

HB 4260

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OFFICE OF THE  
SECRETARY OF STATE

**WEST VIRGINIA LEGISLATURE**  
SECOND REGULAR SESSION, 2010



**ENROLLED**

**COMMITTEE SUBSTITUTE  
FOR  
House Bill No. 4260**

(By Delegates Perry and Ashley)



Passed March 13, 2010

In Effect Ninety Days From Passage

# ENROLLED

COMMITTEE SUBSTITUTE

FOR

## H. B. 4260

(BY DELEGATES PERRY AND ASHLEY)

[Passed March 13, 2010; in effect ninety days from passage.]

AN ACT to repeal §33-12B-2 and §33-12B-13 of the Code of West Virginia, 1931, as amended; to amend and reenact §33-12B-1, §33-12B-3, §33-12B-5, §33-12B-9, §33-12B-10 and §33-12B-11 of said code; to amend said code by adding thereto a new section, designated §33-12B-10a, all relating to insurance adjusters; providing definitions; permitting an adjuster to designate a home state; establishing a new crop adjuster license and its qualifications; revising the requirements for nonresident adjusters; revising licensing renewal requirements; requiring notification by adjusters of legal actions taken against them; granting the Insurance Commissioner the authority to examine the business practices of persons holding or applying for adjuster licenses; clarifying the hearing process to be used concerning adverse administrative actions; providing for placing an adjuster on probation for violation of the provisions of the chapter or rules; providing for suspension or revocation of license for failure to pay administrative penalty; increasing maximum administrative penalty for violations; and providing for judicial review.

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

That §33-12B-2 and §33-12B-13 of the Code of West Virginia, 1931, as amended, be repealed; that §33-12B-1, §33-12B-3, §33-12B-5, §33-12B-9, §33-12B-10 and §33-12B-11 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §33-12B-10a, all to read as follows:

**ARTICLE 12B. ADJUSTERS.**

**§33-12B-1. Definitions.**

1 (a) An “adjuster” is any individual who, for  
2 compensation, fee or commission, investigates and settles  
3 claims arising under property, casualty or surety insurance  
4 contracts, on behalf solely of either the insurer or insured. A  
5 licensed attorney who is qualified to practice law in this state  
6 is deemed not to be an adjuster for the purposes of this  
7 article.

8 (b) “Company adjuster” means an adjuster representing  
9 the interests of the insurer, including an independent  
10 contractor and a salaried employee of the insurer.

11 (c) “Home state” means the District of Columbia or any  
12 state or territory of the United States in which an adjuster  
13 maintains his or her principal place of residence or business  
14 and in which he or she is licensed to act as a resident adjuster.  
15 If a person’s principal place of residence or business does not  
16 license adjusters for the type of adjuster license sought in this  
17 state, he or she shall designate as his or her home state any  
18 state in which he or she has such a license.

19 (d) “Public adjuster” means an independent contractor  
20 representing solely the financial interests of the insured  
21 named in the policy.

22 (e) “Crop adjuster” means a person who adjusts crop  
23 insurance claims under the federal crop insurance program  
24 administered by the United States Department of Agriculture.

**§33-12B-3. Company, public and crop adjusters; concurrency;  
direct conflict prohibited.**

1 The commissioner shall license an individual as a  
2 company adjuster, public adjuster or crop adjuster. An  
3 individual may be licensed concurrently under separate  
4 licenses but shall not act as an adjuster representing the  
5 interests of the insured and the insurer with respect to the  
6 same claim.

**§33-12B-5. Qualifications for adjuster’s license; examinations;  
exemptions.**

1 (a) For the protection of the people of West Virginia, the  
2 commissioner shall not issue, renew or permit to exist any  
3 adjuster’s license, except to an individual who:

4 (1) Is eighteen years of age or more.

5 (2) Is a resident of West Virginia, except for nonresident  
6 adjusters as provided in section nine of this article.

7 (3) Satisfies the commissioner that he or she is  
8 trustworthy and competent.

9 (b)(1) The commissioner may, at his or her discretion,  
10 test the competency of an applicant for a license under this  
11 section by examination. However, in order to qualify for a  
12 crop adjuster license, an applicant must pass a written  
13 examination that tests the knowledge of the individual  
14 concerning the insurance laws of this state and the duties and  
15 responsibilities of a multi-peril crop adjuster. In lieu of such

16 an examination, the commissioner may accept certification  
17 that the individual has passed a proficiency examination  
18 approved by the federal Risk Management Agency.

19 (2) If such an examination is required, each examinee  
20 shall pay a \$25 examination fee for each examination to the  
21 commissioner, which fees shall be used for the purposes set  
22 forth in section thirteen, article three of this chapter. The  
23 commissioner may, at his or her discretion, designate an  
24 independent testing service to prepare and administer such  
25 examination subject to direction and approval by the  
26 commissioner, and examination fees charged by such service  
27 shall be paid by the applicant.

28 (c) The requirements of this section do not apply to  
29 licenses issued to emergency adjusters.

**§33-12B-9. Licensing of nonresident adjusters.**

1 A nonresident applicant for an adjuster license who  
2 holds a similar license in his or her home state may be  
3 licensed as a nonresident adjuster in this state if the  
4 applicant's home state has established, by law or regulation  
5 like requirements for the licensing of a resident of this state  
6 as a nonresident adjuster.

7 (b) As a condition of continuing a nonresident adjuster  
8 license, the licensee must maintain a license in his or her  
9 home state.

