

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 621

(By Senator Fitzsimmons, Kessler (Mr. President), Edgell, Yost
and Cookman)

[Originating in the Committee on Banking and Insurance;
reported February 18, 2014.]

A BILL 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with the commissioner; providing that any conflict with other provisions of the West Virginia insurance code are superseded by this article; and requiring the Insurance Commissioner to provide certification that a condition qualifies for flood insurance or disaster assistance.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
6 enforcing flood plain management regulations that meet or
7 exceed federal flood plain management criteria designed to
8 reduce future flood risk to new construction in flood plains.
9 The program was created by Congress in 1968 because
10 insurance covering the peril of flood was often unavailable
11 in the private insurance market and was intended to reduce
12 the amount of financial aid paid by the federal government
13 in the aftermath of flood-related disasters. After the
14 creation of the National Flood Insurance Program (NFIP),
15 flood insurance coverage continued to be generally
16 unavailable for purchase from private market insurance
17 companies.

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

32 (3) The Biggert-Waters Flood Insurance Reform Act of
33 2012 also encourages the use and acceptance of private
34 market flood insurance. The Legislature finds that there is no
35 adequate private flood insurance market available in West
36 Virginia. Such historic and current inadequacy suggests that

37 the private market in this state is unlikely to expand unless
38 the Legislature provides multiple options for the regulation
39 of flood insurance. The Legislature also finds that the
40 consumers of this state would benefit from the availability of
41 competitively priced private market flood insurance due to
42 the continued availability of NFIP flood insurance, the likely
43 availability of alternative private market flood insurance
44 coverage options and the oversight of the Insurance
45 Commissioner of West Virginia.

46 (4) The National Flood Insurance Program, as amended by
47 the Biggert-Waters Flood Insurance Reform Act of 2012, will
48 prevent many property owners from obtaining affordable flood
49 insurance coverage in this state. The absence of affordable flood
50 insurance threatens the public health, safety and welfare and the
51 economic health of West Virginia. Therefore, the state has a
52 compelling public purpose and interest in providing alternatives
53 to coverage from the National Flood Insurance Program by
54 promoting the availability of flood insurance from private
55 market insurers at potentially lower premium rates so as to

56 facilitate the remediation, reconstruction and replacement of
57 damaged or destroyed property in order to reduce or avoid harm
58 to the public health, safety and welfare, to the economy of this
59 state and to the revenues of state and local governments which
60 are needed to provide for the public welfare.

§33-49-2. Definitions.

1 (a) As used in this article, the term “flood” means a general
2 and temporary condition of partial or complete inundation of
3 two acres or more of normally dry land area or of two or more
4 properties, at least one of which is the policyholder’s property,
5 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 lake
11 or similar body of water as a result of erosion or undermining
12 caused by waves or currents of water exceeding anticipated
13 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
16 is offering flood insurance pursuant to this article:
17 *Provided*, That a surplus lines insurer offering flood
18 insurance pursuant to this article is exempt from the
19 requirements of this chapter but subject to laws and rules
20 applicable to surplus lines 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
4 or on the contents of personal property on a form that has
5 been filed with and approved by the commissioner pursuant
6 to 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
11 more to an eligible surplus lines insurer without making a

12 diligent effort to seek such coverage from three or more
13 authorized insurers as provided in article twelve-c of this
14 chapter. This 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
3 peril of flood may also include water intrusion, as defined
4 by the policy, which originates from outside the structure
5 and is not otherwise covered under the definition of flood.

6 (b) An insurer may offer a flood coverage policy,
7 contract 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
12 deductibles offered under the National Flood Insurance
13 Program;

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

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

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

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

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

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

30 (A) Additional living expenses;

31 (B) Personal property or contents; or

32 (C) Law and ordinance coverage. However, an insurer
33 must offer law and ordinance coverage that is comparable
34 to the law and ordinance coverage offered in the standard
35 National Flood Insurance Program policy. A policy,
36 endorsement or contract that includes the law and

37 ordinance coverage that must be offered under this
38 paragraph must include the following disclosure in
39 uppercase bold lettering of at least 12-point type: “LAW
40 AND ORDINANCE COVERAGE UNDER THIS POLICY
41 MIGHT HAVE LIMITATIONS ON WHAT IS COVERED
42 IN THE EVENT OF A LOSS. YOU SHOULD CONSULT
43 WITH YOUR AGENT IF YOU HAVE QUESTIONS
44 ABOUT THE COVERAGE OFFERED UNDER THIS
45 POLICY.”

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

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

5 (b) Any limitations on flood coverage or policy limits
6 as 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
9 the declarations page or face page of the policy in

10 uppercase bold lettering of at least 12-point type and be
11 sufficiently clear so as to be readily understandable by both
12 the agent and the 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 commissioner
4 shall provide the certification, and the certification is not subject
5 to review under section fourteen, 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 provisions
4 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 marked 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.

(NOTE: The purpose of this bill is to authorize insurers to offer flood insurance in this state.

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