

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 621**

4 (By Senators Fitzsimmons, Kessler (Mr. President), Edgell, Yost  
5 and Cookman)

6 \_\_\_\_\_  
7 [Originating in the Committee on Banking and Insurance;  
8 reported February 18, 2014.]

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14 A BILL to amend the Code of West Virginia, 1931, as amended, by  
15 adding thereto a new article, designated §33-49-1, §33-49-2,  
16 §33-49-3, §33-49-4, §33-49-5, §33-49-6, §33-49-7, §33-49-8,  
17 §33-49-9 and §33-49-10, all relating to authorizing insurers  
18 to offer flood insurance in this state; providing legislative  
19 findings; defining terms; establishing minimum coverage  
20 requirements for these policies; providing coverage  
21 limitations that an insurer may include in these policies;  
22 requiring that certain limitations be noted on the policy  
23 declarations or face page; providing the Insurance  
24 Commissioner with authority for rate-making and legislative  
25 and emergency rule-making authority; requiring the insurer to  
26 provide notice that flood insurance is available from the

1 National Flood Insurance Program; allowing an insurer to  
2 export a contract or endorsement of a certain amount to a  
3 surplus lines insurer without meeting certain requirements;  
4 providing prior notice requirements for cancellation or  
5 nonrenewal of a policy; requiring the insurer to notify the  
6 commissioner before writing flood insurance and to file a plan  
7 of operation with the commissioner; providing that any  
8 conflict with other provisions of the West Virginia insurance  
9 code are superseded by this article; and requiring the  
10 Insurance Commissioner to provide certification that a  
11 condition qualifies for flood insurance or disaster  
12 assistance.

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

14 That the Code of West Virginia, 1931, as amended, be amended  
15 by adding thereto a new article, designated §33-49-1, §33-49-2,  
16 §33-49-3, §33-49-4, §33-49-5, §33-49-6, §33-49-7, §33-49-8, §33-49-  
17 9 and §33-49-10, all to read as follows:

18 **ARTICLE 49. FLOOD INSURANCE.**

19 **§33-49-1. Legislative findings.**

20 (a) The Legislature finds that:

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

1 in flood plains. The program was created by Congress in 1968  
2 because insurance covering the peril of flood was often unavailable  
3 in the private insurance market and was intended to reduce the  
4 amount of financial aid paid by the federal government in the  
5 aftermath of flood-related disasters. After the creation of the  
6 National Flood Insurance Program (NFIP), flood insurance coverage  
7 continued to be generally unavailable for purchase from private  
8 market insurance companies.

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

22       (3) The Biggert-Waters Flood Insurance Reform Act of 2012 also  
23 encourages the use and acceptance of private market flood  
24 insurance. The Legislature finds that there is no adequate private  
25 flood insurance market available in West Virginia. Such historic  
26 and current inadequacy suggests that the private market in this

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

24 **§33-49-2. Definitions.**

25 (a) As used in this article, the term "flood" means a general  
26 and temporary condition of partial or complete inundation of two

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

4 (1) Overflow of waters;

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

7 (3) Mudflow; or

8 (4) 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 (b) As used in this article, the term "insurer" means an  
13 insurer that is subject to the provisions of this chapter and is  
14 offering flood insurance pursuant to this article: *Provided*, That  
15 a surplus lines insurer offering flood insurance pursuant to this  
16 article is exempt from the requirements of this chapter but subject  
17 to laws and rules applicable to surplus lines insurers.

18 **§33-49-3. Issuance of flood insurance.**

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

26 (b) A surplus lines agent may export a contract or endorsement

1 providing flood coverage of \$1 million or more to an eligible  
2 surplus lines insurer without making a diligent effort to seek such  
3 coverage from three or more authorized insurers as provided in  
4 article twelve-c of this chapter. This subsection expires on July  
5 1, 2019.

6 **§33-49-4. Content of flood insurance.**

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

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

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

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

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

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

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

1 (4) In an agreed-upon amount, including coverage limited to  
2 the amount of all outstanding mortgages applicable to the covered  
3 property. However, if a policy, contract or endorsement does not  
4 limit flood coverage to the replacement cost of the covered  
5 property, the contract or endorsement may not include a provision  
6 penalizing the policyholder for not insuring the covered property  
7 up to replacement cost; or

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

9 (A) Additional living expenses;

10 (B) Personal property or contents; or

11 (C) Law and ordinance coverage. However, an insurer must offer  
12 law and ordinance coverage that is comparable to the law and  
13 ordinance coverage offered in the standard National Flood Insurance  
14 Program policy. A policy, endorsement, or contract that includes  
15 the law and ordinance coverage that must be offered under this  
16 paragraph must include the following disclosure in uppercase bold  
17 lettering of at least 12-point type: "LAW AND ORDINANCE COVERAGE  
18 UNDER THIS POLICY MIGHT HAVE LIMITATIONS ON WHAT IS COVERED IN THE  
19 EVENT OF A LOSS. YOU SHOULD CONSULT WITH YOUR AGENT IF YOU HAVE  
20 QUESTIONS ABOUT THE COVERAGE OFFERED UNDER THIS POLICY."

21 **§33-49-5. Notice of availability and limits of flood insurance.**

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

25 (b) Any limitations on flood coverage or policy limits as to  
26 the peril of flood, including, but not limited to, flood

1 deductibles or flood coverage limited to the amount of all  
2 outstanding mortgages, must be prominently disclosed on the  
3 declarations page or face page of the policy in uppercase bold  
4 lettering of at least 12-point type and be sufficiently clear so as  
5 to be readily understandable by both the agent and the property  
6 owner.

7 (c) A policy that limits flood coverage to an amount less than  
8 the full replacement cost of the property must include the  
9 statement: "THIS POLICY LIMITS FLOOD COVERAGE TO LESS THAN THE FULL  
10 COST OF REPLACEMENT FOR THE PROPERTY, WHICH MAY RESULT IN HIGH OUT-  
11 OF-POCKET EXPENSES TO YOU AND MAY PUT YOUR EQUITY IN THIS PROPERTY  
12 AT RISK."

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

18 **§33-49-6. Notice of cancellation or nonrenewal.**

19 A policy, endorsement or contract providing coverage for the  
20 peril of flood must require the insurer to give 45-days' prior  
21 written notice of cancellation or nonrenewal to the insured and any  
22 regulated lending institution or federal agency that is a  
23 mortgagee. An insurer or insured may cancel during the term of the  
24 policy or upon renewal if the cancellation is for a valid reason  
25 under the National Flood Insurance Program.

26 **§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.

7 **§33-49-8. Conflicts between insurance law and flood insurance.**

8 With respect to the regulation of flood insurance coverage  
9 written in this state by private insurers, this article supersedes  
10 any other provision in this chapter in the event of a conflict.

11 **§33-49-9. Federal law requiring certification.**

12 If federal law or rule requires a certification by a state  
13 insurance regulatory official as a condition of qualifying for  
14 private flood insurance or disaster assistance, the commissioner  
15 shall provide the certification, and the certification is not  
16 subject to review under section fourteen, article two of this  
17 chapter.

18 **§33-49-10. Rule-making authority.**

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

23 (1) Establishing and refining definitions;

24 (2) Requirements for ratemaking, forms and other requirements  
25 under this chapter;

1           (3) Clarifying minimum coverage requirements for flood  
2 insurance policies;

3           (4) Determining whether a policy meets the definition of  
4 "private flood insurance" or other certain standards and  
5 requirements; and

6           (5) Solvency and market conduct operations.

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

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(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.)