

2019 Regular Session

SENATE BILL NO. 103

BY SENATOR GARY SMITH

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

INSURANCE CLAIMS. Provides relative to the unauthorized practice of public adjusting and fraudulent insurance acts by public adjusters. (7/1/19)

AN ACT

To amend and reenact R.S. 22:1924 (A)(1) and to enact R.S. 22:1693(F) and (G), and 1923(2)(o), relative to public adjusters; to provide for the crime of unauthorized public adjusting; to provide for fraudulent insurance acts committed by licensed public adjusters; to provide for criminal penalties; to provide for licensed public adjuster contracts; to provide for violations related to fees charged by licensed public adjusters; to define acts committed by licensed public adjusters as fraudulent insurance acts; to provide relative to public adjuster contracts; to provide relative to certain standards of conduct for licensed public adjusters; to provide for restitution to certain victims; to provide relative to records retention; to provide for definitions; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 22:1924(A)(1) is hereby amended and reenacted and R.S. 22:1693(F) and (G), and 1923(2)(o) are hereby enacted to read as follows:

§1693. License required; **crime of unauthorized public adjusting**

* * *

F.(1) Any natural person who violates any provision of Subsection A or

1 C of this Section shall be guilty of the crime of the unauthorized practice of
2 public adjusting and shall be subjected to a term of imprisonment at hard labor
3 for not more than two years or fined not more than one thousand dollars, or
4 both.

5 (2) Any natural person who participates or assists any business entity in
6 violating any provision of Subsection D of this Section shall be guilty of the
7 crime of unauthorized practice of public adjusting and shall be subjected to a
8 term of imprisonment at hard labor for not more than two years or fined not
9 more than one thousand dollars, or both.

10 G. Any business entity that violates any provision of Subsection D of this
11 Section shall be guilty of the crime of unauthorized practice of public adjusting
12 for a business entity and shall be fined not more than five thousand dollars for
13 each violation.

14 * * *

15 §1923. Definitions

16 As used in this Part, the following terms shall have the meanings indicated
17 in this Section:

18 * * *

19 (2) "Fraudulent insurance act" shall include but not be limited to acts or
20 omissions committed by any person who, knowingly and with intent to defraud:

21 * * *

22 (o) Acts in violation of any of the following provisions of law related to
23 public adjusters and public adjusting:

24 (i) R.S. 22:1693(B).

25 (ii) R.S. 22:1703.

26 (iii) R.S. 22:1704.

27 (iv) R.S. 22:1705.

28 (v) R.S. 22:1706.

29 * * *

- (1) Any natural person who is guilty of the crime of the unauthorized practice of public adjusting and shall be sentenced to a term of imprisonment at hard labor for not more than two years or fined not more than \$1,000, or both.
- (2) Any natural person who participates or assists any business entity in engaging in the unauthorized practice of public adjusting shall be guilty of the crime of unauthorized practice of public adjusting and shall be sentenced to a term of imprisonment at hard labor for not more than two years or fined not more than \$1,000, or both.

Present law provides that a business entity acting as a public adjuster is required to obtain a public adjuster license, pay all applicable licensing fees, and be responsible for the business entity's compliance with the insurance laws, rules, and regulations of this state.

Proposed law retains the licensing requirements provided for in present law and creates the crime of unauthorized practice of public adjusting for a business entity for violations of present law. Proposed law provides criminal penalties for the crime of unauthorized practice of public adjusting for a business entity to be a criminal fine of not more than \$5,000.

FEES

Present law (R.S. 22:1703) provides that, when a public adjuster is licensed by the commissioner of insurance, the following restrictions on fees apply:

- (1) A public adjuster may charge the insured a reasonable fee. A public adjuster will not solicit for or enter into any contract or arrangement between an insured and a public adjuster which provides for payment of a fee to the public adjuster which is contingent upon, or calculated as a percentage of, the amount of any claim paid to or on behalf of an insured by the insurer and any such contract will be against public policy and is null and void.
- (2) A public adjuster will not pay a commission, service fee, or other valuable consideration to another for public adjusting in this state if that person is required to be licensed under present law and is not so licensed.
- (3) A person will not accept a commission, service fee, or other valuable consideration for public adjusting in this state if that person is required to be licensed under present law and is not so licensed.

