

House Bill 610

By: Representatives Williamson of the 115th, Brockway of the 102nd, Shaw of the 176th, and Hugley of the 136th

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 1 of Chapter 23 of Title 33 of the Official Code of Georgia Annotated,
2 relating to agents, agencies, subagents, counselors, and adjusters, so as to provide for the
3 licensing and regulation of public adjusters; to provide for definitions; to provide for written
4 contracts; to provide for standard of conduct; to provide for penalties; to provide for related
5 matters; to provide for an effective date; to repeal conflicting laws; and for other purposes.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

7 **SECTION 1.**

8 Article 1 of Chapter 23 of Title 33 of the Official Code of Georgia Annotated, relating to
9 agents, agencies, subagents, counselors, and adjusters, is amended by revising paragraph (13)
10 of subsection (a) of Code Section 33-23-1, relating to definitions, as follows:

11 "(13) 'Public adjuster' means any person who solicits, advertises for, or otherwise agrees
12 to represent only a person who is insured under a policy covering fire, windstorm, water
13 damage, and other physical damage to real and personal property other than vehicles
14 licensed for the road, and any such representation shall be limited to the settlement of a
15 claim or claims under the policy for damages to real and personal property, including
16 related loss of income and living expense losses but excluding claims arising out of any
17 motor vehicle accident, and who, for compensation or any other thing of value, on behalf
18 of an insured:

19 (A) Acts or aids, solely in relation to first-party claims arising under insurance
20 contracts that insure the real or personal property of the insured, in negotiating for, or
21 effecting the settlement of, a claim for loss or damage covered by an insurance contract;

22 (B) Advertises for employment as a public adjuster of insurance claims or solicits
23 business or represents himself or herself to the public as a public adjuster of first-party
24 claims for losses or damages arising out of policies of insurance that insure real or
25 personal property; or

26 (C) Directly or indirectly solicits business, investigates or adjusts losses, or advises an
 27 insured about first party claims for losses or damages arising out of policies of
 28 insurance that insure real or personal property for another person engaged in the
 29 business of adjusting losses or damages covered by an insurance policy."

30 **SECTION 2.**

31 Said article is further amended by revising subsection (a) of Code Section 33-23-4, relating
 32 to license required, restrictions on payment or receipt of commissions, and positions
 33 indirectly related to sale, solicitation, or negotiation of insurance excluded from licensing
 34 requirements, as follows:

35 "(a)(1) A person shall not sell, solicit, or negotiate insurance in this state for any class or
 36 classes of insurance unless the person is licensed for that line of authority in accordance
 37 with this chapter and applicable regulations.

38 (2) Any individual who sells, solicits, or negotiates insurance in this state must be
 39 licensed as an agent.

40 (3) Any business entity that sells, solicits, or negotiates insurance in this state must be
 41 licensed as an agency.

42 (4) Any individual who aids an insured in negotiating for, or effecting the settlement of,
 43 a claim for loss or damage covered by an insurance contract in this state must be licensed
 44 as either an independent adjuster or a public adjuster."

45 **SECTION 3.**

46 Said article is further amended by revising subsection (c) of Code Section 33-23-43, relating
 47 to authority of adjusters and penalty for violation, as follows:

48 "(c) No public adjuster, at any time, shall knowingly:

49 ~~(1) Suggest or advise the employment of or name for employment a specific attorney or~~
 50 ~~attorneys to represent a person in any matter relating to a person's potential claims,~~
 51 ~~including any motor vehicle accident claims for personal injury, loss of consortium,~~
 52 ~~property damages, or other special damages~~ Misrepresent to an insured that he or she is
 53 required to hire an independent or public adjuster to help the insured meet his or her
 54 obligations under his or her policy;

55 (2) Accept or agree to accept any money or other compensation from an attorney or any
 56 person acting on behalf of an attorney which the adjuster knows or should reasonably
 57 know is payment for the suggestion or advice by the adjuster to seek the services of the
 58 attorney or for the referral of any portion of a person's claim to the attorney;

59 (3) Hire or procure another to do any act prohibited by this subsection; ~~or~~

60 (4) Advertise or promise to pay or rebate all or any portion of any insurance deductible
61 as an inducement to the sale of goods or services. As used in this subsection, the term
62 'promise to pay or rebate' includes:

63 (A) ~~granting~~ Granting any allowance or offering any discount against the fees to be
64 charged, including, but not limited to, an allowance or discount in return for displaying
65 a sign or other advertisement at the insured's premises; or

66 (B) ~~paying~~ Paying the insured or any person directly or indirectly associated with the
67 property any form of compensation, gift, prize, bonus, coupon, credit, referral fee, or
68 other item of monetary value for any reason;

69 (5) Misrepresent to a claimant that he or she is an adjuster representing an insurer in any
70 capacity, including acting as an employee of the insurer or as an independent adjuster,
71 unless appointed by an insurer in writing to act on the insurer's behalf for that specific
72 claim or purpose. A licensed public adjuster shall not charge a claimant a fee for
73 adjusting a claim when he or she is appointed by the insurer for that specific claim or
74 purpose and the appointment is accepted by the public adjuster;

75 (6) Solicit, or attempt to solicit, an insured during the progress of a loss-producing
76 occurrence as defined in the insured's insurance contract;

77 (7) Have a direct or indirect financial interest in any aspect of a claim other than the
78 salary, fee, commission, or other consideration established in a written contract with the
79 insured which shall incorporate all of the conditions and provisions set out in Code
80 Section 33-23-43.1;

81 (8) Have a direct or indirect interest in or be compensated by any construction firm,
82 salvage firm, building appraisal firm, storage company, or any other firm or business
83 entity that performs any work in conjunction with damages incident to any loss which the
84 adjuster has been contracted to adjust;

