

State of Wisconsin



2019 Assembly Bill 357

Date of enactment: **March 3, 2020**
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2019 WISCONSIN ACT 129

AN ACT *to amend* 45.44 (1) (a) 18., 601.43 (1) (a) and 601.43 (1) (d); and *to create* 601.31 (1) (z), 601.31 (1) (zb), 601.31 (1) (zc) and chapter 629 of the statutes; **relating to:** regulation of public adjusters.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 45.44 (1) (a) 18. of the statutes is amended to read:

45.44 (1) (a) 18. A license, certificate, registration, or permit issued under chs. 601 to 655.

SECTION 2. 601.31 (1) (z) of the statutes is created to read:

601.31 (1) (z) For issuance of a registration as a public adjuster under s. 629.02 (2), \$50.

SECTION 3. 601.31 (1) (zb) of the statutes is created to read:

601.31 (1) (zb) For each renewal of a public adjuster registration under s. 629.02 (4), \$50.

SECTION 4. 601.31 (1) (zc) of the statutes is created to read:

601.31 (1) (zc) For registering for the public adjuster examination under s. 629.03 (1), \$50.

SECTION 5. 601.43 (1) (a) of the statutes is amended to read:

601.43 (1) (a) *Insurers, other licensees and other persons subject to regulation.* Whenever the commissioner deems it necessary in order to inform himself or herself about any matter related to the enforcement of chs. 600 to 647, the commissioner may examine the affairs and condition of any licensee, registrant, or per-

mittee under chs. 600 to 647 or applicant for a license, registration, or permit, of any person or organization of persons doing or in process of organizing to do an insurance business in this state, of any public adjuster, as defined in s. 629.01 (5), and of any advisory organization serving any of the foregoing in this state.

SECTION 6. 601.43 (1) (d) of the statutes is amended to read:

601.43 (1) (d) *Delivery of records to the office.* On order of the commissioner any licensee, registrant, or permittee under chs. 600 to 647 shall bring to the office for examination such records as the order reasonably requires.

SECTION 7. Chapter 629 of the statutes is created to read:

CHAPTER 629 PUBLIC ADJUSTERS

629.01 Definitions. In this chapter:

(1) "Adjusting service" means an act on behalf of an insured, in exchange for compensation, with the preparation, completion, or filing of a first-party claim, including by negotiating values, damages, or depreciation or by applying the loss circumstances to insurance policy provisions.

* Section 991.11, WISCONSIN STATUTES: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication."

(2) "Compensation" means anything of value received directly or indirectly in return for the performance of an adjusting service.

(3) "First-party claim" means a claim for damage or loss to real or personal property located in this state that is filed by an insured.

(4) "Insured" means a person whose real or personal property is insured under an insurance policy against which a claim is or will be made.

(5) "Public adjuster" means an individual who engages in adjusting services in this state and, in the case of a person who is not a resident of this state, has registered with the commissioner under s. 629.02 (2), but does not include any of the following:

(a) An attorney admitted to practice in this state while acting in his or her professional capacity as an attorney.

(b) An individual who negotiates or settles claims arising under a life insurance policy, a disability insurance policy, as defined in s. 645.675 (1) (h), or an annuity contract.

(c) An individual employed solely for the purpose of obtaining facts surrounding a loss or furnishing technical assistance to a public adjuster, including a photographer, estimator, private investigator, engineer, or handwriting expert.

(d) An individual who settles subrogation claims between insurers.

(e) An individual who is licensed as an intermediary under s. 628.04 or 628.09 while acting in his or her professional capacity as an intermediary.

(f) An individual who represents an insurer in negotiations for the settlement of a claim against the insurer arising out of the coverage provided by an insurance policy.

629.02 Registration. (1) LIST OF REGISTERED PUBLIC ADJUSTERS. The commissioner shall maintain on the office's Internet site a list of public adjusters who have registered with the commissioner under sub. (2).

(2) APPLICATION. A public adjuster who is not a resident of this state shall register with the commissioner prior to engaging in public adjusting services in this state. A public adjuster who is a resident of this state may register with the commissioner. In order to register under this subsection, the public adjuster shall complete an application form prescribed by the commissioner. The form shall request the individual to provide the individual's social security number and all documentation the commissioner determines is necessary and appropriate. The commissioner shall approve the individual's registration application if the commissioner determines the individual satisfies all the following conditions:

(a) The individual has not committed any act subject to penalty under s. 629.13.

(c) The individual pays the fee under s. 601.31 (1) (z).

(d) The individual maintains a home office in the individual's state of residence and is available to the pub-

lic at that office through reasonable appointment hours or regular business hours.

(e) The individual is at least 18 years of age.

(f) The individual meets the requirement of ss. 629.03 and 629.11.

(h) If the individual is not a resident of this state, the individual agrees to be subject to the jurisdiction of the commissioner and the courts of this state and to the commissioner's rules and orders with service of process as provided under ss. 601.72 and 601.73.

