

1 **ENROLLED**

2 COMMITTEE SUBSTITUTE

3 FOR

4 **Senate Bill No. 621**

5 (SENATORS FITZSIMMONS, KESSLER (MR. PRESIDENT), EDGELL, YOST AND COOKMAN,
6 *original sponsors*)

7 _____
8 [Passed March 7, 2014; in effect ninety days from passage.]
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13 AN ACT to amend the Code of West Virginia, 1931, as amended, by
14 adding thereto a new article, designated §33-49-1, §33-49-2,
15 §33-49-3, §33-49-4, §33-49-5, §33-49-6, §33-49-7, §33-49-8,
16 §33-49-9 and §33-49-10, all relating to authorizing insurers
17 to offer flood insurance in this state; providing legislative
18 findings; defining terms; establishing minimum coverage
19 requirements for these policies; providing coverage
20 limitations that an insurer may include in these policies;
21 requiring that certain limitations be noted on the policy
22 declarations or face page; providing the Insurance
23 Commissioner with authority for rate-making and legislative
24 and emergency rule-making authority; requiring the insurer to
25 provide notice that flood insurance is available from the
26 National Flood Insurance Program; allowing an insurer to

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8 code are superseded by this article; and requiring the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

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

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

17 **ARTICLE 49. FLOOD INSURANCE.**

18 **§33-49-1. Legislative findings.**

19 (a) The Legislature finds that:

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

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

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

8 (4) The National Flood Insurance Program, as amended by the
9 Biggert-Waters Flood Insurance Reform Act of 2012, will prevent
10 many property owners from obtaining affordable flood insurance
11 coverage in this state. The absence of affordable flood insurance
12 threatens the public health, safety and welfare and the economic
13 health of West Virginia. Therefore, the state has a compelling
14 public purpose and interest in providing alternatives to coverage
15 from the National Flood Insurance Program 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 (a) As used in this article, the term "flood" means a general
25 and temporary condition of partial or complete inundation of two
26 acres or more of normally dry land area or of two or more

1 properties, at least one of which is the policyholder's property,
2 from:

3 (1) Overflow of waters;

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

6 (3) Mudflow; or

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

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

17 **§33-49-3. Issuance of flood insurance.**

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

25 (b) A surplus lines agent may export a contract or endorsement
26 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 on July
4 1, 2019.

5 **§33-49-4. Content of flood insurance.**

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

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

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

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

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

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

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

26 (4) In an agreed-upon amount, including coverage limited to

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

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

8 (A) Additional living expenses;

9 (B) Personal property or contents; or

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

20 **§33-49-5. Notice of availability and limits of flood insurance.**

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

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

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

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

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

17 **§33-49-6. Notice of cancellation or nonrenewal.**

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

25 **§33-49-7. Additional requirements.**

26 (a) In addition to any other applicable requirements, an

1 insurer providing flood coverage in this state must:

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

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

6 **§33-49-8. Conflicts between insurance law and flood insurance.**

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

10 **§33-49-9. Federal law requiring certification.**

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

17 **§33-49-10. Rule-making authority.**

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

22 (1) Establishing and refining definitions;

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

25 (3) Clarifying minimum coverage requirements for flood

1 insurance policies;

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

5 (5) Solvency and market conduct operations.

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