

WEST VIRGINIA LEGISLATURE

2026 REGULAR SESSION

Introduced

House Bill 5521

By Delegates Hott, Hall, Jeffries, and Green

[Introduced February 13, 2026; referred to the
Committee on Finance]

1 A BILL to amend and reenact §33-12B-1, §33-12B-2, and §33-12B-3 of the Code of West Virginia,
 2 1931, as amended, and to amend the code by adding twelve new sections, designated
 3 §33-12B-5a, §33-12B-5b, §33-12B-5c, §33-12B-5d, §33-12B-5e, §33-12B-5f, §33-12B-
 4 5g, §33-12B-16, §33-12B-17, §33-12B-18, §33-12B-19, §33-12B-20, and §33-12B-21,
 5 relating to public adjusters; defining terms; establishing application, licensure, and
 6 examination requirements for public adjusters; establishing standards of conduct for public
 7 adjusters; and establishing contract requirements for a public adjuster and insured.

Be it enacted by the Legislature of West Virginia:

ARTICLE 12B. ADJUSTERS.

§33-12B-1. Definitions.

1 (a) "Automated claims adjudication system" means a preprogrammed computer system
 2 designed for the collection, data entry, calculation, and final resolution of portable electronics
 3 insurance claims which:

4 (1) May only be used by a licensed adjuster, licensed producer, or supervised individuals
 5 operating pursuant to §33-12B-3(a)(14) of this code;

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

7 (3) Must be certified as compliant with this section by a licensed adjuster that is an officer of
 8 the entity which employs the individuals operating pursuant to §33-12B-3(a)(14) of this code.

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

11 (c) "Catastrophic disaster" according to the Federal Response Plan, means an event that
 12 results in large numbers of deaths and injuries; causes extensive damage or destruction of
 13 facilities that provide and sustain human needs; produces an overwhelming demand on state and
 14 local response resources and mechanisms; causes a severe long-term effect on general
 15 economic activity; and severely affects state, local, and private sector capabilities o begin and
 16 sustain response activities. A catastrophic disaster shall be declared by the President of the

17 United States, the Governor of West Virginia, or the Commissioner pursuant to W. Va. Code §§ 33-
18 2-10a and/or 33-12B-11a when he or she finds that there is an inadequate number of licensed
19 adjusters to meet the demands of the public.

20 (e) (d) "Company adjuster" means an adjuster who is a staff employee of an insurance
21 company, who is paid by the insurance company, and who investigates, negotiates, or settles
22 claims.

23 (e) (e) "Fingerprints" for the purposes of this act, means an impression of the lines on the
24 finger taken for purpose of identification. The impression may be electronic or in ink converted to
25 electronic format.

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

32 (e) (g) "Independent adjuster" means a person who:

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

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

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

40 (f) (h) "Individual" means a natural person.

41 (g) ~~"Insurance emergency" means a temporary situation, as declared by the commissioner~~
42 ~~pursuant to §33-2-10a of this code, when the number of licensed adjusters in this state is~~

43 ~~inadequate to meet the demands of the public.~~

44 (i) "Emergency adjuster" means a person who is authorized by the Commissioner to
45 perform adjusting activities in West Virginia during a catastrophic disaster.

46 ~~(h)~~ (j) "Person" means an individual or business entity.

47 ~~(i)~~ (k) "Public adjuster" means any person who, for compensation or any other thing of
48 value on behalf of the insured:

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

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

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

59 (l) "Uniform individual application" means the current version of the National Association of
60 Insurance Commissioners (NAIC) Uniform Individual Application for resident and nonresident
61 individuals.

§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 on
10 the insurer's behalf for that specific claim or purpose. A licensed public adjuster is prohibited from
11 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. Exemptions from license requirement.

