

1 **ENROLLED**

2 **Senate Bill No. 88**

3 (BY SENATORS LAIRD AND PLYMALE)

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5 [Passed March 8, 2014; in effect ninety days from passage.]
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10 AN ACT to amend and reenact §33-22-2 of the Code of West Virginia,
11 1931, as amended; and to amend and reenact §38-10E-1 of said
12 code, all relating to farmers' mutual fire insurance
13 companies; removing outdated language; clarifying obligations
14 and liability of farmers' mutual fire insurance companies;
15 imposing limited lien on proceeds under policies issued by
16 farmers' mutual fire insurance companies; providing for notice
17 of a total loss determination; and providing for perfection of
18 statutory lien and release under certain conditions.

19 *Be it enacted by the Legislature of West Virginia:*

20 That §33-22-2 of the Code of West Virginia, 1931, as amended,
21 be amended and reenacted; and that §38-10E-1 of said code be
22 amended and reenacted, all to read as follows:

23 **CHAPTER 33. INSURANCE.**

1 **ARTICLE 22. FARMERS' MUTUAL FIRE INSURANCE COMPANIES.**

2 **§33-22-2. Applicability of other provisions.**

3 Each company to the same extent that provisions are applicable
4 to domestic mutual insurers shall be governed by and be subject to
5 the following provisions of this chapter, but only to the extent
6 these provisions are not inconsistent with this article: Article
7 one (definitions); article two (Insurance Commissioner); article
8 four (general provisions), except that section sixteen, article
9 four, may not be applicable; article seven (assets and
10 liabilities); article eight-a (use of clearing corporations and
11 federal reserve book-entry system); article ten (rehabilitation and
12 liquidation), except that under section thirty-two, article ten,
13 assessments may not be levied against any former member of a
14 farmers' mutual fire insurance company who is no longer a member of
15 the company at the time the order to show cause was issued; article
16 eleven (unfair trade practices); article twelve (insurance
17 producers and solicitors), except that the agent's license fee
18 shall be \$5; section six-a, article seventeen (notice of
19 noncoverage of flood damages and the availability of flood
20 insurance); section nine-b, article seventeen (claims for total
21 loss; debris removal proceeds); article twenty-six (West Virginia
22 Insurance Guaranty Association Act); article twenty-seven
23 (insurance holding company systems); article thirty (mine

1 subsidence insurance), except that under section six, article
2 thirty, a farmers' mutual insurance company shall have the option
3 of offering mine subsidence coverage to all of its policyholders,
4 but may not be required to do so; article thirty-three (annual
5 audited financial report); article thirty-four (administrative
6 supervision); article thirty-five (criminal sanctions for failure
7 to report impairment); article thirty-six (business transacted with
8 Producer-Controlled Property-Casualty Insurer Act); article
9 thirty-seven (managing general agents); article thirty-nine
10 (disclosure of material transactions); article forty (risk-based
11 capital for insurers); and article forty-one (Insurance Fraud
12 Prevention Act).

13 **CHAPTER 38. LIENS.**

14 **ARTICLE 10E. LIEN ON INSURANCE PROCEEDS FOR DEBRIS REMOVAL.**

15 **§38-10E-1. Debris removal; notice of insurance proceeds; lien of**
16 **municipality and county.**

17 (a) (1) Notwithstanding any provision of this code to the
18 contrary, the receipt by an insurance company of a claim under a
19 fire insurance policy for a total loss to real property creates a
20 statutory lien on the insurance proceeds payable for such claim in
21 favor of the municipality in which the property is situate or, if
22 the property is located outside a municipality, the county in which
23 the property is situate, in an amount equal to the greater of: (A)

1 \$5,000; or (B) ten percent of the policy limits for loss to the
2 real property, including any coverage for debris removal: *Provided,*
3 That the amount of the lien may not exceed the policy limits of
4 coverage for the real property plus debris removal, if any:
5 *Provided, however,* That the lien created by this subsection does
6 not apply to proceeds payable under the policy for any losses other
7 than those to the real property insured, including loss of personal
8 property and payments for temporary housing and related living
9 expenses: *Provided, further,* That the lien amount imposed against
10 proceeds payable under policies issued by farmers' mutual fire
11 insurance companies pursuant to article twenty-two, chapter
12 thirty-three of this code shall in no event exceed ten percent of
13 the policy limits for loss to the real property, including any
14 coverage for debris removal.

