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2004 APR -2 P 4: 02

OFFICE OF THE SECRETARY OF STATE  
WEST VIRGINIA

**WEST VIRGINIA LEGISLATURE**  
*Regular Session, 2003*



**ENROLLED**

*Committee Substitute for*  
**SENATE BILL NO. 230**

(By Senator *Plymale, et al* )



**PASSED March 13, 2004**

**In Effect 90 days from Passage**

FILED

2004 APR -2 P 4: 03

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**ENROLLED**

COMMITTEE SUBSTITUTE

FOR

**Senate Bill No. 230**

(SENATORS PLYMALE, MCCABE, JENKINS, CALDWELL,  
FANNING, SNYDER AND ROWE, *original sponsors*)

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[Passed March 13, 2004; in effect ninety days from passage.]

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AN ACT to amend and reenact §33-1-10 of the code of West Virginia, 1931, as amended; and to amend and reenact §33-3-14 of said code, all relating to definitions of casualty insurance and federal flood insurance; establishing special funds; and transferring collections on certain insurance premium taxes to benefit office of emergency services for flood plain enhancement activities.

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

That §33-1-10 of the code of West Virginia, 1931, as amended, be amended and reenacted; and that §33-3-14 of said code be amended and reenacted, all to read as follows:

**ARTICLE 1. DEFINITIONS.**

**§33-1-10. Kinds of insurance defined.**

1 The following definitions of kinds of insurance are not  
2 mutually exclusive and, if reasonably adaptable thereto, a  
3 particular coverage may be included under one or more of  
4 such definitions:

5 (a) Life insurance – Life insurance is insurance on  
6 human lives including endowment benefits, additional  
7 benefits in the event of death or dismemberment by  
8 accident or accidental means, additional benefits for  
9 disability and annuities.

10 (b) Accident and sickness – Accident and sickness  
11 insurance is insurance against bodily injury, disability or  
12 death by accident or accidental means, or the expense  
13 thereof, or against disability or expense resulting from  
14 sickness and insurance relating thereto. Group credit  
15 accident and health insurance may also include loss of  
16 income insurance which is insurance against the failure of  
17 a debtor to pay his or her monthly obligation due to  
18 involuntary loss of employment. For the purposes of this  
19 definition, involuntary loss of employment means the  
20 debtor loses employment income (salary or wages) as a  
21 result of unemployment caused by individual or mass  
22 layoff, general strikes, labor disputes, lockout or termina-  
23 tion by employer for other than willful or criminal miscon-  
24 duct. Any or all of the above-mentioned perils may be  
25 included in an insurance policy, at the discretion of the  
26 policyholder.

27 (c) Fire – Fire insurance is insurance on real or personal  
28 property of every kind and interest therein, against loss or  
29 damage from any or all hazard or cause, and against loss  
30 consequential upon such loss or damage, other than  
31 noncontractual liability for any such loss or damage. Fire  
32 insurance shall also include miscellaneous insurance as  
33 defined in paragraph (12), subdivision (e) of this section.

34 (d) Marine insurance is insurance:

35 (1) Against any and all kinds of loss or damage to vessels,  
36 craft, aircraft, cars, automobiles and vehicles of every

37 kind, as well as all goods, freight, cargoes, merchandise,  
38 effects, disbursements, profits, moneys, bullion, precious  
39 stones, securities, choses in action, evidences of debt,  
40 valuable papers, bottomry and respondentia interests and  
41 all other kinds of property and interests therein, in respect  
42 to, appertaining to or in connection with any and all risks  
43 or perils of navigation, transit or transportation, including  
44 war risks, on or under any seas or other waters, on land  
45 (above or below ground), or in the air, or while being  
46 assembled, packed, crated, baled, compressed or similarly  
47 prepared for shipment or while awaiting the same or  
48 during any delays, storage, transshipment, or reshipment  
49 incident thereto, including marine builders' risks and all  
50 personal property floater risks;

51 (2) Against any and all kinds of loss or damage to person  
52 or to property in connection with or appertaining to a  
53 marine, inland marine, transit or transportation insurance,  
54 including liability for loss of or damage to either, arising  
55 out of or in connection with the construction, repair,  
56 operation, maintenance or use of the subject matter of  
57 such insurance (but not including life insurance or surety  
58 bonds nor insurance against loss by reason of bodily injury  
59 to the person arising out of the ownership, maintenance or  
60 use of automobiles);

61 (3) Against any and all kinds of loss or damage to  
62 precious stones, jewels, jewelry, gold, silver and other  
63 precious metals, whether used in business or trade or  
64 otherwise and whether the same be in course of transpor-  
65 tation or otherwise;

