WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1989

ENROLLED

SENATE BILL NO. 296

(By Senator ,)

PASSED April 6, 1989

In Effect 60 days from Passage
ENROLLED

Senate Bill No. 296

(BY SENATORS TUCKER, MR. PRESIDENT, AND HARMAN,
BY REQUEST OF THE EXECUTIVE)

[Passed April 6, 1989; in effect ninety days from passage.]

AN ACT to amend and reenact section five, article twenty-a, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to providing that insurers and not insureds be charged with a deficit incurred by the West Virginia essential insurance association as the result of loss due to any rate plan pursuant to the plan of operation.

Be it enacted by the Legislature of West Virginia:

That section five, article twenty-a, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 20A. WEST VIRGINIA ESSENTIAL INSURANCE COVERAGE ACT.

§33-20A-5. General powers.

1 (a) The association has, for purposes of this article and to the extent approved by the commissioner, the general powers and authority granted under the laws of this state to insurers licensed to transact the kinds of insurance as defined in chapter thirty-three, article one of this code.
(b) The association may take any necessary action to
make available necessary insurance including, but not
limited to, the following:

(1) Assess participating insurers amounts necessary
to pay the obligations of the association, administration
expenses, the cost of examinations and other expenses
authorized under this article. The assessment of each
member insurer for the kind or kinds of insurance
designated in the plan shall be in the proportion that
the net direct written premiums of the member
insurer for the preceding calendar year bear to the net
direct written premiums of all members for the
preceding calendar year. A member insurer may not
be assessed in any year an amount greater than five
percent of his net direct written premiums for the
preceding calendar year. Each member insurer shall
be allowed a premium tax credit at the rate of twenty
percent per year for five successive years following
termination of the association. Each member insurer
shall be allowed a premium tax credit at the rate of
twenty percent per year for five successive years
following payment of the assessment by the member
insurer for any deficit in the plan.

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

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

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

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

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

(8) Pool risks among participating carriers.

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

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

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

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

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

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

(15) Provide for the method of recoupment of deficits that may be incurred by any plan pursuant to the plan of operation. In no event shall a deficit incurred by the association be charged directly or indirectly to any person other than insurers under its fire and extended coverage or essential insurance
policy. The provisions of article seventeen, section nine of this chapter shall not apply to this article.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Frederick Parker  
Chairman Senate Committee

Bernard V. Kelly  
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Joseph S. Clark  
Clerk of the Senate

Donald L. Kopp  
Clerk of the House of Delegates

James S. Metcalfe  
President of the Senate

Henry Dodd  
Speaker House of Delegates

The within was approved this the 25th day of , 1939.

Gaston Caperton  
Governor