

House Bill 610 (AS PASSED HOUSE AND SENATE)

By: Representatives Williamson of the 115th, Brockway of the 102nd, Shaw of the 176th, and Hugley of the 136th

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 1 of Chapter 23 of Title 33 of the Official Code of Georgia Annotated,
2 relating to agents, agencies, subagents, counselors, and adjusters, so as to provide for the
3 licensing and regulation of public adjusters; to provide for definitions; to provide for written
4 contracts; to provide for standard of conduct; to provide for penalties; to amend Code Section
5 33-63-3 of the Official Code of Georgia Annotated, relating to guaranteed asset protection
6 waivers definitions, so as to expand the definition of guaranteed asset protection waiver to
7 include a contractual agreement wherein a creditor agrees for certain charges to cancel or
8 waive all or part of certain excess wear and use charges; to provide for related matters; to
9 provide for an effective date; to repeal conflicting laws; and for other purposes.

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

11 SECTION 1.

12 Article 1 of Chapter 23 of Title 33 of the Official Code of Georgia Annotated, relating to
13 agents, agencies, subagents, counselors, and adjusters, is amended by revising paragraph (13)
14 of subsection (a) of Code Section 33-23-1, relating to definitions, as follows:

15 "(13) 'Public adjuster' means any person who solicits, advertises for, or otherwise agrees
16 to represent only a person who is insured under a policy covering fire, windstorm, water
17 damage, and other physical damage to real and personal property other than vehicles
18 licensed for the road, and any such representation shall be limited to the settlement of a
19 claim or claims under the policy for damages to real and personal property, including
20 related loss of income and living expense losses but excluding claims arising out of any
21 motor vehicle accident, and who, for compensation on behalf of an insured:

22 (A) Acts or aids, solely in relation to first-party claims arising under insurance
23 contracts that insure the real or personal property of the insured, in negotiating for, or
24 effecting the settlement of, a claim for loss or damage covered by an insurance contract;

25 (B) Advertises for employment as a public adjuster of insurance claims or solicits
26 business or represents himself or herself to the public as a public adjuster of first-party

27 claims for losses or damages arising out of policies of insurance that insure real or
 28 personal property; or
 29 (C) Directly or indirectly solicits business, investigates or adjusts losses, or advises an
 30 insured about first-party claims for losses or damages arising out of policies of
 31 insurance that insure real or personal property for another person engaged in the
 32 business of adjusting losses or damages covered by an insurance policy."

33 **SECTION 2.**

34 Said article is further amended in Code Section 33-23-1, relating to definitions, by revising
 35 subsection (b) and by adding a new subsection to read as follows:

36 "(b) The definitions of agent, subagent, ~~counselor, and adjuster~~ and counselor in
 37 subsection (a) of this Code section shall not be deemed to include:

38 (1) An attorney at law admitted to practice in this state, when handling the collections
 39 of premiums or advising clients as to insurance as a function incidental to the practice of
 40 law or who, ~~from time to time~~, adjusts losses which are incidental to the practice of his
 41 or her profession;

42 (2) Any representative of ocean marine insurers;

43 (3) Any representative of farmers' mutual fire insurance companies as defined in
 44 Chapter 16 of this title;

45 (4) A salaried employee of a credit or character reporting firm or agency not engaged in
 46 the insurance business who may, however, report to an insurer;

47 (5) A person acting for or as a collection agency;

48 (6) A person who makes the salary deductions of premiums for employees or, under a
 49 group insurance plan, a person who serves the master policyholder of group insurance in
 50 administering the details of such insurance for the employees or debtors of the master
 51 policyholder or of a firm or corporation by which the person is employed and who does
 52 not receive insurance commissions for such service; provided, further, that an
 53 administration fee not exceeding 5 percent of the premiums collected paid by the insurer
 54 to the administration office shall not be construed to be an insurance commission;

55 (7) Persons exempted from licensure as provided in subsection (h) of Code
 56 Section 33-23-4; or

57 (8) An individual who collects claim information from, or furnishes claim information
 58 to, insureds or claimants, who conducts data entry, and who enters data into an automated
 59 claims adjudication system, provided that the individual is an employee of a licensed
 60 independent adjuster or its affiliate where no more than 25 such persons are under the
 61 supervision of one licensed independent adjuster or licensed agent.

62 (c) In addition to paragraphs (2) through (8) of subsection (b) of this Code section, the
 63 definitions of public adjuster, independent adjuster, and adjuster in subsection (a) of this
 64 Code section shall not be deemed to include an attorney admitted to practice law in this
 65 state."

66 SECTION 3.

67 Said article is further amended by revising subsection (a) of Code Section 33-23-4, relating
 68 to license required, restrictions on payment or receipt of commissions, and positions
 69 indirectly related to sale, solicitation, or negotiation of insurance excluded from licensing
 70 requirements, as follows:

71 "(a)(1) A person shall not sell, solicit, or negotiate insurance in this state for any class or
 72 classes of insurance unless the person is licensed for that line of authority in accordance
 73 with this chapter and applicable regulations.

