

House Bill 254 (AS PASSED HOUSE AND SENATE)

By: Representatives Lumsden of the 12<sup>th</sup>, Williamson of the 115<sup>th</sup>, Taylor of the 173<sup>rd</sup>, Hugley of the 136<sup>th</sup>, and Tarvin of the 2<sup>nd</sup>

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 licensing of agents, agencies, subagents, counselors, and adjusters, so as to  
3 increase the Insurance Commissioner's enforcement authority with regard to adjusters; to  
4 provide for allowable types of remuneration; to provide for proof of financial responsibility;  
5 to provide for record keeping; to provide for certain consumer protections; to provide for  
6 advertising requirements; to provide for certain prohibited acts; to provide for related  
7 matters; to repeal conflicting laws; and for other purposes.

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

9 **SECTION 1.**

10 Article 1 of Chapter 23 of Title 33 of the Official Code of Georgia Annotated, relating to  
11 licensing of agents, agencies, subagents, counselors, and adjusters, is amended by revising  
12 Code Section 33-23-43, relating to authority of adjusters and penalties for violation, as  
13 follows:

14 "33-23-43.

15 (a) An adjuster licensed as both an independent and a public adjuster shall not represent  
16 both the insurer and the insured in the same transaction.

17 (b) An adjuster shall have authority under his or her license only to investigate, settle, or  
18 adjust and report to his or her principal upon claims arising under insurance contracts on  
19 behalf of insurers only if licensed as an independent adjuster or on behalf of insureds only  
20 if licensed as a public adjuster.

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

22 (1) Misrepresent to an insured that he or she is required to hire an independent or public  
23 adjuster to help the insured meet his or her obligations under his or her policy;

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

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

29 (4) Advertise or promise to pay or rebate all or any portion of any insurance deductible  
30 as an inducement to the sale of goods or services. As used in this paragraph, the term  
31 'promise to pay or rebate' includes:

32 (A) Granting any allowance or offering any discount against the fees to be charged,  
33 including, but not limited to, an allowance or discount in return for displaying a sign  
34 or other advertisement at the insured's premises; or

35 (B) Paying the insured or any person directly or indirectly associated with the claim  
36 any form of compensation, gift, prize, bonus, coupon, credit, referral fee, or other item  
37 of monetary value for any reason;

38 (5) Misrepresent to a claimant that he or she is an adjuster representing an insurer in any  
39 capacity, including acting as an employee of the insurer or as an independent adjuster,  
40 unless appointed by an insurer in writing to act on the insurer's behalf for that specific  
41 claim or purpose. A licensed public adjuster shall not charge a claimant a fee for  
42 adjusting a claim when he or she is appointed by the insurer for that specific claim or  
43 purpose and the appointment is accepted by the public adjuster;

- 44 (6) Solicit, or attempt to solicit, an insured during the progress of a loss-producing  
45 occurrence as defined in the insured's insurance contract;
- 46 (7) Have a direct or indirect financial interest in any aspect of a claim other than the  
47 salary, fee, commission, or other consideration established in a written contract with the  
48 insured which shall incorporate all of the conditions and provisions set out in Code  
49 Section ~~33-23-43.1~~ 33-23-43.2;
- 50 (8) Charge to or collect from an insured any amount, other than reasonable compensation  
51 for services rendered based on time spent and expenses incurred, in any transaction where  
52 the insurer either pays or commits in writing to pay the policy limit or limits for all  
53 coverage under the insured's policy within three business days after the loss is reported  
54 to the insurer;
- 55 (9) Misrepresent to an insured or insurer that he or she is an attorney authorized by law  
56 to provide legal advice and services or that a policy covers a loss or losses outside the  
57 scope of the coverage provided by the insurance contract;
- 58 (10) Permit an unlicensed employee or representative of the adjuster to conduct business  
59 for which a license is required; or
- 60 (11) Hire or procure another to do any act prohibited by this subsection.
- 61 (d) For purposes of subsection (c) of this Code section, the term 'public adjuster' shall  
62 include licensed public adjusters as defined by Code Section 33-23-1, persons representing  
63 themselves to be public adjusters who are not properly licensed by the Commissioner, and  
64 persons committing any act under paragraph (4) of subsection (c) of this Code section.
- 65 (e) Any person who violates any provision of subsection (c) of this Code section shall be  
66 guilty of a misdemeanor and such violation shall be grounds for suspension or revocation  
67 of licenses under this chapter.
- 68 (f) The Commissioner may adopt reasonable and necessary rules to implement this article,  
69 including but not limited to rules regarding:

