

No. 1983-72

AN ACT

HB 379

Providing for the licensing and regulating of public adjusters and public adjuster solicitors.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Definitions.

The following words and phrases when used in this act shall have the meanings given to them in this section unless the context clearly indicates otherwise:

“Public adjuster.” Any person, partnership, association or corporation advertising, soliciting business or holding himself or itself out to the public as an adjuster of claims for losses or damages arising out of policies of insurance, surety or indemnity upon property, persons or insurable business interests within this Commonwealth, and receiving any compensation or reward for the giving of advice or assistance to the insured in the adjustment of claims for such losses, or who for compensation or reward, whether by way of salary or commission or otherwise, directly or indirectly, solicit business, investigate or adjust losses or advise the insured with reference to claims for losses on behalf of any other person, partnership, association or corporation engaged in the business of adjusting losses. The term does not include an agent or employee of an insurance company, association or an exchange, through whom a policy of insurance was written, in adjusting loss or damage under such policy, nor does it include a broker or agent acting as an adjuster if the services of the agent or broker in the adjustment are without compensation.

“Public adjuster solicitor.” Any person, partnership, association or corporation, who or which solicits, directly or indirectly, for a fee, or in any manner aids in securing for a public adjuster a contract for the adjustment of a loss.

“Repairs.” Shall not include temporary or emergency repairs made for the purpose of protecting the insured property or to comply with policy terms and conditions.

Section 2. License.

(a) License required.—No person, partnership, association or corporation shall, directly or indirectly, act within the Commonwealth as a public adjuster or a public adjuster solicitor without first procuring from the Insurance Commissioner a license as a public adjuster or public adjuster solicitor, respectively.

(b) Insurance Commissioner to issue licenses.—The Insurance Commissioner may issue a license as a public adjuster or public adjuster solicitor to any person of at least 18 years of age and to any partnership, association or

corporation which maintains a bona fide office in the Commonwealth, readily accessible to the general public. No license shall be granted to any corporation unless, by provisions of its charter, it is authorized to engage in the business of insurance claim adjusting and unless individual licenses are also secured for each active officer of such corporation. No license shall be granted to a partnership or association unless individual licenses are also secured for each active member of such partnership or association. Before any such license is granted, the applicant shall first make answer, in writing and under oath, to interrogatories on forms and supplements such as the Insurance Commissioner shall prepare: Provided, That any applicant who shall have held such a license for a period of at least two years prior to the effective date of this act shall be entitled, upon proper application, to receive a license without the necessity of submitting to an examination. When the Insurance Commissioner is satisfied that the applicant is trustworthy and competent to transact business as a public adjuster and public adjuster solicitor, respectively, in such manner as to safeguard the interest of the public, he shall issue a license.

(c) Nonresident public adjusters and public adjuster solicitors.—The Insurance Commissioner may issue a license as public adjuster or public adjuster solicitor to a person not a resident of this Commonwealth, upon compliance with the applicable provisions of this act, if the State or the Province of Canada of such person's residence will accord the same privilege to a resident of this Commonwealth. The provisions of this subsection relating to noneligibility for licensure shall not apply to any nonresident public adjusters and public adjuster solicitors who did business in Pennsylvania as licensed public adjusters or public adjuster solicitors prior to the effective date of this act.

(1) The Insurance Commissioner may enter into reciprocal agreements with the appropriate official of any such other state or province waiving the written examination of any applicant resident in such other state if:

(i) a written examination is required of applicants for an insurance public adjuster or public adjuster solicitor license in such other state or province;

(ii) the appropriate official of the other state or province certifies that the applicant holds a currently valid license as a public adjuster or public adjuster solicitor in such other state or province and either passed such a written examination or was the holder of an insurance agent's license prior to the time a written examination was required; and

(iii) that in such other state or province a resident of this Commonwealth is privileged to procure a public adjuster or public adjuster solicitor license upon the foregoing conditions and without discrimination as to fees otherwise in favor of the residents of such other state or province.

