

CHAPTER 314

H.B. No. 1211

THE COMMONWEALTH OF MASSACHUSETTS

In the Year Two Thousand and Two

AN ACT FURTHER REGULATING THE LICENSING OF PUBLIC INSURANCE ADJUSTERS.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Section 47A of chapter 175, as appearing in the 2000 Official Edition, is hereby amended by striking out, in lines 23 and 24, the words "adjuster of fire losses" and inserting in place thereof the following words:-- public insurance adjuster.

SECTION 2. Section 162 of said chapter 175, as amended by section 3 of chapter 106 of the acts of 2002, is hereby amended by striking out the second paragraph and inserting in place thereof the following paragraph:

Whoever, for compensation, not being an attorney at law acting in the usual course of his profession, directly or indirectly solicits from an insured or the representative of the insured, or performs services pursuant to an agreement, engagement or undertaking to represent the insured in connection with the assessment of damages, negotiation, settlement, appraisal or reference of a loss under a fire insurance policy, homeowners insurance policy, commercial multi-peril insurance policy, business interruption insurance policy, fidelity bond or crime insurance policy, inland or ocean marine insurance policy, or other property damage insurance coverage of any sort, shall be a public insurance adjuster.

SECTION 3. Said chapter 175 is hereby amended by striking out section 172, as amended by section 22 of chapter 106 of the acts of 2002, and inserting in place thereof the following section:--

Section 172. The commissioner may, upon the payment of the fee prescribed by section 14 and after successful completion of a written examination, issue to any suitable person of 21 years of age or more a license to act as a public insurance adjuster in the commonwealth, if such person files with the commissioner a written application for such license executed on oath by the applicant. Included with the application shall be 2 passport sized photographs taken within 60 days of the date of the application together with a certified copy of a criminal background check. A licensee shall be a resident of the commonwealth or a bona fide resident of a state or country which permits residents of this commonwealth to act as adjusters in such other state or country.

The applications shall be kept on file by the commissioner. No application shall be filed unless and until the applicant shall demonstrate that he has 2 years experience performing services in connection with adjusting of property losses.

If the commissioner is satisfied that the applicant is trustworthy and competent, he shall issue the license which shall expire in 3 years from its date, unless sooner revoked or suspended as provided herein. Upon the payment of the fee prescribed by section 14, the license may be renewed for any succeeding 3 year period without requiring an additional written examination.

A person renewing a public insurance adjuster's license shall be certified by the division of insurance as having completed before the renewal of said license a total of 15 hours of continuing education instruction as approved by the commissioner or by any other state or country which requires continuing education

instruction as a condition for obtaining a public insurance adjuster's license. The commissioner may at any time, for cause shown and after a hearing, revoke the license or suspend it for a period not exceeding the unexpired term thereof, and may, for cause shown and after a hearing, revoke the license while so suspended, and shall notify the licensee in writing of such revocation or suspension.

Contracts for a public insurance adjuster to represent an insured in connection with the assessment of damages, negotiation, settlement, appraisal, or reference of a loss occurring in the commonwealth and arising under a fire insurance policy, home owners insurance policy, commercial multi-peril policy, business interruption insurance policy, fidelity bond or crime insurance policy, inland or ocean marine insurance policy, or other property damage insurance coverage of any sort shall be in writing in a form approved by the commissioner. No such contract shall be made by a public insurance adjuster until a copy of the form of such contract has been on file for 30 days with the commissioner, unless before the expiration of that period the commissioner shall have approved the form in writing; nor if the commissioner notifies the public insurance adjuster in writing within the 30 day period that the form of such contract has been disapproved by the commissioner, specifying the reasons therefor; but the action of the commissioner shall be subject to review by the superior court.

To be enforceable by a public insurance adjuster, such contract shall be signed by a named insured specified in each policy covering the loss to which the public insurance adjuster's services relate, or by an authorized designee of such named insured, and a copy thereof shall be delivered by the public insurance adjuster to such named insured or his designee. If said policy contains a mortgagee clause or names a mortgagee, any mortgagee making claim for payment under the policy shall be a beneficiary of the public insurance adjuster's contract with the named insureds; but nothing herein shall prohibit a mortgagee from engaging a public insurance adjuster to represent its interests directly.

