

1 State of Arkansas
2 81st General Assembly
3 Regular Session, 1997

A Bill

SENATE BILL 309

4
5 By: Senators Canada and Bradford

For An Act To Be Entitled

9 "AN ACT TO DEFINE AND PROVIDE FOR THE LICENSURE AND
10 REGULATION OF PUBLIC ADJUSTERS WITHIN THE STATE OF
11 ARKANSAS AND TO ESTABLISH THE DUTIES AND OBLIGATIONS OF
12 PUBLIC ADJUSTERS; AND FOR OTHER PURPOSES."

Subtitle

15 "AN ACT TO DEFINE AND PROVIDE FOR THE
16 LICENSURE AND REGULATION OF PUBLIC
17 ADJUSTERS AND TO ESTABLISH THE DUTIES
18 AND OBLIGATIONS OF PUBLIC ADJUSTERS."

19
20 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

21
22 SECTION 1. Public Adjuster.

23 (a) A "public adjuster" is any person, firm, limited liability company
24 or corporation, who, for compensation as an independent contractor or as the
25 employee of an independent contractor or for a fee or commission investigates
26 or assists or appraises or negotiates on the behalf of an insured, losses
27 under the insureds policy on first party property claims. Public adjusters
28 must be licensed before acting as a public adjuster.

29 (b) A licensed attorney at law who is qualified to practice law in this
30 state is not deemed to be a public adjuster for purposes of this chapter.

31 (c) A licensed adjuster under § 23-64-209 shall not act as a public
32 adjuster unless also licensed as a public adjuster.

33 (d) The Insurance Commissioner of the State of Arkansas shall regulate
34 and issue the licenses of public adjusters.

35 (e) Public adjusters shall be subject at all times to the provisions of
36 the Insurance Code of the State of Arkansas in addition to those prescribed

1 herein.

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3 SECTION 2. Qualifications for Public Adjusters License; Surety Bond;
4 Requirements.

5 (a) No person shall, in this state, act or hold himself out to be a
6 public adjuster unless then licensed therefor under this act. Applications
7 for license shall be made to the commissioner according to forms as prescribed
8 and furnished by him. The commissioner shall issue the public adjusters
9 license for property insurance only, as to individuals qualified therefor upon
10 payment of a nonrefundable license fee.

11 (b) To be licensed as a public adjuster, the applicant must be
12 specifically qualified as follows:

13 (1) If an individual, must be of legal age of majority or have
14 had the disabilities of minority removed for all general purposes and provide
15 evidence of same.

16 (2) Must be a resident of Arkansas or resident of another state
17 which will permit residents of Arkansas to act as public adjusters in the
18 other state.

19 (3) Must be competent to fulfill the responsibilities of a public
20 adjuster by training or instruction concerning the adjusting of damage or loss
21 under property insurance contracts.

22 (4) Must be deemed by the commissioner to be trustworthy,
23 competent, financially responsible, and of good personal and business
24 reputation as would reasonably assure that he will conduct the business of
25 public adjusting in good faith and without detriment to the public.

26 (5) Must maintain an office accessible to the public and keep
27 therein the usual and customary records pertaining thereto, and the records and
28 offices of all public adjusters shall be subject to inspection by the
29 department without notice, at any time. Failure to submit records or
30 information to the department within thirty (30) days after the department has
31 forwarded a written request to the licensed public adjuster at the address of
32 the licensee listed at the department may result in the automatic expiration
33 of the license without the necessity of a hearing. Reactivation of the
34 license after such expiration shall require the entire licensing process to
35 begin again. A public adjusters license shall not be considered a right in
36 the State of Arkansas to which the Administrative Procedures Act is

1 applicable.

2 (6)(A) Must pass any required examination.

3 (i) The commissioner may give, conduct, and grade all
4 examinations or may arrange to have these examinations administered and graded
5 by an independent testing service as specified by contract, in a fair and
6 impartial manner, and without unfair discrimination as between individuals
7 examined.

8 (ii) The failure of the public adjuster examination
9 twice within any one-year period shall preclude the licensing of the applicant
10 as a public adjuster for a period of three (3) years from the date of the last
11 failure.

12 (iii) The nonrefundable application fee shall be as
13 provided per regulation.

14 (iv) The annual renewal fee for the license shall be
15 as provided per regulation.

16 (B) If the application is approved and if the nonrefundable
17 application fee is paid, an examination permit will be issued to the
18 applicant.

19 (i) The permit will be valid for a period of ninety
20 (90) days from the date of issuance.

21 (ii) If the applicant does not schedule and appear for
22 examination within that ninety (90) day period, the permit shall expire and
23 the applicant may be required to begin the entire licensing process again.

24 (iii) Failure of the examination mandates that the
25 entire licensing process begin again.

26 (C) All public adjusters, resident and nonresident, must
27 pass the examination; waiver of such examination shall not be permitted.

28 (7) Public adjusters shall not be licensed on an emergency basis
29 nor practice within the State of Arkansas without a public adjusters license.

