

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:

1 Section 1. Subsection (a) of section 2108 of the insurance law is
2 amended by adding two new paragraphs 5 and 6 to read as follows:
3 (5) EACH PUBLIC ADJUSTER SHALL HAVE AN AFFIRMATIVE DUTY TO ACT ON
4 BEHALF OF AND IN THE BEST INTERESTS OF THE INSURED WHEN SETTLING OR
5 NEGOTIATING AN INSURANCE CLAIM FOR SUCH INSURED.
6 (6) (I) NO PUBLIC ADJUSTER SHALL RECEIVE ANY COMPENSATION OR RECEIVE
7 ANYTHING OF VALUE, OTHER THAN OF NOMINAL VALUE, EITHER DIRECTLY OR INDI-
8 RECTLY, IN CONSIDERATION OF A REFERRAL OF AN INSURED, OR UPON THE RECOM-
9 MENDATION OR SUGGESTION THAT SERVICES, WORK OR REPAIRS, RELATING TO ANY
10 INSURANCE CLAIM SETTLED OR NEGOTIATED BY THE PUBLIC ADJUSTER, BE
11 PERFORMED BY A PARTICULAR ENTITY OR INDIVIDUAL.
12 (II) PROVIDED, HOWEVER, THAT A PUBLIC ADJUSTER MAY RECEIVE COMPEN-
13 SATION FOR A REFERRAL OF SERVICES, WORK OR REPAIRS, OR HAVE A FINANCIAL
14 OR OWNERSHIP INTEREST IN A BUSINESS THAT PERFORMS SUCH SERVICES, WORK OR
15 REPAIRS, IF SUCH REFERRAL FEE, OR FINANCIAL OR OWNERSHIP INTEREST IS
16 PROMINENTLY AND CLEARLY DISCLOSED TO THE INSURED IN THE COMPENSATION
17 AGREEMENT WITH SUCH PUBLIC ADJUSTER OR IN ANOTHER CONTRACT OR DISCLOSURE
18 FORM THAT IS SIGNED BY BOTH THE PUBLIC ADJUSTER AND THE INSURED. THE
19 AGGREGATE OF ALL FEES RECEIVED BY SUCH PUBLIC ADJUSTER SHALL NOT EXCEED
20 THE MAXIMUM COMPENSATION OR FEE PROVIDED FOR IN SUCH COMPENSATION AGREE-
21 MENT.
22 S 2. Paragraph 1 of subsection (c) of section 2108 of the insurance
23 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 (1) The superintendent may issue an independent adjuster's license or
2 a public adjuster's license to any person, firm, association or corpo-
3 ration, hereinafter designated as licensee, who, or which, is trustwor-
4 thy and competent to act as an adjuster in such manner as to safeguard
5 the interests of the people of this state and who, or which, has
6 complied with the prerequisites herein prescribed. FURTHERMORE, EVERY
7 PERSON, FIRM, ASSOCIATION AND CORPORATION LICENSED AS A PUBLIC ADJUSTER
8 SHALL ACT IN SUCH A MANNER AS TO SAFEGUARD THE BEST INTERESTS OF THE
9 INSURED WHICH HE, SHE OR IT REPRESENTS AND HE OR SHE SHALL NOT RECEIVE
10 ADDITIONAL FEES OR COMPENSATION NOT PROVIDED FOR IN THE COMPENSATION
11 AGREEMENT BETWEEN THE PUBLIC ADJUSTER AND THE INSURED BASED ON ANY
12 REFERRAL FEE, OR FINANCIAL OR OWNERSHIP INTEREST IN A BUSINESS THAT
13 PERFORMS REFERRED SERVICES, WORK OR REPAIRS THAT HAS NOT BEEN CLEARLY
14 DISCLOSED TO THE INSURED.

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

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

23 (1) to provide for a standard form and terms of said written memoran-
24 dum for compensation, including the maximum amount to be charged;

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

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

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

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

47 [(4)] (6) to provide for such other regulations that are deemed neces-
48 sary by the superintendent for the proper and adequate supervision of
49 public adjusters.

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

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

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

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