

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Introduced

House Bill 4502

BY DELEGATES WESTFALL, PORTERFIELD, ESPINOSA AND

BATES

(BY REQUEST OF THE INSURANCE COMMISSION)

[Introduced January 23, 2020; Referred to the
Committee on Banking and Insurance then the
Judiciary.]

1 A BILL to repeal §33-12B-4a and §33-12B-11a of the Code of West Virginia, 1931, as amended;
2 to amend and reenact §33-12B-1, §33-12B-2, §33-12B-3, §33-12B-4, §33-12B-5, §33-
3 12B-6, §33-12B-7, §33-12B-8, §33-12B-9, §33-12B-10, §33-12B-11, and §33-12B-13 of
4 said code; and to amend said code by adding thereto a new section, designated §33-12B-
5 15, all relating to insurance adjusters; defining terms; providing licensure requirements for
6 company, independent, and public adjusters; providing exceptions to adjuster license
7 requirements; permitting temporary licensure for emergency company and independent
8 adjusters; providing for qualifications for a resident adjuster license; authorizing the
9 Insurance Commissioner to conduct criminal history checks for prospective adjusters;
10 providing for adjuster lines of authority; providing for revocation or suspension of adjuster
11 license; providing for civil penalty against adjusters; requiring adjusters to complete
12 continuing education; and providing for an effective date.

Be it enacted by the Legislature of West Virginia:

ARTICLE 12B. ADJUSTERS.

§33-12B-1. Definitions.

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

5 ~~(b)~~ (a) “Automated claims adjudication system” means a preprogrammed computer
6 system designed for the collection, data entry, calculation and final resolution of portable
7 electronics insurance claims which:

8 (1) May only be used by a licensed adjuster, licensed producer, or supervised individuals
9 operating pursuant to section four-a of this article;

10 (2) Must comply with all claims payments requirements of the insurance code; and

11 (3) Must be certified as compliant with this section by a licensed adjuster that is an officer
12 of the entity which employs the individuals operating pursuant to section four-a of this article.

13 (b) "Business entity" means a corporation, association, partnership, limited liability
14 company, limited liability partnership, or other legal entity.

15 (c) "Company adjuster" means an adjuster ~~representing the interests of the insurer,~~
16 ~~including an independent contractor and a salaried employee of the insurer~~ who is a staff
17 employee of an insurance company who represents the interests of the insurance company and
18 who is paid by the insurance company.

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

25 (e) "Independent adjuster" means a person who:

26 (1) Is an individual, a business entity, an independent contractor, or an employee of a
27 contractor, who contracts for compensation with insurers or self-insurers;

28 (2) One whom the insurer's or self-insurer's tax treatment of the individual is consistent
29 with that of an independent contractor rather than as an employee, as defined in the Internal
30 Revenue Code, United States Code, Title 26, Subtitle C; and

31 (3) Investigates, negotiates, or settles property, casualty, or workers' compensation claims
32 for insurers or self-insurers.

33 (f) "Individual" means a natural person.

34 (g) "Insurance emergency" means a temporary situation as declared by the commissioner
35 pursuant to §33-2-10a of this code when the number of licensed adjusters in this state is
36 inadequate to meet the demands of the public.

37 (h) "Person" means an individual or business entity.

38 ~~(e)~~ (i) "Public adjuster" means an independent contractor representing solely the financial
39 interests of the insured named in the policy any person who, for compensation or any other thing
40 of value on behalf of the insured:

41 (1) Acts or aids, solely in relation to first party claims arising under insurance contracts
42 that insure the real or personal property of the insured, on behalf of an insured in negotiating for,
43 or effecting the settlement of, a claim for loss or damage covered by an insurance contract;

44 (2) Advertises for employment as a public adjuster of insurance claims or solicits business
45 or represents himself or herself to the public as a public adjuster of first party insurance claims for
46 losses or damages arising out of policies of insurance that insure real or personal property; or

47 (3) Directly or indirectly solicits business, investigates or adjusts losses, or advises an
48 insured about first party claims for losses or damages arising out of policies of insurance that
49 insure real or personal property for another person engaged in the business of adjusting losses
50 or damages covered by an insurance policy on behalf of an insured.