A contract by which a public insurance adjuster agrees, engages and undertakes, to represent an insured shall provide clearly and conspicuously in writing that such contract may be canceled without recourse within 3 calendar days after the date of receipt of a copy of the written contract by such named insured or his designee. The contract shall also provide that it may be revoked by the insured who signed it or their designee at any time after said 3 calendar days, subject to the public insurance adjuster's assertion of a lien for his agreed percentage fee upon insurance proceeds offered or secured through his efforts as the insured's representative. A contract shall contain the following written notice in at least 10 point bold type:

YOU MAY CANCEL THIS CONTRACT WITHOUT ANY PENALTY OR FURTHER OBLIGATION BY CAUSING A WRITTEN NOTICE OF YOUR CANCELLATION TO BE DELIVERED IN PERSON, BY TELEGRAM OR FACSIMILE TRANSMISSIONS BY OVERNIGHT EXPRESS DELIVERY OR CERTIFIED OR REGISTERED UNITED STATES MAIL, TO THE ADDRESS OF THE PUBLIC INSURANCE ADJUSTER SPECIFIED IN THIS CONTRACT, WITHIN 3 CALENDAR DAYS OF THE DATE THAT YOU RECEIVE THIS CONTRACT. THIS CONTRACT THEREAFTER MAY BE REVOKED BY THE INSURED WHO SIGNED IT, OR THEIR DESIGNEE, AT ANY TIME, SUBJECT TO THE PUBLIC INSURANCE ADJUSTER'S ASSERTION OF A FEE LIEN UPON INSURANCE PROCEEDS OFFERED OR SECURED THROUGH HIS EFFORTS AS THE INSURED'S REPRESENTATIVE. IF YOU CANCEL THIS AGREEMENT YOU WILL REMAIN LIABLE FOR REASONABLE AND NECESSARY EMERGENCY OUT-OF-POCKET EXPENSES OR SERVICES WHICH WERE PAID FOR OR INCURRED BY THE PUBLIC INSURANCE ADJUSTER DURING SAID 3 DAY PERIOD TO PROTECT THE INTERESTS OF THE INSURED.

Whoever acts in the commonwealth as a public insurance adjuster, as defined in section 162 without a license or during a suspension of his license, or in violation of this section, shall be punished by a fine of not more than \$10,000 or by imprisonment for not more than 6 months.

The commissioner shall require that an applicant for a license as a public insurance adjuster take a written examination prepared and administered by the commissioner or an independent testing service designated by the commissioner under the direction of the commissioner, who shall fix a passing grade which in his

judgment indicates the applicant's ability to perform in a satisfactory manner the duties of a public insurance adjuster. The test shall examine an applicant's knowledge of building construction techniques and materials, as well as knowledge of relevant insurance principles and coverage. The commissioner shall determine or approve the charges to be paid by applicants for the services of any independent testing service designated by the commissioner. A written examination shall not be required in order to renew said license.

A license to act as a public insurance adjuster may, upon the payment of the fees prescribed by section 14, be issued to any voluntary organization, as defined in section 1 of chapter 182, which is organized exclusively for the purpose of acting as a public insurance adjuster, subject to the conditions specified in section 172A.

The commissioner may, upon the payment of the fees prescribed by section 14, issue to a partnership a license to act as a public insurance adjuster subject to the conditions specified in section 173. The partnership may include nonresident insurance producers if a majority of the partners are residents of the commonwealth, and if the partnership agreement contains a statement which in substance states that the partnership agreement is a Massachusetts contract and shall be governed by, and construed and enforced in accordance with, the laws of the commonwealth, and that with respect to any legal action arising out of the transactions or activities of the partnership affairs, service of process made on any 1 of the partners shall be deemed valid and binding service upon all partners who are not residents of the commonwealth.

A license to act as a public insurance adjuster may, upon the payment of the fees prescribed by section 14, be issued to any corporation which is incorporated exclusively for the purpose of acting as a public insurance adjuster, subject to the conditions specified in section 174. The majority of officers and directors to be named in the license shall have been so licensed as individuals for 3 years, except that no foreign corporation shall be licensed as an insurance agent of a foreign company under section 163 or as a special insurance broker under said section 168. Each license shall specify the officers and directors who may act thereunder in the name and on behalf of the corporation, the number of such officers and directors to be determined in the discretion of the commissioner in each case.

SECTION 4. Section 172A of said chapter 175, is hereby amended by striking out, in line 7, the words "adjuster of fire losses" and inserting in place thereof the following words:--public insurance adjuster.

SECTION 5. Section 174 of said chapter 175, as amended by section 30 of chapter 106 of the acts of 2002, is hereby amended by striking out, in line 6, the words "adjuster of fire losses" and inserting in place thereof the following words:--public insurance adjuster.

SECTION 6. This act shall not restrict the right of any person or entity whose license under section 172 of chapter 175 of the General Laws is in effect as of the effective date of this act to perform the full scope of services set forth in section 2 subject to the provisions of this act which regulate the renewal of said license and the activities of a licensed public insurance adjuster.

Approved September 6, 2002.