
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 379 Session of
1983

Report of the Committee of Conference

To the Members of the House of Representatives and Senate:

We, the undersigned, Committee of Conference on the part of the House of Representatives and Senate for the purpose of considering House Bill No. 379, entitled:
"An act providing for the licensing and regulating of public adjusters and public adjuster solicitors,"

respectfully submit the following bill as our report:

MICHAEL M. DAWIDA

THOMAS A. MICHLOVIC

ROY REINARD

(Committee on the part of the House of Representatives.)

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(Committee on the part of the Senate.)

AN ACT

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

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

5 Section 1. Definitions.

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

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

28 "Public adjuster solicitor." Any person, partnership,
29 association or corporation, who or which solicits, directly or

1 indirectly, for a fee, or in any manner aids in securing for a
2 public adjuster a contract for the adjustment of a loss.

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

6 Section 2. License.

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

13 (b) Insurance Commissioner to issue licenses.--The Insurance
14 Commissioner may issue a license as a public adjuster or public
15 adjuster solicitor to any person of at least 18 years of age,
16 and to any partnership, association or corporation which
17 maintains a bona fide office in the Commonwealth, readily
18 accessible to the general public. No license shall be granted to
19 any corporation unless by provisions of its charter it is
20 authorized to engage in the business of insurance claim
21 adjusting and unless individual licenses are also secured for
22 each active officer of such corporation. No license shall be
23 granted to a partnership or association unless individual
24 licenses are also secured for each active member of such
25 partnership or association. Before any such license is granted,
26 the applicant shall first make answer, in writing and under
27 oath, to interrogatories on forms and supplements such as the
28 Insurance Commissioner shall prepare: Provided, That any
29 applicant who shall have held such a license for a period of at
30 least two years prior to the effective date of this act shall be

1 entitled, upon proper application, to receive a license without
2 the necessity of submitting to an examination. When the
3 Insurance Commissioner is satisfied that the applicant is
4 trustworthy and competent to transact business as a public
5 adjuster and public adjuster solicitor, respectively, in such
6 manner as to safeguard the interest of the public, he shall
7 issue a license.

8 (c) Nonresident public adjusters and public adjuster
9 solicitors.--The insurance commissioner may issue a license as
10 public adjuster or public adjuster solicitor to a person not a
11 resident of this Commonwealth, upon compliance with the
12 applicable provisions of this act, if the State or the Province
13 of Canada of such person's residence will accord the same
14 privilege to a resident of this Commonwealth. The provisions of
15 this subsection relating to noneligibility for licensure shall
16 not apply to any nonresident public adjusters and public
17 adjuster solicitors who did business in Pennsylvania as licensed
18 public adjusters or public adjuster solicitors prior to the
19 effective date of this act.

20 (1) The insurance commissioner may enter into reciprocal
21 agreements with the appropriate official of any such other
22 state or province waiving the written examination of any
23 applicant resident in such other state if:

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

27 (ii) the appropriate official of the other state or
28 province certifies that the applicant holds a currently
29 valid license as a public adjuster or public adjuster
30 solicitor in such other state or province and either

1 passed such a written examination or was the holder of an
2 insurance agent's license prior to the time a written
3 examination was required; and

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

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

16 Section 3. Fees.

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

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

29 Section 4. Bond.

30 (a) Public adjuster's bond.--Each person, partnership,

1 association or corporation receiving a public adjuster's
2 license, shall, before transacting any business thereunder,
3 execute and deliver to the Insurance Commissioner a bond in the
4 minimum penal sum of \$40,000 with such sureties as the Insurance
5 Commissioner may approve.

