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
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.
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That §33-12B-2 and §33-12B-13 of the Code of West Virginia, 1931, as amended, be repealed; that §33-12B-1, §33-12B-3, §33-12B-5, §33-12B-9, §33-12B-10 and §33-12B-11 of said code be amended and reenacted; that said code be amended by adding thereto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.

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

(b) "Company adjuster" means an adjuster representing the interests of the insurer, including an independent contractor and a salaried employee of the insurer.

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

(d) "Public adjuster" means an independent contractor representing solely the financial interests of the insured named in the policy.
(c) "Crop adjuster" means a person who adjusts crop insurance claims under the federal crop insurance program administered by the United States Department of Agriculture.

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

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

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

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

(1) Is eighteen years of age or more.

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

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

(b)(1) The commissioner may, at his or her discretion, test the competency of an applicant for a license under this section by examination. However, in order to qualify for a crop adjuster license, an applicant must pass a written examination that tests the knowledge of the individual concerning the insurance laws of this state and the duties and responsibilities of a multi-peril crop adjuster. In lieu of such
an examination, the commissioner may accept certification
that the individual has passed a proficiency examination
approved by the federal Risk Management Agency.

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

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

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

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

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

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

d) If a nonresident adjuster has his or her license
suspended, terminated or revoked by his or her home state,
the adjuster must immediately notify the commissioner of that action.

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

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

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

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

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

§33-12B-10a. Reporting of actions.

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

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

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

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

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

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

(c) Whenever, after notice and hearing, the commissioner is satisfied that any adjuster has violated any provision of this chapter or of rules promulgated hereunder, or is incompetent or untrustworthy, he or she shall place the adjuster on probation or revoke, suspend, or, if renewal of license is pending, refuse to renew the license of such adjuster. In
addition to placing a licensee on probation or revoking, 
suspending or refusing to renew his or her license, the 
commissioner may in his or her discretion order such licensee 
to pay to the state of West Virginia an administrative penalty 
in a sum not to exceed $1000 for each violation. Upon the 
failure of the licensee to pay such penalty within thirty days, 
his or her license shall be revoked or suspended by the 
commissioner.

(d) Orders issued pursuant to subsection (b) or (c) of this 
section are subject to the judicial review provisions of section 
fourteen, article two of this chapter.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the House.

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 appeared this the 18th
day of April, 2010.

Governor