

**First Regular Session
Seventy-first General Assembly
STATE OF COLORADO**

INTRODUCED

LLS NO. 17-1151.01 Jery Payne x2157

HOUSE BILL 17-1319

HOUSE SPONSORSHIP

Sias, Lee

SENATE SPONSORSHIP

(None),

House Committees
Judiciary

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING THE NEUTRALITY OF APPRAISERS RETAINED TO HELP THE**
102 **PARTIES TO AN INSURANCE CLAIM ESTABLISH THE APPROPRIATE**
103 **VALUATION.**

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, addressing appraisals conducted for insurance purposes, sets standards for when an appraiser, including an appraisals umpire, is considered fair, impartial, and neutral. The bill imposes the following requirements:

! An appraiser is prohibited from having a direct, material

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

- ! interest in the amounts determined by the appraisal process;
- ! An appraiser, including an appraisals umpire, must disclose to all parties any known fact discovered at any time that a reasonable person would consider likely to affect the appraiser's interest in the amount determined by the appraisal;
- ! Both the insurer and the insured, and their representatives, are prohibited from communicating with the other party's appraiser without the consent and participation of both parties; except that appraisers may directly communicate with each other to reach an agreed-upon settlement amount;
- ! The insurer, the insured, and their representatives, including adjusters, attorneys, and appraisers, must not have ex parte communications with the umpire during the appraisal process; and
- ! The umpire must not have ex parte communications with the insurer, including adjusters, the insured, and their representatives, including public adjusters.

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

13 **(2) Impartiality of appraisers and umpires.** AN APPRAISER OR
14 UMPIRE EMPLOYED TO ARRIVE AT A VALUATION OF DAMAGES FOR
15 INSURANCE PURPOSES SHALL BE FAIR, IMPARTIAL, DISINTERESTED, AND

1 INDEPENDENT.

2 (3) **Impartiality of appraiser defined.** (a) AN APPRAISER IS
3 DEEMED FAIR, IMPARTIAL, DISINTERESTED, AND INDEPENDENT IF THE
4 APPRAISER:

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

6 (II) HAS NO FINANCIAL INTEREST IN THE OUTCOME OF THE
7 APPRAISAL;

8 (III) IS NOT A CURRENT EMPLOYEE OF THE INSURER OR
9 POLICYHOLDER; AND

10 (IV) IS NOT A FAMILY MEMBER OR AN INDIVIDUAL WITH WHOM A
11 PARTY HAS A PERSONAL RELATIONSHIP THAT A REASONABLE PERSON
12 WOULD CONSIDER LIKELY TO AFFECT THE APPRAISER'S VALUATION OF THE
13 INSURED PROPERTY.

14 (b) AN APPRAISER IN THE APPRAISAL PROCESS SHALL NOT HAVE A
15 DIRECT, MATERIAL INTEREST IN THE AMOUNTS DETERMINED BY THE
16 APPRAISAL PROCESS.

17 (c) THE APPRAISER SHALL DISCLOSE TO ALL PARTIES ANY KNOWN
18 FACT THAT A REASONABLE PERSON WOULD CONSIDER LIKELY TO AFFECT
19 THE APPRAISER'S VALUATION OF THE INSURED PROPERTY.

20 (d) THE APPRAISER SHALL CONTINUE TO DISCLOSE TO ALL PARTIES
21 TO THE APPRAISAL ANY FACTS, INCLUDING ANY CONTINGENCY
22 ARRANGEMENT FOR THE PAYMENT OF THE APPRAISER, THE APPRAISER
23 LEARNS AFTER ACCEPTING THE APPOINTMENT THAT A REASONABLE
24 PERSON WOULD CONSIDER LIKELY TO AFFECT THE APPRAISER'S VALUATION
25 OF THE INSURED PROPERTY.

26 (e) (I) ANY INSURER, INSURED, OR REPRESENTATIVE OF THE
27 INSURER OR INSURED, INCLUDING AN ADJUSTER OR LICENSED PUBLIC

1 ADJUSTER, MAY DIRECTLY COMMUNICATE WITH THEIR OWN APPRAISER.

2 (II) AN INSURER, INSURED, OR REPRESENTATIVE OF THE INSURER
3 OR INSURED, INCLUDING AN ADJUSTER OR LICENSED PUBLIC ADJUSTER,
4 SHALL NOT COMMUNICATE WITH THE OTHER PARTY'S APPRAISER WITHOUT
5 THE CONSENT AND PARTICIPATION OF BOTH PARTIES OR THEIR
6 REPRESENTATIVES.