(4) RENEWAL. A registration under sub. (2) shall remain in effect for 2 years from the date of issuance, unless it is revoked or suspended by the commissioner under s. 629.13. An individual may renew a registration by submitting, prior to the registration's expiration date, a request for renewal to the commissioner in the form prescribed by the commissioner. The request shall include evidence of compliance with s. 629.11 and payment of the fee under s. 601.31 (1) (zb). An individual who fails to renew a registration prior to the expiration date may reapply for registration under sub. (2).

629.03 Examination. (1) Prior to the commissioner approving an individual's registration under s. 629.02 (2), the individual shall pass a written examination that tests knowledge of the duties and responsibilities of a public adjuster and the insurance laws and regulations of this state. The examination shall be conducted as prescribed by the commissioner and require payment of the fee under s. 601.31 (1) (zc). The commissioner may contract with an outside testing service for administering the examination and collecting the fee.

(2) An individual who is not a resident of this state and who is a licensed or registered public adjuster in the individual's state of residence and was required to pass a written examination to obtain that license or registration may request the commissioner to accept proof of the examination's passage as fulfilling the requirement under sub. (1). The commissioner may approve the request if the individual's license or registration in that state is in good standing.

629.04 Contract requirements. (1) A public adjuster may not perform any adjusting service for an insured prior to entering into a contract with the insured. The contract shall be in writing, be titled "Public Adjuster Contract," and be on a form filed with the commissioner under s. 631.20 (1m). The contract shall include all of the following:

(a) The public adjuster's full name, state of residence, permanent principal business street address, telephone number, and, if applicable, registration number assigned by the commissioner.

(b) The insured's full name, street address, insurer name, and policy number.

(c) A description of the loss and its location.

(d) The date and time the contract was signed by the public adjuster and the insured.

(e) An attestation by the public adjuster that he or she is fully bonded pursuant to state law.

(f) A disclosure of the compensation the public adjuster is to receive in accordance with s. 629.05.

(g) A provision allowing the insured to void the contract in accordance with sub. (3).

(h) A statement that the contract shall constitute the entire agreement between the public adjuster and the insured.

(2) A contract under sub. (1) may not require the insured to do any of the following:

(a) Authorize an insurer to issue a check only in the name of the public adjuster.

(b) Pay collection costs or a late fee to the public adjuster.

(c) Limit the insured's right to pursue any civil remedy against the public adjuster.

(3) At the insured's option, the insured may void a contract under sub. (1) no later than 5 business days after the contract's execution. The insured may void the contract by sending notice by registered or certified mail, return receipt requested, to the public adjuster at the address on the contract or by personally serving notice on the public adjuster at the place of business identified on the contract. The public adjuster shall return anything of value provided under the contract by the insured no later than 15 business days following receipt of the notice. Nothing in this subsection prevents an insured from pursuing any civil remedy against a public adjuster.

(4) A contract under sub. (1) shall be executed in duplicate with an original provided to the public adjuster and to the insured. The public adjuster shall make the contract available to the commissioner at all times for inspection without notice.

(5) A public adjuster shall include with the contract under sub. (1) a notice of the insured's right to file a complaint with the commissioner about an insurance problem. The notice shall be on a single piece of paper that is separate from the contract and shall include all of the following:

(a) The information described in sub. (1) (a).

(b) A clear statement of the insured's right to file a complaint.

(c) Information on how the insured may obtain a complaint form by contacting the office of the commissioner or from the office's Internet site.

(d) The office of the commissioner's mailing address and phone numbers and the address of the office's Internet site.

629.05 Compensation. (1) In this section, "catastrophic disaster" means an event for which the president of the United States or the governor has declared a state of emergency.

(2) The contract under s. 629.04 shall clearly disclose the compensation the public adjuster is to receive from the insured.

(3) If an insurer pays, or commits in writing to pay, the policy limit no later than 5 business days after the date the loss is reported to the insurer, the only compensation a public adjuster may receive from the insured shall be compensation at a reasonable hourly rate for the time spent on the claim.

(4) A public adjuster may not demand compensation from the insured prior to the insured receiving payment from the insurer.

(5) If an insurer pays a claim in installments, the public adjuster shall receive the compensation in equal amounts prorated over the number of checks issued by the insurer and may not demand to be paid entirely from the first check issued.

(6) A public adjuster may not receive compensation in excess of 10 percent of an insured's actual recovery under the insurance policy if the claim is due to a catastrophic disaster.

629.06 Disclosure of additional compensation. A public adjuster may not directly or indirectly accept compensation or anything else of value from an insured and a person who provides estimates for work or performs work in conjunction with damage or loss under a claim subject to a contract under s. 629.04.

629.07 Assignment of proceeds prohibited. (1) A public adjuster may not request or accept an assignment of insurance policy proceeds from an insured with whom the public adjuster has entered into a contract under s. 629.04. An insurer may not be required to honor an assignment of insurance policy proceeds to a public adjuster.

