

1 **Senate Bill No. 621**

2 (By Senators Fitzsimmons, Kessler (Mr. President),
3 Edgell, Yost and Cookman)

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5 [Introduced February 17, 2014; referred to the Committee on
6 Banking and Insurance.]
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10 A BILL to amend the Code of West Virginia, 1931, as amended, by
11 adding thereto a new article, designated §33-49-1, §33-49-2,
12 §33-49-3, §33-49-4, §33-49-5, §33-49-6, §33-49-7, §33-49-8 and
13 §33-49-9, all relating to authorizing insurers to offer flood
14 insurance in this state; providing legislative findings;
15 defining the term "flood"; establishing the minimum coverage
16 requirements for these policies; providing coverage
17 limitations that an insurer may include in these policies;
18 requiring that certain limitations be noted on the policy
19 declarations or face page; providing the insurer with rate
20 options and the Insurance Commissioner with rate-making
21 authority; requiring the insurer to provide notice that flood
22 insurance is available from the National Flood Insurance
23 Program; allowing an insurer to export a contract or
24 endorsement of a certain amount to a surplus lines insurer

1 without meeting certain requirements; providing prior notice
2 requirements for cancellation or nonrenewal of a policy;
3 requiring the insurer to notify the commissioner before
4 writing flood insurance and to file a plan of operation with
5 the commissioner; providing that any conflict with other
6 provisions of the West Virginia insurance code are preempted
7 by this article; and requiring the Insurance Commissioner to
8 provide certification that a condition qualifies for flood
9 insurance or disaster assistance.

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

11 That the Code of West Virginia, 1931, as amended, be amended
12 by adding thereto a new article, designated §33-49-1, §33-49-2,
13 §33-49-3, §33-49-4, §33-49-5, §33-49-6, §33-49-7, §33-49-8 and
14 §33-49-9, all to read as follows:

15 **ARTICLE 49. FLOOD INSURANCE.**

16 **§33-49-1. Legislative findings.**

17 The Legislature finds that:

18 (a) The National Flood Insurance Program is a federal program
19 that enables property owners in participating communities to
20 purchase flood insurance. A community participates in the federal
21 program by adopting and enforcing flood plain management
22 regulations that meet or exceed federal flood plain management
23 criteria designed to reduce future flood risk to new construction
24 in flood plains. The program was created by Congress in 1968

1 because insurance covering the peril of flood was often unavailable
2 in the private insurance market and was intended to reduce the
3 amount of financial aid paid by the federal government in the
4 aftermath of flood-related disasters. After the creation of the
5 National Flood Insurance Program (NFIP), flood insurance coverage
6 continued to be generally unavailable for purchase from private
7 market insurance companies.

8 (b) The Biggert-Waters Flood Insurance Reform Act of 2012
9 reauthorized and revised the NFIP. The act increases flood
10 insurance premiums purchased through the program for second homes,
11 business properties, severe repetitive loss properties and
12 substantially improved damaged properties by requiring premium
13 increases of twenty-five percent per year until premiums meet the
14 full actuarial cost. Most residences lose their subsidized rates
15 if the property is sold, the policy lapses, repeated and severe
16 flood losses occur or a new policy is purchased. Policyholders
17 whose communities adopt a new, updated Flood Insurance Rate Map
18 (FIRM) that results in higher rates will experience a five-year
19 phase-in of rate increases to achieve required rate levels.

20 (c) The Biggert-Waters Flood Insurance Reform Act of 2012 also
21 encourages the use and acceptance of private market flood
22 insurance. The Legislature finds, however, that there has been a
23 long-term inadequacy of private market flood insurance available in
24 this state. Such inadequacy suggests that the private market in

1 this state is unlikely to expand unless the Legislature provides
2 multiple options for the regulation of flood insurance. The
3 Legislature also finds that the consumers of this state would
4 benefit from the availability of competitively priced private
5 market flood insurance due to the continued availability of NFIP
6 flood insurance, the likely availability of alternative private
7 market flood insurance coverage options, and the oversight of the
8 Insurance Commissioner of West Virginia.

9 (d) The NFIP, as amended by the Biggert-Waters Flood Insurance
10 Reform Act of 2012, will prevent many property owners from
11 obtaining affordable flood insurance coverage in this state. The
12 absence of affordable flood insurance threatens the public health,
13 safety and welfare and the economic health of this state.
14 Therefore, the state has a compelling public purpose and interest
15 in providing alternatives to coverage from NFIP by promoting the
16 availability of flood insurance from private market insurers at
17 potentially lower premium rates so as to facilitate the
18 remediation, reconstruction and replacement of damaged or destroyed
19 property in order to reduce or avoid harm to the public health,
20 safety and welfare, to the economy of this state, and to the
21 revenues of state and local governments which are needed to provide
22 for the public welfare.

