

WEST VIRGINIA LEGISLATURE
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ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 621

(SENATORS FITZSIMMONS, KESSLER (MR. PRESIDENT),
EDGELL, YOST AND COOKMAN, *ORIGINAL SPONSORS*)

[PASSED MARCH 7, 2014; IN EFFECT NINETY DAYS FROM PASSAGE.]

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(SENATORS FITZSIMMONS, KESSLER (MR. PRESIDENT), EDGELL,
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AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §33-49-1, §33-49-2, §33-49-3, §33-49-4, §33-49-5, §33-49-6, §33-49-7, §33-49-8, §33-49-9 and §33-49-10, all relating to authorizing insurers to offer flood insurance in this state; providing legislative findings; defining terms; establishing minimum coverage requirements for these policies; providing coverage limitations that an insurer may include in these policies; requiring that certain limitations be noted on the policy declarations or face page; providing the Insurance Commissioner with authority for rate-making and legislative and emergency rule-making authority; requiring the insurer to provide notice that flood insurance is available from the National Flood Insurance Program; allowing an insurer to export a contract or endorsement of a certain amount to a surplus lines insurer without meeting certain requirements; providing prior notice requirements for cancellation or nonrenewal of a policy; requiring the insurer to notify the commissioner before writing flood insurance and to file a plan of operation with the

commissioner; providing that any conflict with other provisions of the West Virginia insurance code are superseded by this article; and requiring the Insurance Commissioner to provide certification that a condition qualifies for flood insurance or disaster assistance.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §33-49-1, §33-49-2, §33-49-3, §33-49-4, §33-49-5, §33-49-6, §33-49-7, §33-49-8, §33-49-9 and §33-49-10, all to read as follows:

ARTICLE 49. FLOOD INSURANCE.

§33-49-1. Legislative findings.

1 (a) The Legislature finds that:

2 (1) The National Flood Insurance Program is a federal
3 program that enables property owners in participating
4 communities to purchase flood insurance. A community
5 participates in the federal program by adopting and enforcing
6 flood plain management regulations that meet or exceed
7 federal flood plain management criteria designed to reduce
8 future flood risk to new construction in flood plains. The
9 program was created by Congress in 1968 because insurance
10 covering the peril of flood was often unavailable in the
11 private insurance market and was intended to reduce the
12 amount of financial aid paid by the federal government in the
13 aftermath of flood-related disasters. After the creation of the
14 National Flood Insurance Program (NFIP), flood insurance
15 coverage continued to be generally unavailable for purchase
16 from private market insurance companies.

17 (2) The Biggert-Waters Flood Insurance Reform Act of
18 2012 reauthorized and revised the National Flood Insurance
19 Program. The act increases flood insurance premiums
20 purchased through the program for second homes, business
21 properties, severe repetitive loss properties and substantially
22 improved damaged properties by requiring premium
23 increases of twenty-five percent per year until premiums meet
24 the full actuarial cost. Most residences lose their subsidized
25 rates if the property is sold, the policy lapses, repeated and
26 severe flood losses occur or a new policy is purchased.
27 Policyholders whose communities adopt a new, updated
28 Flood Insurance Rate Map (FIRM) that results in higher rates
29 will experience a five-year phase in of rate increases to
30 achieve required rate levels.

31 (3) The Biggert-Waters Flood Insurance Reform Act of
32 2012 also encourages the use and acceptance of private
33 market flood insurance. The Legislature finds that there is no
34 adequate private flood insurance market available in West
35 Virginia. Such historic and current inadequacy suggests that
36 the private market in this state is unlikely to expand unless
37 the Legislature provides multiple options for the regulation of
38 flood insurance. The Legislature also finds that the
39 consumers of this state would benefit from the availability of
40 competitively priced private market flood insurance due to
41 the continued availability of NFIP flood insurance, the likely
42 availability of alternative private market flood insurance
43 coverage options and the oversight of the Insurance
44 Commissioner of West Virginia.

45 (4) The National Flood Insurance Program, as amended
46 by the Biggert-Waters Flood Insurance Reform Act of 2012,
47 will prevent many property owners from obtaining affordable
48 flood insurance coverage in this state. The absence of
49 affordable flood insurance threatens the public health, safety
50 and welfare and the economic health of West Virginia.

51 Therefore, the state has a compelling public purpose and
52 interest in providing alternatives to coverage from the
53 National Flood Insurance Program by promoting the
54 availability of flood insurance from private market insurers
55 at potentially lower premium rates so as to facilitate the
56 remediation, reconstruction and replacement of damaged or
57 destroyed property in order to reduce or avoid harm to the
58 public health, safety and welfare, to the economy of this state
59 and to the revenues of state and local governments which are
60 needed to provide for the public welfare.

§33-49-2. Definitions.

1 (a) As used in this article, the term “flood” means a
2 general and temporary condition of partial or complete
3 inundation of two acres or more of normally dry land area or
4 of two or more properties, at least one of which is the
5 policyholder’s property, from:

6 (1) Overflow of waters;

7 (2) Unusual and rapid accumulation or runoff of surface
8 waters from any source;

9 (3) Mudflow; or

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

14 (b) As used in this article, the term “insurer” means an
15 insurer that is subject to the provisions of this chapter and is
16 offering flood insurance pursuant to this article: *Provided,*
17 That a surplus lines insurer offering flood insurance pursuant
18 to this article is exempt from the requirements of this chapter

19 but subject to laws and rules applicable to surplus lines
20 insurers.

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

1 (a) Subject to the requirements of this article, an insurer
2 may issue an insurance policy, contract or endorsement
3 providing coverage for the peril of flood on any structure or
4 on the contents of personal property on a form that has been
5 filed with and approved by the commissioner pursuant to
6 section eight, article six of this chapter and that may be
7 substantially similar to the form used by the National Flood
8 Insurance Program (NFIP).

