S T A T E O F N E W Y O R K

3771--A

2013-2014 Regular Sessions

I N S E N A T E

February 14, 2013

Introduced by Sen. KLEIN -- read twice and ordered printed, and when printed to be committed to the Committee on Insurance -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the insurance law, in relation to public adjusters and payment of property/casualty claims

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Subsection (a) of section 2108 of the insurance law is amended by adding two new paragraphs 5 and 6 to read as follows:

(5) EACH PUBLIC ADJUSTER SHALL HAVE AN AFFIRMATIVE DUTY TO ACT ON BEHALF OF AND IN THE BEST INTERESTS OF THE INSURED WHEN SETTLING OR NEGOTIATING AN INSURANCE CLAIM FOR SUCH INSURED.

(6) (I) NO PUBLIC ADJUSTER SHALL RECEIVE ANY COMPENSATION OR RECEIVE ANYTHING OF VALUE, OTHER THAN OF NOMINAL VALUE, EITHER DIRECTLY OR INDIRECTLY, IN CONSIDERATION OF A REFERRAL OF AN INSURED, OR UPON THE RECOMMENDATION OR SUGGESTION THAT SERVICES, WORK OR REPAIRS, RELATING TO ANY INSURANCE CLAIM SETTLED OR NEGOTIATED BY THE PUBLIC ADJUSTER, BE PERFORMED BY A PARTICULAR ENTITY OR INDIVIDUAL.

(II) PROVIDED, HOWEVER, THAT A PUBLIC ADJUSTER MAY RECEIVE COMPENSATION FOR A REFERRAL OF SERVICES, WORK OR REPAIRS, OR HAVE A FINANCIAL OR OWNERSHIP INTEREST IN A BUSINESS THAT PERFORMS SUCH SERVICES, WORK OR REPAIRS, IF SUCH REFERRAL FEE, OR FINANCIAL OR OWNERSHIP INTEREST IS PROMINENTLY AND CLEARLY DISCLOSED TO THE INSURED IN THE COMPENSATION AGREEMENT WITH SUCH PUBLIC ADJUSTER OR IN ANOTHER CONTRACT OR DISCLOSURE FORM THAT IS SIGNED BY BOTH THE PUBLIC ADJUSTER AND THE INSURED. THE AGGREGATE OF ALL FEES RECEIVED BY SUCH PUBLIC ADJUSTER SHALL NOT EXCEED THE MAXIMUM COMPENSATION OR FEE PROVIDED FOR IN SUCH COMPENSATION AGREEMENT.

S 2. Paragraph 1 of subsection (c) of section 2108 of the insurance law is amended to read as follows:

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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(1) The superintendent may issue an independent adjuster's license or a public adjuster's license to any person, firm, association or corporation, hereinafter designated as licensee, who, or which, is trustworthy and competent to act as an adjuster in such manner as to safeguard the interests of the people of this state and who, or which, has complied with the prerequisites herein prescribed. FURTHERMORE, EVERY PERSON, FIRM, ASSOCIATION AND CORPORATION LICENSED AS A PUBLIC ADJUSTER SHALL ACT IN SUCH A MANNER AS TO SAFEGUARD THE BEST INTERESTS OF THE INSUREDS WHICH HE, SHE OR IT REPRESENTS AND HE OR SHE SHALL NOT RECEIVE ADDITIONAL FEES OR COMPENSATION NOT PROVIDED FOR IN THE COMPENSATION AGREEMENT BETWEEN THE PUBLIC ADJUSTER AND THE INSURED BASED ON ANY REFERRAL FEE, OR FINANCIAL OR OWNERSHIP INTEREST IN A BUSINESS THAT PERFORMS REFERRED SERVICES, WORK OR REPAIRS THAT HAS NOT BEEN CLEARLY DISCLOSED TO THE INSURED.

S 3. Subsection (p) of section 2108 of the insurance law, as amended by chapter 570 of the laws of 1985, is amended to read as follows:

(p) No adjuster shall have any right to compensation from any insured for or on account of services rendered to such insured as a public adjuster unless such right to compensation is based upon a written memorandum, signed by the party to be charged, and specifying or clearly defining the amount or extent of such compensation. The superintendent shall establish and prescribe regulations:

(1) to provide for a standard form and terms of said written memorandum for compensation, including the maximum amount to be charged;

(2) to provide for compliance with article ten-A of the personal property law relating to door to door sales; however, for the purpose of this section, "door to door sale" in addition to the definition thereof contained in subdivision one of section four hundred twenty-six of the personal property law, shall include any contract entered into by a public adjuster to adjust losses;

(3) TO PROHIBIT ANY PUBLIC ADJUSTER, OR HIS OR HER SPOUSE, FROM RECEIVING ANY FORM OF COMPENSATION, OTHER THAN OF NOMINAL VALUE, DIRECTLY OR INDIRECTLY, FROM ANY INDIVIDUAL OR ENTITY WHICH SUCH ADJUSTER RECOMMENDS OR SUGGESTS TO AN INSURED FOR THE PERFORMANCE OF SERVICES, WORK OR REPAIRS, UNLESS SUCH FORM OF COMPENSATION IS CLEARLY DISCLOSED TO SUCH INSURED;

(4) TO PROHIBIT THE RECEIPT OF ANY FORM OF COMPENSATION BASED ON ANY FINANCIAL OR OWNERSHIP INTEREST IN ANY PROVIDER OF SERVICES, WORK OR REPAIR THAT HAS NOT BEEN CLEARLY DISCLOSED TO THE INSURED; IN THE EVENT A PUBLIC ADJUSTER SUGGESTS OR RECOMMENDS TO AN INSURED THAT SERVICES, WORK OR REPAIRS BE MADE BY ANY INDIVIDUAL TO WHICH SUCH ADJUSTER IS RELATED BY BLOOD OR AFFINITY TO THE SECOND DEGREE OF CONSANGUINITY, THE PUBLIC ADJUSTER SHALL DISCLOSE SUCH RELATIONSHIP TO THE INSURED;

(5) to provide for maintenance of appropriate books and records to be maintained by public adjusters which shall be kept subject to inspection and examination by the superintendent; and

[(4)] (6) to provide for such other regulations that are deemed necessary by the superintendent for the proper and adequate supervision of public adjusters.

S 4. Paragraphs 15 and 16 of subsection (a) of section 2110 of the insurance law are renumbered paragraphs 16 and 17 and a new paragraph 15 is added to read as follows:

(15) WHILE ACTING AS A PUBLIC ADJUSTER, HE OR SHE FAILS TO ACT IN THE BEST INTERESTS OF AN INSURED, OR FAILS TO CLEARLY AND SPECIFICALLY DISCLOSE ANY CONFLICT OF INTEREST TO AN INSURED, INCLUDING DISCLOSURE TO THE INSURED OF ANY COMPENSATION RECEIVED FROM, OR FINANCIAL OR OWNERSHIP

INTEREST HE OR SHE, OR ANY INDIVIDUAL TO WHICH THE ADJUSTER IS RELATED TO THE SECOND DEGREE OF CONSANGUINITY, HAS IN ANY BUSINESS PROVIDING SERVICES, WORK OR REPAIRS WHEN SUCH ADJUSTER REFERS THE INSURED TO SUCH BUSINESS;

S 5. This act shall take effect on the first of January next succeeding the date on which it shall have become a law.