51 ~~(f) "Crop adjuster" means a person who adjusts crop insurance claims under the federal~~
52 ~~crop insurance program administered by the United States Department of Agriculture~~

§33-12B-2. License required.

1 (a) No person may act or hold himself, herself or itself out as a company adjuster, an
2 independent adjuster, or a public adjuster in this state unless the person is licensed in accordance
3 with this article or is exempt from licensure under this article.

4 (b) The license shall contain the licensee's name, address, personal identification number,
5 the date of issuance, expiration date, and any other information the commissioner deems
6 necessary.

7 (c) A person licensed as a public adjuster shall not misrepresent to a claimant that he, she
8 or it is an adjuster representing an insurer in any capacity, including acting as an employee of the
9 insurer or acting as an independent adjuster unless so appointed by an insurer in writing to act

10 on the insurer's behalf for that specific claim or purpose. A licensed public adjuster is prohibited
11 from charging that specific claimant a fee when appointed by the insurer and the appointment is
12 accepted by the public adjuster.

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

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

Exemptions from license.

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

5 (a) Notwithstanding any other provisions of this article, a company adjuster license or
6 independent adjuster license shall not be required of the following:

7 (1) Attorneys-at-law admitted to practice in this state, when acting in their professional
8 capacity as an attorney;

9 (2) A person employed only for the purpose of obtaining facts surrounding a claim or
10 furnishing technical assistance to a licensed company or independent adjuster;

11 (3) An individual who is employed to investigate suspected fraudulent insurance claims
12 but who does not adjust losses, investigate or determine coverage, or determine claim payments;

13 (4) A person who solely performs executive, administrative, managerial, or clerical duties,
14 or any combination thereof, and who does not investigate, negotiate, or settle insurance claims
15 with policyholders, claimants, or their legal representative;

16 (5) A licensed health care provider or its employee who is not responsible for determining
17 compensability;

18 (6) A managed care organization or any of its employees or an employee of any
19 organization providing managed care services so long as the managed care organization or
20 employee referenced herein is not determining compensability;

21 (7) A person who settles reinsurance or subrogation claims between insurers;

22 (8) An officer, director, or manager of an authorized insurer, surplus lines insurer, a risk
23 retention group, or an attorney-in-fact of a reciprocal insurer;

24 (9) A manager of the United States branch of an alien insurer;

25 (10) A person who investigates, negotiates or settles life, accident and health, annuity, or
26 disability insurance claims;

27 (11) An individual employee, under a self-insured arrangement, who adjusts claims on
28 behalf of his or her employer;

29 (12) A licensed individual producer, attorney-in-fact of a reciprocal insurer or managing
30 general agent of the insurer to whom claim authority has been granted by the insurer;

31 (13) A business entity licensed under the authority of §33-46-1 et seq. of this code; or

32 (14) Individuals who collect claim information from, or furnish claim information to,
33 insureds or claimants and who conduct data entry including entering data into an automated
34 claims adjudication system are exempt from licensure under this article: *Provided*, That the
35 individuals are under the supervision of a licensed adjuster or licensed producer: *Provided*
36 *however*, That no more than 25 persons are under the supervision of one licensed adjuster or
37 licensed producer.

38 (b) Notwithstanding any other provisions of this article, a public adjuster license shall not
39 be required of the following:

40 (1) Attorneys-at-law admitted to practice in this state, when acting in their professional
41 capacity as an attorney;

42 (2) A person who negotiates or settles claims arising under a life or health insurance policy
43 or an annuity contract;

44 (3) A person employed only for the purpose of obtaining facts surrounding a loss or
45 furnishing technical assistance to a licensed public adjuster;

46 (4) A licensed health care provider, or employee of a licensed health care provider, who
47 prepares or files a health claim form on behalf of a patient; or

48 (5) A person who settles subrogation claims between insurers.