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

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

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

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

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

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

14 (6) A managed care organization or any of its employees or an employee of any
15 organization providing managed care services, so long as the managed care organization or

16 employee referenced herein is not determining compensability;

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

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

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

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

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

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

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

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

33 (15) Company adjusters employed by an insurer outside of this state who adjust claims
34 solely by telephone, fax, United States mail, and electronic mail, and who do not physically enter
35 this state in the course of adjusting such claims: *Provided*, That such adjusters shall be subject to
36 the jurisdiction of, and regulation by, the commissioner in regard to their adjustment of West
37 Virginia claims: *Provided, however*, That the commissioner may require such adjusters to
38 complete continuing education, not to exceed requirements pursuant to §33-12B-13(d) of this
39 code, to address any deficiencies with respect to their claims handling practices.

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

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

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

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

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

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

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

1 (a) An individual applying for a resident adjuster license shall make application to the
2 commissioner and declare under penalty of suspension, revocation, or refusal of the license that
3 the statements made in the application are true, correct, and complete to the best of the
4 individual’s knowledge and belief. Before approving the application, the commissioner shall find
5 that the individual:

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

7 (2) Is a resident of West Virginia, or eligible to designate West Virginia as his or her home
8 state;

9 (3) Is trustworthy, competent, reliable, and of good reputation, evidence of which may be
10 determined by the commissioner;

11 (4) Has a business or mailing address in this state for acceptance of service of process or,
12 if residing outside of this state, acknowledges that by adjusting claims in this state he or she is
13 subject to this state’s jurisdiction, pursuant to §56-3-33 of this code, and automatically appoints the
14 West Virginia Secretary of State as his or her agent for service of process;

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

17 (6) Has successfully passed the written examination for the line or lines of authority for
18 which the person has applied; and

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

20 (b) A resident individual applying for an adjuster license shall pass a written examination
21 unless exempt pursuant to §33-12B-5(b)(5) or §33-12B-5(b)(6) of this code. The examination shall
22 test the knowledge of the individual concerning the line or lines of authority for which application is
23 made, if applicable, the duties and responsibilities of an adjuster, and the insurance laws and rules
24 of this state. However, to qualify for an adjuster license with the crop line of authority, the
25 commissioner may accept, in lieu of such an examination, certification that the individual has
26 passed a proficiency examination approved by the United States Department of Agriculture Risk
27 Management Agency.

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

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

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

38 (5) An individual who applies for an adjuster license in this state, who was previously
39 licensed for the same lines of authority in another jurisdiction, shall not be required to complete
40 any prelicensing examination. This exemption is only available if the individual is currently
41 licensed in that jurisdiction, or if the application is received within 90 days of the cancellation of the
42 applicant's previous license, and if the prior jurisdiction issues a certification that, at the time of

43 cancellation, the applicant was in good standing in that jurisdiction or the jurisdiction's adjuster
44 database records, maintained by the National Association of Insurance Commissioners, its
45 affiliates or subsidiaries, indicate that the adjuster is or was licensed in good standing for the line of
46 authority requested. The certification must be of a license with the same line of authority for which
47 the individual has applied.

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

53 (7) Examinations may be developed and conducted under rules proposed by the
54 commissioner.

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

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

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

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

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

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

69 (d) The requirements of this section do not apply to temporary licenses issued to
70 emergency company adjusters or emergency independent adjusters.

§33-12B-6. Application for public adjuster license.

1 (a) A person applying for a public adjuster license shall make application to the
2 commissioner on the appropriate uniform application or other application prescribed by the
3 commissioner.

4 (b) The applicant shall declare under penalty of perjury and under penalty of refusal,
5 suspension or revocation of the license that the statements made in the application are true,
6 correct and complete to the best of the applicant's knowledge and belief.

7 (c) In order to make a determination of license eligibility, the insurance commissioner is
8 authorized to require fingerprints of applicants and submit the fingerprints and the fee required to
9 perform the criminal history record checks to the state identification bureau (or state department of
10 justice public state agency) and the Federal Bureau of Investigation (FBI) for state and national
11 criminal history record checks; the insurance commissioner shall require a criminal history record
12 check on each applicant in accordance with this article. The insurance commissioner shall require
13 each applicant to submit a full set of fingerprints in order for the insurance commissioner to obtain
14 and receive National Criminal History Records from the FBI Criminal Justice Information Services
15 Division.

