

HOUSE BILL 15

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HB 494/03 - ECM

2004 Regular Session
4r0276

(PRE-FILED)

By: **Delegate Feldman**
Requested: July 7, 2003
Introduced and read first time: January 14, 2004
Assigned to: Economic Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Insurance - Public Adjusters - Regulation**

3 FOR the purpose of establishing a certain criminal penalty for a person who fails to
4 obtain a license from the Commissioner before acting as a public adjuster;
5 requiring certain entities to obtain a license to act as a public adjuster;
6 establishing certain qualifications for individual applicants for licensure as a
7 public adjuster; establishing certain qualifications for entities applying for
8 licensure as a public adjuster; establishing examination requirements; altering
9 procedures for reinstatement of an expired public adjuster's license; authorizing
10 the issuance of a nonresident license to act as a public adjuster under certain
11 circumstances; authorizing the Commissioner to deny, suspend, revoke, or
12 refuse to renew licensure as a public adjuster under certain circumstances;
13 defining a certain term; altering a certain definition; making certain technical
14 changes; providing for the application of this Act; and generally relating to the
15 licensure of public adjusters.

16 BY repealing and reenacting, without amendments,
17 Article - Insurance
18 Section 10-101(b), 10-402, and 10-406
19 Annotated Code of Maryland
20 (1997 Volume and 2003 Supplement)

21 BY repealing and reenacting, with amendments,
22 Article - Insurance
23 Section 10-401, 10-403, 10-404, 10-405, 10-408, 10-408.1, and 10-410
24 Annotated Code of Maryland
25 (1997 Volume and 2003 Supplement)

26 BY adding to
27 Article - Insurance
28 Section 10-407 and 10-409
29 Annotated Code of Maryland

1 (1997 Volume and 2003 Supplement)

2 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
3 MARYLAND, That the Laws of Maryland read as follows:

4 **Article - Insurance**

5 10-101.

6 (b) "Business entity" means a corporation, professional association,
7 partnership, limited liability company, limited liability partnership, or other legal
8 entity.

9 10-401.

10 (a) In this subtitle the following words have the meanings indicated.

11 (B) "BUSINESS ENTITY" HAS THE MEANING STATED IN § 10-101(B) OF THIS
12 TITLE.

13 [(b)] (C) "License" means a license issued by the Commissioner to act as a
14 public adjuster.

15 [(c)] (D) (1) "Public adjuster" means a person that:

16 [(1)] (I) solicits business or represents itself to the public as an adjuster
17 of FIRST PARTY INSURANCE claims for losses or damages arising [out of policies of
18 fire insurance or allied lines of insurance] UNDER INSURANCE CONTRACTS THAT
19 INSURE THE REAL OR PERSONAL PROPERTY, OR BOTH, OF AN INSURED;

20 [(2)] (II) receives compensation for INVESTIGATING, APPRAISING,
21 EVALUATING, OR OTHERWISE giving advice or help to an insured in the adjustment of
22 claims for losses or damages arising [out of policies of fire insurance or allied lines of
23 insurance] UNDER INSURANCE CONTRACTS THAT INSURE THE REAL OR PERSONAL
24 PROPERTY, OR BOTH, OF AN INSURED; or

25 [(3)] (III) for compensation, directly or indirectly, solicits business,
26 investigates or adjusts losses, or advises an insured about INSURANCE claims for
27 losses or damages arising [out of policies of fire insurance or allied lines of insurance]
28 UNDER INSURANCE CONTRACTS THAT INSURE THE REAL OR PERSONAL PROPERTY,
29 OR BOTH, OF AN INSURED for another person engaged in the business of adjusting
30 losses or damages [by fire or other contingency covered by a policy of fire insurance or
31 allied lines of insurance] ARISING UNDER INSURANCE CONTRACTS THAT INSURE
32 THE REAL OR PERSONAL PROPERTY, OR BOTH, OF AN INSURED.

