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

5775

2013-2014 Regular Sessions

I N S E N A T E

June 14, 2013

Introduced by Sens. KLEIN, MARTINS -- read twice and ordered printed, and when printed to be committed to the Committee on Insurance

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. Section 2108 of the insurance law is amended by adding a new subsection (s) to read as follows:

(S) (1) EVERY PUBLIC ADJUSTER SHALL HAVE AN AFFIRMATIVE DUTY TO ACT ON BEHALF AND IN THE BEST INTERESTS OF THE INSURED WHEN NEGOTIATING FOR OR EFFECTING THE SETTLEMENT OF AN INSURANCE CLAIM FOR THE INSURED OR OTHERWISE ACTING AS A PUBLIC ADJUSTER.

(2) (A) NO PUBLIC ADJUSTER SHALL RECEIVE ANY COMPENSATION, EITHER DIRECTLY OR INDIRECTLY, FOR A REFERRAL OF THE INSURED TO AN INDIVIDUAL OR ENTITY FOR SERVICES, WORK OR REPAIRS, RELATING TO ANY INSURANCE CLAIM FOR WHICH THE PUBLIC ADJUSTER REPRESENTS THE INSURED OR HAS NEGOTIATED OR EFFECTED A SETTLEMENT, UNLESS THE COMPENSATION IS PROMINENTLY AND CLEARLY DISCLOSED TO THE INSURED IN THE WRITTEN MEMORANDUM DESCRIBED IN SUBSECTION (P) OF THIS SECTION. ANY SUCH COMPENSATION RECEIVED SHALL BE DEEMED TO BE COMPENSATION FROM THE INSURED AND, IN COMBINATION WITH ANY OTHER COMPENSATION RECEIVED FROM THE INSURED, SHALL NOT EXCEED THE MAXIMUM AMOUNT THAT THE ADJUSTER MAY CHARGE IN ACCORDANCE WITH THE REGULATIONS REQUIRED PURSUANT TO SUBSECTION (P) OF THIS SECTION.

(B) NO PUBLIC ADJUSTER WHO HAS A FINANCIAL OR OWNERSHIP INTEREST IN THE INDIVIDUAL OR ENTITY THAT PERFORMS THE SERVICES, WORK, OR REPAIRS, SHALL REFER THE INSURED TO THE INDIVIDUAL OR ENTITY UNLESS THE FINANCIAL OR OWNERSHIP INTEREST IS PROMINENTLY AND CLEARLY DISCLOSED TO THE INSURED IN THE WRITTEN MEMORANDUM DESCRIBED IN SUBSECTION (P) OF THIS SECTION. IF A PUBLIC ADJUSTER REFERS AN INSURED TO AN INDIVIDUAL WHO IS RELATED TO THE INDIVIDUAL BY BLOOD OR AFFINITY TO THE SECOND DEGREE OF CONSANGUINITY, OR TO AN ENTITY OWNED OR CONTROLLED BY SUCH AN INDIVID-

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

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UAL, FOR SERVICES, WORK, OR REPAIRS, RELATING TO ANY INSURANCE CLAIM FOR WHICH THE PUBLIC ADJUSTER REPRESENTS THE INSURED OR HAS NEGOTIATED OR EFFECTED A SETTLEMENT, THEN THE PUBLIC ADJUSTER SHALL DISCLOSE THE RELATIONSHIP TO THE INSURED IN THE WRITTEN MEMORANDUM DESCRIBED IN SUBSECTION (P) OF THIS SECTION.

S 2. 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, THE LICENSEE HAS FAILED TO ACT ON BEHALF AND IN THE BEST INTERESTS OF THE INSURED WHEN NEGOTIATING FOR OR EFFECTING THE SETTLEMENT OF AN INSURANCE CLAIM FOR SUCH INSURED OR OTHERWISE ACTING AS A PUBLIC ADJUSTER, OR HAS FAILED TO MAKE THE DISCLOSURES REQUIRED BY PARAGRAPH TWO OF SUBSECTION (S) OF SECTION TWO THOUSAND ONE HUNDRED EIGHT OF THIS ARTICLE;

S 3. This act shall take effect on the first of January next succeeding the date on which it shall have become a law.