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# **WEST VIRGINIA CODE CHAPTER 33**

## **ARTICLE 49**

WV Legislature

**§33-49-1. Legislative findings.**

(a) The Legislature finds that:

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

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

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

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

public welfare.

*WV Legislature*

**§33-49-2. Definitions.**

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

(1) Overflow of waters;

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

(3) Mudflow; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(A) Additional living expenses;

(B) Personal property or contents; or

(C) Law and ordinance coverage. However, an insurer must offer law and ordinance coverage that is comparable to the law and ordinance coverage offered in the standard National Flood Insurance Program policy. A policy, endorsement, or contract that includes the law and ordinance coverage that must be offered under this paragraph must include the following disclosure in uppercase bold lettering of at least 12-point type:

**"LAW AND ORDINANCE COVERAGE UNDER THIS POLICY MIGHT HAVE LIMITATIONS ON WHAT IS COVERED IN THE EVENT OF A LOSS. YOU SHOULD CONSULT WITH YOUR AGENT IF YOU HAVE QUESTIONS ABOUT THE COVERAGE OFFERED UNDER THIS POLICY."**

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

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

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

(c) A policy that limits flood coverage to an amount less than the full replacement cost of the property must include the statement:

"THIS POLICY LIMITS FLOOD COVERAGE TO LESS THAN THE FULL COST OF REPLACEMENT FOR THE PROPERTY, WHICH MAY RESULT IN HIGH OUT-OF-POCKET EXPENSES TO YOU AND MAY PUT YOUR EQUITY IN THIS PROPERTY AT RISK."

(d) A policy that insures a dwelling on the basis of actual cash value must include the statement:

"THIS POLICY PAYS YOU THE DEPRECIATED VALUE OF YOUR PROPERTY THAT IS DAMAGED BY FLOOD, WHICH MAY RESULT IN HIGH OUT-OF-POCKET EXPENSES TO YOU IF YOUR PROPERTY NEEDS TO BE REPAIRED OR REPLACED."

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

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

WV Legislature

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

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

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

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

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

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

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

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

WV Legislature

**§33-49-10. Rule-making authority.**

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

- (1) Establishing and refining definitions;
- (2) Requirements for ratemaking, forms and other requirements under this chapter;
- (3) Clarifying minimum coverage requirements for flood insurance policies;
- (4) Determining whether a policy meets the definition of "private flood insurance" or other certain standards and requirements; and
- (5) Solvency and market conduct operations.

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