9 (b) A surplus lines agent may export a contract or
10 endorsement providing flood coverage of \$1 million or more
11 to an eligible surplus lines insurer without making a diligent
12 effort to seek such coverage from three or more authorized
13 insurers as provided in article twelve-c of this chapter. This
14 subsection expires on July 1, 2019.

§33-49-4. Content of flood insurance.

1 (a) At a minimum, coverage for the peril of flood must
2 cover a flood as defined in this article. Coverage for the peril
3 of flood may also include water intrusion, as defined by the
4 policy, which originates from outside the structure and is not
5 otherwise covered under the definition of flood.

6 (b) An insurer may offer a flood coverage policy, contract
7 or endorsement:

8 (1) That has a flood deductible based on a stated dollar
9 amount or a percentage of the coverage amount. At a
10 minimum, an insurer must offer deductible amounts

11 applicable to flood losses that equal the standard deductibles
12 offered under the National Flood Insurance Program;

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

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

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

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

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

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

29 (A) Additional living expenses;

30 (B) Personal property or contents; or

31 (C) Law and ordinance coverage. However, an insurer
32 must offer law and ordinance coverage that is comparable to
33 the law and ordinance coverage offered in the standard
34 National Flood Insurance Program policy. A policy,
35 endorsement, or contract that includes the law and ordinance
36 coverage that must be offered under this paragraph must
37 include the following disclosure in uppercase bold lettering

38 of at least 12-point type: “LAW AND ORDINANCE
39 COVERAGE UNDER THIS POLICY MIGHT HAVE
40 LIMITATIONS ON WHAT IS COVERED IN THE EVENT
41 OF A LOSS. YOU SHOULD CONSULT WITH YOUR
42 AGENT IF YOU HAVE QUESTIONS ABOUT THE
43 COVERAGE OFFERED UNDER THIS POLICY.”

§33-49-5. Notice of availability and limits of flood insurance.

1 (a) A policy, endorsement or contract providing coverage
2 for the peril of flood must provide notice that flood insurance
3 coverage is available from the National Flood Insurance
4 Program.

5 (b) Any limitations on flood coverage or policy limits as
6 to the peril of flood, including, but not limited to, flood
7 deductibles or flood coverage limited to the amount of all
8 outstanding mortgages, must be prominently disclosed on the
9 declarations page or face page of the policy in uppercase bold
10 lettering of at least 12-point type and be sufficiently clear so
11 as to be readily understandable by both the agent and the
12 property owner.

13 (c) A policy that limits flood coverage to an amount less
14 than the full replacement cost of the property must include
15 the statement: “THIS POLICY LIMITS FLOOD
16 COVERAGE TO LESS THAN THE FULL COST OF
17 REPLACEMENT FOR THE PROPERTY, WHICH MAY
18 RESULT IN HIGH OUT-OF-POCKET EXPENSES TO
19 YOU AND MAY PUT YOUR EQUITY IN THIS
20 PROPERTY AT RISK.”

21 (d) A policy that insures a dwelling on the basis of actual
22 cash value must include the statement: “THIS POLICY
23 PAYS YOU THE DEPRECIATED VALUE OF YOUR
24 PROPERTY THAT IS DAMAGED BY FLOOD, WHICH

25 MAY RESULT IN HIGH OUT-OF-POCKET EXPENSES
26 TO YOU IF YOUR PROPERTY NEEDS TO BE
27 REPAIRED OR REPLACED.”

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

1 A policy, endorsement or contract providing coverage for
2 the peril of flood must require the insurer to give 45-days’
3 prior written notice of cancellation or nonrenewal to the
4 insured and any regulated lending institution or federal
5 agency that is a mortgagee. An insurer or insured may cancel
6 during the term of the policy or upon renewal if the
7 cancellation is for a valid reason under the National Flood
8 Insurance Program.

§33-49-7. Additional requirements.

1 (a) In addition to any other applicable requirements, an
2 insurer providing flood coverage in this state must:

3 (1) Notify the office at least thirty days before writing
4 flood insurance in this state; and

5 (2) File a plan of operation and financial projections or
6 revisions to such plan, as applicable, with the commissioner.

§33-49-8. Conflicts between insurance law and flood insurance.

1 With respect to the regulation of flood insurance
2 coverage written in this state by private insurers, this article
3 supersedes any other provision in this chapter in the event of
4 a conflict.

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

1 If federal law or rule requires a certification by a state
2 insurance regulatory official as a condition of qualifying for

3 private flood insurance or disaster assistance, the
4 commissioner shall provide the certification, and the
5 certification is not subject to review under section fourteen,
6 article two of this chapter.

§33-49-10. Rule-making authority.

1 (a) The commissioner may propose rules for legislative
2 approval in accordance with the provisions of article three,
3 chapter twenty-nine-a of this code to implement the
4 provisions of this article, including but not limited to:

5 (1) Establishing and refining definitions;

6 (2) Requirements for ratemaking, forms and other
7 requirements under this chapter;

8 (3) Clarifying minimum coverage requirements for flood
9 insurance policies;

10 (4) Determining whether a policy meets the definition of
11 “private flood insurance” or other certain standards and
12 requirements; and

13 (5) Solvency and market conduct operations.

14 (b) The commissioner may promulgate emergency rules
15 pursuant to the provisions of section fifteen, article three,
16 chapter twenty-nine-a of this code for any purposes set forth
17 for legislative rules in subsection (a) of this section.

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

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Chairman Senate Committee

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Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

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Clerk of the Senate

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Clerk of the House of Delegates

.....
President of the Senate

.....
Speaker of the House of Delegates

The within this
the Day of, 2014.

.....
Governor