33 (2) "PUBLIC ADJUSTER" DOES NOT INCLUDE A PERSON THAT
34 INVESTIGATES, ADJUSTS, OR APPRAISES CLAIMS FOR LOSS OR DAMAGE COVERED BY
35 A MOTOR VEHICLE INSURANCE POLICY.

1 10-402.

2 This subtitle does not apply to:

3 (1) an adjuster for or an insurance producer or employee of an insurer or
4 group of insurers under common control or ownership that, as representative of the
5 insurer or group, adjusts losses or damages under policies issued by the insurer or
6 group;

7 (2) an insurance producer that acts as an adjuster without compensation
8 for an insured for whom the insurance producer is acting as an insurance producer; or

9 (3) an attorney at law who does not:

10 (i) regularly act as a public adjuster; and

11 (ii) represent to the public by sign, advertisement, or otherwise
12 that the attorney at law acts as a public adjuster.

13 10-403.

14 (A) Except as otherwise provided in this subtitle, a person must obtain a
15 license before the person acts as a public adjuster in the State.

16 (B) A PERSON THAT VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR
17 AND ON CONVICTION IS SUBJECT TO A FINE NOT EXCEEDING \$500 OR
18 IMPRISONMENT NOT EXCEEDING 6 MONTHS OR BOTH FOR EACH VIOLATION.

19 10-404.

20 (a) To qualify for a license, an applicant must be:

21 (1) an individual who meets the requirements of SUBSECTION (B) OF this
22 section; OR

23 (2) A BUSINESS ENTITY THAT MEETS THE REQUIREMENTS OF
24 SUBSECTION (C) OF THIS SECTION.

25 (b) (1) An INDIVIDUAL applicant must be trustworthy and competent to
26 transact business as a public adjuster so as to safeguard the interests of the public.

27 (2) AN INDIVIDUAL APPLICANT MUST HAVE BEEN EMPLOYED
28 REGULARLY BY THE ADMINISTRATION AS AN EMPLOYEE OR BY AN INSURER,
29 ADJUSTER, INSURANCE PRODUCER OR PUBLIC ADJUSTER FOR A PERIOD TOTALING
30 AT LEAST 1 YEAR:

31 (I) DURING THE 5 YEARS IMMEDIATELY PRECEDING THE DATE OF
32 APPLICATION; OR

33 (II) FOR A MEMBER OF THE U.S. ARMED FORCES, DURING THE 5
34 YEARS IMMEDIATELY:

- 1 1. PRECEDING THE DATE OF ENTRANCE INTO THE ARMED
2 FORCES; OR
- 3 2. AFTER DISCHARGE.

4 [(c) (1) (i)] (3) Except as otherwise provided in this subsection, an
5 INDIVIDUAL applicant [must] SHALL:

- 6 (I) pass a written examination given by the Commissioner under
7 this subtitle in order to determine the competency of the applicant to act as a public
8 adjuster[.];
- 9 (ii) [An applicant shall] pay the application fee required by § 2-112
10 of this article[.]; AND
- 11 (iii) [After an applicant has been notified] AFTER RECEIVING
12 NOTIFICATION that the applicant has passed the examination or is otherwise eligible
13 to be licensed, [the applicant shall] pay the applicable license fee required by § 2-112
14 of this article.

15 [(2)] (4) The examination requirement of paragraph [(1)] (3) of this
16 subsection does not apply to an individual who was licensed as a public adjuster in
17 the State on June 30, 1985.

18 [(d) An applicant must have been a resident of the State continuously for at
19 least 1 year immediately preceding the date of filing an application for a license.]

20 (5) AN INDIVIDUAL APPLICANT WHO FAILS AN EXAMINATION MAY NOT
21 TAKE ANOTHER EXAMINATION UNTIL AT LEAST 14 DAYS AFTER THE DATE OF THE
22 LAST EXAMINATION THAT THE APPLICANT FAILED.

