



Testimony before the
House Insurance Committee:
"Public Adjusters"

Presented by:
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Public Adjuster Legislation (HB 424, pn390 and HB 561, pn528)

**House Insurance Committee
Harrisburg, PA
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Good morning Chairman Micozzie, Chairman DeLuca and members of the Committee: Thank you for the invitation to be here today. On behalf of the Pennsylvania Insurance Department (PID), I appreciate the opportunity to discuss with you our comments on two bills affecting the public adjuster industry: HB 424 and HB 561. More specifically, these two bills address issues that will impact the licensing and regulated activities of public adjusters in the Commonwealth. Public adjusters play a vital role in assisting consumers with claims against their own insurance for losses under property type policies. The public adjuster assists the consumer in evaluating the scope of the damage, the cost to repair or replace the property, completion of the proof of loss, mitigation of further loss by emergency repairs and finally negotiates with the insurer on behalf of the consumer to settle the claim.

Both bills advance important consumer protections for the general public. Last session, HB 2370, almost identical to the current version of HB 561 and containing similar provisions to those in HB 424, was passed unanimously by the House. As such, we strongly support these two bills and urge your Committee to move the legislation forward. Moreover, the Department has found the bills' provisions to be consistent with both Pennsylvania law, Act 147 of 2002 (Act 147), which governs the licensing of resident and non-resident insurance producers in the Commonwealth, and the National Association of Insurance Commissioners (NAIC) Model Act on the licensing and practices of public insurance adjusters. Using Act 147 as a basis to ensure uniform consumer protections are applied in this Commonwealth, the Department believes the enhanced consumer protections that these bills will provide are necessary to ensure consumers engaging in business with a public adjuster are afforded the same protections as they would receive if they had been conducting business with an insurance producer.

Before I address specific provisions of these bills, I would like to provide an overview of the marketplace as applied to public adjusters in Pennsylvania. As of May 2, 2011, there were 463 individuals licensed as public adjusters and 646 licensed as public adjuster solicitors. There are also 102 firms licensed as public adjuster entities. While this is a small number compared to over 190,000 insurance producers, consumer complaints regarding public adjusters are on the increase. In the first four months of this year, 15 complaints have been filed by consumers with the Department's Consumer Services Bureau. In 2010, 30 complaints were filed. The issues involved in these complaints vary but several deal directly with the fees charged and the inability of the consumer to make

all necessary repairs with their portion of the settlement funds because they were unaware that the public adjuster's fee would be deducted from the settlement funds. Other contract issues were also listed in the complaints including the inability to cancel the contract after four days.

When you consider the number of complaints per licensee for public adjusters and solicitors compared to insurance producers, the number of complaints investigated by the Department against public adjusters and solicitors is approximately 50% greater than that of insurance producers. As an example of the severity of the infractions occurring, 8 of the 35 cases investigated by the Department within the last two years resulted in either suspension or revocation of the public adjuster or solicitor's license. The following two examples I will provide emphasize the importance of enacting the enhanced consumer protections contained in these bills. In the first case, a public adjuster firm assigned claims to a public adjuster solicitor in advance of his obtaining the adjuster license. The consumer complaint filed with the Department was over incorrect fees being charged and our investigation confirmed both that the consumer was overcharged by 5% and that the claim was handled by a solicitor, rather than a licensed adjuster. The end result was a suspension of the solicitor's license and a \$15,000.00 penalty and five years supervision of the firm. In another case, we discovered that the public adjuster misappropriated the settlement checks. After investigating the complaint, the Department revoked the license of the public adjuster, ordered restitution, and referred the case to law enforcement for criminal investigation. Other cases investigated by the Department involved monetary penalties being assessed and orders of supervision being entered. The complaints we receive clearly indicate a need for more disclosure and additional time for the consumer to evaluate the contract in order to more fully understand the terms of the contract and the fees involved.

Regarding the two bills under consideration by this Committee, it should be noted that the Department has worked closely with the Insurance Federation and various public adjuster trade associations to develop provisions that would enhance protection of our citizens during times of catastrophic loss--times when consumers are often emotional and very vulnerable to advice that may not be in their best interests. Those stakeholders included the National Association of Public Insurance Adjusters, the American Association of Public Insurance Adjusters and the Mid-Atlantic Public Insurance Adjusters. Staff of the House Insurance Committee also participated in these detailed negotiations. Ultimately, all of these major stakeholders concluded that these enhanced provisions are consistent with other jurisdictions and national reciprocity licensing initiatives.

At this time I would like to provide some specific comments on the main provisions of these bills, as well as some commentary on areas that were appropriately omitted from consideration at this time:

- **“Free Look” period for consumers:** HB 561 allows a consumer 5 business days to change their mind about entering into a contract with a public adjuster. This is an important safeguard that allows an insured to make a more informed decision,

once the emotional trauma of their loss has begun to subside. Although the Department originally proposed a 10 day “free look,” or rescission period, we agreed to the 5 business day period as an appropriate compromise.