16 (1) The insurance commissioner may contract for the collection, transmission and
17 resubmission of fingerprints required under this section. If the commissioner does so, the fee for
18 collecting, transmitting and retaining fingerprints shall be payable directly to the contractor by the
19 applicant. The insurance commissioner may agree to a reasonable fingerprinting fee to be
20 charged by the contractor.

21 (2) The insurance commissioner may waive submission of fingerprints by any person that
22 has previously furnished fingerprints and those fingerprints are on file with the Central Repository
23 of the NAIC, its affiliates or subsidiaries.

24 (3) The insurance commissioner is authorized to receive criminal history records.

25 (4) The insurance commissioner is authorized to submit electronic fingerprint records and
26 necessary identifying information to the NAIC, its affiliates or subsidiaries for permanent retention
27 in a centralized repository. The purpose of such a centralized repository is to provide insurance
28 commissioners with access to fingerprint records in order to perform criminal history record
29 checks.

30 (d) A business entity acting as a public adjuster is required to obtain a public adjuster
31 license. Application shall be made using the Uniform Business Entity Application. Before
32 approving the application, the insurance commissioner shall find that:

33 (1) The business entity has paid the fees set forth by the commissioner in accordance with
34 the authority granted to the commissioner in §33-2-10 of this code; and

35 (2) The business entity has designated a licensed public adjuster responsible for the
36 business entity's compliance with the insurance laws, rules and regulations of this state.

§33-12B-5b. Resident public adjuster license.

1 (a) Before issuing a public adjuster license to an applicant under this article, the
2 commissioner shall find that the applicant:

3 (1) Is eligible to designate this state as his or her home state or is a nonresident who is not
4 eligible for a license under §33-12B-5e of this code;

5 (2) Has not committed any act that is a ground for denial, suspension or revocation of a
6 license as set forth in §33-12B-11 of this code;

7 (3) Is trustworthy, reliable, and of good reputation, evidence of which may be determined
8 by the commissioner;

9 (4) Is financially responsible to exercise the license and has provided proof of financial
10 responsibility as required in §33-12B-5g of this code;

11 (5) Has paid the fees as set forth by the commissioner in accordance with the authority
12 granted to the commissioner in §33-2-10 of this code ; and

13 (6) Maintains an office in the home state of residence with public access by reasonable
14 appointment and/or regular business hours. This includes a designated office within a home state
15 of residence.

16 (b) In addition to satisfying the requirements of subsection (a), an individual shall

17 (1) Be at least eighteen (18) years of age; and

18 (2) Have successfully passed the public adjuster examination.

19 (3) Designate a licensed individual public adjuster responsible for the business entity's
20 compliance with the insurance laws, rules, and regulations of this state; and

21 (4) Designate only licensed individual public adjusters to exercise the business entity's
22 license.

23 (c) The commissioner may require any documents reasonably necessary to verify the
24 information contained in the application.

§33-12B-5c. Public adjuster examination.

1 (a) An individual applying for a public adjuster license under this act shall pass a written
2 examination unless exempt pursuant to §33-12B-5d of this code. The examination shall test the
3 knowledge of the individual concerning the duties and responsibilities of a public adjuster and the
4 insurance laws and regulations of this state. Examinations required by this section shall be
5 developed and conducted under rules and regulations prescribed by the commissioner.

6 (b) The commissioner may make arrangements, including contracting with an outside
7 testing service, for administering examinations and collecting the nonrefundable fee set forth by
8 the commissioner.

9 (c) Each individual applying for an examination shall remit a non-refundable fee as
10 prescribed by the commissioner in accordance with the authority granted to the commissioner in
11 §33-2-10 of this code.

12 (d) An individual who fails to appear for the examination as scheduled or fails to pass the
13 examination, shall reapply for an examination and remit all required fees and forms before being

14 rescheduled for another examination.

§33-12B-5d. Exemptions for public adjuster examination.