§33-12B-4. ~~License required; exception~~ Temporary licensure for emergency company or independent adjusters.

1 ~~No person shall in West Virginia act as or hold out to be an adjuster unless then licensed~~
2 ~~therefor pursuant to this article: Provided, That the provisions of this section do not apply to~~
3 ~~emergency insurance adjusters as defined in section eleven-a of this article~~

4 (a) In the event of a declared insurance emergency, an insurer shall notify the
5 commissioner with an application for temporary emergency licensure for each individual who will
6 act as an emergency company adjuster or emergency independent adjuster on behalf of the
7 insurer.

8 (b) A person who is otherwise qualified to adjust claims, but not already licensed in this
9 state when the insurance emergency has been declared, may act as an emergency company or
10 independent adjuster and adjust claims, if, within five days of the declared insurance emergency,
11 the insurer notifies the commissioner by providing the following information in a format prescribed
12 by the commissioner:

13 (1) Name and address of the individual;

14 (2) Social Security number of individual;

15 (3) Name of insurer which the company or independent adjuster will represent;

16 (4) If applicable, effective date of the contract between the insurer and independent
17 adjuster;

18 (5) Insurance emergency or loss control number;

19 (6) Insurance emergency event name; and

20 (7) Any other information the commissioner deems necessary.

21 (c) An emergency company or independent adjuster's license shall remain in force for a
22 period not to exceed 90 days, unless extended for an additional period by the commissioner.

23 (d) The fee for emergency company or independent adjuster application for licensure shall
24 be in an amount specified in §33-12B-8 of this code. The fee shall be due and payable at the time
25 of application for licensure.

§33-12B-4a. Exemptions from license.

1 [Repealed]

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

1 ~~(a) For the protection of the people of West Virginia, the commissioner shall not issue,~~
2 ~~renew or permit to exist any adjuster's license, except to an individual who~~ An individual applying
3 for a resident adjuster license shall make application to the commissioner and declare under
4 penalty of suspension, revocation, or refusal of the license that the statements made in the
5 application are true, correct, and complete to the best of the individual's knowledge and belief.
6 Before approving the application, the commissioner shall find that the individual:

7 (1) Is 18 years of age or more;

8 (2) Is a resident of West Virginia, ~~except for nonresident adjusters as provided in section~~
9 ~~nine of this article~~ or eligible to designate West Virginia as his or her home state;

10 (3) ~~Satisfies the commissioner that he or she~~ Is trustworthy, and competent, reliable, and
11 of good reputation, evidence of which may be determined by the commissioner;

12 (4) Has a business or mailing address in this state for acceptance of service of process;

13 (5) Has not committed any act that is a ground for probation, suspension, revocation, or
14 refusal of an adjuster's license as set forth in §33-12B-11 of this code;

15 (6) Has successfully passed the written examination for the line(s) of authority for which
16 the person has applied; and

17 (7) Has paid the fees applicable to licensure.

18 ~~(b)(1) The commissioner may, at his or her discretion, test the competency of an applicant~~
19 ~~for a license under this section by examination. However, in order to qualify for a crop adjuster~~
20 ~~license, an applicant must pass a written examination that tests the knowledge of the individual~~
21 ~~concerning the insurance laws of this state and the duties and responsibilities of a multi-peril crop~~
22 ~~adjuster. In lieu of such an examination, the commissioner may accept certification that the~~
23 ~~individual has passed a proficiency examination approved by the federal Risk Management~~
24 ~~Agency~~ A resident individual applying for an adjuster license shall pass a written examination
25 unless exempt pursuant to subdivision (5) or (6) of this subsection. The examination shall test the
26 knowledge of the individual concerning the line(s) of authority for which application is made, if
27 applicable, the duties and responsibilities of an adjuster, and the insurance laws and rules of this
28 state. However, to qualify for an adjuster license with the crop line of authority, the commissioner
29 may accept, in lieu of such an examination, certification that the individual has passed a
30 proficiency examination approved by the USDA Risk Management Agency.

