



State of Wisconsin
2019 - 2020 LEGISLATURE

LRB-2323/1
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2019 SENATE BILL 329

July 31, 2019 - Introduced by Senators FEYEN, BEWLEY, ERPENBACH, MILLER, OLSEN, PETROWSKI and SCHACHTNER, cosponsored by Representatives STEFFEN, OHNSTAD, BOWEN, BROOKS, DITTRICH, DOYLE, FELZKOWSKI, FIELDS, GOYKE, GUNDRUM, HORLACHER, KRUG, KULP, NYGREN, RAMTHUN, SKOWRONSKI, SPREITZER, STUBBS, STUCK, C. TAYLOR, VRUWINK and SUBECK. Referred to Committee on Insurance, Financial Services, Government Oversight and Courts.

1 **AN ACT to amend** 45.44 (1) (a) 18., 601.43 (1) (a) and 601.43 (1) (d); and **to create**
2 601.31 (1) (z), 601.31 (1) (zb), 601.31 (1) (zc) and chapter 629 of the statutes;
3 **relating to:** regulation of public adjusters and granting rule-making
4 authority.

Analysis by the Legislative Reference Bureau

This bill imposes registration and other requirements on an individual, known as a public adjuster, who assists an insured person with a claim against the person's insurance company for loss or damage to real or personal property that is located in this state.

Under the bill, an individual may not perform services or solicit business as a public adjuster unless he or she is registered with the Office of the Commissioner of Insurance. In order to register with the commissioner, the individual must complete an application that requires proof of good character and financial responsibility, pass a written examination, and pay a fee. If the commissioner approves the application, the registration is effective for two years and may be renewed if the individual fulfills continuing education requirements. The commissioner may deny, suspend, revoke, or refuse to renew a registration if the commissioner determines that the individual has engaged in behavior that warrants the denial, suspension, revocation, or refusal. Additionally, the commissioner may impose a civil penalty on the individual.

The bill requires a registered public adjuster to enter into a contract with the insured before providing services to the insured. The contract must contain certain provisions, including provisions that disclose the public adjuster's compensation and

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the circumstances under which the insured may void the contract. The bill prohibits the contract from containing provisions that impose collection costs and late fees on the insured, require the insured to authorize the insurer to issue a check solely in the public adjuster's name, or limit the insured's right to pursue civil remedies against the public adjuster.

Under the bill, the public adjuster may not be paid prior to the insured receiving payment from the insurer and, if the insurer pays the policy limit within five business days from the date the loss is reported, the public adjuster may only be paid a reasonable hourly rate for the time spent on the claim. Additionally, the public adjuster's compensation may not exceed 10 percent of an insured's actual recovery if the claim is due to a catastrophic disaster.

The bill imposes requirements on a public adjuster to address conflicts of interest that may arise while working for the insured, including a requirement to notify the insured if the public adjuster has a financial interest in, or may receive compensation from, an entity working on the claim, such as a repair shop. The bill also imposes other requirements and limitations on a public adjuster, including that he or she must have the insured's written consent to agree to a settlement, may solicit business only during certain hours of the day, and may not work as an adjuster for an insurer or as an independent adjuster while registered as a public adjuster.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

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

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

2 45.44 (1) (a) 18. A license, certificate, registration, or permit issued under chs.
3 601 to 655.

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

5 601.31 (1) (z) For issuance of a registration as a public adjuster under s. 629.02
6 (2), an amount to be set by the commissioner by rule.

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

8 601.31 (1) (zb) For each renewal of a public adjuster registration under s.
9 629.02 (4), an amount to be set by the commissioner by rule.

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

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

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

5 **(5)** “Public adjuster” means an individual who is registered with the
6 commissioner under s. 629.02.

7 **629.02 Registration. (1) REQUIREMENT TO REGISTER.** (a) No individual may
8 engage in any of the following activities unless the individual is registered as a public
9 adjuster under this section:

10 1. Perform, offer to perform, or publicly represent himself or herself as
11 performing an adjusting service with respect to a first-party claim.

12 2. Directly or indirectly solicit business, investigate or adjust losses, or advise
13 an insured about a first-party claim for a person engaged in the business of providing
14 an adjusting service.

15 (b) No person may utilize the adjusting services of an individual if the person
16 knows, or should know, that the individual is not registered under this section.

17 (c) A contract entered into in violation of this subsection is void.

18 **(2) APPLICATION.** An individual may apply for the registration required under
19 sub. (1) by completing a form prescribed by the commissioner. The form shall require
20 the individual to provide the individual’s social security number and all
21 documentation the commissioner determines is necessary and appropriate. The
22 commissioner shall approve the individual’s registration application if the
23 commissioner determines the individual satisfies all the following conditions:

24 (a) The individual has not committed any act that warrants the denial,
25 suspension, revocation, or nonrenewal of a registration under s. 629.13.

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1 (b) The individual provides proof that he or she is trustworthy, reliable,
2 financially responsible, and of good reputation.

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

4 (d) The individual maintains a home office in the individual's state of residence
5 and is available to the public at that office through reasonable appointment hours
6 or regular business hours.

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

8 (f) The individual meets the requirement of s. 629.03.

