

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 1st Session of the 55th Legislature (2015)

4 COMMITTEE SUBSTITUTE
5 FOR ENGROSSED
6 SENATE BILL NO. 439

By: Quinn of the Senate

and

Grau of the House

8
9 COMMITTEE SUBSTITUTE

10 An Act relating to insurance adjusters; amending 36
11 O.S. 2011, Sections 6205, 6214, 6216.2, 6218, 6220
12 and 6220.1, which relate to the Insurance Adjusters
13 Licensing Act; modifying nonresident applicant
14 eligibility; increasing amount of certain surety
15 bond; updating references; requiring return of
16 certain things of value after cancellation notice;
17 modifying statement required in contract for
18 services; modifying contents of contract for
19 services; requiring certain information be included
20 in contract for services; providing certain
21 requirements upon adjuster when an insurer pays
22 certain policy coverage limits; prohibiting certain
23 terms in a public adjuster contract; requiring
24 certain duplicate contracts; authorizing adjuster be
 named as a joint payee; authorizing certain
 declaration of emergency; modifying duration of
 emergency adjuster license; limiting claims emergency
 adjuster may adjust; limiting certain compensation
 public adjuster may receive; providing applicability;
 adding instances the Insurance Commissioner may
 suspend, revoke, fail to issue or renew license;
 authorizing the Insurance Department to impose
 certain penalties and remedies; prohibiting certain
 acts; providing penalty; modifying applicability;
 providing public adjuster requirements; providing for
 codification; and providing an effective date.

1 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

2 SECTION 1. AMENDATORY 36 O.S. 2011, Section 6205, is
3 amended to read as follows:

4 Section 6205. A. Application for a license as an adjuster
5 shall be made to the Insurance Commissioner upon forms prescribed
6 and furnished by the Commissioner. As a part of and in connection
7 with the application, the applicant shall furnish such information
8 concerning the applicant's identity, personal history, business
9 experience, business record and such other pertinent information
10 which the Commissioner shall reasonably require.

11 B. Unless denied licensure pursuant to Section 6220 of this
12 title, a nonresident applicant shall receive a nonresident adjuster
13 license if:

14 1. The applicant has passed an examination in the applicant's
15 home state or in another state in which the applicant is currently
16 licensed and in good standing;

17 2. The applicant is currently licensed and in good standing in
18 the home state of the applicant;

19 3. The applicant has submitted the proper request for licensure
20 and has paid the fees required by Section 6212 of this title; and

21 4. The applicant's home state awards nonresident adjuster
22 licenses to residents of this state on the same basis.

23 C. If a nonresident applicant's home state does not license or
24 require an examination for an adjuster license, the adjuster may

1 declare another state which has an examination requirement and in
2 which the adjuster is licensed to be the home state. Should the
3 applicant not hold an active adjuster license in his or her home
4 state or declared home state, the applicant shall pass the adjuster
5 examination of this state prior to receiving a nonresident adjuster
6 license.

7 D. An individual who is a resident of Canada shall not be
8 licensed pursuant to the Insurance Adjusters Licensing Act nor
9 designate this state as the individual's home state, unless the
10 individual has successfully passed the adjuster examination and has
11 complied with all applicable requirements of the Insurance Adjusters
12 Licensing Act; except that any such applicant shall not be required
13 to comply with paragraph 2 of subsection A of Section 6206 of this
14 title or Section 6215 of this title.

15 SECTION 2. AMENDATORY 36 O.S. 2011, Section 6214, is
16 amended to read as follows:

17 Section 6214. A. Prior to the issuance of a license as a
18 public adjuster or any renewal of the license, the applicant shall
19 file with the Commissioner a surety bond in favor of the people of
20 the State of Oklahoma, executed by a surety company authorized to do
21 business in the state, in the amount of ~~Ten Thousand Dollars~~
22 ~~(\$10,000.00)~~ Twenty-five Thousand Dollars (\$25,000.00). The total
23 aggregate liability on the bond may be limited to the payment of ~~Ten~~
24 ~~Thousand Dollars (\$10,000.00)~~ Twenty-five Thousand Dollars

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

1 (\$25,000.00). The bond shall be conditioned on the accounting by
2 the adjuster to any insured whose claim the adjuster is handling for
3 monies or any other settlement received in connection with the
4 claim.

5 B. Any bond shall remain in force concurrently with the license
6 or until the surety is released from liability by the Commissioner,
7 or until canceled by the surety. Without prejudice to any liability
8 accrued prior to the cancellation, the surety may cancel a bond upon
9 thirty (30) days' advance notice in writing filed with the
10 Commissioner.