31 ~~(2) If such an examination is required~~ Each examinee shall pay a nonrefundable \$25
32 examination fee for each examination to the commissioner, which fees shall be used for the
33 purposes set forth in §33-3-13 of this code. The commissioner may, at his or her discretion,
34 designate an independent testing service to prepare and administer such examination subject to
35 direction and approval by the commissioner, and examination fees charged by such service shall
36 be paid by the applicant.

37 ~~(3) An individual who fails to appear for the examination as scheduled or fails to pass the~~
38 ~~examination, shall reapply for an examination and remit all required fees and forms before being~~
39 ~~rescheduled for another examination.~~ An individual who fails to appear for the examination as scheduled or fails to pass the
examination, shall reapply for an examination and remit all required fees and forms before being
rescheduled for another examination.

40 ~~(4) An individual who initially fails to pass an examination required by this section is limited~~
41 ~~to seven additional attempts to pass the examination.~~ An individual who initially fails to pass an examination required by this section is limited
to seven additional attempts to pass the examination.

42 ~~(5) An individual who applies for an adjuster license in this state who was previously~~
43 ~~licensed for the same lines of authority in another jurisdiction shall not be required to complete~~
An individual who applies for an adjuster license in this state who was previously
licensed for the same lines of authority in another jurisdiction shall not be required to complete

44 any prelicensing examination. This exemption is only available if the individual is currently
45 licensed in that jurisdiction or if the application is received within 90 days of the cancellation of
46 the applicant's previous license and if the prior jurisdiction issues a certification that, at the time
47 of cancellation, the applicant was in good standing in that jurisdiction or the jurisdiction's adjuster
48 database records, maintained by the National Association of Insurance Commissioners, its
49 affiliates or subsidiaries, indicate that the adjuster is or was licensed in good standing for the line
50 of authority requested. The certification must be of a license with the same line of authority for
51 which the individual has applied.

52 (6) An individual licensed as an adjuster in another jurisdiction who moves to this state
53 shall make application within 90 days of establishing legal residence to become a resident
54 licensee pursuant to this section: *Provided*, That no pre-licensing examination shall be required
55 of that individual to obtain any line of authority previously held in the prior jurisdiction except where
56 the commissioner determines otherwise by rule.

57 (7) Examinations may be developed and conducted under rules prescribed by the
58 commissioner.

59 (8) Examinations required by this subsection are applicable for individual adjusters first
60 licensed on or after July 1, 2021, or for individual adjusters who add a line of authority to an
61 existing adjuster license on or after July 1, 2021.

62 (c) A business entity applying for a resident independent or public adjuster license shall
63 make application to the commissioner on forms prescribed by the commissioner and shall declare
64 under penalty of suspension, revocation, or refusal of the license that the statements made in the
65 application are true, correct and complete to the best of the business entity's knowledge and
66 belief. Before approving the application, the commissioner shall find that the business entity:

67 (1) Is eligible to designate West Virginia as its home state;

68 (2) Has a business or mailing address in this state for acceptance of service of process;

69 (3) Has designated a licensed independent or public adjuster responsible for the business
70 entity's compliance with the insurance laws and rules of this state; and

71 (4) Has not committed an act that is a ground for probation, suspension, revocation, or
72 refusal of an independent or public adjuster's license as set forth in §33-12B-11 of this code.

73 ~~(e)(d)~~ The requirements of this section do not apply to temporary licenses issued to
74 emergency company adjusters or emergency independent adjusters.

§33-12B-6. Application Authorization for criminal history record check; fees.

