

House Bill 610 (COMMITTEE SUBSTITUTE)

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 on behalf of an insured:

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

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

25 (C) Directly or indirectly solicits business, investigates or adjusts losses, or advises an
26 insured about first-party claims for losses or damages arising out of policies of

27 insurance that insure real or personal property for another person engaged in the
 28 business of adjusting losses or damages covered by an insurance policy."

29 **SECTION 2.**

30 Said article is further amended in Code Section 33-23-1, relating to definitions, by revising
 31 subsection (b) and by adding a new subsection to read as follows:

32 "(b) The definitions of agent, subagent, ~~counselor, and adjuster~~ and counselor in
 33 subsection (a) of this Code section shall not be deemed to include:

34 (1) An attorney at law admitted to practice in this state, when handling the collections
 35 of premiums or advising clients as to insurance as a function incidental to the practice of
 36 law or who, ~~from time to time~~, adjusts losses which are incidental to the practice of his
 37 or her profession;

38 (2) Any representative of ocean marine insurers;

39 (3) Any representative of farmers' mutual fire insurance companies as defined in
 40 Chapter 16 of this title;

41 (4) A salaried employee of a credit or character reporting firm or agency not engaged in
 42 the insurance business who may, however, report to an insurer;

43 (5) A person acting for or as a collection agency;

44 (6) A person who makes the salary deductions of premiums for employees or, under a
 45 group insurance plan, a person who serves the master policyholder of group insurance in
 46 administering the details of such insurance for the employees or debtors of the master
 47 policyholder or of a firm or corporation by which the person is employed and who does
 48 not receive insurance commissions for such service; provided, further, that an
 49 administration fee not exceeding 5 percent of the premiums collected paid by the insurer
 50 to the administration office shall not be construed to be an insurance commission;

51 (7) Persons exempted from licensure as provided in subsection (h) of Code
 52 Section 33-23-4; or

53 (8) An individual who collects claim information from, or furnishes claim information
 54 to, insureds or claimants, who conducts data entry, and who enters data into an automated
 55 claims adjudication system, provided that the individual is an employee of a licensed
 56 independent adjuster or its affiliate where no more than 25 such persons are under the
 57 supervision of one licensed independent adjuster or licensed agent.

58 (c) In addition to paragraphs (2) through (8) of subsection (b) of this Code section, the
 59 definitions of public adjuster, independent adjuster, and adjuster in subsection (a) of this
 60 Code section shall not be deemed to include an attorney admitted to practice law in this
 61 state."

62 **SECTION 3.**

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

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

70 (2) Any individual who sells, solicits, or negotiates insurance in this state ~~must~~ shall be
 71 licensed as an agent.

72 (3) Any business entity that sells, solicits, or negotiates insurance in this state ~~must~~ shall
 73 be licensed as an agency.

74 (4) Any individual defined as an adjuster under paragraph (1) of Code Section 33-23-1
 75 who for a fee, commission, salary, or other compensation investigates, settles, or adjusts
 76 claims arising under insurance contracts on behalf of the insurer or the insured shall be
 77 licensed as either an independent adjuster or a public adjuster."