1 (a) An individual who applies for a public adjuster license in this state who was previously
 2 licensed as a public adjuster in another state based on a public adjuster examination shall not be
 3 required to complete any precicensing examination. This exemption is only available if the person
 4 is currently licensed in that state or if the application is received within twelve (12) months of the
 5 cancellation of the applicant's previous license and if the prior state issues a certification that, at
 6 the time of cancellation, the applicant was in good standing in that state or the state's producer
 7 database records or records maintained by the NAIC, its affiliates, or subsidiaries, indicate that the
 8 public adjuster is or was licensed in good standing.

9 (b) A person licensed as a public adjuster in another state based on a public adjuster
 10 examination who moves to this state shall make application within ninety (90) days of establishing
 11 legal residence to become a resident licensee pursuant to §33-12B-5b of this code. No
 12 precicensing examination shall be required of that person to obtain a public adjuster license.

13 (c) An individual who applies for a public adjuster license in this state who was previously
 14 licensed as a public adjuster in this state shall not be required to complete any precicensing
 15 examination. This exemption is only available if the application is received within twelve (12)
 16 months of the cancellation of the applicant's previous license in this state and if, at the time of
 17 cancellation, the applicant was in good standing in this state.

§33-12B-5e. Nonresident public adjuster license reciprocity.

1 (a) Unless denied licensure pursuant to §33-12B-11 of this code, a nonresident person
 2 shall receive a nonresident public adjuster license if:

3 (1) The person is currently licensed as a resident public adjuster and in good standing in
 4 his or her home state;

5 (2) The person has submitted the proper request for licensure, has paid the fees required
 6 by this article, and has provided proof of financial responsibility as required in §33-12B-5g of this

7 code;

8 (3) The person has submitted or transmitted to the commissioner the appropriate
9 completed application for licensure; and

10 (4) The person's home state awards non-resident public adjuster licenses to residents of
11 this state on the same basis.

12 (b) The commissioner may verify the public adjuster's licensing status through the
13 producer database maintained by the NAIC, its affiliates, or subsidiaries.

14 (c) As a condition to continuation of a public adjuster license issued under this section, the
15 licensee shall maintain a resident public adjuster license in his or her home state. The non-
16 resident public adjuster license issued under this section shall terminate and be surrendered
17 immediately to the commissioner if the home state public adjuster license terminates for any
18 reason, unless the public adjuster has been issued a license as a resident public adjuster in his or
19 her new home state. Notification to the state or states where nonresident license is issued must be
20 made as soon as possible, yet no later than thirty (30) days of change in new state resident
21 license. Licensee shall include new and old address. A new state resident license is required for
22 non-resident licenses to remain valid. The new state resident license must have reciprocity with
23 the licensing non-resident state(s) for the non-resident license not to terminate.

§33-12B-5f. Public adjuster license.

1 (a) Unless denied licensure under this article, persons who have met the requirements of
2 this article shall be issued a public adjuster license.

3 (b) A public adjuster license shall remain in effect unless revoked, terminated or
4 suspended as long as the request for renewal and fee set forth by the commissioner in accordance
5 with the authority granted to the commissioner in §33-2-10 of this code is paid and any other
6 requirements for license renewal are met by the due date.

7 (c) The licensee shall inform the commissioner by any means acceptable to the
8 commissioner of a change of address, change of legal name, or change of information submitted

9 on the application within thirty (30) days of the change.

10 (d) A licensed public adjuster shall be subject to §33-11-1 et seq., §33-11A-1 et seq., and
11 §33-41-1 et seq. of this code.

12 (e) A public adjuster who allows his or her license to lapse may, within twelve (12) months
13 from the due date of the renewal, be issued a new public adjuster license upon the commissioner's
14 receipt of the request for renewal. However, a penalty in the amount of double the unpaid renewal
15 fee shall be required for the issue of the new public adjuster license. The new public adjuster
16 license shall be effective the date the commissioner receives the request for renewal and the late
17 payment penalty.

