

House Bill 254 (COMMITTEE SUBSTITUTE)

By: Representatives Lumsden of the 12th, Williamson of the 115th, Taylor of the 173rd, Hugley of the 136th, and Tarvin of the 2nd

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 licensing of agents, agencies, subagents, counselors, and adjusters, so as to
3 increase the Insurance Commissioner's enforcement authority with regard to adjusters; to
4 provide for allowable types of remuneration; to provide for proof of financial responsibility;
5 to provide for record keeping; to provide for certain consumer protections; to provide for
6 advertising requirements; to provide for certain prohibited acts; to provide for related
7 matters; to repeal conflicting laws; and for other purposes.

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

9 **SECTION 1.**

10 Article 1 of Chapter 23 of Title 33 of the Official Code of Georgia Annotated, relating to
11 licensing of agents, agencies, subagents, counselors, and adjusters, is amended by revising
12 Code Section 33-23-43, relating to authority of adjusters and penalties for violation, as
13 follows:

14 "33-23-43.

15 (a) An adjuster licensed as both an independent and a public adjuster shall not represent
16 both the insurer and the insured in the same transaction.

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17 (b) An adjuster shall have authority under his or her license only to investigate, settle, or
18 adjust and report to his or her principal upon claims arising under insurance contracts on
19 behalf of insurers only if licensed as an independent adjuster or on behalf of insureds only
20 if licensed as a public adjuster.

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

22 (1) Misrepresent to an insured that he or she is required to hire an independent or public
23 adjuster to help the insured meet his or her obligations under his or her policy;

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

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

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

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

35 (B) Paying the insured or any person directly or indirectly associated with the claim
36 any form of compensation, gift, prize, bonus, coupon, credit, referral fee, or other item
37 of monetary value for any reason;

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

- 44 (6) Solicit, or attempt to solicit, an insured during the progress of a loss-producing
45 occurrence as defined in the insured's insurance contract;
- 46 (7) Have a direct or indirect financial interest in any aspect of a claim other than the
47 salary, fee, commission, or other consideration established in a written contract with the
48 insured which shall incorporate all of the conditions and provisions set out in Code
49 Section ~~33-23-43.1~~; 33-23-43.2;
- 50 (8) Charge to or collect from an insured any amount, other than reasonable compensation
51 for services rendered based on time spent and expenses incurred, in any transaction where
52 the insurer either pays or commits in writing to pay the policy limit or limits for all
53 coverage under the insured's policy within three business days after the loss is reported
54 to the insurer;
- 55 (9) Misrepresent to an insured or insurer that he or she is an attorney authorized by law
56 to provide legal advice and services or that a policy covers a loss or losses outside the
57 scope of the coverage provided by the insurance contract;
- 58 (10) Permit an unlicensed employee or representative of the adjuster to conduct business
59 for which a license is required; or
- 60 (11) Hire or procure another to do any act prohibited by this subsection.
- 61 (d) For purposes of subsection (c) of this Code section, the term 'public adjuster' shall
62 include licensed public adjusters as defined by Code Section 33-23-1, persons representing
63 themselves to be public adjusters who are not properly licensed by the Commissioner, and
64 persons committing any act under paragraph (4) of subsection (c) of this Code section.
- 65 (e) Any person who violates any provision of subsection (c) of this Code section shall be
66 guilty of a misdemeanor and such violation shall be grounds for suspension or revocation
67 of licenses under this chapter.
- 68 (f) The Commissioner may adopt reasonable and necessary rules to implement this article,
69 including but not limited to rules regarding:

- 70 (1) The qualifications for adjusters, in addition to those prescribed by this article, that are
71 necessary to promote the public interest;
72 (2) The regulation of the conduct of adjusters, in accord with this article;
73 (3) The prescription of fees not prescribed elsewhere in this title that are necessary to
74 cover the cost of filings or other administrative costs; and
75 (4) The regulation of advertisements and the definition of 'advertisement' as the term is
76 used in paragraph (4) of subsection (c) of this Code section."

77 **SECTION 2.**

78 Said article is further amended by adding a new Code section to read as follows:

79 "33-23-43.1.