- 70 (1) The qualifications for adjusters, in addition to those prescribed by this article, that are  
71 necessary to promote the public interest;  
72 (2) The regulation of the conduct of adjusters, in accord with this article;  
73 (3) The prescription of fees not prescribed elsewhere in this title that are necessary to  
74 cover the cost of filings or other administrative costs; and  
75 (4) The regulation of advertisements and the definition of 'advertisement' as the term is  
76 used in paragraph (4) of subsection (c) of this Code section."

77 **SECTION 2.**

78 Said article is further amended by adding a new Code section to read as follows:

79 "33-23-43.1.

80 (a) No person may act or hold himself or herself out to be a public adjuster in this state  
81 unless such person holds a public adjuster license issued by the Commissioner.

82 (b) A public adjuster license is not, however, required for:

83 (1) An attorney licensed to practice law in this state while acting for an insured  
84 concerning a loss under a policy; or

85 (2) A person licensed as a general property and casualty agent or personal lines property  
86 and casualty agent while acting for an insurer concerning a loss under a policy issued by  
87 that agent."

88 **SECTION 3.**

89 Said article is further amended by revising and renumbering Code Section 33-23-43.1,  
90 related to requirements for public adjuster contracts, as follows:

91 "~~33-23-43.1.~~ 33-23-43.2.

92 (a) No person may, directly or indirectly, act within this state as a public adjuster without,  
93 among other requirements, having first entered into a contract, in writing, on a form  
94 approved by the Commissioner, executed in duplicate by such person and the insured or

95 the insured's duly authorized representative. A public adjuster shall not use any form of  
96 contract that is not approved by the Commissioner.

97 (a)(b) Public adjusters shall ensure that all contracts for their services are in writing,  
98 prominently captioned and titled 'Public Adjuster Contract,' and contain the following:

99 (1) Legible full name of the public adjuster signing the contract, as specified on the  
100 license issued by the ~~Department of Insurance~~, department and attestation language that  
101 the public adjuster is fully bonded pursuant to state law;

102 (2) Permanent home state business address and contact information of the public  
103 adjuster, including email address;

104 (3) The public adjuster's ~~Department of Insurance~~ department license number and a  
105 statement that the license is valid and in full force and effect as of the date the contract  
106 is signed;

107 (4) The insured's full name and street address;

108 (5) A description of the loss and its location, if applicable;

109 (6) A description of services to be provided to the insured;

110 (7) Signatures of the public adjuster and the insured;

111 (8) The date the contract was signed by the public adjuster, and the date the contract was  
112 signed by the insured;

113 (9) A statement of the fee, compensation, or other considerations that the public adjuster  
114 is to receive for services, including a listing of typical costs and expenses for which the  
115 public adjuster is to be reimbursed; ~~and~~

116 (10) A statement prominently captioned in a minimum 12 point font that contains the  
117 following:

118 (A) Any direct or indirect interest in or compensation by any construction firm, salvage  
119 firm, building appraisal firm, storage company, or any other firm or business entity that  
120 performs any work in conjunction with damages incident to any loss which the adjuster  
121 has been contracted to adjust;

122 (B) Any direct or indirect participation in the reconstruction, repair, or restoration of  
123 damaged property that is the subject of a claim adjusted by the adjuster or disclosure  
124 of any other activities that may be reasonably construed as a conflict of interest,  
125 including a financial interest in any salvage, repair, construction, or restoration of any  
126 business entity that obtains business in connection with any claims that the public  
127 adjuster has a contract or agreement to adjust; and

128 (C) Any direct or indirect compensation of value in connection with an insured's  
129 specific loss other than compensation from the insured for service as a public adjuster,  
130 as explicitly permitted by subsection (d) of Code Section 33-23-43.7; and

131 (11) A prominently displayed notice in 12-point boldface type that states 'WE  
132 REPRESENT THE INSURED ONLY.'