10 (c) If a nonresident adjuster desires to become a resident  
11 adjuster he or she must apply to become one within ninety  
12 days of establishing legal residency in this state.

13 (d) If a nonresident adjuster has his or her license  
14 suspended, terminated or revoked by his or her home state,

15 the adjuster must immediately notify the commissioner of  
16 that action.

**§33-12B-10. Expiration of license; renewal.**

1 (a) All licenses of adjusters shall expire at midnight on  
2 May 31 next following the date of issuance and the  
3 commissioner shall renew annually the license of all such  
4 licensees who qualify and make application therefor.  
5 However, the commissioner may, in his or her discretion,  
6 establish the dates of expiration of licenses in any manner  
7 deemed advisable for an efficient distribution of the workload  
8 of his or her office.

9 (b) An adjuster whose license expires may, if application  
10 is made within one year of the expiration date, be reissued a  
11 license upon payment of twice the renewal fee.

12 (c) The commissioner may waive any renewal  
13 requirement for any adjuster who is unable to comply due to  
14 military service, long-term medical disability or other  
15 extenuating circumstance.

16 (d) As a condition of the renewal of a crop adjuster  
17 license, the commissioner may require that the licensee  
18 demonstrate that he or she has maintained certification of  
19 proficiency issued or approved by the federal Risk  
20 Management Agency.

**§33-12B-10a. Reporting of actions.**

1 (a) An adjuster shall report to the commissioner any  
2 administrative action taken against the adjuster in another  
3 jurisdiction or by another governmental agency in this state  
4 within thirty days of the final disposition of the matter,  
5 including decertification or other action related to the

6 adjuster's proficiency to adjust multi-peril crop insurance  
7 claims. The report shall include a copy of the order, consent  
8 to order and any other relevant legal documents.

9 (b) Within thirty days of the initial pretrial hearing date,  
10 an adjuster shall report to the commissioner any criminal  
11 prosecution of the adjuster in any jurisdiction. The report  
12 shall include a copy of the initial complaint filed, the order  
13 resulting from the hearing and any other relevant legal  
14 documents.

**§33-12B-11. Denial, revocation, suspension, probation or  
refusal to renew license; penalties.**

1 (a) The commissioner may examine and investigate the  
2 business affairs and conduct of persons applying for or  
3 holding an adjuster license to determine whether such person  
4 is trustworthy and competent or has been or is engaged in any  
5 violation of the insurance laws or rules of this state or in any  
6 unfair or deceptive acts or practices in any state.

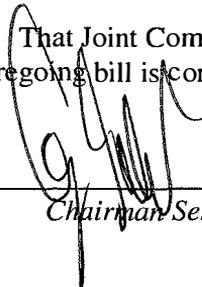
7 (b) If the commissioner denies an application for a  
8 license, he or she shall notify the applicant or licensee in  
9 writing of the reason for such action. The applicant or  
10 licensee may, within ten days of receipt of such notice, make  
11 written demand for a hearing before the commissioner to  
12 determine the reasonableness of the action, and such hearing  
13 shall be held in accordance with the provisions of section  
14 thirteen, article two of this chapter.

15 (c) Whenever, after notice and hearing, the commissioner  
16 is satisfied that any adjuster has violated any provision of this  
17 chapter or of rules promulgated hereunder, or is incompetent  
18 or untrustworthy, he or she shall place the adjuster on  
19 probation or revoke, suspend, or, if renewal of license is  
20 pending, refuse to renew the license of such adjuster. In

21 addition to placing a licensee on probation or revoking,  
22 suspending or refusing to renew his or her license, the  
23 commissioner may in his or her discretion order such licensee  
24 to pay to the state of West Virginia an administrative penalty  
25 in a sum not to exceed \$1000 for each violation. Upon the  
26 failure of the licensee to pay such penalty within thirty days,  
27 his or her license shall be revoked or suspended by the  
28 commissioner.

29 (d) Orders issued pursuant to subsection (b) or (c) of this  
30 section are subject to the judicial review provisions of section  
31 fourteen, article two of this chapter.

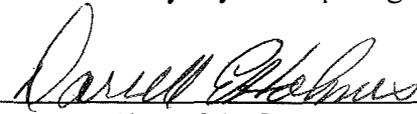
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

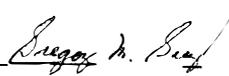
  
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Chairman Senate Committee

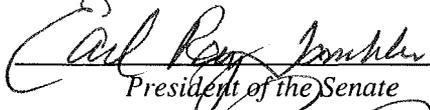
  
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Chairman House Committee

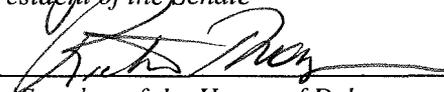
Originating in the House.

In effect ninety days from passage.

  
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Clerk of the Senate

  
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Clerk of the House of Delegates

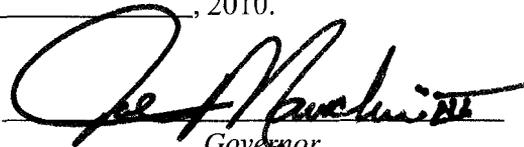
  
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President of the Senate

  
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Speaker of the House of Delegates

SECRETARY OF STATE

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The within is approved this the 1st  
day of April, 2010.

  
\_\_\_\_\_  
Governor

PRESENTED TO THE  
GOVERNOR

MAR 29 2010

Time 10:05 