80 (a) No person may act or hold himself or herself out to be a public adjuster in this state
81 unless such person holds a public adjuster license issued by the Commissioner.

82 (b) A public adjuster license is not, however, required for:

83 (1) An attorney licensed to practice law in this state while acting for an insured
84 concerning a loss under a policy; or

85 (2) A person licensed as a general property and casualty agent or personal lines property
86 and casualty agent while acting for an insurer concerning a loss under a policy issued by
87 that agent."

88 **SECTION 3.**

89 Said article is further amended by revising and renumbering Code Section 33-23-43.1,
90 related to requirements for public adjuster contracts, as follows:

91 "~~33-23-43.1.~~ 33-23-43.2.

92 (a) No person may, directly or indirectly, act within this state as a public adjuster without,
93 among other requirements, having first entered into a contract, in writing, on a form
94 approved by the Commissioner, executed in duplicate by such person and the insured or

95 the insured's duly authorized representative. A public adjuster shall not use any form of
96 contract that is not approved by the Commissioner.

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

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

102 (2) Permanent home state business address and contact information of the public
103 adjuster, including email address;

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

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

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

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

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

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

113 (9) A statement of the fee, compensation, or other considerations that the public adjuster
114 is to receive for services, including a listing of typical costs and expenses for which the
115 public adjuster is to be reimbursed; ~~and~~

116 (10) A statement prominently captioned in a minimum 12 point font that contains the
117 following:

118 (A) Any direct or indirect interest in or compensation by any construction firm, salvage
119 firm, building appraisal firm, storage company, or any other firm or business entity that
120 performs any work in conjunction with damages incident to any loss which the adjuster
121 has been contracted to adjust;

122 (B) Any direct or indirect participation in the reconstruction, repair, or restoration of
123 damaged property that is the subject of a claim adjusted by the adjuster or disclosure
124 of any other activities that may be reasonably construed as a conflict of interest,
125 including a financial interest in any salvage, repair, construction, or restoration of any
126 business entity that obtains business in connection with any claims that the public
127 adjuster has a contract or agreement to adjust; and

128 (C) Any direct or indirect compensation of value in connection with an insured's
129 specific loss other than compensation from the insured for service as a public adjuster,
130 as explicitly permitted by subsection (d) of Code Section 33-23-43.7; and

131 (11) A prominently displayed notice in 12-point boldface type that states 'WE
132 REPRESENT THE INSURED ONLY.'

133 ~~(b)~~(c) Public adjuster contracts may not contain a contract term that:

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

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

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

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

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

148 (6) Purports to allow the public adjuster to act in multiple capacities; or

149 (7) Identifies the public adjuster as also being a contractor, appraiser, or other position.
150 ~~(e)~~(d) All public adjuster contracts shall be construed to contain, by operation of law:
151 (1) A provision granting the insured a right to rescind the contract within three business
152 days after the date the contract was signed, so long as the rescission is in writing and
153 mailed or delivered to the public adjuster at the address stated in the contract within three
154 business days. For purposes of this subsection, rescission of the contract shall be
155 considered delivered or mailed if it is delivered by electronic transmittal to the ~~e-mail~~
156 email address or facsimile specified in the contract for such communications;
157 (2) A provision that if the insured exercises the right to rescind the contract, anything of
158 value given by the insured under the contract shall be returned to the insured within 15
159 business days following the receipt by the public adjuster of the rescission notice; and
160 (3) A provision requiring that, prior to initiating any contact with the insured's insurer,
161 the insurer's adjuster, or the insurer's attorney regarding settlement of the insured's claim,
162 a public adjuster must provide the insurer a notification letter signed by the insured
163 confirming that the insured has authorized the public adjuster to communicate directly
164 with the insurer, the insurer's adjuster, or the insurer's attorney on behalf of the insured.
165 ~~(d)~~(e) All public adjuster contracts shall be executed in duplicate to provide an original
166 contract to the public adjuster and an original contract to the insured. The public adjuster's
167 original contract shall be available at all times for inspection without notice by the
168 Commissioner of Insurance department.
169 (f) No public adjuster shall enter into a contract with an insured and collect a commission
170 as provided by Code Section 33-23-43.3, without having the intent to actually perform
171 services customarily provided by a public adjuster for the insured."

