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Senate of Pennsylvania

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TO: All Senators

DATE: August 15, 2011

FROM: Senator John P. Blake

SUBJECT: Adding “Licensed Public Adjusters” to the PA Unemployment Compensation Law

I will soon introduce legislation to amend the Pennsylvania Unemployment Compensation Law (43 P.S. § 753) to add licensed public adjusters to the list of exclusions from the definition of “EMPLOYMENT” – 43 P.S. § 753 (17) – so that public adjusters receive the same classification as their counterparts in other industries that are remunerated solely by way of commission.

The current law does not exclude commission based public adjusters from the definition of employment, even though such public adjusters are no different from real estate, insurance and financial agents who work independently and solely on a commission basis, and who are excluded from the definition of employment in 43 P.S. § 753 (17). Public adjusting firms are treating the commission based adjusters as Form 1099 independent contractors, but the common law on independent contractors versus employees is not always clear, depending on the purpose of the enquiry, leading to inconsistent results when the independent contractor status is challenged.

Adding public adjusters to this exclusion will give clarity to the industry by allowing them to continue to utilize public adjusters who are remunerated solely in a commission basis as independent contractors without fear of an audit or unemployment compensation challenge, and will allow the public adjusters to continue to be self-employed with the tax status that confers, without fear of a later audit based on a common law challenge to their independent contractor status.

If you would like to co-sponsor this legislation, please contact my office at 717-787-6481. If you have any questions, please contact Kyle Mullins at kmullins@pasenate.com.