18 (f) Any public adjuster licensee that fails to apply for renewal of a license before expiration
19 of the current license shall pay a lapsed license fee of twice the license fee and be subject to other
20 penalties as provided by law before the license will be renewed. If the Department receives the
21 request for reinstatement and the required lapsed license fee within sixty (60) days of the date the
22 license lapsed, the Department shall reinstate the license retroactively to the date the license
23 lapsed. If the Department receives the request for reinstatement and the required lapsed license
24 fee after sixty (60) days but within one year of the date the license lapsed, the Department shall
25 reinstate the license prospectively with the date the license is reinstated. If the person applies for
26 reinstatement more than one year from date of lapse, the person shall reapply for the license
27 under this article.

28 (g) A licensed public adjuster who is unable to comply with license renewal procedures due
29 to military service, a long-term medical disability, or some other extenuating circumstance, may
30 request a waiver of those procedures. The public adjuster may also request a waiver of any
31 examination requirement, fine, or other sanction imposed for failure to comply with renewal
32 procedures.

33 (h) The license shall contain the licensee's name, city and state of business address,
34 personal identification number, the date of issuance, the expiration date, and any other information

35 the commissioner deems necessary.

36 (i) In order to assist in the performance of the commissioner’s duties, the commissioner
37 may contract with non-governmental entities, including the NAIC or any affiliates or subsidiaries
38 that the NAIC oversees, to perform any ministerial functions, including the collection of fees and
39 data, related to licensing that the commissioner may deem appropriate.

§33-12B-5g. Public adjuster fees.

1 Prior to issuance of a license as a public adjuster and for the duration of the license, the
2 applicant shall secure evidence of financial responsibility in a format prescribed by the insurance
3 commissioner through a security bond or irrevocable letter of credit:

4 (a) A surety bond executed and issued by an insurer authorized to issue surety bonds in
5 this state, which bond:

6 (1) Shall be in the minimum amount of \$20,000;

7 (2) Shall be in favor of this state and shall specifically authorize recovery by the
8 commissioner on behalf of any person in this state who sustained damages as the result of
9 erroneous acts, failure to act, conviction of fraud, or conviction of unfair practices in his or her
10 capacity as a public adjuster; and

11 (3) Shall not be terminated unless at least thirty (30) days’ prior written notice will have
12 been filed with the commissioner and given to the licensee.

13 (b) An irrevocable letter of credit issued by a qualified financial institution, which letter of
14 credit:

15 (1) Shall be in the minimum amount of \$20,000;

16 (2) Shall be to an account to the commissioner and subject to lawful levy of execution on
17 behalf of any person to whom the public adjuster has been found to be legally liable as the result of
18 erroneous acts, failure to act, fraudulent acts, or unfair practices in his or her capacity as a public
19 adjuster; and

20 (3) Shall not be terminated unless at least thirty (30) days’ prior written notice will have

21 been filed with the commissioner and given to the licensee.

22 (c) The issuer of the evidence of financial responsibility shall notify the commissioner upon
23 termination of the bond or letter of credit, unless otherwise directed by the commissioner.

24 (d) The commissioner may ask for the evidence of financial responsibility at any time he or
25 she deems relevant.

26 (e) The authority to act as a public adjuster shall automatically terminate if the evidence of
27 financial responsibility terminates or becomes impaired.

§33-12B-16. Public adjuster fees.

1 (a) A public adjuster shall not pay a commission, service fee or other valuable
2 consideration to a person for investigating or settling claims in this state if that person is required to
3 be licensed under this article and is not so licensed.

4 (b) A person shall not accept a commission, service fee or other valuable consideration for
5 investigating or settling claims in this state if that person is required to be licensed under this
6 section and is not so licensed.

7 (c) A public adjuster may pay or assign commission, service fees or other valuable
8 consideration to persons who do not investigate or settle claims in this state, unless the payment
9 would violate §33-11-4(8) or any rule promulgated by the by the commissioner in accordance with
10 the authority granted to the commissioner in §33-2-10 of this code.

11 (d) There shall be limits on fees. No public adjuster shall charge, agree to or accept as
12 compensation or reimbursement any payment, commission, fee, or another thing of value equal to
13 more than ten percent (10%) for any insurance claim settlement. No public adjuster shall require,
14 demand or accept any fee, retainer, compensation, deposit, or other thing of value, prior to
15 settlement of a claim.

§33-12B-17. Contract between public adjuster and insured.