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

12 (c) Condition of bond.--The bond of the public adjuster and
13 the public adjuster solicitor shall be conditioned that said
14 public adjuster or public adjuster solicitor will faithfully
15 comply with all the requirements of this act, and shall not
16 embezzle, take, secrete or otherwise dispose of or fraudulently
17 withhold, appropriate, lend, invest or otherwise use or apply,
18 any money or substitutes for money or any salvage, goods or
19 property received by him as such public adjuster or public
20 adjuster solicitor or employee of a public adjuster, contrary to
21 the instructions or without the consent of the assured or his
22 legal representative. Any person, firm or corporation who has
23 entered into a contract with a public adjuster, as provided in
24 section 5, and who shall suffer loss by reason of the failure of
25 the public adjuster to comply with this act and faithfully
26 perform his duties, shall have the right to intervene and be
27 made a party to any action instituted by the Commonwealth on the
28 bond of the public adjuster and to have his, her or its rights
29 and claims adjudicated in such action and judgment rendered
30 thereon, subject, however, to the priority of the claim and

1 judgment of the Commonwealth. If the amount of the liability of
2 the surety on said bond is sufficient to pay the full amount due
3 the Commonwealth, the remainder shall be distributed pro rata
4 among said intervenors. If no suit should be brought by the
5 Commonwealth of Pennsylvania, upon application therefore and
6 furnishing affidavit to the Insurance Department that loss has
7 been suffered by reason of failure of the public adjuster to
8 comply with this act or faithfully perform his duties, such
9 insured shall be furnished with a certified copy of said bond,
10 upon which he, she or it shall have a right of action, and shall
11 be and are hereby authorized to bring suit in the name of the
12 Commonwealth, for his, her or its use and benefit against said
13 public adjuster and his sureties and to prosecute the same to
14 final judgment and execution. Where suit is instituted by any
15 such insureds on the bond of the public adjuster, it shall be
16 commenced within one year after the performance and final
17 settlement of said contract, and not later. Where suit is so
18 instituted by an insured or insureds, no other action shall be
19 brought by any other claimant, but any other claimant may file
20 his claim in the action first brought and be made party thereto
21 within one year from the completion of the work under said
22 contract, and not later. If two or more actions be brought on
23 the same day, the action in which the largest claim is demanded
24 shall be regarded as the first action. Any creditor who has
25 brought an action within one year as aforesaid, but after suit
26 brought by another creditor or on the same day, may intervene in
27 the suit first brought within the year, notwithstanding the fact
28 that the intervention in such case be after the expiration of
29 the year, provided said intervention be made within 30 days
30 after the expiration of the year. If the recovery on the bond

1 should be inadequate to pay the amounts found due to all of said
2 creditors, judgment shall be given to each creditor pro rata of
3 the amount of the recovery. The surety on said bond may pay into
4 the court, for distribution among said claimants and creditors,
5 the full amount of the surety's liability, to wit, the penalty
6 named in the bond, less any amount which said surety may have
7 had to pay to the Commonwealth by reason of the execution of
8 said bond, and, upon so doing, the surety will be relieved from
9 further liability. In all suits instituted under the provisions
10 of this act, such personal notice of the pendency of such suits,
11 informing them of their right to intervene, as the court may
12 order shall be given to all known creditors, and, in addition
13 thereto, notice shall be given by publication in newspapers of
14 general circulation, published in the county or municipality
15 where the contract was performed, once a week for at least three
16 successive weeks: Provided, however, That when such suit has
17 begun within three weeks of the end of the year within which
18 suit may be brought, said notice by publication shall be only
19 for the period intervening between the time of instituting such
20 suit and the end of the year.

21 Section 5. Contract.

22 (a) Written contract required.--No public adjuster shall,
23 directly or indirectly, act within this Commonwealth as a public
24 adjuster without having first entered into a contract, in
25 writing, on a form approved by the Insurance Commissioner, and
26 executed in duplicate by the public adjuster and the insured or
27 a duly authorized representative. One copy of this contract
28 shall be kept on file by the public adjuster, available at all
29 times for inspection, without notice, by the Insurance
30 Commissioner or his duly authorized representative. No public

1 adjuster or public adjuster solicitor shall solicit a client for
2 employment within 24 hours of a fire or other catastrophe or
3 occurrence which is the basis of the solicitation. With respect
4 to a fire, the 24-hour period shall begin at such time as the
5 fire department in charge determines that the fire is
6 extinguished. Any contract with a public adjuster may be
7 rescinded by any person signing the contract. Such action must
8 be taken within four calendar days after signature. The
9 Insurance Commissioner may issue regulations to assure the
10 implementation of this section. No public adjuster solicitor
11 shall use any form of contract other than that approved for the
12 public adjuster for whom he is soliciting, nor shall he make any
13 contracts or agreements for himself or for the public adjuster
14 other than such as are specified in the approved contract.