SECTION 4.

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

"33-23-43.3.

(a) Except as provided by subsection (b) of this Code section, an adjuster may receive a commission for service provided under this article consisting of an hourly fee, a flat rate, a percentage of the total amount paid by an insurer to resolve a claim, or another method of compensation. A public adjuster may not charge the insured an unreasonable fee, and the total commission received shall not exceed 33.3 percent of the amount of the insurance settlement of the claim.

(b) An adjuster shall not receive a commission consisting of a percentage of the total amount paid by an insurer to resolve a claim on a claim on which the insurer, not later than 72 hours after the date on which the loss is reported to the insurer, either pays or commits in writing to pay to the insured the policy limit of the insurance policy. A public adjuster is entitled to reasonable compensation from the insured for services provided by such adjuster on behalf of the insured, based on the time spent on a claim that is subject to this Code section and expenses incurred by such adjuster, until the claim is paid or the insured receives a written commitment to pay from the insurer.

(c) Except for the payment of a commission by the insured, all persons paying proceeds of a policy of insurance or making any payment affecting an insured's rights under a policy of insurance shall:

(1) Include the insured as a payee on the payment draft or check; and

(2) Require the written signature and endorsement of the insured on the payment draft or check.

(d) An adjuster shall not accept any payment that violates the provisions of this Code section.

197 (e) A public adjuster may sign or endorse a payment, draft, or check issued on behalf of
198 an insured if authorized in writing by each insured payee, and only if such written
199 endorsement meets the following criteria:

200 (1) The authorization limits the public adjuster to endorse the check or payment for
201 deposit only into the public adjuster's escrow or trust account and such authorization
202 states that the check or payment will be distributed in the percentages or amounts agreed
203 upon in the public adjuster contract;

204 (2) The authorization requires that the insured be notified of the deposit of funds, and
205 states that any distribution of such funds to the insured or the public adjuster will be
206 accompanied by a detailed breakdown of the funds distributed; and

207 (3) The authorization form states that such authorization may be revoked at any time by
208 the insured upon written notice of such revocation to the public adjuster.

209 33-23-43.4.

210 (a) As a continuing condition of licensure, a public adjuster shall file proof of financial
211 responsibility with respect to transactions with insureds under this chapter in an amount
212 determined by the Commissioner by rule. The financial responsibility shall include the
213 ability to pay sums that the public adjuster is obligated to pay under any judgment against
214 such adjuster by an insured, based on an error, omission, fraud, negligent act, or unfair
215 practice of such adjuster or any person for whose acts such adjuster is legally liable in the
216 transaction of such adjuster's business under this Code section.

217 (b) In determining the amount of the financial responsibility requirement, the
218 Commissioner shall consider the nature of the obligation, other financial security
219 requirements under this Code section, and financial security requirements adopted for
220 public adjusters in other states. In determining the types of financial responsibility
221 required, the Commissioner may consider a surety bond or a professional liability policy

222 or similar policy or contract of professional liability coverage acceptable to the
223 Commissioner.

224 (c) The requirements of this Code section are in addition to the bond requirements of Code
225 Section 33-23-6 and relevant rules and regulations promulgated by the Commissioner.

226 33-23-43.5.

227 (a) A public adjuster shall keep a complete record in this state of each of such adjuster's
228 transactions as a public adjuster. The records shall include each of the following:

229 (1) The name of the insured;

230 (2) The date, location, and amount of the loss;

231 (3) A copy of the contract between the public adjuster and the insured;

232 (4) The name of the insurer and the amount, expiration date, and number of each policy
233 under which the loss is covered;

234 (5) An itemized statement of the recoveries by the insured from the sources known to the
235 public adjuster;

236 (6) The total compensation received for the adjustment; and

237 (7) An itemized statement of disbursements made by the license holder from recoveries
238 received on behalf of the insured.

239 (b) Records required to be kept under this Code section shall be:

240 (1) Maintained in this state for at least five years after the termination of a transaction
241 with the insured; and

242 (2) Open to examination by the Commissioner.

243 33-23-43.6.