(d) License not to be issued to certain persons.—No license as a public adjuster or public adjuster solicitor shall be issued to any person, partnership, association or corporation engaged or interested in, or receiving any profit from, nor shall the holder of any such license engage or be interested in, or receive any profit from, any salvage or similar business.

Section 3. Fees.

(a) **Public adjuster's license.**—A fee shall be paid to the Insurance Commissioner by the applicant for a public adjuster's license at the time application is made, and annually thereafter for the renewal thereof, of \$100. If the applicant is a corporation, partnership or association, such fee shall be paid for each person specified in the license.

(b) **Public adjuster solicitor's license.**—A fee shall be paid to the Insurance Commissioner by the applicant for a public adjuster solicitor's license at the time application is made, and annually thereafter for the renewal thereof, of \$50. If the applicant is a corporation, partnership, or association, such fee shall be paid for each person specified in the license.

Section 4. Bond.

(a) **Public adjuster's bond.**—Each person, partnership, association or corporation receiving a public adjuster's license shall, before transacting any business thereunder, execute and deliver to the Insurance Commissioner a bond in the minimum penal sum of \$40,000 with such sureties as the Insurance Commissioner may approve.

(b) **Public adjuster solicitor's bond.**—Each person, partnership, association or corporation receiving a public adjuster solicitor's license shall, before transacting any business thereunder, execute and deliver to the Insurance Commissioner a bond in the minimum penal sum of \$8,000 with such sureties as the Insurance Commissioner may approve.

(c) **Condition of bond.**—The bond of the public adjuster and the public adjuster solicitor shall be conditioned that said public adjuster or public adjuster solicitor will faithfully comply with all the requirements of this act and shall not embezzle, take, secrete or otherwise dispose of or fraudulently withhold, appropriate, lend, invest or otherwise use or apply any money or substitutes for money or any salvage, goods or property received by him as such public adjuster or public adjuster solicitor or employee of a public adjuster, contrary to the instructions or without the consent of the assured or his legal representative. Any person, firm or corporation who has entered into a contract with a public adjuster, as provided in section 5, and who shall suffer loss by reason of the failure of the public adjuster to comply with this act and faithfully perform his duties shall have the right to intervene and be made a party to any action instituted by the Commonwealth on the bond of the public adjuster and to have his, her or its rights and claims adjudicated in such action and judgment rendered thereon, subject, however, to the priority of the claim and judgment of the Commonwealth. If the amount of the liability of the surety on said bond is sufficient to pay the full amount due the Commonwealth, the remainder shall be distributed pro rata among said intervenors. If no suit should be brought by the Commonwealth of Pennsylvania, upon application therefore and furnishing affidavit to the Insurance Department that loss has been suffered by reason of failure of the public adjuster to comply with this act or faithfully perform his duties, such insured shall be furnished with a certified copy of said bond, upon which he, she or it shall have a right of action, and shall be and are hereby authorized to bring suit in the name of the Commonwealth for his, her or its use and benefit

against said public adjuster and his sureties and to prosecute the same to final judgment and execution. Where suit is instituted by any such insureds on the bond of the public adjuster, it shall be commenced within one year after the performance and final settlement of said contract, and not later. Where suit is so instituted by an insured or insureds, no other action shall be brought by any other claimant, but any other claimant may file his claim in the action first brought and be made party thereto within one year from the completion of the work under said contract, and not later. If two or more actions be brought on the same day, the action in which the largest claim is demanded shall be regarded as the first action. Any creditor who has brought an action within one year as aforesaid, but after suit brought by another creditor or on the same day, may intervene in the suit first brought within the year, notwithstanding the fact that the intervention in such case be after the expiration of the year, provided said intervention be made within 30 days after the expiration of the year. If the recovery on the bond should be inadequate to pay the amounts found due to all of said creditors, judgment shall be given to each creditor pro rata of the amount of the recovery. The surety on said bond may pay into the court, for distribution among said claimants and creditors, the full amount of the surety's liability, to wit, the penalty named in the bond, less any amount which said surety may have had to pay to the Commonwealth by reason of the execution of said bond, and, upon so doing, the surety will be relieved from further liability. In all suits instituted under the provisions of this act, such personal notice of the pendency of such suits, informing them of their right to intervene, as the court may order, shall be given to all known creditors and, in addition thereto, notice shall be given by publication in newspapers of general circulation, published in the county or municipality where the contract was performed, once a week for at least three successive weeks: Provided, however, That, when such suit has begun within three weeks of the end of the year within which suit may be brought, said notice by publication shall be only for the period intervening between the time of instituting such suit and the end of the year.