74 (2) Any individual who sells, solicits, or negotiates insurance in this state ~~must~~ shall be
 75 licensed as an agent.

76 (3) Any business entity that sells, solicits, or negotiates insurance in this state ~~must~~ shall
 77 be licensed as an agency.

78 (4) Any individual defined as an adjuster under paragraph (1) of subsection (a) of Code
 79 Section 33-23-1 who for a fee, commission, salary, or other compensation investigates,
 80 settles, or adjusts claims arising under insurance contracts on behalf of the insurer or the
 81 insured shall be licensed as either an independent adjuster or a public adjuster."

82 SECTION 4.

83 Said article is further amended by revising subsection (c) of Code Section 33-23-43, relating
 84 to authority of adjusters and penalty for violation, as follows:

85 "(c) No public adjuster, at any time, shall knowingly:

86 (1) ~~Suggest or advise the employment of or name for employment a specific attorney or~~
 87 ~~attorneys to represent a person in any matter relating to a person's potential claims,~~
 88 ~~including any motor vehicle accident claims for personal injury, loss of consortium,~~
 89 ~~property damages, or other special damages~~ Misrepresent to an insured that he or she is
 90 required to hire an independent or public adjuster to help the insured meet his or her
 91 obligations under his or her policy;

92 (2) Accept or agree to accept any money or other compensation from an attorney or any
 93 person acting on behalf of an attorney which the adjuster knows or should reasonably
 94 know is payment for the suggestion or advice by the adjuster to seek the services of the
 95 attorney or for the referral of any portion of a person's claim to the attorney;

96 (3) Hire or procure another to do any act prohibited by this subsection; ~~or~~

- 97 (4) Advertise or promise to pay or rebate all or any portion of any insurance deductible
 98 as an inducement to the sale of goods or services. As used in this subsection, the term
 99 'promise to pay or rebate' includes:
- 100 (A) ~~granting~~ Granting any allowance or offering any discount against the fees to be
 101 charged, including, but not limited to, an allowance or discount in return for displaying
 102 a sign or other advertisement at the insured's premises; or
- 103 (B) ~~paying~~ Paying the insured or any person directly or indirectly associated with the
 104 property any form of compensation, gift, prize, bonus, coupon, credit, referral fee, or
 105 other item of monetary value for any reason;
- 106 (5) Misrepresent to a claimant that he or she is an adjuster representing an insurer in any
 107 capacity, including acting as an employee of the insurer or as an independent adjuster,
 108 unless appointed by an insurer in writing to act on the insurer's behalf for that specific
 109 claim or purpose. A licensed public adjuster shall not charge a claimant a fee for
 110 adjusting a claim when he or she is appointed by the insurer for that specific claim or
 111 purpose and the appointment is accepted by the public adjuster;
- 112 (6) Solicit, or attempt to solicit, an insured during the progress of a loss-producing
 113 occurrence as defined in the insured's insurance contract;
- 114 (7) Have a direct or indirect financial interest in any aspect of a claim other than the
 115 salary, fee, commission, or other consideration established in a written contract with the
 116 insured which shall incorporate all of the conditions and provisions set out in Code
 117 Section 33-23-43.1;
- 118 (8) Charge to or collect from an insured any amount, other than reasonable compensation
 119 for services rendered based on time spent and expenses incurred, in any transaction where
 120 the insurer either pays or commits in writing to pay the policy limit or limits for all
 121 coverage under the insured's policy within three business days after the loss is reported
 122 to the insurer;
- 123 (9) Misrepresent to an insured or insurer that he or she is an attorney authorized by law
 124 to provide legal advice and services or that a policy covers a loss or losses outside the
 125 scope of the coverage provided by the insurance contract;
- 126 (10) Permit an unlicensed employee or representative of the adjuster to conduct business
 127 for which a license is required; or
- 128 (11) Hire or procure another to do any act prohibited by this subsection."

129 **SECTION 5.**

130 Said article is further amended by adding new Code sections to read as follows:

131 "33-23-43.1.