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

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

24 (d) Contracts limited to adjustment of insurance losses.--No
25 public adjuster or public adjuster solicitor shall, directly or
26 indirectly, through or with any person, partnership, corporation
27 or association in which it has an indirect or beneficial
28 interest, enter into any contract with any insured for the
29 repair, replacement, restoration, renovation or demolition of
30 damaged property, real or personal, at any time prior to the

1 date a verdict or award is entered or payment is received from
2 the insurance carrier, whichever event shall occur first.

3 Section 6. Revocation, etc., of license.

4 (a) Grounds for fines, suspensions or revocations.--

5 Committing any of the following acts shall be grounds for fine,
6 suspension or revocation of a public adjuster's or public
7 adjuster solicitor's license:

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

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

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

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

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

22 (6) To pay or cause to be paid any commission or any
23 other compensation or thing of value whatsoever to any agent,
24 broker, attorney, partner, clerk, servant, employee or any
25 other person, whosoever hired by or employed by or with any
26 insured named in any policy of insurance as an inducement or
27 solicitation to influence the contracting of services for the
28 services of public adjuster or public adjuster solicitor with
29 any insured. A public adjuster may utilize the services of
30 any person authorized by the insurer to assist in connection

1 with an insurance claim: Provided, That said services must
2 not conflict with the services required to be rendered by a
3 public adjuster.

4 (7) To receive, directly or indirectly, any
5 compensation, commission or thing of value or profit from any
6 person, partnership, association or corporation engaged or
7 interested in the business of salvage, repair, replacement,
8 restoration, renovation or demolition of damaged property,
9 real or personal, unless such compensation, commission or
10 thing of value or profit is disclosed to the insured and
11 agreed to in the contract.

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

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

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

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

22 (12) The commission of fraudulent practices.

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

26 (b) Civil penalty.--Regardless of whether the public
27 adjuster or public adjuster solicitor was licensed or not, the
28 Insurance Commissioner may, at his discretion, in cases
29 warranting such action, impose a civil penalty of not more than
30 \$1,000 for each and every violation of this act.

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

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

20 Section 7. Violations.

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

28 Section 8. Administration and enforcement.

29 (a) Insurance Commissioner to administer and enforce act.--
30 The Insurance Commissioner is hereby charged with the

1 administration and enforcement of this act and shall prescribe,
2 publish, adopt and promulgate rules and regulations in
3 connection herewith.

4 (b) Insurance Commissioner may bring actions.--The Insurance
5 Commissioner or a duly authorized representative may maintain an
6 action for an injunction or other process against any person,
7 partnership, association, corporation or other entity to
8 restrain and prevent any of the foregoing from transacting
9 business as a public adjuster or public adjuster solicitor
10 without a license. Any such action shall be instituted in the
11 Court of Common Pleas in any county where the alleged unlicensed
12 activity occurred. Such court may issue a temporary restraining
13 order or injunction under this act but shall determine any such
14 action on its merits as soon as possible whether in term time or
15 in vacation. No bond shall be required of and no costs shall be
16 taxed against the Insurance Commissioner, his duly authorized
17 representative or the Insurance Department on account of any
18 such action.

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

26 Section 9. Repeals.

27 (a) Specific act.--The act of April 25, 1921 (P.L.276,
28 No.136), entitled, as amended, "An act requiring persons,
29 partnerships, associations, or corporations advertising for or
30 soliciting business as adjusters of claims within this

1 Commonwealth for loss or damage arising out of policies of
2 insurance, surety, or indemnity on property, persons, or
3 insurable business interests within this Commonwealth, to be
4 licensed by the Insurance Commissioner; requiring persons,
5 partnerships, associations, or corporations acting as solicitors
6 for said adjusters to be licensed by the Insurance Commissioner;
7 regulating the issuance and revocation of such licenses;
8 prescribing certain conditions for the transaction of such
9 business; providing for the filing of bonds by public adjusters
10 and public adjuster solicitors, and for recovery thereon by
11 parties in interest; and providing penalties," is repealed.

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

14 Section 10. Severability.

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

21 Section 11. Effective date.

22 This act shall take effect immediately.