23 (C) A BUSINESS ENTITY APPLICANT MUST:

24 (1) BE TRUSTWORTHY AND COMPETENT TO TRANSACT BUSINESS AS A
25 PUBLIC ADJUSTER SO AS TO SAFEGUARD THE INTERESTS OF THE PUBLIC;

26 (2) EMPLOY ONE OR MORE INDIVIDUAL LICENSED PUBLIC ADJUSTERS;
27 AND

28 (3) PAY THE APPLICABLE LICENSE FEE REQUIRED BY § 2-112 OF THIS
29 ARTICLE.

30 10-405.

31 (a) An applicant for an initial license shall file with the Commissioner an
32 application on the form that the Commissioner provides.

33 (b) The application form shall require:

34 (1) the name and address of the applicant;

1 (2) whether any other insurance license or certificate has been issued to
2 the applicant;

3 (3) the business in which the applicant has been engaged for the [year]
4 5 YEARS immediately preceding the date of application and, if employed by another,
5 the name and address of each employer; [and]

6 (4) FOR A BUSINESS ENTITY APPLICANT:

7 (I) THE NAME OF THE INDIVIDUAL LICENSED PUBLIC ADJUSTER
8 EMPLOYED BY THE BUSINESS ENTITY WHO IS DESIGNATED TO ACT AS THE BUSINESS
9 ENTITY'S PRINCIPAL CONTACT WITH THE ADMINISTRATION; AND

10 (II) THE NAME AND ADDRESS OF EACH LICENSED PUBLIC
11 ADJUSTER EMPLOYED BY THE BUSINESS ENTITY, EACH INDIVIDUAL WHO HAS
12 DIRECT CONTROL OVER ITS FISCAL MANAGEMENT, EACH OWNER, PARTNER,
13 MEMBER, OR MANAGER OF THE BUSINESS ENTITY, AND EACH DIRECTOR OF A
14 BUSINESS ENTITY THAT IS A CORPORATION; AND

15 [(4)] (5) any other information that the Commissioner requires of
16 applicants to enable the Commissioner to determine the trustworthiness and
17 competence of the applicant to transact business as a public adjuster so as to
18 safeguard the interests of the public.

19 (c) An application shall be signed under [oath by the applicant] OATH:

20 (1) IN THE CASE OF AN INDIVIDUAL APPLICANT, BY THE APPLICANT; OR

21 (2) IN THE CASE OF AN APPLICANT THAT IS A BUSINESS ENTITY, BY AN
22 INDIVIDUAL WHO HAS DIRECT CONTROL OVER ITS FISCAL MANAGEMENT, AN
23 OWNER, PARTNER, MEMBER, OR MANAGER OF THE BUSINESS ENTITY, OR A DIRECTOR
24 OF A BUSINESS ENTITY THAT IS A CORPORATION.

25 10-406.

26 (a) The Commissioner shall issue a license to each applicant who meets the
27 requirements of this subtitle.

28 (b) A person that is licensed as a public adjuster under this subtitle may be
29 known as a "certified public adjuster".

30 10-407.

31 THE COMMISSIONER SHALL ADOPT REGULATIONS THAT SPECIFY:

32 (1) THE SCOPE, TYPE, CONDUCT, AND GRADING OF THE WRITTEN
33 EXAMINATION;

34 (2) THE FREQUENCY, TIMES, AND LOCATIONS WITHIN THE STATE
35 WHERE THE WRITTEN EXAMINATION WILL BE HELD; AND

1 (3) THE EXPERIENCE REQUIREMENTS FOR AN INDIVIDUAL APPLICANT
2 TO BE ELIGIBLE TO TAKE A WRITTEN EXAMINATION.

3 10-408.

4 (a) A [certificate of qualification] LICENSE expires at the end of every other
5 June 30 unless it is renewed for a 2-year term as provided in this section.

6 (b) At least 1 month before a [certificate of qualification] LICENSE expires,
7 the Commissioner shall mail to the holder of the [certificate of qualification]
8 LICENSE, at the last known address of the holder:

9 (1) a renewal application form; and

10 (2) a notice that states:

11 (i) the date by which the Commissioner must receive the renewal
12 application for the renewal to be issued and mailed before the [certificate of
13 qualification] LICENSE expires; and

14 (ii) the amount of the renewal fee.