Present law provides that any violation of present law by a licensed public adjuster is a "fraudulent insurance act". Present law further provides that a person convicted of any "fraudulent insurance act" is guilty of a felony and shall be subjected to a term of imprisonment, with or without hard labor, not to exceed five years, or a fine not to exceed \$5,000, or both, on each count and payment of restitution to the victim company of any insurance payments to the defendant that the court determines was not owed and the costs incurred by the victim company associated with the evaluation and defense of the fraudulent claim, including but not limited to the investigative costs, attorney fees, and court costs. Present law further provides that, if the benefit does not exceed \$1,000, the term of imprisonment shall not exceed six months and the fine shall not exceed \$1,000, or both, on each count.

Proposed law retains present law as it relates to the restriction on fees which can be charged by licensed public adjusters but provides that any unlawful fee charged by a licensed public adjuster will be considered a "fraudulent insurance act" under present law and subject the license public adjuster to a term of imprisonment, with or without hard labor, not to exceed five years, or a fine not to exceed \$5,000, or both. Proposed law provides that the court will also require the licensed public adjuster to make a payment of restitution to the victim that was overcharged.

CONTRACTS

Present law (R.S. 22:1704) provides that public adjusters will ensure that all contracts for their services are in writing and contain the following terms:

- (1) Legible full name of the adjuster signing the contract, as specified in Dept. of Insurance records.
- (2) Permanent home state business address and phone number.
- (3) Dept. of Insurance license number.
- (4) Title of "Public Adjuster Contract".
- (5) The insured's full name, street address, insurance company name, and policy number, if known or upon notification.
- (6) A description of the loss and its location, if applicable.
- (7) Description of services to be provided to the insured.
- (8) Signatures of the public adjuster and the insured.
- (9) Date contract was signed by the public adjuster and date that the contract was signed by the insured.
- (10) Attestation language stating that the public adjuster has satisfied the financial responsibility requirements of state law.
- (11) Full salary, fee, compensation, or other considerations the public adjuster is to receive for services.
- (12) If applicable, an acknowledgment that a mortgage holder exists on any property adjusted by the public adjuster and that such mortgage holder is or may be an additional insured on the claim.

Present law provides that compensation provisions in a public adjusting contract will not be redacted in any copy of the contract provided to the commissioner of the Dept. of Insurance. Present law provides that a redaction will constitute an omission of material fact.

Present law provides that if 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, the public adjuster will:

- (1) Inform the insured that the loss recovery amount cannot be increased by the insurer.
- (2) Be entitled only to reasonable compensation from the insured for services provided by the public adjuster on behalf of the insured, based on the time spent on a claim and expenses incurred by the public adjuster, until the claim is paid or the insured receives a written commitment to pay from the insurer.

Present law provides that a public adjuster contract may not contain any contract term that:

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

- (2) When any payment on a claim is made and the insured is represented by a public adjuster, the insurer's check or checks may be made payable to the insured and the public adjuster when the amount of the check does not exceed the public adjuster's fee, the amount of the fee is indicated in a written compensation agreement signed by the insured or the balance of the proceeds, not included in the check made payable to the insured and the public adjuster, is made payable to the insured or to the insured and other lienholder or holders, as is required by law. Present law provides that, should a dispute arise, the public adjuster is prohibited from acting in any manner which would cause the insured not to receive the undisputed portion of the insurance proceeds. Present law provides that, if the insured's check, which contains that amount not associated with the public adjuster's fee, is mailed to the public adjuster, the public adjuster will promptly present the check to the insured.
- (3) Imposes collection costs or late fees.
- (4) Precludes the insured from pursuing civil or judicial remedies.