1 ~~(a) Application for an adjuster's license or renewal thereof or emergency adjusters'~~
2 ~~licenses shall be made to the commissioner upon a form prescribed by him and shall contain such~~
3 ~~information and be accompanied by such supporting documents as the commissioner may~~
4 ~~require, and the commissioner may require such application to be made under the applicant's~~
5 ~~oath~~ In furtherance of the national goal of promoting uniformity and reciprocity among the states,
6 commonwealths, territories, and the District of Columbia with regard to adjuster licensing, this
7 section sets forth the requirements to obtain access to the Federal Bureau of Investigation
8 Criminal Justice Information Services Division criminal history record information and to secure
9 information or reports from the Federal Bureau of Investigation Criminal Justice Information
10 Services Division. The scope of this section is to set forth the applicability of the criminal history
11 record check to applicants for a home state insurance adjuster license.

12 (b) As used in this section, the following terms have the meanings ascribed in this
13 subsection, unless a different meaning is clearly required by the context:

14 (1) "Applicant" means a natural person applying for:

15 (A) An initial home state license as an insurance adjuster;

16 (B) An additional line of authority under an existing home state insurance adjuster license
17 where a criminal history record check has not been obtained; or

18 (C) A resident insurance adjuster license under change of home state provisions.

19 “Applicant” does not mean a person applying for renewal or continuation of a home state
20 insurance adjuster license or a nonresident insurance adjuster license.

21 (2) “Fingerprint” means an impression of the lines on the finger taken for the purpose of
22 identification. The impression may be obtained electronically or in ink converted to an electronic
23 format.

24 (c) In order to make a determination of adjuster license eligibility, the commissioner is
25 authorized to require fingerprints of applicants and to submit the fingerprints and the fee required
26 to perform a criminal history record check to the West Virginia State Police and to the Federal
27 Bureau of Investigation.

28 (d) The commissioner shall require a criminal history record check on each applicant in
29 accordance with this section. The commissioner shall require each applicant to submit a full set
30 of fingerprints, including a scanned file from a hard copy fingerprint, in order for the commissioner
31 to obtain and receive national criminal history records from the Federal Bureau of Investigation’s
32 Criminal Justice Information Services Division.

33 (e) The commissioner shall collect a fee from each applicant in an amount sufficient to
34 cover:

35 (1) The cost of the collection and transmittal of fingerprints by persons, including local law
36 enforcement agencies that are approved by the commissioner to capture fingerprints, to the West
37 Virginia State Police and the Federal Bureau of Investigation; and

38 (2) The cost of any amounts charged by the West Virginia State Police and the Federal
39 Bureau of Investigation to perform the criminal history record checks.

40 (f) The commissioner may contract for the collection and transmission of fingerprints
41 authorized under this section and may order that the fee for collecting and transmitting fingerprints
42 be payable directly by the applicant to the contractor.

43 (g) The commissioner is authorized to receive criminal history record information directly
44 from the Federal Bureau of Investigation, in lieu of via transmission of the information from the
45 Federal Bureau of Investigation to the West Virginia State Police.

46 (h) The commissioner shall treat and maintain an applicant's fingerprints and any criminal
47 history record information obtained under this section as confidential and shall apply security
48 measures consistent with the Federal Bureau of Investigation's Criminal Justice Information
49 Services Division standards for the electronic storage of fingerprints and necessary identifying
50 information. The commissioner shall limit the use of records solely to the purposes authorized in
51 this section. The fingerprints and the criminal history record information in the custody of the
52 commissioner are not subject to subpoena, other than one issued in a criminal action or
53 investigation; are confidential by law and privileged; and are not subject to discovery or admissible
54 in evidence in any private civil action.

§33-12B-7. Issuance of license Lines of authority.

1 ~~The commissioner may issue a license to any individual as an adjuster who complies with~~
2 ~~the applicable provisions of this chapter and who in the opinion of the commissioner is trustworthy~~
3 ~~and competent~~ (a) An independent adjuster or a company adjuster may qualify for a license in
4 one or more of the following lines of authority:

5 (1) Property and casualty;

6 (2) Workers' compensation; or

7 (3) Crop.