15 (c) Before a [certificate of qualification] LICENSE expires, the holder of the
16 [certificate of qualification] LICENSE may renew it for an additional 2-year term, if
17 the holder:

18 (1) otherwise is entitled to a [certificate of qualification] LICENSE;

19 (2) files with the Commissioner a renewal application on the form that
20 the Commissioner provides; and

21 (3) pays to the Commissioner the renewal fee required by § 2-112 of this
22 article.

23 (d) An application for renewal of a [certificate of qualification] LICENSE shall
24 be considered made in a timely manner if it is postmarked on or before June 30 of the
25 year of renewal.

26 (e) (1) The Commissioner shall renew the [certificate of qualification]
27 LICENSE of each holder who meets the requirements of this section.

28 (2) If the holder of a [certificate of qualification] LICENSE files an
29 application for renewal before the [certificate of qualification] LICENSE expires, the
30 certificate of qualification shall remain in effect until:

31 (i) the Commissioner issues a renewal [certificate of qualification]
32 LICENSE; or

33 (ii) 5 days after the Commissioner refuses in writing to renew the
34 [certificate of qualification] LICENSE and serves notice of the refusal on the holder.

1 10-408.1.

2 (a) [On or before September 30 of the renewal year] FOR UP TO 1 YEAR AFTER
3 THE EXPIRATION DATE, a person whose public adjuster's [certificate of qualification]
4 LICENSE has expired may reinstate the expired [certificate of qualification] LICENSE
5 by:

6 (1) filing with the Commissioner the appropriate reinstatement
7 application; and

8 (2) paying to the Commissioner the applicable reinstatement fee
9 required under subsection (b) of this section.

10 (b) (1) The fee for a reinstatement under this section shall be:

11 (i) the amount charged for a full renewal period for the type of
12 [certificate of qualification] LICENSE held by the person seeking the reinstatement;
13 and

14 (ii) [1. \$25 for reinstatement during the period from July 1
15 through July 31;

16 2. \$50 for reinstatement during the period from August 1
17 through August 31; and

18 3. \$75 for reinstatement during the period from September 1
19 through September 30] A REINSTATEMENT FEE OF \$100.

20 (2) The Commissioner may limit the reinstatement fee to the amount of
21 the renewal fee in cases where the reinstatement applicant did not make timely
22 renewal because of MILITARY SERVICE, temporary incapacity, hospitalization, or
23 other hardship.

24 (c) A person whose public adjuster's [certificate of qualification] LICENSE has
25 expired is prohibited from acting as a public adjuster until the effective date of
26 reinstatement of the [certificate of qualification] LICENSE.

27 (d) [A person who does not comply with subsection (a) of this section on or
28 before September 30 of the year of expiration shall apply for a public adjuster's
29 certificate of qualification under § 10-405 of this subtitle and meet any other
30 requirements specified by the Commissioner in regulation.]

31 (1) IF A PERSON APPLIES FOR REINSTATEMENT OF AN EXPIRED
32 LICENSE WITHIN 60 DAYS AFTER THE LICENSE EXPIRED, THE COMMISSIONER SHALL
33 REINSTATE THE LICENSE RETROACTIVELY, WITH THE REINSTATEMENT EFFECTIVE
34 ON THE DATE THAT THE PERSON'S LICENSE EXPIRED.

35 (2) IF A PERSON APPLIES FOR REINSTATEMENT OF AN EXPIRED
36 LICENSE MORE THAN 60 DAYS AFTER THE LICENSE EXPIRED, THE COMMISSIONER

1 SHALL REINSTATE THE PERSON'S LICENSE PROSPECTIVELY, WITH THE
2 REINSTATEMENT EFFECTIVE ON THE DATE THAT THE LICENSE IS REINSTATED.

3 (E) A PERSON WHO DOES NOT COMPLY WITH SUBSECTION (A) OF THIS
4 SECTION ON OR BEFORE 1 YEAR AFTER THE EXPIRATION DATE SHALL APPLY FOR A
5 LICENSE UNDER § 10-405 OF THIS SUBTITLE AND MEET THE REQUIREMENTS
6 SPECIFIED BY THE COMMISSIONER IN REGULATION.