Present law provides that prior to the signing of the contract, the public adjuster will provide the insured with a separate disclosure document regarding the claim process that states:

- (1) Property insurance policies obligate the insured to present a claim to his insurance company for consideration. There are three types of adjusters that could be involved in that process; namely, (a) "company adjusters", "independent adjusters", and "public adjusters".
- (2) The insured is not required to hire a public adjuster to help the insured meet his obligations under the policy but has the right to do so.
- (3) The insured always has the right to initiate direct communications with the insured's attorney, the insurer, the insurer's adjuster, and the insurer's attorney, or any other person regarding the settlement of the insured's claim. Once a public adjuster has been retained, the public adjuster will not restrict communications between the insurer and its insured.
- (4) The public adjuster is not a representative or employee of the insurer.
- (5) The salary, fee, or other consideration to be paid to the public adjuster is the obligation of the insured, not the insurer.

Present law provides that the contracts will be executed in duplicate, to provide an original contract to the public adjuster and an original contract to the insured. Proposed law provides that the public adjuster's original contract will be available at all times for inspection without notice by the commissioner of insurance.

Present law provides that the insured has the right to rescind the contract within three business days after the date the contract was signed. Present law requires the rescission to be in writing and mailed or delivered to the public adjuster at the address in the contract within the three- business-day period.

Present law provides that if the insured exercises the right to rescind the contract, any thing of value given by the insured under the contract will be returned to the insured within 15 business days following the receipt by the public adjuster of the cancellation notice.

Proposed law retains present law and provides that any violation of present law is a "fraudulent insurance act". Proposed law further provides for criminal penalties for such acts.

RECORDS RETENTION

Present law (R.S. 22:1705) provides that a public adjuster will maintain a complete record of each transaction as a public adjuster. The records required by present law will include the name of the insured, the date of the loss, copy of the contract between the public adjuster and insured, documents related to the insurance claim, itemized statement of the insured's monies and distributions, any attorney representing the insured and evidence of financial responsibility in a format prescribed by the commissioner of insurance. Present law provides that the records will be maintained for at least five years after the termination of the transaction with an insured and will be open to examination by the commissioner of insurance at all times.

Proposed law retains present law but provides that any violation of present law is a "fraudulent insurance act" and provides for criminal penalties for such acts.

STANDARDS OF CONDUCT

Present law (R.S. 22:1706) provides that a public adjuster will maintain certain standards of conduct, including objectivity and complete loyalty to the interest of his insured alone, not permitting an unlicensed employee or representative of the public adjuster to conduct business as a public adjuster, not having a direct or indirect financial interest in any aspect of the claim (other than the statutorily allowed fee) in the written contract and not soliciting for attorneys for a fee. Present law further provides that public adjusters will also adhere to the following general requirements:

- (1) No public adjuster, while so licensed by the department, may represent or act as a company adjuster or independent adjuster in Louisiana.
- (2) A public adjuster will not enter into a contract or accept a power of attorney that vests in the public adjuster the authority to choose the persons who will perform repair work.
- (3) A public adjuster will ensure that all contracts for the public adjuster's services are in writing and set forth all terms and conditions of the engagement.
- (4) A public adjuster will not file or record on behalf of an insured client any complaint to or with any court of record or agency of the state.
- (5) A public adjuster will not provide services with any claim except a first-party claim on behalf of an insured against such insured's insurer.
- (6) A public adjuster will not provide services to the insured in connection with any claim for personal injury.
- (7) A public adjuster will not render legal advice to the insured, including but not limited to legal advice regarding the policy provisions or coverage issues.
- (8) A public adjuster will not engage in the unauthorized practice of law.
- (9) A public adjuster may not agree to any loss settlement without the insured's knowledge and written consent.
- (10) A public adjuster will not act as an appraiser or umpire pursuant to the appraisal provisions in present law or any similar provision of a policy of insurance if that public adjuster is adjusting or has adjusted all or any part of the claim, or both, or property subject to that appraisal provision.

Proposed law retains present law and provides that any violation of present law is a "fraudulent insurance act". Proposed law further provides for criminal penalties for fraudulent insurance acts.

Effective July 1, 2019.

(Amends R.S. 22:1924(A)(1); adds R.S. 22:1693(F) and (G), and 1923(2)(o))