66 (4) Against any and all kinds of loss or damage to  
67 bridges, tunnels and other instrumentalities of transporta-  
68 tion and communication (excluding buildings, their  
69 furniture and furnishings, fixed contents and supplies held  
70 in storage) unless fire, windstorm, sprinkler leakage, hail,  
71 explosion, earthquake, riot or civil commotion or any or all  
72 of them are the only hazards to be covered;

73 (5) Against any and all kinds of loss or damage to piers,  
74 wharves, docks and ships, excluding the risks of fire,  
75 windstorm, sprinkler leakage, hail, explosion, earthquake,  
76 riot and civil commotion and each of them;

77 (6) Against any and all kinds of loss or damage to other  
78 aids to navigation and transportation, including dry docks  
79 and marine railways, dams and appurtenant facilities for  
80 control of waterways; and

81 (7) Marine protection and indemnity insurance, which is  
82 insurance against, or against legal liability of the insured  
83 for, loss, damage or expense arising out of, or incident to,  
84 the ownership, operation, chartering, maintenance, use,  
85 repair or construction of any vessel, craft or instrumental-  
86 ity in use in ocean or inland waterways, including liability  
87 of the insured for personal injury, illness or death or for  
88 loss of or damage to the property of another person.

89 (e) Casualty – Casualty insurance includes:

90 (1) Vehicle insurance, which is insurance against loss of  
91 or damage to any land vehicle or aircraft or any draft or  
92 riding animal or to property while contained therein or  
93 thereon or being loaded therein or therefrom, from any  
94 hazard or cause, and against any loss, liability or expense  
95 resulting from or incident to ownership, maintenance or  
96 use of any such vehicle, aircraft or animal; together with  
97 insurance against accidental death or accidental injury to  
98 individuals, including the named insured, while in, enter-  
99 ing, alighting from, adjusting, repairing or cranking, or  
100 caused by being struck by any vehicle, aircraft or draft or  
101 riding animal, if such insurance is issued as a part of  
102 insurance on the vehicle, aircraft or draft or riding animal;

103 (2) Liability insurance, which is insurance against legal  
104 liability for the death, injury or disability of any human  
105 being, or for damage to property; and provisions for  
106 medical, hospital, surgical, disability benefits to injured  
107 persons and funeral and death benefits to dependents,

108 beneficiaries or personal representatives of persons killed,  
109 irrespective of legal liability of the insured, when issued as  
110 an incidental coverage with or supplemental to liability  
111 insurance;

112 (3) Burglary and theft insurance, which is insurance  
113 against loss or damage by burglary, theft, larceny, robbery,  
114 forgery, fraud, vandalism, malicious mischief, confisca-  
115 tion, or wrongful conversion, disposal or concealment, or  
116 from any attempt at any of the foregoing, including  
117 supplemental coverages for medical, hospital, surgical and  
118 funeral benefits sustained by the named insured or other  
119 person as a result of bodily injury during the commission  
120 of a burglary, robbery or theft by another; also insurance  
121 against loss of or damage to moneys, coins, bullion,  
122 securities, notes, drafts, acceptances or any other valuable  
123 papers and documents resulting from any cause;

124 (4) Personal property floater insurance, which is insur-  
125 ance upon personal effects against loss or damage from  
126 any cause;

127 (5) Glass insurance, which is insurance against loss or  
128 damage to glass, including its lettering, ornamentation and  
129 fittings;

130 (6) Boiler and machinery insurance, which is insurance  
131 against any liability and loss or damage to property or  
132 interest resulting from accidents to or explosion of boilers,  
133 pipes, pressure containers, machinery or apparatus and to  
134 make inspection of and issue certificates of inspection  
135 upon boilers, machinery and apparatus of any kind,  
136 whether or not insured;

137 (7) Leakage and fire extinguishing equipment insurance,  
138 which is insurance against loss or damage to any property  
139 or interest caused by the breakage or leakage of sprinklers,  
140 hoses, pumps and other fire extinguishing equipment or  
141 apparatus, water mains, pipes and containers, or by water  
142 entering through leaks or openings in buildings, and

143 insurance against loss or damage to such sprinklers, hoses,  
144 pumps and other fire extinguishing equipment or appara-  
145 tus;

146 (8) Credit insurance, which is insurance against loss or  
147 damage resulting from failure of debtors to pay their  
148 obligations to the insured. Credit insurance shall include  
149 loss of income insurance which is insurance against the  
150 failure of a debtor to pay his or her monthly obligation due  
151 to involuntary loss of employment. For the purpose of this  
152 definition, involuntary loss of employment means the  
153 debtor loses employment income (salary or wages) as a  
154 result of unemployment caused by individual or mass  
155 layoff, general strikes, labor disputes, lockout or termina-  
156 tion by employer for other than willful or criminal miscon-  
157 duct; any or all of the above-mentioned perils may be  
158 included in an insurance policy, at the discretion of the  
159 policyholder;