Section 5. Contract.

(a) Written contract required.—No public adjuster shall, directly or indirectly, act within this Commonwealth as a public adjuster without having first entered into a contract, in writing, on a form approved by the Insurance Commissioner and executed in duplicate by the public adjuster and the insured or a duly authorized representative. One copy of this contract shall be kept on file by the public adjuster, available at all times for inspection, without notice, by the Insurance Commissioner or his duly authorized representative. No public adjuster or public adjuster solicitor shall solicit a client for employment within 24 hours of a fire or other catastrophe or occurrence which is the basis of the solicitation. With respect to a fire, the 24-hour period shall begin at such time as the fire department in charge determines that the fire is extinguished. Any contract with a public adjuster may be rescinded by any person signing the contract. Such action must be taken within four calendar days after signature. The Insurance Commissioner may issue regulations to assure the implementation of this section. No public

adjuster solicitor shall use any form of contract other than that approved for the public adjuster for whom he is soliciting, nor shall he make any contracts or agreements for himself or for the public adjuster other than such as are specified in the approved contract.

(b) Contracts only authorized by insured against his own carrier.—No public adjuster or public adjuster solicitor may adjust or solicit a contract for the adjustment of any claim for losses or damages on behalf of any person except claims by an insured against his own insurance carrier.

(c) Personal injury and automobile property damage claims prohibited.—No public adjuster or public adjuster solicitor shall act in any manner in relation to claims for personal injury or automobile property damage.

(d) Contracts limited to adjustment of insurance losses.—No public adjuster or public adjuster solicitor shall, directly or indirectly, through or with any person, partnership, corporation or association in which it has an indirect or beneficial interest, enter into any contract with any insured for the repair, replacement, restoration, renovation or demolition of damaged property, real or personal, at any time prior to the date a verdict or award is entered or payment is received from the insurance carrier, whichever event shall occur first.

Section 6. Revocation, etc., of license.

(a) Grounds for fines, suspensions or revocations.—Committing any of the following acts shall be grounds for fine, suspension or revocation of a public adjuster's or public adjuster solicitor's license:

(1) Material misrepresentation of the terms and effect of any insurance contract.

(2) Engaging in, or attempting to engage in, any fraudulent transaction with respect to a claim or loss that licensee is adjusting.

(3) Misrepresentation of the services offered or the fees or commission to be charged.

(4) Conviction by any court of or a plea of nolo contendere to a felony under the laws of this Commonwealth, any other state, the United States or any territory or foreign country.

(5) Misappropriation, conversion to his own use or improper withholding of moneys held on behalf of another party to the contract.

(6) To pay or cause to be paid any commission or any other compensation or thing of value whatsoever to any agent, broker, attorney, partner, clerk, servant, employee or any other person, whosoever hired by or employed by or with any insured named in any policy of insurance as an inducement or solicitation to influence the contracting of services for the services of public adjuster or public adjuster solicitor with any insured. A public adjuster may utilize the services of any person authorized by the insurer to assist in connection with an insurance claim: Provided, That said services must not conflict with the services required to be rendered by a public adjuster.

(7) To receive, directly or indirectly, any compensation, commission or thing of value or profit from any person, partnership, association or corporation engaged or interested in the business of salvage, repair,

replacement, restoration, renovation or demolition of damaged property, real or personal, unless such compensation, commission or thing of value or profit is disclosed to the insured and agreed to in the contract.

(8) Removal of a public adjuster's or a public adjuster solicitor's office, accounts or records from the Commonwealth.