7 [(e)] (F) The Commissioner may adopt regulations to carry out this section.

8 10-409.

9 (A) EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, THE COMMISSIONER
10 SHALL WAIVE THE LICENSE REQUIREMENTS FOR AN APPLICANT WHO IS NOT A
11 RESIDENT OF THE STATE IF:

12 (1) THE APPLICANT HAS A VALID PUBLIC ADJUSTER LICENSE FROM THE
13 HOME STATE OF THE APPLICANT; AND

14 (2) THE HOME STATE OF THE APPLICANT AWARDS NONRESIDENT
15 PUBLIC ADJUSTER LICENSES TO RESIDENTS OF THE STATE ON THE SAME BASIS.

16 (B) UNLESS DENIED A LICENSE PURSUANT TO § 10-410 OF THIS SUBTITLE, A
17 PERSON THAT IS NOT A RESIDENT OF THE STATE MAY OBTAIN A NONRESIDENT
18 LICENSE TO ACT AS A PUBLIC ADJUSTER IF:

19 (1) THE PERSON CURRENTLY IS LICENSED AS A RESIDENT PUBLIC
20 ADJUSTER AND IN GOOD STANDING IN THE PERSON'S HOME STATE;

21 (2) THE PERSON FILES AN APPLICATION ON THE FORM THAT THE
22 COMMISSIONER PROVIDES;

23 (3) THE PERSON HAS PAID THE APPLICABLE FEE PURSUANT TO § 2-112
24 OF THIS ARTICLE; AND

25 (4) THE PERSON'S HOME STATE AWARDS NONRESIDENT PUBLIC
26 ADJUSTER LICENSES TO RESIDENTS OF THIS STATE ON THE SAME BASIS.

27 (C) A PERSON WHO IS NOT A RESIDENT OF THIS STATE AND WHOSE HOME
28 STATE DOES NOT ISSUE A PUBLIC ADJUSTER LICENSE MUST MEET THE LICENSE
29 REQUIREMENTS OF §§ 10-404 AND 10-405 OF THIS SUBTITLE.

30 10-410.

31 (A) The Commissioner may deny a license to an applicant or suspend, revoke,
32 or refuse to renew OR REINSTATE a license AFTER NOTICE AND OPPORTUNITY FOR A
33 HEARING UNDER §§ 2-210 THROUGH 2-214 OF THIS ARTICLE if the applicant or
34 licensee:

35 (1) has violated this article;