- 132 (a) Public adjusters shall ensure that all contracts for their services are in writing,
 133 prominently captioned and titled 'Public Adjuster Contract,' and contain the following:
- 134 (1) Legible full name of the public adjuster signing the contract, as specified on the
 135 license issued by the Department of Insurance, and attestation language that the public
 136 adjuster is fully bonded pursuant to state law;
 - 137 (2) Permanent home state business address and contact information of the public
 138 adjuster, including e-mail address;
 - 139 (3) The public adjuster's Department of Insurance license number and a statement that
 140 the license is valid and in full force and effect as of the date the contract is signed;
 - 141 (4) The insured's full name and street address;
 - 142 (5) A description of the loss and its location, if applicable;
 - 143 (6) A description of services to be provided to the insured;
 - 144 (7) Signatures of the public adjuster and the insured;
 - 145 (8) The date the contract was signed by the public adjuster, and the date the contract was
 146 signed by the insured;
 - 147 (9) A statement of the fee, compensation, or other considerations that the public adjuster
 148 is to receive for services, including a listing of typical costs and expenses for which the
 149 public adjuster is to be reimbursed; and
 - 150 (10) A statement prominently captioned in a minimum 12 point font that contains the
 151 following:
 - 152 (A) Any direct or indirect interest in or compensation by any construction firm, salvage
 153 firm, building appraisal firm, storage company, or any other firm or business entity that
 154 performs any work in conjunction with damages incident to any loss which the adjuster
 155 has been contracted to adjust;
 - 156 (B) Any direct or indirect participation in the reconstruction, repair, or restoration of
 157 damaged property that is the subject of a claim adjusted by the adjuster or disclosure
 158 of any other activities that may be reasonably construed as a conflict of interest,
 159 including a financial interest in any salvage, repair, construction, or restoration of any
 160 business entity that obtains business in connection with any claims that the public
 161 adjuster has a contract or agreement to adjust; and
 - 162 (C) Any direct or indirect compensation of value in connection with an insured's
 163 specific loss other than compensation from the insured for service as a public adjuster.
- 164 (b) Public adjuster contracts may not contain a contract term that:
- 165 (1) Restricts an insured's right to initiate and maintain direct communications with his
 166 or her attorney, the insurer, the insurer's adjuster, the insurer's attorney, or any other
 167 person regarding settlement of the insured's claim;

168 (2) Vests the public adjuster with the right to initiate direct communications with the
 169 insured's insurer, the insurer's adjuster, or the insurer's attorney regarding settlement of
 170 the insured's claim without specific written authorization from the insured;

171 (3) Allows the public adjuster's percentage fee to be collected when money is due from
 172 an insurance company but not paid or that allows a public adjuster to collect the entire fee
 173 from the first check issued by an insurance company rather than as a percentage of each
 174 check issued by an insurance company;

175 (4) Requires the insured to authorize an insurance company to issue a check only in the
 176 name of the public adjuster; or

177 (5) Precludes or restricts an insured from pursuing any civil remedies relating to his or
 178 her claim.

179 (c) All public adjuster contracts shall be construed to contain, by operation of law:

180 (1) A provision granting the insured a right to rescind the contract within three business
 181 days after the date the contract was signed, so long as the rescission is in writing and
 182 mailed or delivered to the public adjuster at the address stated in the contract within three
 183 business days. For purposes of this subsection, rescission of the contract shall be
 184 considered delivered or mailed if it is delivered by electronic transmittal to the e-mail
 185 address or facsimile specified in the contract for such communications;

186 (2) A provision that if the insured exercises the right to rescind the contract, anything of
 187 value given by the insured under the contract will be returned to the insured within 15
 188 business days following the receipt by the public adjuster of the cancellation notice; and

189 (3) A provision requiring that, prior to initiating any contact with the insured's insurer,
 190 the insurer's adjuster, or the insurer's attorney regarding settlement of the insured's claim,
 191 a public adjuster must provide the insurer a notification letter signed by the insured
 192 confirming that the insured has authorized the public adjuster to communicate directly
 193 with the insurer, the insurer's adjuster, or the insurer's attorney on behalf of the insured.

194 (d) All public adjuster contracts shall be executed in duplicate to provide an original
 195 contract to the public adjuster and an original contract to the insured. The public adjuster's
 196 original contract shall be available at all times for inspection without notice by the
 197 Commissioner of Insurance.

198 33-23-43.2.

199 (a) A public adjuster is obligated, under his or her license, to serve with objectivity and
 200 complete loyalty to the interest of his or her client alone and to render to the insured such
 201 information, counsel, and service within the public adjuster's knowledge, understanding,
 202 and opinion that will best serve the insured's insurance claim needs and interest.

203 (b) A public adjuster shall faithfully observe all of the terms and provisions of the public
204 adjuster contract as prescribed in Code Section 33-23-43.1."

205 **SECTION 6.**

206 Code Section 33-63-3 of the Official Code of Georgia Annotated, relating to guaranteed asset
207 protection waivers definitions, is amended by revising in paragraph (6) as follows:

208 "(6) 'Guaranteed asset protection waiver' means a contractual agreement wherein a
209 creditor agrees for a separate charge to cancel or waive all or part of amounts due on a
210 borrower's finance agreement in the event of a total physical damage loss or unrecovered
211 theft of the motor vehicle, which agreement must be part of, or a separate addendum to,
212 the finance agreement or a contractual agreement wherein a creditor agrees for a separate
213 charge to cancel or waive all or part of the excess wear and use charges owed by the
214 borrower to the creditor under the lease contract when the borrower returns a leased
215 vehicle to the creditor at termination of the lease, which agreement must be part of, or a
216 separate addendum to, the lease contract."

217 **SECTION 7.**

218 This Act shall become effective on July 1, 2014.

219 **SECTION 8.**

220 All laws and parts of laws in conflict with this Act are repealed.