(9) The closure of a licensee's office for a period in excess of 30 days, unless granted permission by the Insurance Commissioner to close the office for a longer period.

(10) Violation of any provision of this act or any rule or regulation promulgated, published and adopted thereunder.

(11) Making a material misstatement in the application for any such license.

(12) The commission of fraudulent practices.

(13) Has, in the judgment of the Insurance Commissioner, demonstrated his incompetency or untrustworthiness to transact the business of a public adjuster.

(b) Civil penalty.—Regardless of whether the public adjuster or public adjuster solicitor was licensed or not, the Insurance Commissioner may, at his discretion, in cases warranting such action, impose a civil penalty of not more than \$1,000 for each and every violation of this act.

(c) Notice and hearing.—Before the Insurance Commissioner shall take any action as above set forth, he shall give written notice to the person, partnership, association or corporation accused of violating the law, stating specifically the nature of such alleged violation and fixing a time and place, at least ten days thereafter, when a hearing of the matter shall be held. After such hearing or upon failure of the accused to appear at such a hearing, the Insurance Commissioner shall impose such of the above penalties as he deems advisable. When the Insurance Commissioner shall have taken any actions as above set forth, the party aggrieved may appeal therefrom to the Commonwealth Court.

(d) Adjusters and solicitors responsible for conduct of employees.—Any public adjuster or public adjuster solicitor employing, or using the services of, any person to solicit business shall be held fully responsible for the conduct of that person in connection with business dealings, including, but not limited to, making certain that such person has a valid license as a public adjuster or public adjuster solicitor.

Section 7. Violations.

Any person, partnership, association or corporation violating any of the provisions of this act shall be guilty of a misdemeanor and, upon conviction thereof, shall be sentenced to pay a fine of not less than \$500 nor more than \$1,000 for each violation and conviction. Prosecution for any violation under this section may be instituted by the Insurance Commissioner or his duly authorized representative.

Section 8. Administration and enforcement.

(a) Insurance Commissioner to administer and enforce act.—The Insurance Commissioner is hereby charged with the administration and enforcement of this act and shall prescribe, publish, adopt and promulgate rules and regulations in connection herewith.

(b) Insurance Commissioner may bring actions.—The Insurance Commissioner or a duly authorized representative may maintain an action for an injunction or other process against any person, partnership, association, corporation or other entity to restrain and prevent any of the foregoing from transacting business as a public adjuster or public adjuster solicitor without a license. Any such action shall be instituted in the court of common pleas in any county where the alleged unlicensed activity occurred. Such court may issue a temporary restraining order or injunction under this act but shall determine any such action on its merits as soon as possible whether in term time or in vacation. No bond shall be required of and no costs shall be taxed against the Insurance Commissioner, his duly authorized representative or the Insurance Department on account of any such action.

(c) Act to be supplementary.—The provisions of this act shall be constructed as supplementary to all other acts dealing with the same subject matter. No action brought under the provisions of this act shall prevent the prosecution or institution of any civil or criminal action otherwise provided by law for violation of any licensing act or departmental rule or regulation promulgated thereunder.

Section 9. Repeals.

(a) Specific act.—The act of April 25, 1921 (P.L.276, No.136), entitled, as amended, “An act requiring persons, partnerships, associations, or corporations advertising for or soliciting business as adjusters of claims within this Commonwealth for loss or damage arising out of policies of insurance, surety, or indemnity on property, persons, or insurable business interests within this Commonwealth, to be licensed by the Insurance Commissioner; requiring persons, partnerships, associations, or corporations acting as solicitors for said adjusters to be licensed by the Insurance Commissioner; regulating the issuance and revocation of such licenses; prescribing certain conditions for the transaction of such business; providing for the filing of bonds by public adjusters and public adjuster solicitors, and for recovery thereon by parties in interest; and providing penalties,” is repealed.

(b) General repeal.—All other acts and parts of acts are repealed insofar as they are inconsistent with this act.

Section 10. Severability.

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

Section 11. Effective date.

This act shall take effect immediately.

APPROVED—The 20th day of December, A. D. 1983.

DICK THORNBURGH