1 (a) Public adjusters shall ensure that all contracts for their services are in writing and
2 contain the following terms:

- 3 (1) Legible full name of the adjuster signing the contract, as specified in Department of
4 Insurance records;
- 5 (2) Permanent home state business address and phone number;
- 6 (3) Department of Insurance license number;
- 7 (4) Title of "Public Adjuster Contract";
- 8 (5) The insured's full name, street address, insurance company name and policy number, if
9 known or upon notification;
- 10 (6) A description of the loss and its location, if applicable;
- 11 (7) Description of services to be provided to the insured;
- 12 (8) Signatures of the public adjuster and the insured;
- 13 (9) Date contract was signed by the public adjuster and date the contract was signed by the
14 insured;
- 15 (10) Attestation language stating that the public adjuster is fully bonded pursuant to state
16 law;
- 17 (11) Full salary, fee, commission, compensation or other considerations the public adjuster
18 is to receive for services; and
- 19 (12) a "choice of law" clause requiring the contract be governed under West Virginia law
20 and any dispute be filed in a West Virginia court of competent jurisdiction.
- 21 (b) The contract may specify that the public adjuster shall be named as a co-payee on an
22 insurer's payment of a claim.
- 23 (1) If the compensation is based on a share of the insurance settlement, the exact
24 percentage shall be specified.
- 25 (2) Initial expenses to be reimbursed to the public adjuster from the proceeds of the claim
26 payment shall be specified by type, with dollar estimates set forth in the contract and with any
27 additional expenses first approved by the insured.
- 28 (3) Compensation provisions in a public adjusting contract shall not be redacted in any

29 copy of the contract provided to the commissioner. Such a redaction shall constitute an omission
30 of material fact in violation of §33-41-1 et seq. of this code.

31 (c) If the insurer, not later than seventy-two (72) hours after the date on which the loss is
32 reported to the insurer, either pays or commits in writing to pay to the insured the policy limit of the
33 insurance policy, the public adjuster shall:

34 (1) Not receive a commission consisting of a percentage of the total amount paid by an
35 insurer to resolve a claim;

36 (2) Inform the insured that loss recovery amount might not be increased by insurer; and

37 (3) Be entitled only to reasonable compensation from the insured for services provided by
38 the public adjuster on behalf of the insured, based on the time spent on a claim and expenses
39 incurred by the public adjuster, until the claim is paid or the insured receives a written commitment
40 to pay from the insurer.

41 (d) A public adjuster contract may not contain any contract term that:

42 (1) Allows the public adjuster's percentage fee to be collected when money is due from an
43 insurance company, but not paid, or that allows a public adjuster to collect the entire fee from the
44 first check issued by an insurance company, rather than as percentage of each check issued by an
45 insurance company;

46 (2) Requires the insured to authorize an insurance company to issue a check only in the
47 name of the public adjuster;

48 (3) Imposes collection costs or late fees; or

49 (4) Precludes a public adjuster from pursuing civil remedies.

50 (e) Prior to the signing of the contract the public adjuster shall provide the insured with a
51 separate disclosure document regarding the claim process that states:

52 (1) Property insurance policies obligate the insured to present a claim to his or her
53 insurance company for consideration. There are three (3) types of adjusters that could be involved
54 in that process. The definitions of the three types are as follows:

55 (A) "Company adjuster" means the insurance adjusters who are employees of an
56 insurance company. They represent the interest of the insurance company and are paid by the
57 insurance company. They will not charge you a fee.

58 (B) "Independent adjuster" means the insurance adjusters who are hired on a contract
59 basis by an insurance company to represent the insurance company's interest in the settlement of
60 the claim. They are paid by your insurance company. They will not charge you a fee.

61 (C) "Public adjuster" means the insurance adjusters who do not work for any insurance
62 company. They work for the insured to assist in the preparation, presentation and settlement of the
63 claim. The insured hires them by signing a contract agreeing to pay them a fee or commission
64 based on a percentage of the settlement, or other method of compensation.

65 (2) The insured is not required to hire a public adjuster to help the insured meet his or her
66 obligations under the policy, but has the right to do so.