11 C. Effective December 1, 1983, such bond shall be required of
12 all public adjusters.

13 SECTION 3. AMENDATORY 36 O.S. 2011, Section 6216.2, is
14 amended to read as follows:

15 Section 6216.2 A. The ~~owner of damaged property~~ insured has
16 the right to cancel any compensation agreement entered into with a
17 licensed public adjuster until midnight of the third business day
18 after the day on which the signed agreement was ~~signed~~ provided to
19 the insured.

20 B. Cancellation occurs when the ~~buyer~~ insured gives written
21 notice of cancellation to the licensed public adjuster at the
22 address stated in the agreement between the parties. Notice of
23 cancellation may be given by mail and is given when deposited in a
24 United States mail box properly addressed and postage prepaid.

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1 Notice of cancellation must contain the written intention of the
2 ~~owner~~ insured to cancel the agreement. No liability accrues to the
3 ~~owner~~ insured when the agreement is canceled within said period,
4 except for reasonable expense incurred by the public adjuster in
5 preserving the damaged premises during the said three-day period.
6 Anything of value given by the insured under the contract shall be
7 returned to the insured within fifteen (15) business days following
8 the receipt by the public adjuster of the cancellation notice.

9 C. Every contract for services to be rendered by a public
10 adjuster shall contain the following statement. It shall be in
11 boldface ten-point or larger type and located conspicuously on the
12 front face of the contract. "THIS CONTRACT MAY BE CANCELED WITHIN
13 THREE (3) DAYS AFTER THE ~~OWNER OF THE DAMAGED PROPERTY~~ INSURED PARTY
14 HAS ~~SIGNED~~ RECEIVED AN ORIGINAL SIGNED COPY OF THIS AGREEMENT".

15 D. Every contract for services to be rendered by a public
16 adjuster shall ~~clearly indicate the time, date, and place of~~
17 ~~execution of the contract. This information shall be part of the~~
18 ~~contract and shall be placed thereon before execution~~ be in writing
19 and contain the following information:

- 20 1. Legible full name of the public adjuster signing the
21 contract, as specified in Insurance Department records;
- 22 2. Permanent home state business address and phone number;
- 23 3. Department license number;
- 24 4. Title of "Public Adjuster Contract";

- 1 5. The insured's full name, street address, insurance company
2 name and policy number, if known or upon notification;
- 3 6. A description of the loss and its location, if applicable;
4 7. Description of services to be provided to the insured;
5 8. Signatures of the public adjuster and the insured;
6 9. Date contract was signed by the public adjuster and date the
7 contract was signed by the insured;
- 8 10. Full salary, fee, commission, compensation or other
9 considerations the public adjuster is to receive for services
10 pursuant to the following guidelines:
- 11 a. if the compensation is based on a share of the
12 insurance settlement, the exact percentage shall be
13 specified,
- 14 b. initial expenses to be reimbursed to the public
15 adjuster from the proceeds of the claim payment shall
16 be specified by type, with dollar estimates set forth
17 in the contract and with any additional expenses first
18 approved by the insured,
- 19 c. compensation provisions in a public adjusting contract
20 shall not be redacted in any copy of a contract
21 provided to the Department upon request. Such a
22 redaction shall constitute an omission of material
23 fact, and
- 24

1 d. the public adjuster and the insured shall both
2 indicate their agreement to the compensation
3 provision(s) of the contract by initialing next to the
4 provision(s) in the contract.

5 E. If the insurer, not later than seventy-two (72) hours after
6 the date on which the loss is reported to the insurer, either pays
7 or commits in writing to pay to the insured a policy coverage
8 limit(s), the public adjuster shall, with respect to that coverage:

9 1. Not receive a commission consisting of a percentage of the
10 total amount paid by an insurer to resolve a claim;

11 2. Inform the insured that loss recovery amount might not be
12 increased by insurer; and

13 3. Be entitled only to reasonable compensation from the insured
14 for services provided by the public adjuster on behalf of the
15 insured, based on the time spent on a claim and expenses incurred by
16 the public adjuster, until the claim is paid or the insured receives
17 a written commitment to pay from the insurer.

18 F. A public adjuster contract may not contain any contract term
19 that:

20 1. Allows the public adjuster's percentage fee to be collected
21 when money is due from an insurance company but not paid, or that
22 allows a public adjuster to collect the entire fee from the first
23 check issued by an insurance company, rather than as a percentage of
24 each check issued by an insurance company;

1 2. Requires the insured to authorize an insurance company to
2 issue a check only in the name of the public adjuster;

3 3. Imposes collection costs or late fees; or

4 4. Precludes any party from pursuing civil remedies.