- 1 (2) has made a material misstatement in the application for the license;
- 2 (3) has engaged in fraudulent or dishonest practices; [or]
- 3 (4) has demonstrated incompetency or untrustworthiness to act as a
4 public adjuster[.];
- 5 (5) HAS MISAPPROPRIATED, CONVERTED, OR UNLAWFULLY WITHHELD
6 MONEY THAT BELONGS TO AN INSURER, INSURANCE PRODUCER, INSURED, OR
7 OTHER PERSON;
- 8 (6) HAS WILLFULLY AND MATERIALLY MISREPRESENTED THE
9 PROVISIONS OF A POLICY;
- 10 (7) HAS BEEN CONVICTED OF A FELONY, A CRIME OF MORAL
11 TURPITUDE, OR ANY CRIMINAL OFFENSE INVOLVING DISHONESTY OR BREACH OF
12 TRUST;
- 13 (8) HAS WILLFULLY FAILED TO COMPLY WITH OR HAS WILLFULLY
14 VIOLATED A PROPER ORDER OR REGULATION OF THE COMMISSIONER;
- 15 (9) HAS FAILED OR REFUSED TO PAY ON DEMAND MONEY THAT
16 BELONGS TO AN INSURER, INSURANCE PRODUCER, INSURED, OR OTHER PERSON
17 ENTITLED TO THE MONEY;
- 18 (10) IS NOT CARRYING ON OR DOES NOT INTEND TO CARRY ON BUSINESS
19 IN GOOD FAITH WHILE REPRESENTING TO THE PUBLIC THAT THE PERSON IS A
20 PUBLIC ADJUSTER;
- 21 (11) HAS BEEN DENIED A LICENSE OR HAS HAD A LICENSE SUSPENDED
22 OR REVOKED IN ANOTHER STATE; OR
- 23 (12) HAS KNOWINGLY EMPLOYED OR KNOWINGLY CONTINUED TO
24 EMPLOY AN INDIVIDUAL ACTING IN A FIDUCIARY CAPACITY WHO HAS BEEN
25 CONVICTED WITHIN THE PRECEDING 10 YEARS OF A FELONY OR CRIME OF MORAL
26 TURPITUDE.
- 27 (B) (1) THE COMMISSIONER MAY DENY A LICENSE TO A BUSINESS ENTITY
28 APPLICANT OR SUSPEND, REVOKE, OR REFUSE TO RENEW OR REINSTATE THE
29 LICENSE OF A BUSINESS ENTITY AFTER NOTICE AND OPPORTUNITY FOR A HEARING
30 UNDER §§ 2-210 THROUGH 2-214 OF THIS ARTICLE, IF AN INDIVIDUAL LISTED IN
31 PARAGRAPH (2) OF THIS SUBSECTION:
- 32 (I) VIOLATES ANY PROVISION OF THIS ARTICLE;
- 33 (II) IS CONVICTED OF A FELONY, A CRIME OF MORAL TURPITUDE,
34 OR ANY CRIMINAL OFFENSE INVOLVING DISHONESTY OR BREACH OF TRUST; OR
- 35 (III) HAS ANY PROFESSIONAL LICENSE SUSPENDED OR REVOKED
36 FOR A FRAUDULENT OR DISHONEST PRACTICE.

1 (2) THE SANCTIONS PROVIDED FOR UNDER THIS SUBSECTION MAY BE
2 IMPOSED ON A BUSINESS ENTITY IF THE VIOLATION WAS COMMITTED BY AN
3 INDIVIDUAL WHO:

4 (I) IS A PUBLIC ADJUSTER EMPLOYED BY THE BUSINESS ENTITY;

5 (II) 1. IN THE CASE OF A LIMITED LIABILITY COMPANY, IS AN
6 OFFICER, DIRECTOR, MEMBER, OR MANAGER;

7 2. IN THE CASE OF A PARTNERSHIP, IS A PARTNER; AND

8 3. IN THE CASE OF A CORPORATION, IS A DIRECTOR,
9 OFFICER, OR CONTROLLING OWNER; OR

10 (III) HAS DIRECT CONTROL OVER THE FISCAL MANAGEMENT OF
11 THE BUSINESS ENTITY.

12 (C) INSTEAD OF OR IN ADDITION TO SUSPENDING OR REVOKING THE LICENSE
13 OF A PUBLIC ADJUSTER, THE COMMISSIONER MAY IMPOSE ON THE LICENSEE A
14 PENALTY OF NOT LESS THAN \$100 BUT NOT EXCEEDING \$500 FOR EACH VIOLATION
15 OF THIS ARTICLE.

16 (D) INSTEAD OF OR IN ADDITION TO SUSPENDING OR REVOKING THE
17 LICENSE, THE COMMISSIONER MAY REQUIRE THAT RESTITUTION BE MADE TO ANY
18 CITIZEN WHO HAS SUFFERED FINANCIAL INJURY BECAUSE OF THE VIOLATION OF
19 THIS ARTICLE.

20 (E) IF THE LICENSE IS SUSPENDED UNDER THIS SECTION, THE
21 COMMISSIONER MAY REQUIRE THE INDIVIDUAL TO PASS AN EXAMINATION AND
22 FILE A NEW APPLICATION BEFORE THE SUSPENSION IS LIFTED.

23 SECTION 2. AND BE IT FURTHER ENACTED, That the provisions of this
24 Act shall apply to a person that is a business entity on January 1, 2005.

25 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take
26 effect July 1, 2004.