78 **SECTION 4.**

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

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

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

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

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

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

- 96 (A) ~~granting~~ Granting any allowance or offering any discount against the fees to be
 97 charged, including, but not limited to, an allowance or discount in return for displaying
 98 a sign or other advertisement at the insured's premises; or
 99 (B) ~~paying~~ Paying the insured or any person directly or indirectly associated with the
 100 property any form of compensation, gift, prize, bonus, coupon, credit, referral fee, or
 101 other item of monetary value for any reason;
- 102 (5) Misrepresent to a claimant that he or she is an adjuster representing an insurer in any
 103 capacity, including acting as an employee of the insurer or as an independent adjuster,
 104 unless appointed by an insurer in writing to act on the insurer's behalf for that specific
 105 claim or purpose. A licensed public adjuster shall not charge a claimant a fee for
 106 adjusting a claim when he or she is appointed by the insurer for that specific claim or
 107 purpose and the appointment is accepted by the public adjuster;
- 108 (6) Solicit, or attempt to solicit, an insured during the progress of a loss-producing
 109 occurrence as defined in the insured's insurance contract;
- 110 (7) Have a direct or indirect financial interest in any aspect of a claim other than the
 111 salary, fee, commission, or other consideration established in a written contract with the
 112 insured which shall incorporate all of the conditions and provisions set out in Code
 113 Section 33-23-43.1;
- 114 (8) Charge to or collect from an insured any amount, other than reasonable compensation
 115 for services rendered based on time spent and expenses incurred, in any transaction where
 116 the insurer either pays or commits in writing to pay the policy limit or limits for all
 117 coverage under the insured's policy within three business days after the loss is reported
 118 to the insurer;
- 119 (9) Misrepresent to an insured or insurer that he or she is an attorney authorized by law
 120 to provide legal advice and services or that a policy covers a loss or losses outside the
 121 scope of the coverage provided by the insurance contract;
- 122 (10) Permit an unlicensed employee or representative of the adjuster to conduct business
 123 for which a license is required; or
- 124 (11) Hire or procure another to do any act prohibited by this subsection."

125 **SECTION 5.**

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

127 "33-23-43.1.

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

- 130 (1) Legible full name of the public adjuster signing the contract, as specified on the
 131 license issued by the Department of Insurance, and attestation language that the public
 132 adjuster is fully bonded pursuant to state law;
- 133 (2) Permanent home state business address and contact information of the public
 134 adjuster, including e-mail address;
- 135 (3) The public adjuster's Department of Insurance license number and a statement that
 136 the license is valid and in full force and effect as of the date the contract is signed;
- 137 (4) The insured's full name and street address;
- 138 (5) A description of the loss and its location, if applicable;
- 139 (6) A description of services to be provided to the insured;
- 140 (7) Signatures of the public adjuster and the insured;
- 141 (8) The date the contract was signed by the public adjuster, and the date the contract was
 142 signed by the insured; and
- 143 (9) A statement of the fee, compensation, or other considerations that the public adjuster
 144 is to receive for services, including a listing of typical costs and expenses for which the
 145 public adjuster is to be reimbursed.
- 146 (10) A statement prominently captioned in a minimum 12 point font that contains the
 147 following:
- 148 (A) Any direct or indirect interest in or compensation by any construction firm, salvage
 149 firm, building appraisal firm, storage company, or any other firm or business entity that
 150 performs any work in conjunction with damages incident to any loss which the adjuster
 151 has been contracted to adjust;
- 152 (B) Any direct or indirect participation in the reconstruction, repair, or restoration of
 153 damaged property that is the subject of a claim adjusted by the adjuster or disclosure
 154 of any other activities that may be reasonably construed as a conflict of interest,
 155 including a financial interest in any salvage, repair, construction, or restoration of any
 156 business entity that obtains business in connection with any claims that the public
 157 adjuster has a contract or agreement to adjust; and
- 158 (C) Any direct or indirect compensation of value in connection with an insured's
 159 specific loss other than compensation from the insured for service as a public adjuster.
- 160 (b) Public adjuster contracts may not contain a contract term that:
- 161 (1) Restricts an insured's right to initiate and maintain direct communications with his
 162 or her attorney, the insurer, the insurer's adjuster, the insurer's attorney, or any other
 163 person regarding settlement of the insured's claim;
- 164 (2) Vests the public adjuster with the right to initiate direct communications with the
 165 insured's insurer, the insurer's adjuster, or the insurer's attorney regarding settlement of
 166 the insured's claim without specific written authorization from the insured;

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

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

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

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

176 (1) A provision granting the insured a right to rescind the contract within three business
177 days after the date the contract was signed, so long as the rescission is in writing and
178 mailed or delivered to the public adjuster at the address stated in the contract within three
179 business days. For purposes of this subsection, rescission of the contract shall be
180 considered delivered or mailed if it is delivered by electronic transmittal to the e-mail
181 address or facsimile specified in the contract for such communications;

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

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

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

194 33-23-43.2.

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

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

201 **SECTION 6.**

202 This Act shall become effective on July 1, 2014.

203 **SECTION 7.**

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