5 G. A public adjuster contract shall be executed in duplicate to
6 provide an original contract to the public adjuster and an original
7 contract to the insured at the time of signing.

8 H. A public adjuster contract may specify that the public
9 adjuster shall be named as a joint payee on an insurer's payment of
10 a claim.

11 I. The Insurance Commissioner reserves the right to approve
12 forms of contracts containing language other than that specified in
13 ~~subsection A~~ of this section if such language reasonably discloses
14 to the insured the statutory rights under this section and is
15 otherwise consistent with all other provisions of law and
16 regulations promulgated.

17 SECTION 4. AMENDATORY 36 O.S. 2011, Section 6218, is
18 amended to read as follows:

19 Section 6218. A. In the event of a catastrophe, the Insurance
20 Commission may declare an emergency to exist, and in the event of
21 such a declaration, the Commissioner may issue a license as an
22 emergency adjuster to any resident or nonresident applicant. Such
23 declaration of emergency may be made per zip code or on a county-by-
24 county basis, or any combination thereof. An individual licensed as

1 an emergency adjuster pursuant to this section may only adjust
2 claims related to the catastrophe. ~~Said~~ The applicant shall not
3 have to be a licensed adjuster. An applicant for this license shall
4 be certified in the manner prescribed by the Commissioner by an
5 adjuster licensed in this state or by an insurer who maintains an
6 office in this state and is licensed to do business in this state.
7 A licensed adjuster or insurer who certifies an applicant for this
8 license shall be responsible for any losses caused by the applicant
9 or for any improper claim handling practices committed by the
10 applicant. The employer of this applicant shall certify the
11 application for license as an emergency adjuster to the Commissioner
12 within five (5) days after the applicant begins working as an
13 emergency adjuster for ~~said~~ the employer. The license as an
14 emergency adjuster shall remain in force for not more than ninety
15 (90) days from the date ~~of issue, unless extended for an additional~~
16 ~~ninety (90) days by~~ the Commissioner issues an emergency declaration
17 order. The emergency declaration order may be extended an
18 additional ninety (90) days at the Commissioner's discretion. An
19 emergency adjuster may only adjust claims resulting from the
20 particular catastrophe for which the emergency declaration order is
21 issued.

22 B. The Commissioner may suspend or revoke the right of any
23 person acting as an adjuster or an emergency adjuster in this state
24 pursuant to the authority derived from the provisions of the

1 Insurance Adjusters Licensing Act to continue to adjust claims in
2 this state after a hearing on the suspension or revocation if the
3 Commissioner finds that said person has engaged in any of the
4 practices forbidden to a licensed adjuster. Notice of the hearing
5 on said suspension or revocation shall be given personally or shall
6 be sent by mail to the address stated in the registration. A
7 duplicate copy of the notice shall be given to the insurer.

8 C. No public adjuster shall charge, agree to or accept as
9 compensation or reimbursement any payment, commission, fee or other
10 thing of value equal to more than ten percent (10%) of the amount of
11 the insurance settlement claim paid by the insurer on any claim
12 resulting from a catastrophe declared by the Commissioner to be an
13 emergency pursuant to subsection A of this section. The provisions
14 of this subsection shall not apply to a public adjuster providing
15 public adjuster services on behalf of a for-profit commercial
16 entity.

17 SECTION 5. AMENDATORY 36 O.S. 2011, Section 6220, is
18 amended to read as follows:

19 Section 6220. A. The Commissioner may censure, suspend,
20 revoke, or refuse to issue ~~a renewal~~ or renew a license after
21 hearing for any of the following causes:

22 1. Material misrepresentation or fraud in obtaining an
23 adjuster's license; ~~or~~

24

1 2. Any cause for which original issuance of a license could
2 have been refused; ~~or~~

3 3. Misappropriation, conversion to the personal use of the
4 licensee, or illegal withholding of monies required to be held by
5 the licensee in a fiduciary capacity; ~~or~~

6 4. Material misrepresentation of the terms and effect of any
7 insurance contract, with intent to deceive, or engaging in, or
8 attempting to engage in, any fraudulent transaction with respect to
9 a claim or loss that the licensee or the trainee is adjusting and,
10 in the case of a public adjuster, misrepresentation of the services
11 offered or the fees or commission to be charged; ~~or~~

12 5. Conviction of or pleading guilty or nolo contendere to a
13 felony pursuant to the laws of this state, any other state, the
14 United States, or any foreign country; ~~or~~

15 6. If in the conduct of business affairs, the licensee or
16 trainee has shown himself to be, and is so deemed by the
17 Commissioner, incompetent, untrustworthy or a source of injury to
18 the public; ~~or~~

