

Second Regular Session
Seventy-first General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 18-0794.01 Duane Gall x4335

HOUSE BILL 18-1153

HOUSE SPONSORSHIP

Becker J., Hansen

SENATE SPONSORSHIP

Coram, Jahn

House Committees

Finance

Senate Committees

A BILL FOR AN ACT

101 CONCERNING THE CONDUCT OF APPRAISALS OF THE VALUE OF
102 PROPERTY COVERED BY PROPERTY AND CASUALTY INSURANCE,
103 AND, IN CONNECTION THEREWITH, SPECIFYING THE
104 QUALIFICATIONS AND RULES OF CONDUCT FOR APPRAISERS AND
105 UMPIRES ENGAGED IN THE APPRAISAL PROCESS.

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

The bill addresses the situation in which appraisers and, if necessary, an umpire selected by the appraisers or by a court attempt to

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

agree on the fair value of property covered by a property and casualty insurance policy. Specifically, the bill:

- ! Disqualifies any person from serving as an appraiser or umpire if the person has a known, direct, and material interest in the outcome of the appraisal proceeding or a known, direct, and substantial relationship with a party to the proceeding;
- ! Requires appraisers and umpires to disclose any prior relationships or interests that might affect their objectivity; and
- ! Prohibits ex parte communications by or with an umpire.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, **add** 10-4-122 as
3 follows:

4 **10-4-122. Appraisals for insurance claims - standards -**
5 **disclosures - communications - legislative declaration - definitions.**

6 (1) **Legislative declaration.** THE GENERAL ASSEMBLY HEREBY DECLARES
7 THAT THIS SECTION ADDRESSES THE SITUATION IN WHICH A DISPUTE
8 ARISES BETWEEN AN INSURER AND THE INSURED OVER THE VALUE OF A
9 LOSS THAT IS SUBJECT TO A CLAIM UNDER AN INSURANCE CONTRACT. THE
10 GENERAL ASSEMBLY INTENDS THIS SECTION TO PROVIDE GUIDANCE TO
11 INSURERS, INSURED, APPRAISERS, UMPIRES, AND ADJUSTERS WHEN A
12 PARTY INVOKES A CONTRACTUAL RIGHT UNDER AN APPRAISAL CLAUSE IN
13 AN INSURANCE CONTRACT.

14 (2) **Umpire - definition.** AS USED IN THIS SECTION, "UMPIRE"
15 MEANS A NEUTRAL PARTY SELECTED BY THE APPRAISERS REPRESENTING
16 THE INSURER AND THE INSURED OR, IF THE APPRAISERS CANNOT AGREE ON
17 AN UMPIRE, DESIGNATED BY A COURT OF COMPETENT JURISDICTION. THE
18 UMPIRE IS CHARGED WITH RESOLVING ISSUES UPON WHICH THE APPRAISERS
19 ARE UNABLE TO AGREE DURING AN APPRAISAL.

1 **(3) Appraisers and umpires - disqualification - disclosures.**

2 (a) AN INDIVIDUAL WHO HAS A KNOWN, DIRECT, AND MATERIAL INTEREST
3 IN THE OUTCOME OF THE APPRAISAL PROCEEDING OR A KNOWN, EXISTING,
4 AND SUBSTANTIAL RELATIONSHIP WITH A PARTY TO AN APPRAISAL
5 PROCEEDING SHALL NOT SERVE AS AN APPRAISER OR UMPIRE.

6 (b) AN APPRAISER AND AN UMPIRE EMPLOYED TO ARRIVE AT A
7 VALUATION OF DAMAGES FOR INSURANCE PURPOSES SHALL MAKE
8 DISCLOSURES TO THE OTHER APPRAISER; TO THE UMPIRE, IF APPLICABLE;
9 AND TO THE PARTIES CONFIRMING THAT THE APPRAISER OR UMPIRE:

10 (I) IS NOT A PARTY TO THE INSURANCE CONTRACT;

11 (II) HAS NO FINANCIAL INTEREST IN THE OUTCOME OF THE
12 APPRAISAL;

13 (III) IS NOT A CURRENT EMPLOYEE OF THE INSURER OR
14 POLICYHOLDER; AND

15 (IV) IS NOT A FAMILY MEMBER OF A PARTY TO THE APPRAISAL
16 PROCEEDING OR AN INDIVIDUAL WITH WHOM A PARTY HAS A PERSONAL
17 RELATIONSHIP THAT A REASONABLE PERSON WOULD CONSIDER LIKELY TO
18 AFFECT THE APPRAISER'S OR UMPIRE'S VALUATION OF THE INSURED
19 PROPERTY.

20 (c) AN APPRAISER SHALL NOT HAVE A DIRECT, MATERIAL INTEREST
21 IN THE AMOUNTS DETERMINED BY THE APPRAISAL PROCESS.

22 (d) AN APPRAISER SHALL DISCLOSE TO ALL PARTIES THE NUMBER
23 OF TIMES IN THE IMMEDIATELY PRECEDING THREE YEARS THAT THE
24 APPRAISER, OR THE COMPANY FOR WHICH THE APPRAISER WORKS, HAS
25 BEEN EMPLOYED IN ANY CAPACITY BY THE PARTY THAT SELECTED THAT
26 APPRAISER.