244 (a) All funds received as claim proceeds by an adjuster acting as a public adjuster are
245 received and held by such adjuster in a fiduciary capacity. Such adjuster shall not divert
246 or appropriate fiduciary funds received or held.

247 (b) An applicant for a license to act as a public adjuster shall, as part of the application,
248 endorse an authorization for disclosure to the Commissioner of all financial records of any
249 funds such adjuster holds and will hold as a fiduciary. The authorization continues in force
250 and effect for as long as such adjuster continues to be licensed under this article.

251 33-23-43.7.

252 (a) Each advertisement by an adjuster soliciting or advertising business shall display the
253 adjuster's name and license number as they appear in the records of the Commissioner.

254 (b) No advertisement soliciting or advertising business may be used by an adjuster unless
255 such solicitation or advertisement has been approved by the Commissioner.

256 (c) The following statements, made in any public adjuster's advertisement or solicitation,
257 are considered deceptive or misleading:

258 (1) A statement or representation that invites an insured to submit a claim when such
259 insured does not have covered damage to such insured's property;

260 (2) A statement or representation that invites an insured to submit a claim by offering
261 monetary or other valuable inducement;

262 (3) A statement or representation that invites an insured to submit a claim by stating that
263 there is 'no risk' to the insured by submitting such claim; and

264 (4) A statement or representation, or use of a logo or shield, that implies or could
265 mistakenly be construed to imply that the solicitation was issued or distributed by a
266 governmental agency or is sanctioned or endorsed by a governmental agency.

267 (d) For purposes of this subsection, the term 'written advertisement' includes only
268 newspapers, magazines, flyers, and bulk mailers. The following disclaimer, which is not
269 required to be printed on standard size business cards, shall be added in bold print and
270 capital letters in typeface no smaller than the typeface of the body of the text to all written
271 advertisements of a public adjuster:

272 'THIS IS A SOLICITATION FOR BUSINESS. IF YOU HAVE HAD A CLAIM FOR
273 AN INSURED PROPERTY LOSS OR DAMAGE AND YOU ARE SATISFIED WITH
274 THE PAYMENT BY YOUR INSURER, YOU MAY DISREGARD THIS
275 ADVERTISEMENT'.

276 33-23-43.8.

277 (a) An adjuster shall not solicit or attempt to solicit a client for employment during the
278 progress of a loss-producing natural disaster occurrence. For purposes of this subsection,
279 the term 'natural disaster' means any natural disaster for which a state of emergency is
280 proclaimed by the Governor.

281 (b) An adjuster shall not solicit or attempt to solicit business on a loss or a claim in person,
282 by telephone, or in any other manner at any time except between the hours of 9 A.M.
283 and 9 P.M. on a weekday or a Saturday and between noon and 9 P.M. on a Sunday. This
284 subsection shall not prohibit an adjuster from accepting phone calls or personal visits
285 during the prohibited hours from an insured on the insured's initiation.

286 (c) An adjuster shall not knowingly make any false report to the adjuster's employer or
287 client and shall not divulge to any other person, except as the law may require, any
288 information obtained except at the direction of the employer or the client for whom the
289 information is obtained.

290 (d) An adjuster shall not permit an employee or agent, in the employee's or agent's own
291 name, to advertise, solicit or engage clients, furnish reports or present bills to clients, or in
292 any manner conduct business for which a license is required under this chapter, unless such
293 employee or agent is so duly licensed.

294 (e) An agent shall not render services or perform acts that constitute the practice of law,
295 including the giving of legal advice to any person, in his or her capacity as an adjuster.

296 (f) A public adjuster shall not solicit or attempt to solicit business, directly or indirectly,
297 or act in any manner on a bodily injury loss covered by a life, health, or accident insurance
298 policy or on any claim for which the client is not an insured under the insurance policy.

299 (g) An adjuster shall not:

300 (1) Participate directly or indirectly in the reconstruction, repair, or restoration of
301 damaged property that is the subject of a claim adjusted by such adjuster;

302 (2) Engage in any other activities that may reasonably be construed as presenting a
303 conflict of interest, including soliciting or accepting any remuneration from, having a
304 financial interest in, or deriving any direct or indirect financial benefit from, any salvage
305 firm, repair firm, construction firm, or other firm that obtains business in connection with
306 any claim the adjuster has a contract or agreement to adjust;

307 (3) Without the knowledge and consent of the insured in writing, acquire an interest in
308 salvaged property that is the subject of a claim adjusted by such adjuster.