133 ~~(b)~~(c) Public adjuster contracts may not contain a contract term that:

134 (1) Restricts an insured's right to initiate and maintain direct communications with his  
135 or her attorney, the insurer, the insurer's adjuster, the insurer's attorney, or any other  
136 person regarding settlement of the insured's claim;

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

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

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

146 (5) Precludes or restricts an insured from pursuing any civil remedies relating to his or  
147 her claim; or

148 (6) Purports to allow the public adjuster to act in multiple capacities; or

149 (7) Identifies the public adjuster as also being a contractor, appraiser, or other position.  
150 ~~(e)~~(d) All public adjuster contracts shall be construed to contain, by operation of law:  
151 (1) A provision granting the insured a right to rescind the contract within three business  
152 days after the date the contract was signed, so long as the rescission is in writing and  
153 mailed or delivered to the public adjuster at the address stated in the contract within three  
154 business days. For purposes of this subsection, rescission of the contract shall be  
155 considered delivered or mailed if it is delivered by electronic transmittal to the ~~e-mail~~  
156 email address or facsimile specified in the contract for such communications;  
157 (2) A provision that if the insured exercises the right to rescind the contract, anything of  
158 value given by the insured under the contract shall be returned to the insured within 15  
159 business days following the receipt by the public adjuster of the rescission notice; and  
160 (3) A provision requiring that, prior to initiating any contact with the insured's insurer,  
161 the insurer's adjuster, or the insurer's attorney regarding settlement of the insured's claim,  
162 a public adjuster must provide the insurer a notification letter signed by the insured  
163 confirming that the insured has authorized the public adjuster to communicate directly  
164 with the insurer, the insurer's adjuster, or the insurer's attorney on behalf of the insured.  
165 ~~(d)~~(e) All public adjuster contracts shall be executed in duplicate to provide an original  
166 contract to the public adjuster and an original contract to the insured. The public adjuster's  
167 original contract shall be available at all times for inspection without notice by the  
168 Commissioner of Insurance department.  
169 (f) No public adjuster shall enter into a contract with an insured and collect a commission  
170 as provided by Code Section 33-23-43.3, without having the intent to actually perform  
171 services customarily provided by a public adjuster for the insured."

172 **SECTION 4.**

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

174 "33-23-43.3.

175 (a) Except as provided by subsection (b) of this Code section, an adjuster may receive a  
176 commission for service provided under this article consisting of an hourly fee, a flat rate,  
177 a percentage of the total amount paid by an insurer to resolve a claim, or another method  
178 of compensation. A public adjuster may not charge the insured an unreasonable fee, and  
179 the total commission received shall not exceed 33.3 percent of the amount of the insurance  
180 settlement of the claim.

181 (b) An adjuster shall not receive a commission consisting of a percentage of the total  
182 amount paid by an insurer to resolve a claim on a claim on which the insurer, not later  
183 than 72 hours after the date on which the loss is reported to the insurer, either pays or  
184 commits in writing to pay to the insured the policy limit of the insurance policy. A public  
185 adjuster is entitled to reasonable compensation from the insured for services provided by  
186 such adjuster on behalf of the insured, based on the time spent on a claim that is subject to  
187 this Code section and expenses incurred by such adjuster, until the claim is paid or the  
188 insured receives a written commitment to pay from the insurer.

189 (c) Except for the payment of a commission by the insured, all persons paying proceeds  
190 of a policy of insurance or making any payment affecting an insured's rights under a policy  
191 of insurance shall:

192 (1) Include the insured as a payee on the payment draft or check; and

193 (2) Require the written signature and endorsement of the insured on the payment draft  
194 or check.