(2) A public adjuster may request that an insurer include both the public adjuster and the insured on a check paying all or part of the proceeds of an insurance policy if the contract under s. 629.04 permits joint payment of proceeds.

629.08 Escrow of funds. A public adjuster who, on behalf of an insured, receives, accepts, or holds any funds for the settlement of a first-party claim shall deposit the funds in a noninterest-bearing escrow account in a federally insured financial institution that is located in the state in which the insured resides or the loss occurred.

629.082 Bonding. A public adjuster shall supply a bond that meets specifications established by the commissioner to guarantee faithful performance of the individual's duties and obligations as a public adjuster.

629.09 Contractors. A public adjuster may not require an insured to use a particular contractor or vendor and may not take any action that vests the effective authority with the public adjuster to choose a person to perform work on the insured's claim. A contract under s. 629.04 shall state that the insured may choose any contractor or vendor.

629.10 Prohibitions. In addition to the other prohibitions in this chapter, a public adjuster may not engage in any of the following activities:

(1) Solicit, or attempt to solicit, an insured during the progress of a loss-producing occurrence, as defined in the insured's insurance policy.

(3) Own a direct or indirect financial interest in any aspect of a claim, other than the compensation agreed to under s. 629.04 (1) (f)

(4) Acquire an interest in salvage of the insured's property unless obtaining written permission from the insured after settlement of the claim.

(5) Refer the insured to a person in whom the public adjuster has a direct or indirect financial interest or from whom the public adjuster may directly or indirectly receive anything of value.

(6) Solicit an insured outside the hours of 9 a.m. and 8 p.m. during the first 24 hours after the loss.

(7) Undertake an adjusting service without being competent and knowledgeable about the terms and conditions of the insured's insurance coverage or if the loss or coverage exceeds the public adjuster's expertise.

(8) Knowingly make a false material statement regarding any person engaged in the business of insurance to a client or potential client.

(9) Act as an adjuster for an insurer or independent adjuster.

(10) Agree to a settlement without the insured's knowledge and written consent.

629.11 Continuing education. (1) Prior to the commissioner approving an individual's registration under s. 629.02 (2), the individual shall certify to the commissioner that the individual will complete, on a biennial basis, a minimum of 15 credits of continuing education, including 3 credits of ethics. Each credit shall consist of at least 50 minutes of instruction and shall be approved by the commissioner. A public adjuster shall report the credits in conjunction with the registration renewal under s. 629.02 (4), if applicable.

(2) An individual who is not a resident of this state and who is a licensed or registered public adjuster in the individual's state of residence and complies with continuing education requirements in that state that are substantially similar to the requirements under sub. (1) may submit to the commissioner proof of compliance with that state's requirements. If the individual's state of residence provides credit to the residents of this state on a reciprocal basis, the commissioner shall accept the proof of compliance as meeting the requirement under sub. (1).

629.12 Reporting of administrative and criminal actions. (1) A public adjuster shall report to the commissioner any administrative action related to the business of insurance that is taken against the public adjuster by a governmental agency or regulatory body. The report

shall be made no later than 30 days after the final disposition of the matter and shall include a copy of the order, consent to order, or similar document.

(2) A public adjuster shall report to the commissioner any criminal prosecution taken against the public adjuster in any jurisdiction. The report shall be made no later than 30 days after the date of the initial pretrial hearing and shall include a copy of the complaint, the order from the hearing, and any other information required by the commissioner.

629.13 Penalties. Upon a finding that a public adjuster has done any of the following, the commissioner may, after a hearing, notify the public by posting the public adjuster's name and infraction on the office's Internet site, levy a civil penalty, or, if applicable, suspend or revoke the public adjuster's registration under s. 629.02, or do any combination of the 3 actions:

(1) Provided false, misleading, or incomplete information in the registration application.

(2) Failed to comply with any provision in this chapter.

(3) Violated any insurance law or rule or any subpoena or order of the commissioner or insurance regulatory body of another state.

(4) Obtained, or attempted to obtain, registration as a public adjuster through misrepresentation or fraud.

(5) Misappropriated or otherwise improperly handled money or property received in the course of doing business as a public adjuster.

(6) Intentionally misrepresented the terms of an insurance policy.

(7) Been convicted of a felony related to the duties and obligations of a public adjuster or the business of insurance.

(8) Admitted to committing, or is found to have committed, any insurance unfair trade practice or insurance fraud.

(9) Used fraudulent, coercive, or dishonest practices, or demonstrated incompetence or untrustworthiness, in the conduct of business in any jurisdiction.

(10) Had an intermediary license or public adjuster license or registration denied, suspended, or revoked in any jurisdiction.

(11) Cheated on an examination for a public adjuster license or registration.

(12) Misrepresented to a person that the individual represents or is employed by an insurer in any capacity, including as an independent adjuster.

SECTION 8. Effective date.

(1) This act takes effect on the first day of the 4th month beginning after publication.