23 **§33-49-2. Definitions.**

24 As used in this article, the term "flood" means a general and

1 temporary condition of partial or complete inundation of two acres
2 or more of normally dry land area or of two or more properties, at
3 least one of which is the policyholder's property, from:

4 (a) Overflow of waters;

5 (b) Unusual and rapid accumulation or runoff of surface waters
6 from any source;

7 (c) Mudflow; or

8 (d) Collapse or subsidence of land along the shore of a lake
9 or similar body of water as a result of erosion or undermining
10 caused by waves or currents of water exceeding anticipated cyclical
11 levels which result in a flood.

12 **§33-49-3. Issuance of flood insurance.**

13 (a) Subject to the requirements of this article, an insurer may
14 issue an insurance policy, contract, or endorsement providing
15 coverage for the peril of flood on any structure or on the contents
16 of personal property on a form that has been filed with and approved
17 by the commissioner pursuant to section eight, article six of this
18 chapter and that may be substantially similar to the form used by
19 the National Flood Insurance Program (NFIP).

20 (b) At a minimum, coverage for the peril of flood must cover
21 a flood as defined in this article. Coverage for the peril of flood
22 may also include water intrusion, as defined by the policy, which
23 originates from outside the structure and is not otherwise covered
24 under the definition of flood.

1 (c) An insurer may offer a flood coverage policy, contract, or
2 endorsement:

3 (1) That has a flood deductible based on a stated dollar amount
4 or a percentage of the coverage amount. At a minimum, an insurer
5 must offer deductible amounts applicable to flood losses that equal
6 the standard deductibles offered under the National Flood Insurance
7 Program;

8 (2) That provides that any flood loss will be adjusted on the
9 basis of:

10 (A) The actual cash value of the property; or

11 (B) Replacement costs up to the policy limits in the same
12 manner as provided under section nine, article seventeen of this
13 chapter;

14 (3) That restricts flood coverage to the principal building,
15 as defined in the applicable policy;

16 (4) In an agreed-upon amount, including coverage limited to the
17 amount of all outstanding mortgages applicable to the covered
18 property. However, if a policy, contract, or endorsement does not
19 limit flood coverage to the replacement cost of the covered
20 property, the contract or endorsement may not include a provision
21 penalizing the policyholder for not insuring the covered property
22 up to replacement cost; or

23 (5) That, as to the peril of flood, does not cover:

24 (A) Additional living expenses;

1 (B) Personal property or contents; or

2 (C) Law and ordinance coverage. However, an insurer, must
3 offer law and ordinance coverage that is comparable to the law and
4 ordinance coverage offered in the standard NFIP policy. A policy,
5 endorsement, or contract that includes the law and ordinance
6 coverage that must be offered under this paragraph must include the
7 following disclosure in uppercase bold lettering of at least 12-
8 point type: "LAW AND ORDINANCE COVERAGE UNDER THIS POLICY MIGHT
9 HAVE LIMITATIONS ON WHAT IS COVERED IN THE EVENT OF A LOSS. YOU
10 SHOULD CONSULT WITH YOUR AGENT IF YOU HAVE QUESTIONS ABOUT THE
11 COVERAGE OFFERED UNDER THIS POLICY."

12 (d) Any limitations on flood coverage or policy limits as
13 to the peril of flood, including, but not limited to, flood
14 deductibles or flood coverage limited to the amount of all
15 outstanding mortgages, must be prominently disclosed on the
16 declarations page or face page of the policy in uppercase bold
17 lettering of at least 12-point type and be sufficiently clear so as
18 to be readily understandable by both the agent and the property
19 owner.

20 **§33-49-4. Notice of limits of flood insurance.**

21 (a) A policy that limits flood coverage to an amount less than
22 the full replacement cost of the property must include the
23 statement: "THIS POLICY LIMITS FLOOD COVERAGE TO LESS THAN THE FULL
24 COST OF REPLACEMENT FOR THE PROPERTY, WHICH MAY RESULT IN HIGH OUT-

1 OF-POCKET EXPENSES TO YOU AND MAY PUT YOUR EQUITY IN THIS PROPERTY
2 AT RISK."

3 (b) A policy that insures a dwelling on the basis of actual
4 cash value must include the statement: "THIS POLICY PAYS YOU THE
5 DEPRECIATED VALUE OF YOUR PROPERTY THAT IS DAMAGED BY FLOOD, WHICH
6 MAY RESULT IN HIGH OUT-OF-POCKET EXPENSES TO YOU IF YOUR PROPERTY
7 NEEDS TO BE REPAIRED OR REPLACED."