195 (d) An adjuster shall not accept any payment that violates the provisions of this Code  
196 section.



197 (e) A public adjuster may sign or endorse a payment, draft, or check issued on behalf of  
198 an insured if authorized in writing by each insured payee, and only if such written  
199 endorsement meets the following criteria:

200 (1) The authorization limits the public adjuster to endorse the check or payment for  
201 deposit only into the public adjuster's escrow or trust account and such authorization  
202 states that the check or payment will be distributed in the percentages or amounts agreed  
203 upon in the public adjuster contract;

204 (2) The authorization requires that the insured be notified of the deposit of funds, and  
205 states that any distribution of such funds to the insured or the public adjuster will be  
206 accompanied by a detailed breakdown of the funds distributed; and

207 (3) The authorization form states that such authorization may be revoked at any time by  
208 the insured upon written notice of such revocation to the public adjuster.

209 33-23-43.4.

210 (a) As a continuing condition of licensure, a public adjuster may, at the Commissioner's  
211 discretion, file proof of financial responsibility with respect to transactions with insureds  
212 under this chapter in an amount determined by the Commissioner by rule. The financial  
213 responsibility shall include the ability to pay sums that the public adjuster is obligated to  
214 pay under any judgment against such adjuster by an insured, based on an error, omission,  
215 fraud, negligent act, or unfair practice of such adjuster or any person for whose acts such  
216 adjuster is legally liable in the transaction of such adjuster's business under this Code  
217 section.

218 (b) In determining the amount of the financial responsibility requirement, the  
219 Commissioner shall consider the nature of the obligation, other financial security  
220 requirements under this Code section, and financial security requirements adopted for  
221 public adjusters in other states. In determining the types of financial responsibility  
222 required, the Commissioner may consider a surety bond or a professional liability policy

223 or similar policy or contract of professional liability coverage acceptable to the  
224 Commissioner.

225 (c) The requirements of this Code section are in addition to the bond requirements of Code  
226 Section 33-23-6 and relevant rules and regulations promulgated by the Commissioner.

227 33-23-43.5.

228 (a) A public adjuster shall keep a complete record in this state of each of such adjuster's  
229 transactions as a public adjuster. The records shall include each of the following:

230 (1) The name of the insured;

231 (2) The date, location, and amount of the loss;

232 (3) A copy of the contract between the public adjuster and the insured;

233 (4) The name of the insurer and the amount, expiration date, and number of each policy  
234 under which the loss is covered;

235 (5) An itemized statement of the recoveries by the insured from the sources known to the  
236 public adjuster;

237 (6) The total compensation received for the adjustment; and

238 (7) An itemized statement of disbursements made by the license holder from recoveries  
239 received on behalf of the insured.

240 (b) Records required to be kept under this Code section shall be:

241 (1) Maintained in this state for at least five years after the termination of a transaction  
242 with the insured; and

243 (2) Open to examination by the Commissioner.

244 33-23-43.6.

245 (a) All funds received as claim proceeds by an adjuster acting as a public adjuster are  
246 received and held by such adjuster in a fiduciary capacity. Such adjuster shall not divert  
247 or misappropriate fiduciary funds received or held.

248 (b) An applicant for a license to act as a public adjuster shall, as part of the application,  
249 endorse an authorization for disclosure to the Commissioner of all financial records of any  
250 funds such adjuster holds and will hold as a fiduciary. The authorization continues in force  
251 and effect for as long as such adjuster continues to be licensed under this article.

252 33-23-43.7.

253 (a) Each advertisement by an adjuster soliciting or advertising business shall display the  
254 adjuster's name and license number as they appear in the records of the Commissioner.

255 (b) No advertisement soliciting or advertising business may be used by an adjuster unless  
256 such solicitation or advertisement has been approved by the Commissioner.