160 (9) Malpractice insurance, which is insurance against  
161 legal liability of the insured and against loss, damage or  
162 expense incidental to a claim of such liability, and includ-  
163 ing medical, hospital, surgical and funeral benefits to  
164 injured persons, irrespective of legal liability of the  
165 insured arising out of the death, injury or disablement of  
166 any person, or arising out of damage to the economic  
167 interest of any person, as the result of negligence in  
168 rendering expert, fiduciary or professional service;

169 (10) Entertainment insurance, which is insurance  
170 indemnifying the producer of any motion picture, televi-  
171 sion, radio, theatrical, sport, spectacle, entertainment or  
172 similar production, event or exhibition against loss from  
173 interruption, postponement or cancellation thereof due to  
174 death, accidental injury or sickness of performers, partici-  
175 pants, directors or other principals;

176 (11) Mine subsidence insurance as provided for in article  
177 thirty of this chapter;

178 (12) Miscellaneous insurance, which is insurance against  
179 any other kind of loss, damage or liability properly a  
180 subject of insurance and not within any other kind of  
181 insurance as defined in this chapter, if such insurance is  
182 not disapproved by the commissioner as being contrary to  
183 law or public policy; and

184 (13) Federal flood insurance, which is insurance pro-  
185 vided by the federal insurance administration or by  
186 private insurers through the write your own program  
187 within the national flood insurance program, instituted by  
188 the federal insurance administration pursuant to the  
189 provision of 42 U. S. C. §4071, on real or personal property  
190 of every kind and interest therein, against loss or damage  
191 from flood or mudslide and against loss consequential to  
192 such loss or damage, other than noncontractual liability  
193 for any loss or damage.

194 (f) Surety – Surety insurance includes:

195 (1) Fidelity insurance, which is insurance guaranteeing  
196 the fidelity of persons holding positions of public or  
197 private trust;

198 (2) Insurance guaranteeing the performance of contracts,  
199 other than insurance policies, and guaranteeing and  
200 executing bonds, undertakings and contracts of suretyship:  
201 *Provided*, That surety insurance does not include the  
202 guaranteeing and executing of bonds by professional  
203 bondsmen in criminal cases or by individuals not in the  
204 business of becoming a surety for compensation upon  
205 bonds;

206 (3) Insurance indemnifying banks, bankers, brokers,  
207 financial or moneyed corporations or associations against  
208 loss, resulting from any cause, of bills of exchange, notes,  
209 bonds, securities, evidences of debt, deeds, mortgages,  
210 warehouse receipts or other valuable papers, documents,  
211 money, precious metals and articles made therefrom,  
212 jewelry, watches, necklaces, bracelets, gems, precious and



213 semiprecious stones, including any loss while they are  
214 being transported in armored motor vehicles or by messen-  
215 ger, but not including any other risks of transportation or  
216 navigation, and also insurance against loss or damage to  
217 such an insured's premises or to his furnishings, fixtures,  
218 equipment, safes and vaults therein, caused by burglary,  
219 robbery, theft, vandalism or malicious mischief, or any  
220 attempt to commit such crimes; and

221 (4) Title insurance, which is insurance of owners of  
222 property or others having an interest therein, or liens or  
223 encumbrances thereon, against loss by encumbrance,  
224 defective title, invalidity or adverse claim to title.

**ARTICLE 3. LICENSING, FEES AND TAXATION OF INSURERS.**

**§33-3-14. Annual financial statement and premium tax return;  
remittance by insurer of premium tax, less certain  
deductions; special revenue fund created.**

1 (a) Every insurer transacting insurance in West Virginia  
2 shall file with the commissioner, on or before the first day  
3 of March, each year, a financial statement made under  
4 oath of its president or secretary and on a form prescribed  
5 by the commissioner. The insurer shall also, on or before  
6 the first day of March of each year subject to the provi-  
7 sions of section fourteen-c of this article, under the oath of  
8 its president or secretary, make a premium tax return for  
9 the previous calendar year on a form prescribed by the  
10 commissioner showing the gross amount of direct premi-  
11 ums, whether designated as a premium or by some other  
12 name, collected and received by it during the previous  
13 calendar year on policies covering risks resident, located  
14 or to be performed in this state and compute the amount  
15 of premium tax chargeable to it in accordance with the  
16 provisions of this article, deducting the amount of quar-  
17 terly payments as required to be made pursuant to the  
18 provisions of section fourteen-c of this article, if any, less  
19 any adjustments to the gross amount of the direct premi-  
20 ums made during the calendar year, if any, and transmit