67 (3) The insured has the right to initiate direct communications with the insured's attorney,
68 the insurer, the insurer's adjuster, and the insurer's attorney, or any other person regarding the
69 settlement of the insured's claim.

70 (4) The public adjuster is not a representative or employee of the insurer.

71 (5) The salary, fee, commission or other consideration is the obligation of the insured, not
72 the insurer.

73 (f) The contracts shall be executed in duplicate to provide an original contract to the public
74 adjuster, and an original contract to the insured. The public adjuster's original contract shall be
75 available at all times for inspection without notice by the commissioner.

76 (g) The public adjuster shall provide the insurer a notification letter, which has been signed
77 by the insured, authorizing the public adjuster to represent the insured's interest. The insurer shall
78 verify the public adjuster holds a valid license with the Department of Insurance.

79 (h) The public adjuster shall give the insured written notice of the insured's right as
80 provided in §33-11A-1 et seq. and in accordance with the authority granted to the commissioner in

81 §33-11A-4 of this code.

82 (i) The insured has the right to rescind the contract within three (3) business days after the
83 date the contract was signed. The rescission shall be in writing and mailed or delivered to the
84 public adjuster at the address in the contract within the three (3) business day period.

85 (j) If the insured exercises the right to rescind the contract, anything of value given by the
86 insured under the contract will be returned to the insured within fifteen (15) business days
87 following the receipt by the public adjuster of the cancellation notice.

88 (k) Subject to its terms relating to assignability, a property insurance policy, whether
89 heretofore or hereafter issued, under the terms of which the policy and its rights and benefits are
90 assignable, may provide that the rights and benefits under the insurance may only be assigned to
91 a person who has the legal authority to represent the named insured, or to a subsequent owner of
92 the property to whom title is transferred, and may explicitly prohibit assignment of rights and
93 benefits to any other person, including a property repair contractor. For purposes of this
94 subsection, having "legal authority to represent the named insured" includes the person named by
95 the named insured as having the named insured's power of attorney, the person who is the named
96 insured's licensed public adjuster, or any other comparable person. Property repair contractors
97 operating in this state may not subvert the public adjuster licensing requirements of §33-12B-3 of
98 this code through the acquisition of a power of attorney from the named insured.

99 (l) Notwithstanding the terms of this code, only the public adjuster may obtain an executed
100 contract from the insured. All other business entities, persons, including contractors and solicitors,
101 are prohibited from obtaining a signature from the insured on a contract between the public
102 adjuster and the insured.

§33-12B-18. Unlicensed actors.

1 A person or entity commits a fraudulent insurance act if he or she:

2 (a) Represents or advertises himself to be a public adjuster who has not met the
3 requirements of licensure under §33-41-1 et seq.

4 (b) Conducts business for which a license is required under this section without a license.

§33-12B-19. Public adjuster record retention.

1 (a) A public adjuster shall maintain a complete record of each transaction as a public
2 adjuster. The records required by this section shall include the following:

3 (1) Name of the insured;

4 (2) Date, location and amount of the loss;

5 (3) Copy of the contract between the public adjuster and insured;

6 (4) Name of the insurer, amount, expiration date and number of each policy carried with
7 respect to the loss;

8 (5) Itemized statement of the insured's recoveries;

9 (6) Itemized statement of all compensation received by the public adjuster, from any
10 source whatsoever, in connection with the loss;

11 (7) A register of all monies received, deposited, disbursed, or withdrawn in connection with
12 a transaction with an insured, including fees transfers and disbursements from a trust account and
13 all transactions concerning all interest bearing accounts;

14 (8) Name of public adjuster who executed the contract;

15 (9) Name of the attorney representing the insured, if applicable, and the name of the claims
16 representatives of the insurance company; and

17 (10) Evidence of financial responsibility in a format prescribed by the insurance
18 commissioner.

19 (b) Records shall be maintained for at least five (5) years after the termination of the
20 transaction with an insured and shall be open to examination by the commissioner at all times.