257 (c) The following statements, made in any public adjuster's advertisement or solicitation,  
258 are considered deceptive or misleading:

259 (1) A statement or representation that invites an insured to submit a claim when such  
260 insured does not have covered damage to such insured's property;

261 (2) A statement or representation that invites an insured to submit a claim by offering  
262 monetary or other valuable inducement;

263 (3) A statement or representation that invites an insured to submit a claim by stating that  
264 there is 'no risk' to the insured by submitting such claim; and

265 (4) A statement or representation, or use of a logo or shield, that implies or could  
266 mistakenly be construed to imply that the solicitation was issued or distributed by a  
267 governmental agency or is sanctioned or endorsed by a governmental agency.

268 (d) For purposes of this subsection, the term 'written advertisement' includes only  
269 newspapers, magazines, flyers, and bulk mailers. The following disclaimer, which is not  
270 required to be printed on standard size business cards, shall be added in bold print and  
271 capital letters in typeface no smaller than the typeface of the body of the text to all written  
272 advertisements of a public adjuster:

273 'THIS IS A SOLICITATION FOR BUSINESS. IF YOU HAVE HAD A CLAIM FOR  
274 AN INSURED PROPERTY LOSS OR DAMAGE AND YOU ARE SATISFIED WITH  
275 THE PAYMENT BY YOUR INSURER, YOU MAY DISREGARD THIS  
276 ADVERTISEMENT'.

277 33-23-43.8.

278 (a) An adjuster shall not solicit or attempt to solicit a client for employment during the  
279 progress of a loss-producing natural disaster occurrence. For purposes of this subsection,  
280 the term 'natural disaster' means any natural disaster for which a state of emergency is  
281 proclaimed by the Governor.

282 (b) An adjuster shall not solicit or attempt to solicit business on a loss or a claim in person,  
283 by telephone, or in any other manner at any time except between the hours of 8 A.M.  
284 and 10 P.M. on a weekday or a Saturday and between noon and 10 P.M. on a Sunday. This  
285 subsection shall not prohibit an adjuster from accepting phone calls or personal visits  
286 during the prohibited hours from an insured on the insured's initiation.

287 (c) An adjuster shall not knowingly make any false report to the adjuster's employer or  
288 client and shall not divulge to any other person, except as the law may require, any  
289 information obtained except at the direction of the employer or the client for whom the  
290 information is obtained.

291 (d) An adjuster shall not permit an unlicensed employee or other representative of the  
292 adjuster to in any manner conduct business for which a license is required under this  
293 chapter.

294 (e) An agent shall not render services or perform acts that constitute the practice of law,  
295 including the giving of legal advice to any person, in his or her capacity as an adjuster.

296 (f) A public adjuster shall not solicit or attempt to solicit business, directly or indirectly,  
297 or act in any manner on a bodily injury loss covered by a life, health, or accident insurance  
298 policy or on any claim for which the client is not an insured under the insurance policy.

299 (g) An adjuster shall not:

300 (1) Participate directly or indirectly in the reconstruction, repair, or restoration of  
301 damaged property that is the subject of a claim adjusted by such adjuster;

302 (2) Engage in any other activities that may reasonably be construed as presenting a  
303 conflict of interest, including soliciting or accepting any remuneration from, having a  
304 financial interest in, or deriving any direct or indirect financial benefit from, any salvage  
305 firm, repair firm, construction firm, or other firm that obtains business in connection with  
306 any claim the adjuster has a contract or agreement to adjust;

307 (3) Without the knowledge and consent of the insured in writing, acquire an interest in  
308 salvaged property that is the subject of a claim adjusted by such adjuster.

309 (4) Represent an insured on a claim or charge a fee to an insured while representing the  
310 insurance carrier against which such claim is made.

311 (5) Directly or indirectly solicit employment for an attorney or enter into a contract with  
312 an insured for the primary purpose of referring an insured to an attorney without the  
313 intent to actually perform the services customarily provided by a licensed public adjuster.  
314 This Code section shall not be construed to prohibit an adjuster from recommending a  
315 particular attorney to an insured; or

316 (6) Act on behalf of an attorney during the course of a claim adjustment, through an  
317 insured signed attorney representation agreement or other means.