21 with the return to the commissioner a remittance in full  
22 for the tax due. The tax is the sum equal to two percent of  
23 the taxable premium and also includes any additional tax  
24 due under section fourteen-a of this article. All taxes,  
25 except those received on write your own federal flood  
26 insurance premium taxes, received by the commissioner  
27 shall be paid into the insurance tax fund created in  
28 subsection (b) of this section: *Provided*, That no later than  
29 the thirtieth day of June of each year, one million six  
30 hundred sixty-seven thousand dollars of the portion of  
31 taxes received by the commissioner from insurance  
32 policies for medical liability insurance as defined in  
33 section three, article twenty-f of this chapter and from any  
34 insurer on its medical malpractice line shall be tempo-  
35 rarily dedicated to replenishing moneys appropriated from  
36 the tobacco settlement account pursuant to subsection (c),  
37 section two, article eleven-a, chapter four of this code.  
38 Upon determination by the commissioner that these  
39 moneys have been fully replenished to the tobacco settle-  
40 ment account, the commissioner shall resume depositing  
41 taxes received from medical malpractice premiums as  
42 provided in subsection (b) of this section.

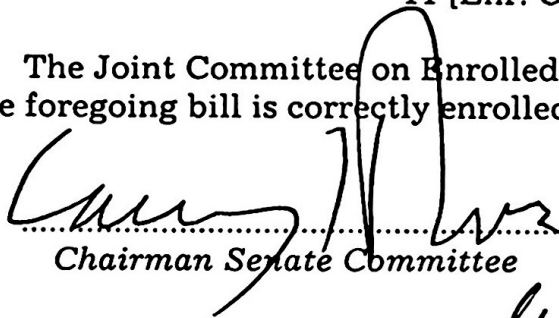
43 (b) There is created in the state treasury a special  
44 revenue fund, administered by the treasurer, designated  
45 the "insurance tax fund". This fund is not part of the  
46 general revenue fund of the state. It consists of all  
47 amounts deposited in the fund pursuant to subsection (a)  
48 of this section, sections fifteen and seventeen of this  
49 article, except those received on write your own federal  
50 flood insurance premium taxes, any appropriations to the  
51 fund, all interest earned from investment of the fund and  
52 any gifts, grants or contributions received by the fund.

53 (c) After the transfers authorized in this section, the  
54 treasurer shall, no later than the last business day of each  
55 month, transfer amounts the treasurer determines are not  
56 necessary for making refunds under this article to the  
57 credit of the general revenue fund.

58 (d) There is created in the state treasury a special  
59 revenue fund, administered by the treasurer, designated  
60 the "flood insurance tax fund". This fund is not part of  
61 the general revenue fund of the state. All taxes collected  
62 pursuant to subsection (a) of this section from federal  
63 flood insurance policy premium taxes shall be deposited  
64 into the flood insurance tax fund. The flood insurance tax  
65 fund shall contain collections, any appropriations to the  
66 fund and any gifts, grants and contributions received.

67 (e) The treasurer is restricted to, and shall distribute  
68 from, the flood insurance tax fund for activities which  
69 promote and enhance flood plain management issues and  
70 for subgrants to local units of government and other  
71 eligible entities after full consideration of the recommen-  
72 dations of the office of emergency services.

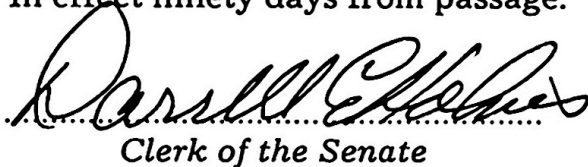
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

  
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Chairman Senate Committee

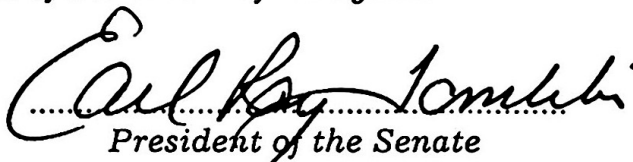
  
.....  
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

  
.....  
Clerk of the Senate

  
.....  
Clerk of the House of Delegates

  
.....  
President of the Senate

  
.....  
Speaker House of Delegates

The within is approved this the 2nd  
Day of April ....., 2004.

  
.....  
Governor

PRESENTED TO THE  
GOVERNOR

DATE 3/26/04  
TIME 3:10pm