15 (2) The terms "municipality" and "treasurer" have the same
16 meanings ascribed to them in section two, article one, chapter
17 eight of this code.

18 (b) Within ten days of a determination by the insurer that a
19 covered claim constitutes a total loss, the insurance company shall
20 send certified letters to the insured and, as applicable, to the
21 treasurer of the municipality in which the property is situate or,
22 if the property is situate outside a municipality, to the sheriff
23 of the county in which the property is situate, stating any amount

1 claimed; the limits and conditions of coverage; the location of the
2 property; the terms and limits of coverage designated by the
3 insurance policy for securing, cleanup and removal, if any; any
4 time limitations imposed on the insured for securing, cleanup and
5 removal; and the policyholder's name and mailing address.

6 (c)(1) The lien created pursuant to subsection (a) of this
7 section shall be discharged unless the municipality or county,
8 whichever is applicable, within thirty days of the receipt of the
9 letter sent in accordance with subsection (b) of this section,
10 perfects and preserves such lien by filing a notice thereof with
11 the clerk of the county commission of the county in which such
12 property is situate: *Provided*, That upon filing of a notice of lien
13 in accordance with this subdivision, the amount of the lien created
14 in subsection (a) of this section shall thereafter be for the
15 estimated cost of cleanup contained in such notice of lien, subject
16 to the limitation stated in subsection (a) of this section with
17 respect to policies issued by farmers' mutual insurance companies:
18 *Provided, however*, That the discharge of a lien based on the
19 municipality's or county's failure to file a notice pursuant to
20 this subdivision does not affect any other remedies the
21 municipality or county may have with respect to such property or
22 the liability of the property owner.

23 (2) A notice of lien filed in accordance with this subsection

1 shall include a statement of the estimated cost to the municipality
2 or county for the cleanup of the damaged property, removal of any
3 refuse, debris, remnants or remains of the building and
4 appurtenances, and securing the structure: *Provided*, That such
5 estimated cost may not exceed the amount of the lien created
6 pursuant to subsection (a) of this section.

7 (3) A notice of lien filed in accordance with this section
8 shall be notarized and shall be sufficient if in form and effect as
9 follows:

10 Notice of Lien for Debris Removal

11 To (name of insurance company):

12 You will please take notice that the undersigned, on behalf of
13 the (municipality or county) (of County, if a municipality), West
14 Virginia, has estimated that the cost of removing debris and
15 otherwise cleaning up (a certain building, other structure or
16 improvement) on real estate known as (an adequate and ascertainable
17 description of the real estate) would be (estimated cleanup cost).

18 You are further notified that, in order to secure the payment
19 of the amount allowed by the provisions of subsection (a), section
20 one, article ten-e, chapter thirty-eight of the West Virginia Code,
21 the undersigned, on behalf of the (municipality or county) and
22 pursuant to the provisions of section one, article ten-e, chapter
23 thirty-eight of the West Virginia Code, claims a lien in such

1 amount upon the interest of (policyholder's name) in a fire
2 insurance policy (the policy number or other identifying
3 information) issued by (the insurance company's name and address).

4 (Signature of treasurer or municipal officer exercising the
5 power and authority commonly exercised by a treasurer, or sheriff).

6 (Title)

7 (d) The clerk of the county commission shall, upon the filing
8 of such notice, index the same in a book in his or her office
9 called "Debris Removal Liens" as a lien against the insurance
10 proceeds in favor of the municipality or county and shall send a
11 copy of the notice to the insurer.