85 (9) Directly or indirectly, participate in the reconstruction, repair, or restoration of
86 damaged property that is the subject of a claim adjusted by the adjuster or engage in any
87 other activities that may be reasonably construed as a conflict of interest, including
88 having a financial interest in any salvage, repair, construction, or restoration or any
89 business entity that obtains business in connection with any claims that the public
90 adjuster has a contract or agreement to adjust;

91 (10) Directly or indirectly, receive any compensation or anything of value in connection
92 with an insured's specific loss other than compensation from the insured or insurer for
93 service provided as an independent or public adjuster;

94 (11) Charge to or collect from an insured any amount, other than reasonable
95 compensation for services rendered based on time spent and expenses incurred, in any
96 transaction where the insurer either pays or commits in writing to pay the policy limit or

97 limits for all coverage under the insured's policy within three business days after the loss
 98 is reported to the insurer;
 99 (12) Charge to or collect from an insured any fee that is contingent upon, or calculated
 100 as a percentage of, the amount of any claim or claims paid to or on behalf of an insured
 101 by the insurer and that is in excess of 12.5 percent of the total loss paid by the insurer.
 102 Any contract or arrangement between an insured and a public adjuster which provides for
 103 payment of a contingent fee to the public adjuster which is in excess of 12.5 percent of
 104 the total loss paid by the insurer shall be against public policy and shall be null and void;
 105 (13) Misrepresent to an insured or insurer that he or she is an attorney authorized by law
 106 to provide legal advice and services or that a policy covers a loss or losses outside the
 107 scope of the coverage provided by the insurance contract;
 108 (14) Permit an unlicensed employee or representative of the adjuster to conduct business
 109 for which a license is required; or
 110 (15) Hire or procure another to do any act prohibited by this subsection."

111 **SECTION 4.**

112 Said article is further amended by adding new Code sections to read as follows:

113 "33-23-43.1.

114 (a) Public adjusters shall ensure that all contracts for their services are in writing,
 115 prominently captioned and titled 'Public Adjuster Contract,' and contain the following:

116 (1) Legible full name of the public adjuster signing the contract, as specified on the
 117 license issued by the Department of Insurance, and attestation language that the public
 118 adjuster is fully bonded pursuant to state law;

119 (2) Permanent home state business address and contact information of the public
 120 adjuster, including e-mail address;

121 (3) The public adjuster's Department of Insurance license number and a statement that
 122 the license is valid and in full force and effect as of the date the contract is signed;

123 (4) The insured's full name and street address;

124 (5) A description of the loss and its location, if applicable;

125 (6) A description of services to be provided to the insured;

126 (7) Signatures of the public adjuster and the insured;

127 (8) The date the contract was signed by the public adjuster, and the date the contract was
 128 signed by the insured; and

129 (9) A statement of the full salary, fee, compensation, or other considerations that the
 130 public adjuster is to receive for services, including a listing of typical costs and expenses
 131 for which the public adjuster is to be reimbursed.

132 (b) Public adjuster contracts may not contain a contract term that:

133 (1) Restricts an insured's right to initiate and maintain direct communications with his
134 or her attorney, the insurer, the insurer's adjuster, the insurer's attorney, or any other
135 person regarding settlement of the insured's claim;

136 (2) Vests the public adjuster with the right to initiate direct communications with the
137 insured's insurer, the insurer's adjuster, or the insurer's attorney regarding settlement of
138 the insured's claim without specific written authorization from the insured;

139 (3) Allows the public adjuster's percentage fee to be collected when money is due from
140 an insurance company but not paid or that allows a public adjuster to collect the entire fee
141 from the first check issued by an insurance company rather than as a percentage of each
142 check issued by an insurance company;

143 (4) Requires the insured to authorize an insurance company to issue a check only in the
144 name of the public adjuster; or

145 (5) Precludes or restricts an insured from pursuing any civil remedies relating to his or
146 her claim.

147 (c) All public adjuster contracts shall be construed to contain, by operation of law:

148 (1) A provision granting the insured a right to rescind the contract within three business
149 days after the date the contract was signed, so long as the rescission is in writing and
150 mailed or delivered to the public adjuster at the address stated in the contract within three
151 business days;

152 (2) A provision that if the insured exercises the right to rescind the contract, anything of
153 value given by the insured under the contract will be returned to the insured within 15
154 business days following the receipt by the public adjuster of the cancellation notice; and

155 (3) A provision requiring that, prior to initiating any contact with the insured's insurer,
156 the insurer's adjuster, or the insurer's attorney regarding settlement of the insured's claim,
157 a public adjuster must provide the insurer a notification letter signed by the insured
158 confirming that the insured has authorized the public adjuster to communicate directly
159 with the insurer, the insurer's adjuster, or the insurer's attorney on behalf of the insured.

160 (d) All public adjuster contracts shall be executed in duplicate to provide an original
161 contract to the public adjuster and an original contract to the insured. The public adjuster's
162 original contract shall be available at all times for inspection without notice by the
163 Commissioner of Insurance.

164 33-23-43.2.

165 (a) A public adjuster is obligated, under his or her license, to serve with objectivity and
166 complete loyalty to the interest of his or her client alone and to render to the insured such
167 information, counsel, and service within the public adjuster's knowledge, understanding,
168 and opinion that will best serve the insured's insurance claim needs and interest.

169 (b) A public adjuster shall faithfully observe all of the terms and provisions of the public
170 adjuster contract as prescribed in Code Section 33-23-43.1."

171 **SECTION 5.**

172 This Act shall become effective upon its approval by the Governor or upon its becoming law
173 without such approval.

174 **SECTION 6.**

175 All laws and parts of laws in conflict with this Act are repealed.