309 (4) Represent an insured on a claim or charge a fee to an insured while representing the
310 insurance carrier against which such claim is made.

311 (5) Directly or indirectly solicit employment for an attorney or enter into a contract with
312 an insured for the primary purpose of referring an insured to an attorney without the
313 intent to actually perform the services customarily provided by a licensed public adjuster.
314 This Code section shall not be construed to prohibit an adjuster from recommending a
315 particular attorney to an insured; or

316 (6) Act on behalf of an attorney during the course of a claim adjustment, through an
317 insured signed attorney representation agreement or other means.

318 (h) An adjuster shall not engage in misrepresentation to solicit a contract or agreement to
319 adjust a claim.

- 320 (i) An adjuster shall not:
321 (1) Advance money to any potential client or insured; or
322 (2) Pay, allow, or give, or offer to pay, allow, or give, directly or indirectly, to a person
323 who is not a licensed public adjuster a fee, commission, or other valuable consideration
324 for the referral of an insured to such adjuster for purposes of the insured entering into a
325 contract with such adjuster or for any related purpose.
- 326 (j) An adjuster shall not use any letterhead, advertisement, or other printed matter, or use
327 any other means, to represent that such adjuster is an instrumentality of the federal
328 government, of a state, or of a political subdivision of a state.
- 329 (k) A contractor shall not act as a public adjuster or advertise to adjust claims for any
330 property for which the contractor is providing or may provide contracting services,
331 regardless of whether the contractor:
332 (1) Holds a license under this chapter; or
333 (2) Is authorized to act on behalf of the insured under a power of attorney or other
334 agreement.
- 335 (l) A public adjuster shall not accept a fee, commission, or other valuable consideration
336 of any nature, regardless of form or amount, in exchange for the referral by such adjuster
337 of an insured to any third-party individual or firm, including an attorney, appraiser, umpire,
338 construction company, contractor, or salvage company.
- 339 (m) No person who has had his or her license under this title refused or revoked shall be
340 an owner, officer, or director of a business entity, association, or corporation if such entity,
341 association, or corporation holds itself out as a public adjuster, a public adjusting firm, or
342 otherwise represents itself or acts as an association of public adjusters or an association
343 which offers public adjusting services."

344 **SECTION 5.**

345 Said article is further amended by revising and renumbering Code Section 33-23-43.2,
346 relating to standard of conduct for public adjusters, as follows:

347 "~~33-23-43.2.~~ 33-23-43.9.

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

352 (b) A public adjuster shall faithfully observe all of the terms and provisions of the public
353 adjuster contract as prescribed in Code Section ~~33-23-43.1.~~ 33-23-43.2."

354 **SECTION 6.**

355 Said article is further amended by adding a new Code section to read as follows:

356 "33-23-43.10.

357 (a) The Commissioner may deny an application for a license or suspend or revoke a license
358 issued to any public adjuster on the basis of:

359 (1) A violation of this article or of any rule adopted by the Commissioner under this
360 article;

361 (2) A cause that constitutes grounds for denial of an original license;

362 (3) Misrepresentation or fraud in obtaining a license;

363 (4) The failure to pass a required license examination;

364 (5) The misappropriation or conversion of money required to be held in a fiduciary
365 capacity;

366 (6) Material misrepresentation, with intent to deceive, of the terms of an insurance
367 contract;

368 (7) Engaging in a fraudulent transaction;

369 (8) Demonstrating incompetence or untrustworthiness in the conduct of the license
370 holder's affairs under the license, as determined by the Commissioner;
371 (9) Conviction of a felony by a final judgment in a court of competent jurisdiction; or
372 (10) Material misrepresentation, with intent to deceive, of the person's status as a public
373 adjuster.
374 (b) If the department proposes to refuse to issue an original license under this article or
375 to suspend, revoke, or refuse to renew a license under this article, the rejected applicant or
376 affected licensee is entitled to a notice and hearing in accordance with chapter 2 of this
377 title."

378 **SECTION 7.**

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