19 7. Refusal to comply with any lawful order of the Commissioner;
20 ~~or~~

21 8. Violation of any provision of the Insurance Adjusters
22 Licensing Act; ~~or~~

23 9. Adjusting losses or negotiating claim settlements arising
24 pursuant to provisions of insurance contracts on behalf of an

1 insurer without proper licensing or authority from the licensed
2 insurer;

3 10. Failing to respond to any inquiry (including electronic
4 communications) from the Department within thirty (30) calendar days
5 of receipt of such inquiry;

6 11. Forging another's name to any document;

7 12. Obtaining or attempting to obtain a license through
8 misrepresentation or fraud;

9 13. Having admitted or been found to have committed any
10 insurance unfair trade practice or insurance fraud;

11 14. Having an insurance adjuster license or its equivalent
12 denied, suspended, censured, placed on probation or revoked in any
13 other state, province, district or territory;

14 15. Failing to inform the Department, by any means acceptable
15 to the Department, of a change of address, change of legal name or
16 change of information submitted on the application within thirty
17 (30) days of the change; or

18 16. Providing services as a public adjuster, company adjuster
19 or independent adjuster on the same claim.

20 B. In addition to or in lieu of any applicable denial,
21 suspension, or revocation of a license, any person violating the
22 provisions of ~~this section~~ the Insurance Adjusters Licensing Act may
23 be subject to a civil fine of not more than One Thousand Dollars
24

1 (\$1,000.00) for each violation. This fine may be enforced in the
2 same manner in which civil judgment may be enforced.

3 C. If the license of an adjuster is suspended, revoked, or not
4 renewed, the licensee shall surrender said license to the
5 Commissioner.

6 D. The Commissioner shall not reinstate a license to any person
7 whose license has been suspended, revoked, or refused renewal until
8 the Commissioner determines that the cause or causes for the
9 suspension, revocation, or nonrenewal of said license no longer
10 exist.

11 E. The Department shall retain the authority to enforce the
12 provisions of and impose any penalty or remedy authorized by this
13 title against any person who is under investigation for or charged
14 with a violation even if the person's license or registration has
15 been surrendered or has lapsed by operation of law.

16 F. It shall be unlawful for any person, firm, association,
17 company or corporation to act as an adjuster without first obtaining
18 a license pursuant to the Insurance Adjusters Licensing Act. Any
19 person convicted of violating the provisions of this subsection
20 shall be guilty of a misdemeanor and shall be punished as set forth
21 in Section 10 of Title 21 of the Oklahoma Statutes.

22 SECTION 6. AMENDATORY 36 O.S. 2011, Section 6220.1, is
23 amended to read as follows:
24

1 Section 6220.1 A. No adjuster may, directly or indirectly, own
2 or have a pecuniary interest in any business entity which provides
3 construction or reconstruction related services on behalf of an
4 insurance claimant or insured for which the adjuster is providing
5 services, nor may the adjuster, directly or indirectly, own or have
6 a pecuniary interest in any other business entity which furnishes
7 any supplies, material, services, or equipment purchased by or on
8 behalf of the claimant or insured in settlement of the claim, other
9 than usual and customary supplies, materials, services, or equipment
10 utilized in the adjusting process.

11 B. Any person who violates the provisions of this section shall
12 be subject to disciplinary action or a civil fine, or both, as set
13 forth in Section 6220 of Title 36 of the Oklahoma Statutes.

14 C. This section shall not apply to an adjuster providing
15 services on a claim which is located ~~in the county in which the~~
16 ~~adjuster maintains their principal place of business, or~~ in a
17 municipality having a population of less than six thousand (6,000)
18 persons; provided, however, the adjuster shall give written
19 disclosure of the potential conflict of interest to both the insured
20 and insurer prior to the performance of any adjuster services.

21 SECTION 7. NEW LAW A new section of law to be codified
22 in the Oklahoma Statutes as Section 6223 of Title 36, unless there
23 is created a duplication in numbering, reads as follows:

24

1 A. A public adjuster shall not misrepresent to a claimant that
2 the public adjuster is an adjuster representing an insurer in any
3 capacity, including acting as an employee of the insurer or acting
4 as an independent adjuster.

5 B. No public adjuster shall split any commission, service fee
6 or other valuable consideration for performing adjusting services
7 with any person or entity unless that person or entity is required
8 to be licensed as a public adjuster under this title and is so
9 licensed.