8 (b) A public adjuster may only qualify for a license designating a property and casualty line
9 of authority.

§33-12B-8. License fee; ~~exemptions~~ fees.

1 (a) The annual fee for an ~~adjuster's~~ individual adjuster license shall be \$25. ~~as provided~~
2 ~~in section thirteen, article three of this chapter. Provided, That when any other state imposes a~~
3 ~~tax, bond, fine, penalty, license fee or other obligation or prohibition on adjusters resident in this~~

4 ~~state, the same tax, bond, fine, penalty, license fee or other obligation or prohibition shall be~~
5 ~~imposed upon adjusters (where licensing of nonresident adjusters is permitted under this article)~~
6 ~~of each other state licensed or seeking a license in this state. All fees and moneys so collected~~
7 ~~shall be used for the purposes set forth in section thirteen, article three of this chapter: Provided,~~
8 ~~however, That the provisions of this section shall not apply to emergency insurance adjusters as~~
9 ~~defined in section eleven-a of this article~~

10 (b) The annual fee for a business entity adjuster license shall be \$200.

11 (c) The fee for a temporary emergency adjuster license shall be \$25.

12 (d) All fees collected pursuant to this section shall be used for the purposes set forth in
13 §33-3-13 of this code.

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

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

5 (b) As a condition of continuing a nonresident adjuster license, the licensee must maintain
6 a license in his or her home state. The commissioner may verify the adjuster's licensing status
7 through the producer database maintained by the National Association of Insurance
8 Commissioners, its affiliates, or subsidiaries.

9 (c) If a nonresident adjuster desires to become a resident adjuster he or she must apply
10 to become one within 90 days of establishing legal residency in this state.

11 (d) If a nonresident adjuster has his or her license suspended, terminated, or revoked by
12 his or her home state, the adjuster must immediately notify the commissioner of that action and,
13 with respect to license terminations or revocations, surrender the license to the commissioner.

14 (e) A resident of Canada may be licensed as a nonresident adjuster under this section if
15 that person has obtained a resident or home state adjuster license in another ~~state~~ U.S.
16 jurisdiction.

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

1 (a) ~~All licenses of adjusters shall~~ The commissioner may, in his or her discretion, fix the
2 dates of expiration of respective licenses for all adjusters in any manner as is considered by him
3 or her to be advisable for an efficient distribution of the workload of his or her office. If the
4 expiration date so fixed would upon first occurrence shorten the period for which license fee has
5 theretofore been paid, no refund of unearned fee shall be made; and if the expiration date so fixed
6 would upon first occurrence lengthen the period for which license fee had theretofore been paid,
7 the commissioner shall charge no additional fee for the lengthened period. If another date is not
8 so fixed by the commissioner, each license shall, unless continued as herein above provided,
9 expire at midnight on May 31 next following the date of issuance and the commissioner shall
10 renew annually the license of all such licensees who qualify, and make application therefor, and
11 have paid the fees set forth in this article. ~~However, the commissioner may, in his or her~~
12 ~~discretion, establish the dates of expiration of licenses in any manner deemed advisable for an~~
13 ~~efficient distribution of the workload of his or her office~~

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

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

18 (d) As a condition of the renewal of ~~a crop~~ an adjuster license with the designation of a
19 crop insurance line of authority, the commissioner may require that the licensee demonstrate that
20 he or she has maintained certification of proficiency issued or approved by the USDA Risk
21 Management Agency.