- **Consumer disclosure:** Clearly written and timely disclosure is a key component of protecting a consumer entering into a contract with a public adjuster. Insurers are required to give disclosure on many products at time of purchase, and we support the concept that public adjusters likewise must provide sufficient disclosure at the time of sale. The disclosures contained in the bills cover the most significant areas of concern and the Department supports enacting these needed consumer protections. Consumers deserve to fully understand the contract and have adequate time to consider their rights and the fees involved, including the fact that in most cases the fees paid to the public adjuster are taken from the claim proceeds and are not an add on by the insurer, which is a notion commonly held by consumers evidenced by the complaints we receive. Consumers should fully understand estimates and other supporting documentation submitted on their behalf, as well as items in dispute. We have also found that communication between the insurer and insured enhances the claims handling experience for consumers. Many consumers contact the Department regarding settlement delays only to find that the insurer is waiting for the public adjuster to provide additional documentation on the claim. Complaints also refer to issues where there are items in dispute or the public adjuster, as the consumer’s representative, has received but failed to disburse payment. The enhanced consumer disclosures required by these bills could resolve many of these problems.
- **Ban on solicitation during “the progress of a loss-producing occurrence”:** The Department supports the ban on public adjuster soliciting during the progress of a loss-producing occurrence, especially while first or emergency responders are on site. The Department believes that the safety and welfare of consumers and their homes or property may be jeopardized if such solicitations are permitted to occur while the consumer’s house is on fire, a tornado has just damaged their home or other such catastrophic loss-producing event is actually in progress. Solicitations would be permitted, however, as soon as the loss-producing event has concluded and emergency personnel have departed the scene. As such, we believe this prohibition is as narrowly-tailored and least-restrictive as possible to achieve this substantial and compelling interest in protecting the safety and welfare of Pennsylvania citizens.

The elimination of the public adjuster solicitor license will further assist in remedying solicitation problems. HB 561 eliminates the public adjuster solicitor license. Licenses of this type are only granted in Pennsylvania and create problems for reciprocal licensing in other states. The public adjuster solicitor secures and negotiates the contract between the public adjuster and the consumer. The solicitor does not handle or assist in the claim process. As you can imagine, the competition generated by such activity can result in very aggressive behavior by these licensees. It is interesting to note that in Pennsylvania, there are 646

solicitors while only 463 adjusters. These solicitors must work for either one of the 102 licensed public adjuster firms or one of the public adjusters, and we believe if the solicitor's employer wishes an individual adjuster to only handle securing contracts, that is an employer/employee issue and should not be a licensing issue.

- **Insurer and insured communication:** The Department supports the need for open communication between the insurer and the insured during all aspects of the insurance transaction, from time of purchase to time of claim. We recognize that public adjusters play a role in the claims settlement process, but the Department believes that the continued ability for the insurer and insured to communicate directly is an essential part of the claims settlement process. The Department believes that what, if any, portion of any such communication is shared with a public adjuster should be left to the discretion of the insured.
- **Felony for violations of law:** The Department, as a matter of policy, takes every opportunity to make penalty provisions of law uniform. There are numerous examples of laws the Department enforces where violations are classified as felonies. The Department believes elevating certain violations of law to felony status, as reflected in these bills, serves as a deterrent to criminal activity by our licensees.
- **Insurance company adjuster licensing:** This is an area we believe is appropriately not addressed in the legislation. The Department does not need additional authority to regulate adjusters employed by an insurer since Pennsylvania law provides for broad authority over all aspects of insurer activity. Moreover, the Department believes current regulation of insurers under our Unfair Insurance Practices Act can address issues regarding adjusters and claims personnel working for insurers and sufficiently protects the safety and welfare of our citizens and their homes and property.

Last year we were surprised when we learned of a letter dated August 30, 2010 to the Senate Banking and Insurance Committee from The Insurance Adjustment Bureau, Inc. ("IAB"). We respectfully suggest that the IAB's comments should not stand in the way of your favorable action on these bills. IAB participated in a June 3, 2010 conference call, arranged by the House Insurance Committee, and provided input in the earlier discussions that led to the drafting of what is now HB 561. We also believe the IAB comments do not reflect the prevailing views of the public adjuster groups that participated in our discussions of these bills. For the reasons summarized above, the Department does not agree with IAB's comments and strongly believes that the comments should not delay the Committee's movement of these bills.

The current versions of House Bill 561 and House bill 424 contain provisions that are in the best interest of the citizens of Pennsylvania, and we again urge you to move these bills out of committee. HB 2370 of 2010 passed the House unanimously last year, albeit late in the session. By moving these bills quickly, the House will provide the Senate with

ample time to consider these bills on the merits, and ultimately enact these needed consumer protections into law.

Chairman Micozzie, Chairman DeLuca and members of the Committee: Thank you again for this opportunity to testify. I would be happy to answer any questions you have at this time.