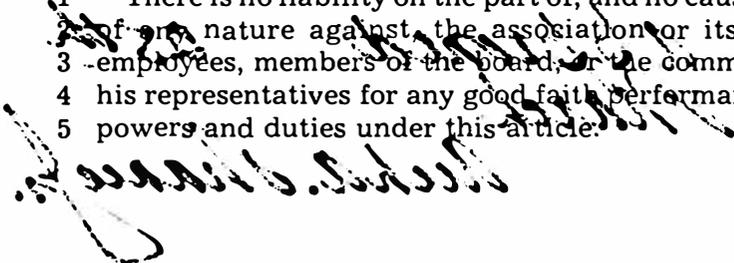
11 (c) Spread the burden imposed by the facility equitably
12 and efficiently.

13 (d) Establish procedures for applicants and
14 participants to have grievances reviewed.

15 (e) Take all reasonable and necessary steps to dissolve
16 the association at the earliest date when essential insurance
17 becomes readily available in the private market. The
18 dissolution of the association, including its assets and
19 liabilities, shall be accomplished under the supervision of
20 the commissioner in an equitable and reasonable manner.

§33-20A-7. Immunity from liability.

1 There is no liability on the part of, and no cause of action
2 of any nature against, the association or its agents or
3 employees, members of the board, or the commissioner or
4 his representatives for any good faith performance of their
5 powers and duties under this article.



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

Bruce O. Williams
.....
Chairman Senate Committee

Floyd Fuller
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Todd C. Withers
.....
Clerk of the Senate

Donald D. Kopp
.....
Clerk of the House of Delegates

Don Tolson
.....
President of the Senate

Joseph P. Allright
.....
Speaker House of Delegates

The within *approved* this the *25th*
day of *March*, 1986.

Arch A. Shreve, Jr.
.....
Governor



PRESENTED TO THE
GOVERNOR

Date 3/13/86

Time 12:38 p.m.

RECEIVED

1988 MAR 28 PM 4: 25

SECRETARIAT OF STATE

FILED IN THE OFFICE OF
SECRETARY OF STATE OF
WEST VIRGINIA

THIS DATE 3/26/86