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

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

5 (b) The commissioner may place on probation, suspend, revoke, or refuse to issue or
6 renew an adjuster's license, or may levy a civil penalty in a sum not to exceed \$1,000 for each
7 violation, or any combination of actions, for any one or more of the following causes:

8 (1) Providing incorrect, misleading, incomplete, or materially untrue information in the
9 license application;

10 (2) Violating any insurance statute, rule, subpoena, or order of the commissioner or of
11 another state's insurance commissioner;

12 (3) Obtaining or attempting to obtain a license through misrepresentation or fraud;

13 (4) Improperly withholding, misappropriating, or converting any monies or properties
14 received in the course of doing insurance business;

15 (5) Intentionally misrepresenting the terms of an actual or proposed insurance contract or
16 application for insurance;

17 (6) Having been convicted of or pleaded nolo contendere to any felony;

18 (7) Having been convicted of or pleaded nolo contendere to a misdemeanor in connection
19 with his or her activities relating to the business of insurance;

20 (8) Having admitted or been found to have committed any insurance unfair trade practice
21 or fraud;

22 (9) Having an insurance license or its equivalent suspended, revoked, or refused in any
23 other state, province, district or territory;

24 (10) Forging any document or signature relating to an insurance transaction or fraudulently
25 procuring a forged signature to any document related to an insurance transaction;

26 (11) Cheating, including improperly using notes or any other reference material, in the
27 course of taking an examination for an insurance license;

28 (12) Using fraudulent, coercive, or dishonest practices, or demonstrating incompetence,
29 untrustworthiness, or financial irresponsibility, in the conduct of insurance business in this state
30 or elsewhere;

31 (13) Failing to comply with an administrative or court order imposing a child support
32 obligation; or

33 (14) Failing to pay state income tax or comply with any administrative or court order
34 directing payment of state income tax which remains unpaid.

35 ~~(b)~~ (c) If the commissioner denies an initial or renewal application for a license, he or she
36 shall notify the applicant or licensee in writing of the reason for such action. The applicant or
37 licensee may, within 10 days of receipt of such notice, make written demand for a hearing before
38 the commissioner to determine the reasonableness of the action, and such hearing shall be held
39 in accordance with the provisions of §33-2-13 of this code.

40 ~~(c)~~ (d) Whenever, after notice and hearing, the commissioner is satisfied that any adjuster
41 has violated any provision of this chapter or of rules promulgated hereunder, or is incompetent or
42 untrustworthy, he or she shall place the adjuster on probation or revoke, suspend, or, if renewal
43 of license is pending, refuse to renew the license of such adjuster. In addition to placing a licensee
44 on probation or revoking, suspending or refusing to renew his or her license, the commissioner
45 may in his or her discretion order such licensee to pay to the State of West Virginia an
46 administrative penalty in a sum not to exceed \$1,000 for each violation. Upon the failure of ~~the a~~
47 licensee to pay ~~such~~ within 30 days a civil penalty imposed by the commissioner, his or her license
48 shall be revoked or suspended by the commissioner.

49 ~~(d)~~ (e) Orders issued pursuant to ~~subsection (b) or (c)~~ of this section are subject to the
50 judicial review provisions of §33-2-14 of this code.

**§33-12B-11a. Emergency adjusters and insurance emergencies; definitions; authorization
of temporary emergency adjusters; applications; limitations and authority.**

1 [Repealed]

§33-12B-13. Continuing education.

1 (a) The purpose of this section is to provide continuing education requirements for
2 individual adjusters under guidelines established by the commissioner's office in conjunction with
3 the Board of Insurance Agent Education as provided in §33-12-7 of this code.

4 (b) This section applies to company adjusters, independent adjusters and public adjusters
5 licensed pursuant to §33-12B-2 of this code.

6 (c) This section shall not apply to:

7 (1) Licensees not licensed for one full year prior to the end of the applicable continuing
8 education biennium; or

9 (2) Licensees holding nonresident adjuster licenses who have met substantially similar
10 continuing education requirements of their designated home state and whose home state gives
11 credit to residents of this state on the same basis.

12 (d)(1) The Board of Insurance Agent Education as established by §33-12-7 of this code
13 shall develop a program of continuing education for adjusters and submit the proposal for the
14 approval of the commissioner on or before December 31 of each year. No program may be
15 approved by the commissioner that includes a requirement that any individual adjuster complete
16 more than 24 hours of continuing insurance education biennially.