30 (c) A firm, corporation, or limited liability company, whether
31 organized or not under the laws of this state, may be licensed as a public
32 adjuster if each individual who is to exercise the license powers is named in
33 the license and is individually licensed as a public adjuster in this state.

34 (d) Each public adjuster licensed must maintain and file with the
35 department a bond executed and issued by a surety insurer authorized to
36 transact such business in this state in the amount of five thousand dollars

1 (\$5,000), conditioned for the faithful performance of such duties as a public
2 adjuster. The bond shall be in favor of the department and shall specifically
3 authorize recovery by the department of the damages sustained or fines levied
4 in case the licensee is found at a hearing to have violated the Insurance Code
5 or this act in connection with the business as a public adjuster. Such
6 collection under the bond shall not diminish any other enforcement or recovery
7 available to the department or client of the public adjuster.

8 (e) Requirements and actions of public adjusters include but are
9 not limited to the following:

10 (1) Contracts engaging the services of a public adjuster,
11 entered into in violation of any provisions of this act or the Insurance Code,
12 or regulations of the Insurance Department shall be declared unenforceable on
13 the part of any public adjuster, as violative of public policy.

14 (2) The solicitation of public adjusting business for
15 compensation is deemed to be a material part of the business of public
16 adjusting and, therefore, requires licensure as a public adjuster under the
17 laws of Arkansas and shall be engaged in only by persons licensed by this
18 department as public adjusters, or by licensed attorneys in this state.

19 (A) The answering of incoming telephone calls by
20 unlicensed persons, at the place of business of a public adjuster, is not
21 violative of this requirement, so long as the unlicensed persons engage in
22 purely administrative matters and not in judgement or interpretation with
23 regard to the insurance contract, claim, or potential claim.

24 (B) Except as between licensed public adjusters, or
25 licensed public adjusters and licensed attorneys in this state, no public
26 adjuster may compensate any person, whether directly or indirectly, for the
27 purpose of referring business to the public adjuster.

28 (3) Public adjusters shall ensure that all contracts for
29 their services shall be in writing and shall have the following:

30 (A) The contract must legibly state the full name and
31 address as specified in department records of the public adjuster signing the
32 contract.

33 (B) The contract must be signed by the public adjuster who
34 solicited the contract.

35 (C) The contract must show the insureds full name, street
36 address, address of the loss, and a brief description of the loss. The

1 contract shall also show the insureds insurance company name and policy
2 number.

3 (D) The contract must show the date signed by the insured
4 and the date solicited by the public adjuster.

5 (E) The full and total compensation to the public adjuster
6 shall be stated in the contract. If the compensation is based on a share of
7 the insurance settlement, the exact percentage shall be specified. Any costs
8 to be reimbursed to the public adjuster out of the proceeds must be specified
9 by type, with dollar estimates set forth in the contract.

10 (F) A public adjusters contract with his client shall be
11 revokable or cancelable, without penalty or obligation by the insured, for
12 three (3) business days after the contract is signed by the insured, and this
13 information must be stated on the contract, in type at least as large as the
14 public adjuster business name on the contract, and underlined. If the insured
15 elects to cancel the contract, prompt notice must be received by the adjuster.
16 Nothing in this provision shall be construed to prevent an insured from
17 pursuing any civil remedy after this three (3) business day cancellation
18 period.

19 (4) A public adjuster shall not represent or imply to any client
20 or potential client to the effect that insurance companies or adjusters who
21 work for the insurer, routinely attempt to or do in fact deprive insureds of
22 their full rights under the insurance policy.

23 (5) A public adjuster shall not prevent or attempt to dissuade an
24 insured from speaking privately with his insurer or insurer representative,
25 attorney, or any other person regarding the settlement of the claim.

26 (6) A public adjuster shall not enter into a contract or accept a
27 power of attorney which vests in the public adjuster the effective authority
28 to choose the persons who shall perform repair work.

29 (7) A public adjuster shall not acquire any interest in salvaged
30 property.

31 (8) Public adjusters shall advise insureds of their right to
32 choose counsel, contractors, architects, engineers, or any other similar
33 professional used in settlement of their loss.

34 (9) No public adjuster may settle a claim unless the terms and
35 conditions of settlement are approved in writing by the insured.

36 (10) Public adjusters authority is restricted to working on

1 behalf of the insureds first party claims or property wherein the value of
2 the property or recovery under an insurance or indemnity contract are to be
3 determined after a loss to the insureds property.

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5 SECTION 3. Rules and Regulations.

6 The commissioner may adapt reasonable rules and regulations for the
7 implementation and administration of public adjusters without the necessity
8 for public hearings.

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10 SECTION 4. All provisions of this act of a general and permanent nature
11 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code
12 Revision Commission shall incorporate the same in the Code.

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14 SECTION 5. If any provision of this act or the application thereof to
15 any person or circumstance is held invalid, such invalidity shall not affect
16 other provisions or applications of the act which can be given effect without
17 the invalid provision or application, and to this end the provisions of this
18 act are declared to be severable.

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20 SECTION 6. All laws and parts of laws in conflict with this act are
21 hereby repealed.

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