318 (h) An adjuster shall not engage in misrepresentation to solicit a contract or agreement to  
319 adjust a claim.

320 (i) An adjuster shall not:

321 (1) Advance money to any potential client or insured; or

322 (2) Pay, allow, or give, or offer to pay, allow, or give, directly or indirectly, to a person  
323 who is not a licensed public adjuster a fee, commission, or other valuable consideration  
324 for the referral of an insured to such adjuster for purposes of the insured entering into a  
325 contract with such adjuster or for any related purpose.

326 (j) An adjuster shall not use any letterhead, advertisement, or other printed matter, or use  
327 any other means, to represent that such adjuster is an instrumentality of the federal  
328 government, of a state, or of a political subdivision of a state.

329 (k) A contractor shall not act as a public adjuster or advertise to adjust claims for any  
330 property for which the contractor is providing or may provide contracting services,  
331 regardless of whether the contractor:

332 (1) Holds a license under this chapter; or

333 (2) Is authorized to act on behalf of the insured under a power of attorney or other  
334 agreement. However, a contractor may discuss or explain a bid for construction or repair  
335 of covered property with a residential property owner who has suffered loss or damage  
336 covered by a property insurance policy, or the insurer of such property, if the contractor  
337 is doing so for the usual and customary fees applicable to the work to be performed as  
338 stated in the contract between the contractor and the insured.

339 (l) A public adjuster shall not accept a fee, commission, or other valuable consideration  
340 of any nature, regardless of form or amount, in exchange for the referral by such adjuster  
341 of an insured to any third-party individual or firm, including an attorney, appraiser, umpire,  
342 construction company, contractor, or salvage company.

343 (m) No person who has had his or her license under this title refused or revoked shall be  
344 an owner, officer, or director of a business entity, association, or corporation if such entity,  
345 association, or corporation holds itself out as a public adjuster, a public adjusting firm, or  
346 otherwise represents itself or acts as an association of public adjusters or an association  
347 which offers public adjusting services."

348 **SECTION 5.**

349 Said article is further amended by revising and renumbering Code Section 33-23-43.2,  
350 relating to standard of conduct for public adjusters, as follows:

351 ~~"33-23-43.2:~~ 33-23-43.9.

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

356 (b) A public adjuster shall faithfully observe all of the terms and provisions of the public  
357 adjuster contract as prescribed in Code Section ~~33-23-43.1.~~ 33-23-43.2."

358 **SECTION 6.**

359 Said article is further amended by adding a new Code section to read as follows:

360 "33-23-43.10.

361 (a) The Commissioner may deny an application for a license or suspend or revoke a license  
362 issued to any public adjuster on the basis of:

363 (1) A violation of this article or of any rule adopted by the Commissioner under this  
364 article;

365 (2) A cause that constitutes grounds for denial of an original license;

366 (3) Misrepresentation or fraud in obtaining a license;

367 (4) The failure to pass a required license examination;

368 (5) The misappropriation or conversion of money required to be held in a fiduciary  
369 capacity;

370 (6) Material misrepresentation, with intent to deceive, of the terms of an insurance  
371 contract;

372 (7) Engaging in a fraudulent transaction;

373 (8) Demonstrating incompetence or untrustworthiness in the conduct of the license  
374 holder's affairs under the license, as determined by the Commissioner;

375 (9) Conviction of a felony by a final judgment in a court of competent jurisdiction; or

376 (10) Material misrepresentation, with intent to deceive, of the person's status as a public  
377 adjuster.

378 (b) If the department proposes to refuse to issue an original license under this article or to  
379 suspend, revoke, or refuse to renew a license under this article, the rejected applicant or  
380 affected licensee is entitled to a notice and hearing in accordance with Chapter 2 of this  
381 title."

382 **SECTION 7.**

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