10 C. Prior to the signing of the contract the public adjuster
11 shall provide the insured with a separate disclosure document
12 regarding the claim process that states:

13 1. Property insurance policies obligate the insured to present
14 a claim to his or her insurance company for consideration. There
15 are three types of adjusters that could be involved in that process.
16 The definitions of the three types are as follows:

17 a. "company adjuster" means the insurance adjusters who
18 are employees of an insurance company. They represent
19 the interest of the insurance company and are paid by
20 the insurance company. They will not charge you a
21 fee,

22 b. "independent adjuster" means the insurance adjusters
23 who are hired on a contract basis by an insurance
24 company to represent the insurance company's interest

1 in the settlement of the claim. They are paid by your
2 insurance company. They will not charge you a fee,
3 and

4 c. "public adjuster" means the insurance adjusters who do
5 not work for any insurance company. They work for the
6 insured to assist in the preparation, presentation and
7 settlement of the claim. The insured hires them by
8 signing a contract agreeing to pay them a fee or
9 commission based on a percentage of the settlement, or
10 other method of compensation;

11 2. The insured is not required to hire a public adjuster to
12 help the insured meet his or her obligations under the policy, but
13 has the right to do so;

14 3. The public adjuster is not a representative or employee of
15 the insure; and

16 4. The salary, fee, commission or other consideration is the
17 obligation of the insured, not the insurer.

18 D. The public adjuster shall provide the insurer a notification
19 letter which has been signed by the insured authorizing the public
20 adjuster to represent the insured's interest.

21 E. A public adjuster who receives, accepts or holds any funds
22 on behalf of an insured towards the settlement of a claim for loss
23 or damage shall deposit the funds in a non-interest-bearing escrow
24 or trust account in a financial institution that is insured by an

1 agency of the federal government in the public adjuster's home state
2 or where the loss occurred.

3 F. A public adjuster shall maintain a complete record of each
4 transaction as a public adjuster for at least five (5) years after
5 the termination of the transaction and the record shall be open to
6 examination by the Department at all times. The records required by
7 this subsection shall include the following:

8 1. Name of the insured;

9 2. Date, location and amount of the loss;

10 3. Copy of the signed contract between the public adjuster and
11 insured;

12 4. Name of the insurer, amount, expiration date and number of
13 each policy carried with respect to the loss;

14 5. Itemized statement of the insured's recoveries;

15 6. Itemized statement of all compensation received by the
16 public adjuster, from any source whatsoever, in connection with the
17 loss;

18 7. A register of all monies received, deposited, disbursed or
19 withdrawn in connection with a transaction with an insured,
20 including fees, transfers and disbursements from a trust account,
21 and all transactions concerning all interest-bearing accounts;

22 8. Name of the public adjuster who executed the contract; and
23
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1 9. Name of the attorney representing the insured, if
2 applicable, and the name of the claims representatives of the
3 insurance company.

4 G. A public adjuster is obligated under his or her license to
5 serve with objectivity and complete loyalty to the interest of his
6 or her client alone; and to render to the insured such information,
7 counsel and service as within the knowledge, understanding and
8 opinion in good faith of the licensee will best serve the insured's
9 insurance claim needs and interest.

10 H. A public adjuster shall not solicit or attempt to solicit an
11 insured during the progress of a loss-producing occurrence.

12 I. A public adjuster shall not permit an unlicensed employee or
13 representative of the public adjuster to conduct business for which
14 a license is required.

15 J. A public adjuster shall not acquire any interest in salvage
16 of property subject to the contract with the insured unless the
17 public adjuster obtains written permission from the insured after
18 settlement of the claim with the insurer.

19 K. The public adjuster shall not refer or direct the insured to
20 obtain needed repairs or services in connection with a loss from any
21 person or entity with whom the public adjuster has a financial
22 interest or from whom the public adjuster may receive direct or
23 indirect compensation for the referral.

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~~Strike thru~~ language denotes deletion from present Statutes.

1 L. Any compensation or anything of value in connection with an
2 insured's specific loss that will be received by a public adjuster
3 from any third party shall be disclosed by the public adjuster to
4 the insured in writing including the source and amount of any such
5 compensation.

6 M. A public adjuster shall not enter into a contract or accept
7 a power of attorney that vests in the public adjuster the effective
8 authority to choose the persons who shall perform repair work.

9 N. A public adjuster may not agree to any loss settlement
10 without the insured's knowledge and consent.

11 O. On a percentage fee contract, a public adjuster may not
12 require, demand or accept any fee, retainer, compensation, deposit
13 or other thing of value prior to payment of any claim proceeds,
14 whether such payment is partial in nature or payment in full.

15 SECTION 8. This act shall become effective November 1, 2015.

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17 COMMITTEE REPORT BY: COMMITTEE ON INSURANCE, dated 04/13/2015 - DO
18 PASS, As Amended.

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