WEST VIRGINIA LEGISLATURE
EIGHTY-FIRST LEGISLATURE
REGULAR SESSION, 2014

ENROLLED

Senate Bill No. 88
(BY SENATORS LAIRD AND PLYMALE)

[PASSED MARCH 8, 2014; IN EFFECT NINETY DAYS FROM PASSAGE.]
AN ACT to amend and reenact §33-22-2 of the Code of West Virginia, 1931, as amended; and to amend and reenact §38-10E-1 of said code, all relating to farmers' mutual fire insurance companies; removing outdated language; clarifying obligations and liability of farmers' mutual fire insurance companies; imposing limited lien on proceeds under policies issued by farmers' mutual fire insurance companies; providing for notice of a total loss determination; and providing for perfection of statutory lien and release under certain conditions.

Be it enacted by the Legislature of West Virginia:

That §33-22-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §38-10E-1 of said code be amended and reenacted, all to read as follows:

CHAPTER 33. INSURANCE.

ARTICLE 22. FARMERS' MUTUAL FIRE INSURANCE COMPANIES.


1 Each company to the same extent that provisions are applicable to domestic mutual insurers shall be governed by
and be subject to the following provisions of this chapter, but
only to the extent these provisions are not inconsistent with this
article: Article one (definitions); article two (Insurance
Commissioner); article four (general provisions), except that
section sixteen, article four, may not be applicable; article seven
(assets and liabilities); article eight-a (use of clearing
corporations and federal reserve book-entry system); article ten
(rehabilitation and liquidation), except that under section
thirty-two, article ten, assessments may not be levied against
any former member of a farmers' mutual fire insurance
company who is no longer a member of the company at the
time the order to show cause was issued; article eleven (unfair
trade practices); article twelve (insurance producers and
solicitors), except that the agent’s license fee shall be $5;
section six-a, article seventeen (notice of noncoverage of flood
damages and the availability of flood insurance); section nine-b,
article seventeen (claims for total loss; debris removal
proceeds); article twenty-six (West Virginia Insurance Guaranty
Association Act); article twenty-seven (insurance holding
company systems); article thirty (mine subsidence insurance),
except that under section six, article thirty, a farmers' mutual
insurance company shall have the option of offering mine
subsidence coverage to all of its policyholders, but may not be
required to do so; article thirty-three (annual audited financial
report); article thirty-four (administrative supervision); article
thirty-five (criminal sanctions for failure to report impairment);
article thirty-six (business transacted with Producer-Controlled
Property-Casualty Insurer Act); article thirty-seven (managing
general agents); article thirty-nine (disclosure of material
transactions); article forty (risk-based capital for insurers); and
article forty-one (Insurance Fraud Prevention Act).

CHAPTER 38. LIENS.

ARTICLE 10E. LIEN ON INSURANCE PROCEEDS FOR
DEBRIS REMOVAL.
§38-10E-1. Debris removal; notice of insurance proceeds; lien of municipality and county.

(a)(1) Notwithstanding any provision of this code to the contrary, the receipt by an insurance company of a claim under a fire insurance policy for a total loss to real property creates a statutory lien on the insurance proceeds payable for such claim in favor of the municipality in which the property is situate or, if the property is located outside a municipality, the county in which the property is situate, in an amount equal to the greater of: (A) $5,000; or (B) ten percent of the policy limits for loss to the real property, including any coverage for debris removal: Provided, That the amount of the lien may not exceed the policy limits of coverage for the real property plus debris removal, if any: Provided, however, That the lien created by this subsection does not apply to proceeds payable under the policy for any losses other than those to the real property insured, including loss of personal property and payments for temporary housing and related living expenses: Provided, further, That the lien amount imposed against proceeds payable under policies issued by farmers' mutual fire insurance companies pursuant to article twenty-two, chapter thirty-three of this code shall in no event exceed ten percent of the policy limits for loss to the real property, including any coverage for debris removal.

(2) The terms “municipality” and “treasurer” have the same meanings ascribed to them in section two, article one, chapter eight of this code.

(b) Within ten days of a determination by the insurer that a covered claim constitutes a total loss, the insurance company shall send certified letters to the insured and, as applicable, to the treasurer of the municipality in which the property is situate or, if the property is situate outside a municipality, to the sheriff of the county in which the
property is situate, stating any amount claimed; the limits and
conditions of coverage; the location of the property; the terms
and limits of coverage designated by the insurance policy for
securing, cleanup and removal, if any; any time limitations
imposed on the insured for securing, cleanup and removal; and
the policyholder's name and mailing address.

(c)(1) The lien created pursuant to subsection (a) of this
section shall be discharged unless the municipality or county,
whichever is applicable, within thirty days of the receipt of the
letter sent in accordance with subsection (b) of this section,
perfects and preserves such lien by filing a notice thereof with
the clerk of the county commission of the county in which such
property is situate: Provided, That upon filing of a notice of
lien in accordance with this subdivision, the amount of the lien
created in subsection (a) of this section shall thereafter be for
the estimated cost of cleanup contained in such notice of lien,
subject to the limitation stated in subsection (a) of this section
with respect to policies issued by farmers' mutual insurance
companies: Provided, however, That the discharge of a lien
based on the municipality's or county's failure to file a notice
pursuant to this subdivision does not affect any other remedies
the municipality or county may have with respect to such
property or the liability of the property owner.

(2) A notice of lien filed in accordance with this subsection
shall include a statement of the estimated cost to the
municipality or county for the cleanup of the damaged
property, removal of any refuse, debris, remnants or remains of
the building and appurtenances, and securing the structure:
Provided, That such estimated cost may not exceed the amount
of the lien created pursuant to subsection (a) of this section.

(3) A notice of lien filed in accordance with this section
shall be notarized and shall be sufficient if in form and effect
as follows:
Notice of Lien for Debris Removal

To (name of insurance company):

You will please take notice that the undersigned, on behalf of the (municipality or county) (of County, if a municipality), West Virginia, has estimated that the cost of removing debris and otherwise cleaning up (a certain building, other structure or improvement) on real estate known as (an adequate and ascertainable description of the real estate) would be (estimated cleanup cost).

You are further notified that, in order to secure the payment of the amount allowed by the provisions of subsection (a), section one, article ten-e, chapter thirty-eight of the West Virginia Code, the undersigned, on behalf of the (municipality or county) and pursuant to the provisions of section one, article ten-e, chapter thirty-eight of the West Virginia Code, claims a lien in such amount upon the interest of (policyholder’s name) in a fire insurance policy (the policy number or other identifying information) issued by (the insurance company’s name and address).

(Signature of treasurer or municipal officer exercising the power and authority commonly exercised by a treasurer, or sheriff).

(d) The clerk of the county commission shall, upon the filing of such notice, index the same in a book in his or her office called “Debris Removal Liens” as a lien against the insurance proceeds in favor of the municipality or county and shall send a copy of the notice to the insurer.
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 of the House of Delegates

The within is approved this 24th Day of March, 2014.

Governor
PRESENTED TO THE GOVERNOR

MAR 21 2014

Time 11:00 a.m.

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