

**WEST VIRGINIA LEGISLATURE**  
**EIGHTY-FIRST LEGISLATURE**  
**REGULAR SESSION, 2014**



**ENROLLED**

**Senate Bill No. 88**

**(BY SENATORS LAIRD AND PLYMALE)**

[PASSED MARCH 8, 2014; IN EFFECT NINETY DAYS FROM PASSAGE.]

**E N R O L L E D**

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AN ACT to amend and reenact §33-22-2 of the Code of West Virginia, 1931, as amended; and to amend and reenact §38-10E-1 of said code, all relating to farmers' mutual fire insurance companies; removing outdated language; clarifying obligations and liability of farmers' mutual fire insurance companies; imposing limited lien on proceeds under policies issued by farmers' mutual fire insurance companies; providing for notice of a total loss determination; and providing for perfection of statutory lien and release under certain conditions.

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

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

**CHAPTER 33. INSURANCE.**

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

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

- 1 Each company to the same extent that provisions are
- 2 applicable to domestic mutual insurers shall be governed by

3 and be subject to the following provisions of this chapter, but  
4 only to the extent these provisions are not inconsistent with this  
5 article: Article one (definitions); article two (Insurance  
6 Commissioner); article four (general provisions), except that  
7 section sixteen, article four, may not be applicable; article seven  
8 (assets and liabilities); article eight-a (use of clearing  
9 corporations and federal reserve book-entry system); article ten  
10 (rehabilitation and liquidation), except that under section  
11 thirty-two, article ten, assessments may not be levied against  
12 any former member of a farmers' mutual fire insurance  
13 company who is no longer a member of the company at the  
14 time the order to show cause was issued; article eleven (unfair  
15 trade practices); article twelve (insurance producers and  
16 solicitors), except that the agent's license fee shall be \$5;  
17 section six-a, article seventeen (notice of noncoverage of flood  
18 damages and the availability of flood insurance); section nine-b,  
19 article seventeen (claims for total loss; debris removal  
20 proceeds); article twenty-six (West Virginia Insurance Guaranty  
21 Association Act); article twenty-seven (insurance holding  
22 company systems); article thirty (mine subsidence insurance),  
23 except that under section six, article thirty, a farmers' mutual  
24 insurance company shall have the option of offering mine  
25 subsidence coverage to all of its policyholders, but may not be  
26 required to do so; article thirty-three (annual audited financial  
27 report); article thirty-four (administrative supervision); article  
28 thirty-five (criminal sanctions for failure to report impairment);  
29 article thirty-six (business transacted with Producer-Controlled  
30 Property-Casualty Insurer Act); article thirty-seven (managing  
31 general agents); article thirty-nine (disclosure of material  
32 transactions); article forty (risk-based capital for insurers); and  
33 article forty-one (Insurance Fraud Prevention Act).

## **CHAPTER 38. LIENS.**

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

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

1           (a)(1) Notwithstanding any provision of this code to the  
2 contrary, the receipt by an insurance company of a claim  
3 under a fire insurance policy for a total loss to real property  
4 creates a statutory lien on the insurance proceeds payable for  
5 such claim in favor of the municipality in which the property  
6 is situate or, if the property is located outside a municipality,  
7 the county in which the property is situate, in an amount  
8 equal to the greater of: (A) \$5,000; or (B) ten percent of the  
9 policy limits for loss to the real property, including any  
10 coverage for debris removal: *Provided*, That the amount of  
11 the lien may not exceed the policy limits of coverage for the  
12 real property plus debris removal, if any: *Provided, however*,  
13 That the lien created by this subsection does not apply to  
14 proceeds payable under the policy for any losses other than  
15 those to the real property insured, including loss of personal  
16 property and payments for temporary housing and related  
17 living expenses: *Provided, further*, That the lien amount  
18 imposed against proceeds payable under policies issued by  
19 farmers' mutual fire insurance companies pursuant to article  
20 twenty-two, chapter thirty-three of this code shall in no event  
21 exceed ten percent of the policy limits for loss to the real  
22 property, including any coverage for debris removal.

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

26           (b) Within ten days of a determination by the insurer that  
27 a covered claim constitutes a total loss, the insurance  
28 company shall send certified letters to the insured and, as  
29 applicable, to the treasurer of the municipality in which the  
30 property is situate or, if the property is situate outside a  
31 municipality, to the sheriff of the county in which the

32 property is situate, stating any amount claimed; the limits and  
33 conditions of coverage; the location of the property; the terms  
34 and limits of coverage designated by the insurance policy for  
35 securing, cleanup and removal, if any; any time limitations  
36 imposed on the insured for securing, cleanup and removal; and  
37 the policyholder's name and mailing address.

38 (c)(1) The lien created pursuant to subsection (a) of this  
39 section shall be discharged unless the municipality or county,  
40 whichever is applicable, within thirty days of the receipt of the  
41 letter sent in accordance with subsection (b) of this section,  
42 perfects and preserves such lien by filing a notice thereof with  
43 the clerk of the county commission of the county in which such  
44 property is situate: *Provided*, That upon filing of a notice of  
45 lien in accordance with this subdivision, the amount of the lien  
46 created in subsection (a) of this section shall thereafter be for  
47 the estimated cost of cleanup contained in such notice of lien,  
48 subject to the limitation stated in subsection (a) of this section  
49 with respect to policies issued by farmers' mutual insurance  
50 companies: *Provided, however*, That the discharge of a lien  
51 based on the municipality's or county's failure to file a notice  
52 pursuant to this subdivision does not affect any other remedies  
53 the municipality or county may have with respect to such  
54 property or the liability of the property owner.

55 (2) A notice of lien filed in accordance with this subsection  
56 shall include a statement of the estimated cost to the  
57 municipality or county for the cleanup of the damaged  
58 property, removal of any refuse, debris, remnants or remains of  
59 the building and appurtenances, and securing the structure:  
60 *Provided*, That such estimated cost may not exceed the amount  
61 of the lien created pursuant to subsection (a) of this section.

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

65 Notice of Lien for Debris Removal

66 To (name of insurance company):

67 You will please take notice that the undersigned, on  
68 behalf of the (municipality or county) (of County, if a  
69 municipality), West Virginia, has estimated that the cost of  
70 removing debris and otherwise cleaning up (a certain  
71 building, other structure or improvement) on real estate  
72 known as (an adequate and ascertainable description of the  
73 real estate) would be (estimated cleanup cost).

74 You are further notified that, in order to secure the  
75 payment of the amount allowed by the provisions of  
76 subsection (a), section one, article ten-e, chapter thirty-eight  
77 of the West Virginia Code, the undersigned, on behalf of the  
78 (municipality or county) and pursuant to the provisions of  
79 section one, article ten-e, chapter thirty-eight of the West  
80 Virginia Code, claims a lien in such amount upon the interest  
81 of (policyholder's name) in a fire insurance policy (the policy  
82 number or other identifying information) issued by (the  
83 insurance company's name and address).

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

87 (Title)

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



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*

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*President of the Senate*

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*Speaker of the House of Delegates*

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The within ..... this  
the ..... Day of ....., 2014.

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*Governor*