21 (c) Records submitted to the commissioner in accordance with this section that contain
22 information identified in writing as proprietary by the public adjuster shall be treated as confidential
23 by the commissioner and shall not be subject to §29B-1-1 et seq. of this code.

§33-12B-20. Standards of conduct of public adjuster.

1 (a) A public adjuster is obligated, under his or her license, to serve with objectivity and
2 complete loyalty the interest of his client alone; and to render to the insured such information,
3 counsel and service, as within the knowledge, understanding and opinion in good faith of the
4 licensee, as will best serve the insured's insurance claim needs and interest.

5 (b) A public adjuster shall not solicit, or attempt to solicit, an insured during the progress of
6 a loss-producing occurrence, as defined in the insured's insurance contract.

7 (c) A public adjuster shall not advertise or infer damage unless an inspection of the
8 property has been completed.

9 (d) A public adjuster shall not offer to pay an insured's deductible, or claim the insured's
10 deductible will be waived, as an inducement to using the services of a public adjuster.

11 (e) A public adjuster shall not permit an unlicensed employee or representative of the
12 public adjuster to conduct business for which a license is required under this section.

13 (f) A public adjuster shall not have a direct or indirect financial interest in any aspect of the
14 claim, other than the salary, fee, commission or other consideration established in the written
15 contract with the insured.

16 (g) A public adjuster shall not acquire any interest in salvage of property subject to the
17 contract with the insured.

18 (h) The public adjuster shall abstain from referring or directing the insured to get needed
19 repairs or services in connection with a loss from any person:

20 (1) With whom the public adjuster has a financial interest; or

21 (2) From whom the public adjuster may receive direct or indirect compensation for the
22 referral.

23 (i) Any compensation or anything of value in connection with an insured's specific loss that
24 will be received by a public adjuster shall be disclosed by the public adjuster to the insured in
25 writing including the source and amount of any such compensation.

26 (j) Public adjusters shall adhere to the following general ethical requirements:

27 (1) A public adjuster shall not undertake the adjustment of any claim if the public adjuster is
28 not competent and knowledgeable as to the terms and conditions of the insurance coverage, or
29 which otherwise exceeds the public adjuster's current expertise;

30 (2) A public adjuster shall not knowingly make any oral or written material
31 misrepresentations or statements which are false or maliciously critical and intended to injure any
32 person engaged in the business of insurance to any insured client or potential insured client;

33 (3) No public adjuster, while so licensed by the Department, may represent or act as a
34 company adjuster, or independent adjuster on the same claim;

35 (4) The contract shall not be construed to prevent an insured from pursuing any civil
36 remedy after the three-business day revocation or cancellation period;

37 (5) A public adjuster shall not enter into a contract or accept a power of attorney that vests
38 in the public adjuster the effective authority to choose the persons who shall perform repair work;
39 and

40 (6) A public adjuster shall ensure that all contracts for the public adjuster's services are in
41 writing and set forth all terms and conditions of the engagement.

42 (k) A public adjuster may not agree to any loss settlement without the insured's knowledge
43 and consent.

§33-12B-21. Reporting of actions by public adjuster.

1 (a) The public adjuster shall report to the commissioner any administrative action taken
2 against the public adjuster in another jurisdiction or by another governmental agency in this state
3 within thirty (30) days of the final disposition of the matter. This report shall include a copy of the
4 order, consent to order, or other relevant legal documents.

5 (b) Within thirty (30) days of the initial pretrial hearing date, the public adjuster shall report
6 to the commissioner any criminal prosecution of the public adjuster taken in any jurisdiction. The
7 report shall include a copy of the initial complaint filed, the order resulting from the hearing, and
8 any other relevant legal documents.

9 (c) Records of all monies received, deposited, disbursed, withdrawn in connection with a
10 transaction with an insured under this section, including fee transfers and disbursements from a
11 trust account and all transactions concerning all interest bearing accounts, shall be disclosed to
12 the insured within three (3) business days. Such disclosure shall be accompanied by a receipt to
13 the insured detailing the transaction.

NOTE: The purpose of this bill is to create application, licensure, and examination requirements for public adjusters and to create standards of conduct which govern public adjusters.

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