7 (f) APPRAISERS MAY DIRECTLY COMMUNICATE WITH EACH OTHER
8 AS PART OF THE APPRAISAL TO REACH AN AGREED-UPON SETTLEMENT
9 AMOUNT.

10 (4) **Impartiality of umpires.** (a) AN UMPIRE IS CONSIDERED FAIR,
11 IMPARTIAL, AND NEUTRAL IF THE UMPIRE DOES NOT HAVE AN EXISTING
12 DIRECT OR MATERIAL RELATIONSHIP WITH ANY PARTY TO THE APPRAISAL
13 AND DOES NOT HAVE A DIRECT OR MATERIAL INTEREST IN THE OUTCOME
14 OF THE APPRAISAL PROCEEDING.

15 (b) THE UMPIRE MUST DISCLOSE TO ALL PARTIES IN THE APPRAISAL
16 ANY KNOWN FACTS THAT A REASONABLE PERSON WOULD CONSIDER
17 LIKELY TO AFFECT THE IMPARTIALITY OF THE UMPIRE INCLUDING:

18 (I) A FINANCIAL OR PERSONAL INTEREST IN THE OUTCOME OF THE
19 APPRAISAL; AND

20 (II) A CURRENT OR PREVIOUS RELATIONSHIP WITH ANY OF THE
21 PARTIES TO THE AGREEMENT TO APPRAISE OR THE APPRAISAL PROCEEDING,
22 THEIR COUNSEL OR REPRESENTATIVES, INCLUDING ADJUSTERS, ANY
23 WITNESS, OR EITHER OF THE APPRAISERS.

24 (c) THE UMPIRE SHALL DISCLOSE TO ALL PARTIES TO THE
25 APPRAISAL PROCESS ANY FACTS THE UMPIRE LEARNS AFTER ACCEPTING
26 THE APPOINTMENT THAT A REASONABLE PERSON WOULD CONSIDER LIKELY
27 TO AFFECT THE IMPARTIALITY OF THE UMPIRE.

1 (d) THE INSURER, THE INSURED, AND THEIR REPRESENTATIVES,
2 INCLUDING ADJUSTERS, ATTORNEYS, AND APPRAISERS, SHALL NOT HAVE
3 EX PARTE COMMUNICATIONS WITH THE UMPIRE DURING THE APPRAISAL
4 PROCESS.

5 (e) THE UMPIRE SHALL NOT HAVE EX PARTE COMMUNICATIONS
6 WITH THE INSURER, INCLUDING ADJUSTERS, THE INSURED, AND THEIR
7 REPRESENTATIVES, INCLUDING PUBLIC ADJUSTERS.

8 (5) **Definitions.** FOR THE PURPOSES OF THIS SECTION, "UMPIRE"
9 MEANS A NEUTRAL PARTY SELECTED BY THE APPRAISERS REPRESENTING
10 THE INSURER AND THE INSURED OR, IF THE APPRAISERS CANNOT AGREE ON
11 AN UMPIRE, DESIGNATED BY A COURT OF COMPETENT JURISDICTION. THE
12 UMPIRE IS CHARGED WITH RESOLVING ISSUES THAT THE APPRAISERS ARE
13 UNABLE TO AGREE UPON DURING THE COURSE OF AN APPRAISAL.

14 **SECTION 2. Act subject to petition - effective date -**
15 **applicability.** (1) This act takes effect at 12:01 a.m. on the day following
16 the expiration of the ninety-day period after final adjournment of the
17 general assembly (August 9, 2017, if adjournment sine die is on May 10,
18 2017); except that, if a referendum petition is filed pursuant to section 1
19 (3) of article V of the state constitution against this act or an item, section,
20 or part of this act within such period, then the act, item, section, or part
21 will not take effect unless approved by the people at the general election
22 to be held in November 2018 and, in such case, will take effect on the
23 date of the official declaration of the vote thereon by the governor.

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