ENROLLED

Committee Substitute for

SENATE BILL NO. 230

(By Senator Plymale, et al.)

PASSED March 13, 2004

In Effect 90 days from Passage
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.
The following definitions of kinds of insurance are not mutually exclusive and, if reasonably adaptable thereto, a particular coverage may be included under one or more of such definitions:

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

(b) Accident and sickness — Accident and sickness insurance is insurance against bodily injury, disability or death by accident or accidental means, or the expense thereof, or against disability or expense resulting from sickness and insurance relating thereto. Group credit accident and health insurance may also include loss of income insurance which is insurance against the failure of a debtor to pay his or her monthly obligation due to involuntary loss of employment. For the purposes of this definition, involuntary loss of employment means the debtor loses employment income (salary or wages) as a result of unemployment caused by individual or mass layoff, general strikes, labor disputes, lockout or termination by employer for other than willful or criminal misconduct. Any or all of the above-mentioned perils may be included in an insurance policy, at the discretion of the policyholder.

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

(d) Marine insurance is insurance:

(1) Against any and all kinds of loss or damage to vessels, craft, aircraft, cars, automobiles and vehicles of every
kind, as well as all goods, freight, cargoes, merchandise, effects, disbursements, profits, moneys, bullion, precious stones, securities, choses in action, evidences of debt, valuable papers, bottomry and respondencia interests and all other kinds of property and interests therein, in respect to, appertaining to or in connection with any and all risks or perils of navigation, transit or transportation, including war risks, on or under any seas or other waters, on land (above or below ground), or in the air, or while being assembled, packed, crated, baled, compressed or similarly prepared for shipment or while awaiting the same or during any delays, storage, transshipment, or reshipment incident thereto, including marine builders' risks and all personal property floater risks;

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

(3) Against any and all kinds of loss or damage to precious stones, jewels, jewelry, gold, silver and other precious metals, whether used in business or trade or otherwise and whether the same be in course of transportation or otherwise;

(4) Against any and all kinds of loss or damage to bridges, tunnels and other instrumentalities of transportation and communication (excluding buildings, their furniture and furnishings, fixed contents and supplies held in storage) unless fire, windstorm, sprinkler leakage, hail, explosion, earthquake, riot or civil commotion or any or all of them are the only hazards to be covered;
(5) Against any and all kinds of loss or damage to piers, wharves, docks and ships, excluding the risks of fire, windstorm, sprinkler leakage, hail, explosion, earthquake, riot and civil commotion and each of them;

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

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

(e) Casualty – Casualty insurance includes:

(1) Vehicle insurance, which is insurance against loss of or damage to any land vehicle or aircraft or any draft or riding animal or to property while contained therein or thereon or being loaded therein or therefrom, from any hazard or cause, and against any loss, liability or expense resulting from or incident to ownership, maintenance or use of any such vehicle, aircraft or animal; together with insurance against accidental death or accidental injury to individuals, including the named insured, while in, entering, alighting from, adjusting, repairing or cranking, or caused by being struck by any vehicle, aircraft or draft or riding animal, if such insurance is issued as a part of insurance on the vehicle, aircraft or draft or riding animal;

(2) Liability insurance, which is insurance against legal liability for the death, injury or disability of any human being, or for damage to property; and provisions for medical, hospital, surgical, disability benefits to injured persons and funeral and death benefits to dependents,
beneficiaries or personal representatives of persons killed,
irrespective of legal liability of the insured, when issued as
an incidental coverage with or supplemental to liability insurance;

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

(4) Personal property floater insurance, which is insurance upon personal effects against loss or damage from any cause;

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

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

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

(8) Credit insurance, which is insurance against loss or damage resulting from failure of debtors to pay their obligations to the insured. Credit insurance shall include loss of income insurance which is insurance against the failure of a debtor to pay his or her monthly obligation due to involuntary loss of employment. For the purpose of this definition, involuntary loss of employment means the debtor loses employment income (salary or wages) as a result of unemployment caused by individual or mass layoff, general strikes, labor disputes, lockout or termination by employer for other than willful or criminal misconduct; any or all of the above-mentioned perils may be included in an insurance policy, at the discretion of the policyholder;

(9) Malpractice insurance, which is insurance against legal liability of the insured and against loss, damage or expense incidental to a claim of such liability, and including medical, hospital, surgical and funeral benefits to injured persons, irrespective of legal liability of the insured arising out of the death, injury or disablement of any person, or arising out of damage to the economic interest of any person, as the result of negligence in rendering expert, fiduciary or professional service;

(10) Entertainment insurance, which is insurance indemnifying the producer of any motion picture, television, radio, theatrical, sport, spectacle, entertainment or similar production, event or exhibition against loss from interruption, postponement or cancellation thereof due to death, accidental injury or sickness of performers, participants, directors or other principals;

(11) Mine subsidence insurance as provided for in article thirty of this chapter;
(12) Miscellaneous insurance, which is insurance against any other kind of loss, damage or liability properly a subject of insurance and not within any other kind of insurance as defined in this chapter, if such insurance is not disapproved by the commissioner as being contrary to law or public policy; and

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

(f) Surety—Surety insurance includes:

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

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

(3) Insurance indemnifying banks, bankers, brokers, financial or moneyed corporations or associations against loss, resulting from any cause, of bills of exchange, notes, bonds, securities, evidences of debt, deeds, mortgages, warehouse receipts or other valuable papers, documents, money, precious metals and articles made therefrom, jewelry, watches, necklaces, bracelets, gems, precious and
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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
with the return to the commissioner a remittance in full for the tax due. The tax is the sum equal to two percent of the taxable premium and also includes any additional tax due under section fourteen-a of this article. All taxes, except those received on write your own federal flood insurance premium taxes, received by the commissioner shall be paid into the insurance tax fund created in subsection (b) of this section: Provided, That no later than the thirtieth day of June of each year, one million six hundred sixty-seven thousand dollars of the portion of taxes received by the commissioner from insurance policies for medical liability insurance as defined in section three, article twenty-f of this chapter and from any insurer on its medical malpractice line shall be temporarily dedicated to replenishing moneys appropriated from the tobacco settlement account pursuant to subsection (c), section two, article eleven-a, chapter four of this code. Upon determination by the commissioner that these moneys have been fully replenished to the tobacco settlement account, the commissioner shall resume depositing taxes received from medical malpractice premiums as provided in subsection (b) of this section.

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

(c) After the transfers authorized in this section, the treasurer shall, no later than the last business day of each month, transfer amounts the treasurer determines are not necessary for making refunds under this article to the credit of the general revenue fund.
(d) There is created in the state treasury a special revenue fund, administered by the treasurer, designated the “flood insurance tax fund”. This fund is not part of the general revenue fund of the state. All taxes collected pursuant to subsection (a) of this section from federal flood insurance policy premium taxes shall be deposited into the flood insurance tax fund. The flood insurance tax fund shall contain collections, any appropriations to the fund and any gifts, grants and contributions received.

(e) The treasurer is restricted to, and shall distribute from, the flood insurance tax fund for activities which promote and enhance flood plain management issues and for subgrants to local units of government and other eligible entities after full consideration of the recommendations of the office of emergency services.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

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