17 (2) The biennium mandatory continuing education provisions of this section become
18 effective on the reporting period beginning July 1, 2021.

19 (3) The commissioner and the Board of Insurance Agent Education, under standards
20 established by the board, may approve any course or program of instruction developed or

21 sponsored by an authorized insurer, accredited college or university, adjusters' association,
22 insurance trade association, or independent program of instruction that presents the criteria and
23 the number of hours that the board and commissioner determine appropriate for the purpose of
24 this section.

25 (e) An individual who holds an adjuster license and who is not exempt shall satisfactorily
26 complete a minimum of 24 hours of continuing education courses, of which three hours must be
27 in ethics, reported to the commissioner on a biennial basis in conjunction with their license renewal
28 cycle.

29 (f) Every individual adjuster subject to the continuing education requirements shall furnish,
30 at intervals and on forms as may be prescribed by the commissioner, written certification listing
31 the courses, programs or seminars of instruction successfully completed by the adjuster. The
32 certification shall be executed by, or on behalf of, the organization sponsoring the courses,
33 programs, or seminars of instruction.

34 (g) Subject to the approval of the commissioner, the active annual membership by an
35 adjuster in an organization or association recognized and approved by the commissioner as a
36 state, regional, or national professional insurance organization or association may be approved
37 by the commissioner for up to two hours of continuing insurance education: *Provided*, That not
38 more than two hours of continuing education may be awarded to an adjuster for membership in a
39 professional insurance organization during a biennial reporting period.

40 (h) Adjusters who exceed the minimum continuing education requirement for the biennial
41 reporting period may carry over a maximum of six credit hours only into the next reporting period.

42 (i) Any individual adjuster failing to meet the requirements mandated in this section and
43 who has not been granted an extension of time with respect to the requirements, or who has
44 submitted to the commissioner a false or fraudulent certificate of compliance, shall have his or
45 her license automatically suspended and no further license may be issued to the person until the

46 person demonstrates to the satisfaction of the commissioner that he or she has complied with all
47 of the requirements mandated by this section and all other applicable laws or rules.

48 (j) The commissioner shall notify the individual adjuster of his or her suspension pursuant
49 to subsection (i) of this section by certified mail, return receipt requested, to the last address on
50 file with the commissioner pursuant to §33-12B-2(b) of this code. Any individual insurance
51 adjuster who has had a suspension order entered against him or her pursuant to this section may,
52 within 30 calendar days of receipt of the order, file with the commissioner a request for a hearing
53 for reconsideration of the matter.

54 (k) Any individual adjuster who does not satisfactorily demonstrate compliance with this
55 section and all other laws applicable thereto as of the last day of the biennium following his or her
56 suspension shall have his or her license automatically terminated and is subject to the licensing
57 and examination requirements of §33-12B-5 of this code.

58 (l) The commissioner is authorized to hire personnel and make reasonable expenditures
59 considered necessary for purposes of establishing and maintaining a system of continuing
60 education for adjusters. The commissioner shall charge a fee of \$25 to continuing education
61 providers for each continuing education course submitted for approval which shall be used to
62 maintain the continuing education system. The commissioner may, at his or her discretion,
63 designate an outside administrator to provide all of or part of the administrative duties of the
64 continuing education system subject to direction and approval by the commissioner. The fees
65 charged by the outside administrator shall be paid by the continuing education providers. In
66 addition to fees charged by the outside administrator, the outside administrator shall collect and
67 remit to the commissioner the \$25 course submission fee.

§33-12B-15. Effective date for 2020 amendments.

1 The effective date of the amendments made to this article during the 2020 regular
2 legislative session is July 1, 2021.

Introduced HB 4502

NOTE: The purpose of this bill is to update the requirements for insurance adjusters to become licensed, and maintain licensure, in this state.

Strike-throughs indicate language that would be stricken from a heading or the present law, and underscoring indicates new language that would be added.