8 **§33-49-5. Establishment of flood coverage rates.**

9 (a) An insurer shall establish and use flood coverage rates in
10 accordance with the rate standards under section three, article
11 twenty of this chapter: *Provided*, That for flood coverage rates
12 filed with the office before July 1, 2016, the insurer may elect one
13 or more of the following options:

14 (1) In accordance with the rates, rating schedules, or rating
15 manuals filed by the insurer with the office which allow the insurer
16 a reasonable rate of return on flood coverage written in this state.
17 Flood coverage rates established under this paragraph are not
18 subject to section three, article twenty of this chapter. An
19 insurer shall notify the office of any change in rates within thirty
20 days after the effective date of the change. The notice must
21 include the name of the insurer and the average statewide percentage
22 change in rates. Actuarial data with regard to rates for flood
23 coverage must be maintained by the insurer for two years after the
24 effective date of such rate change and is subject to examination by

1 the office. The commissioner may require the insurer to incur the
2 costs associated with an examination. Upon examination, the
3 commissioner, in accordance with generally accepted and reasonable
4 actuarial techniques, shall consider the rate factors and standards
5 specified in section three, article twenty of this chapter to
6 determine if the rate is excessive, inadequate, or unfairly
7 discriminatory.

8 (2) Through individual risk rating as provided in article
9 twenty of this chapter.

10 (3) With the written consent of the insured signed before the
11 policy inception date and filed with the insurer, using a flood
12 coverage rate that has not been approved by the commissioner. The
13 signed consent form must notify the insured that the rate is not
14 subject to the approval of the commissioner. A copy of the form
15 shall be maintained by the insurer for three years and must be
16 available for review by the commissioner. An insurer is not
17 required to obtain subsequent written consents upon renewal, but
18 shall provide notice at each renewal that the rate is not subject
19 to approval of the commissioner.

20 (b) A policy, endorsement, or contract providing coverage for
21 the peril of flood must provide notice that flood insurance coverage
22 is available from the NFIP.

23 (c) A surplus lines agent may export a contract or endorsement
24 providing flood coverage of \$1 million or more to an eligible

1 surplus lines insurer without making a diligent effort to seek such
2 coverage from three or more authorized insurers as provided in
3 article twelve-c of this chapter. This subsection expires July 1,
4 2019.

5 **§33-49-6. Notice of cancellation or nonrenewal.**

6 A policy, endorsement, or contract providing coverage for the
7 peril of flood must require the insurer to give forty-five days'
8 prior written notice of cancellation or nonrenewal to the insured
9 and any regulated lending institution or federal agency that is a
10 mortgagee. An insurer or insured may cancel during the term of the
11 policy or upon renewal if the cancellation is for a valid reason
12 under the NFIP.

13 **§33-49-7. Additional requirements.**

14 In addition to any other applicable requirements, an insurer
15 providing flood coverage in this state must:

16 (a) Notify the office at least thirty days before writing flood
17 insurance in this state; and

18 (b) File a plan of operation and financial projections or
19 revisions to such plan, as applicable, with the commissioner, unless
20 the insurer maintains at least \$35 million in surplus and provides
21 coverage as an endorsement to an existing property insurance form.

22 **§33-49-8. Conflicts insurance law and flood insurance.**

23 With respect to the regulation of flood insurance coverage
24 written in this state by private insurers, this section supersedes

1 any other provision in the West Virginia Insurance Code in the event
2 of a conflict.

3 **§33-49-9. Federal law requiring certification.**

4 If federal law or rule requires a certification by a state
5 insurance regulatory official as a condition of qualifying for
6 private flood insurance or disaster assistance, the Commissioner of
7 the Office of Insurance Regulation shall provide the certification,
8 and the certification is not subject to review under section
9 fourteen, article two of this chapter.

NOTE: The purpose of this bill is to authorize insurers to offer flood insurance in this state. The bill provides legislative findings and defines the term "flood". It establishes the minimum coverage requirements for these policies. The bill has coverage limitations that an insurer may include in these policies and requires that certain limitations be noted on the policy declarations or face page. The bill gives the insurer rate options and requires the insurer to provide notice that flood insurance is available from the National Flood Insurance Program. The bill allows an insurer to export a contract or endorsement of a certain amount to a surplus lines insurer without meeting certain requirements. It requires prior notice requirements for cancellation or nonrenewal of a policy. The insurer is required to notify the Insurance Commissioner before writing flood insurance and to file a plan of operation with the Insurance Commissioner. The bill provides that any conflict with other provisions of the West Virginia insurance code are preempted by this article. And the bill requires the Insurance Commissioner to provide certification that a condition qualifies for flood insurance or disaster assistance.

This article is new; therefore, strike-throughs and underscoring have been omitted.