27 (e) AN APPRAISER HAS A CONTINUING OBLIGATION TO DISCLOSE TO

1 ALL PARTIES TO THE APPRAISAL PROCEEDING ANY INFORMATION
2 DESCRIBED IN SUBSECTIONS (3)(a) TO (3)(d) OF THIS SECTION THAT THE
3 APPRAISER LEARNS AFTER ACCEPTING THE APPOINTMENT AND THAT A
4 REASONABLE PERSON WOULD CONSIDER LIKELY TO AFFECT THE
5 APPRAISER'S VALUATION OF THE INSURED PROPERTY.

6 (f) (I) AN INSURER, INSURED, OR REPRESENTATIVE OF THE INSURER
7 OR INSURED, INCLUDING AN ADJUSTER OR LICENSED PUBLIC ADJUSTER,
8 SHALL NOT:

9 (A) TAKE ANY ACTION TO INFLUENCE, DIRECT, OR CONTROL THEIR
10 OWN APPRAISER BUT MAY COMMUNICATE WITH THEIR OWN APPRAISER TO
11 PROVIDE INFORMATION MATERIAL TO THE APPRAISAL PROCESS; OR

12 (B) COMMUNICATE WITH ANOTHER PARTY'S APPRAISER WITHOUT
13 THE CONSENT AND PARTICIPATION OF BOTH PARTIES OR THEIR
14 REPRESENTATIVES.

15 (II) THE FACT THAT AN APPRAISER CONSISTENTLY WORKS FOR
16 POLICYHOLDERS OR INSURERS IS NOT A BASIS FOR OBJECTION TO THE
17 APPRAISER.

18 (g) APPRAISERS MAY DIRECTLY COMMUNICATE WITH EACH OTHER
19 AS PART OF THE APPRAISAL TO REACH AN AGREED-UPON SETTLEMENT
20 AMOUNT.

21 (4) **Umpires - neutrality.** (a) AN UMPIRE IS CONSIDERED
22 NEUTRAL IF THE UMPIRE DOES NOT HAVE AN EXISTING DIRECT OR
23 MATERIAL RELATIONSHIP WITH ANY PARTY TO THE APPRAISAL
24 PROCEEDING AND DOES NOT HAVE A DIRECT OR MATERIAL INTEREST IN
25 THE OUTCOME OF THE APPRAISAL PROCEEDING.

26 (b) AN UMPIRE MUST DISCLOSE TO ALL PARTIES IN THE APPRAISAL
27 PROCEEDING ANY KNOWN FACTS THAT A REASONABLE PERSON WOULD

1 CONSIDER LIKELY TO AFFECT THE NEUTRALITY OF THE UMPIRE,
2 INCLUDING:

3 (I) A FINANCIAL OR PERSONAL INTEREST IN THE OUTCOME OF THE
4 APPRAISAL; AND

5 (II) A CURRENT OR PREVIOUS RELATIONSHIP WITH ANY OF THE
6 PARTIES TO THE AGREEMENT TO APPRAISE OR THE APPRAISAL PROCEEDING,
7 THEIR COUNSEL OR REPRESENTATIVES, INCLUDING ADJUSTERS, ANY
8 WITNESS, OR EITHER OF THE APPRAISERS.

9 (c) AN UMPIRE SHALL DISCLOSE TO ALL PARTIES TO THE APPRAISAL
10 PROCEEDING ANY FACTS THE UMPIRE LEARNS AFTER ACCEPTING THE
11 APPOINTMENT THAT A REASONABLE PERSON WOULD CONSIDER LIKELY TO
12 AFFECT THE NEUTRALITY OF THE UMPIRE.

13 (d) THE INSURER, THE INSURED, AND THEIR REPRESENTATIVES,
14 INCLUDING ADJUSTERS, ATTORNEYS, AND APPRAISERS, SHALL NOT HAVE
15 EX PARTE COMMUNICATIONS WITH THE UMPIRE DURING THE APPRAISAL
16 PROCEEDING.

17 (e) THE UMPIRE SHALL NOT HAVE EX PARTE COMMUNICATIONS
18 WITH: THE INSURER, OR THE INSURER'S ADJUSTERS; THE INSURED; OR ANY
19 REPRESENTATIVE OF EITHER PARTY, INCLUDING PUBLIC ADJUSTERS.

20 **SECTION 2. Act subject to petition - effective date -**
21 **applicability.** (1) This act takes effect at 12:01 a.m. on the day following
22 the expiration of the ninety-day period after final adjournment of the
23 general assembly (August 8, 2018, if adjournment sine die is on May 9,
24 2018); except that, if a referendum petition is filed pursuant to section 1
25 (3) of article V of the state constitution against this act or an item, section,
26 or part of this act within such period, then the act, item, section, or part
27 will not take effect unless approved by the people at the general election

1 to be held in November 2018 and, in such case, will take effect on the
2 date of the official declaration of the vote thereon by the governor.

3 (2) This act applies to appraisals conducted on or after the
4 applicable effective date of this act.