9 (g) The individual supplies a bond that meets specifications established by the
10 commissioner to guarantee faithful performance of the individual's duties and
11 obligations as a public adjuster.

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

16 **(3) EXCEPTIONS.** Subsection (1) does not apply to any of the following
17 individuals:

18 (a) An attorney admitted to practice in this state while acting in the
19 professional capacity as an attorney.

20 (b) An individual who negotiates or settles claims arising under a life or
21 disability insurance policy or an annuity contract.

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

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

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

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

11 **629.03 Examination.** (1) Prior to the commissioner approving an
12 individual's registration under s. 629.02 (2), the individual shall pass a written
13 examination that tests knowledge of the duties and responsibilities of a public
14 adjuster and the insurance laws and regulations of this state. The examination shall
15 be conducted as prescribed by the commissioner and require payment of the fee
16 under s. 601.31 (1) (zc). The commissioner may contract with an outside testing
17 service for administering the examination and collecting the fee.

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

24 **629.04 Contract requirements.** (1) A public adjuster may not perform any
25 adjusting service for an insured prior to entering into a contract with the insured.

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1 The contract shall be in writing, be titled "Public Adjuster Contract," and be on a form
2 filed with the commissioner under s. 631.20 (1m). The contract shall include all of
3 the following:

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

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

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

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

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

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

15 (g) A provision allowing the insured to void the contract in accordance with sub.
16 (3).

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

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

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

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

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

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1 **(3)** At the insured's option, the insured may void a contract under sub. (1) no
2 later than 5 business days after the contract's execution, except that the insured may
3 void a contract no later than 10 business days after execution if the contract is
4 executed no later than 5 business days after conclusion of the loss-producing
5 occurrence. The insured may void the contract by sending notice by registered or
6 certified mail, return receipt requested, to the public adjuster at the address on the
7 contract or by personally serving notice on the public adjuster at the place of business
8 identified on the contract. The public adjuster shall return anything of value
9 provided under the contract by the insured no later than 15 business days following
10 receipt of the notice. Nothing in this subsection prevents an insured from pursuing
11 any civil remedy against a public adjuster.

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

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

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

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

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

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

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1 **629.05 Compensation.** (1) In this section, “catastrophic disaster” means an
2 event that results in large numbers of deaths and injuries, causes extensive damage
3 or destruction of facilities that provide and sustain human needs, produces an
4 overwhelming demand on state and local response resources, causes a severe
5 long-term effect on general economic activity, and severely affects state, local, and
6 private-sector capabilities to begin and sustain response activities.

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

9 (3) If an insurer pays, or commits in writing to pay, the policy limit no later than
10 5 business days after the date the loss is reported to the insurer, the only
11 compensation a public adjuster may receive from the insured shall be compensation
12 at a reasonable hourly rate for the time spent on the claim.

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

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

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

21 **629.06 Disclosure of additional compensation.** A public adjuster may not
22 directly or indirectly accept compensation or anything else of value from an insured
23 and a person who provides estimates for work or performs work in conjunction with
24 damage or loss under a claim subject to a contract under s. 629.04 unless the public
25 adjuster provides the insured with prior written notice. The notice shall clearly and

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1 conspicuously disclose any direct or indirect financial interest that the public
2 adjuster has in the other person and all amounts to be paid, directly or indirectly, by
3 the other person to the public adjuster. The notice shall be in the form prescribed by
4 the commissioner and be provided prior to the date the insured incurs an obligation
5 to make any payment under the contract or to the other person.

6 **629.07 Assignment of proceeds prohibited.** (1) A public adjuster may not
7 request or accept an assignment of insurance policy proceeds from an insured with
8 whom the public adjuster has entered into a contract under s. 629.04. An insurer
9 may not be required to honor an assignment of insurance policy proceeds to a public
10 adjuster.

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

14 **629.08 Escrow of funds.** A public adjuster who, on behalf of an insured,
15 receives, accepts, or holds any funds for the settlement of a first-party claim shall
16 deposit the funds in a noninterest-bearing escrow account in a federally insured
17 financial institution that is located in the state in which the insured resides or the
18 loss occurred.

19 **629.09 Contractors.** A public adjuster may not require an insured to use a
20 particular contractor or vendor and may not take any action that vests the effective
21 authority with the public adjuster to choose a person to perform work on the insured's
22 claim. A contract under s. 629.04 shall state that the insured may choose any
23 contractor or vendor.

24 **629.10 Prohibitions.** In addition to the other prohibitions in this chapter, a
25 public adjuster may not engage in any of the following activities:

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

3 (2) Allow an unregistered employee or representative to perform an adjusting
4 service for which registration is required under this chapter.

5 (3) Own a direct or indirect financial interest in any aspect of a claim, other
6 than the compensation agreed to under s. 629.04 (1) (f), unless notification is
7 provided to the insured under s. 629.06.

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

10 (5) Refer the insured to a person in whom the public adjuster has a direct or
11 indirect financial interest or from whom the public adjuster may directly or
12 indirectly receive anything of value for the referral unless notification is provided to
13 the insured under s. 629.06.

14 (6) Solicit an insured outside the hours of 9 a.m. and 6 p.m.

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

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

20 (9) Act as an adjuster for an insurer or independent adjuster while registered
21 under s. 629.02.

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

24 **629.11 Continuing education.** (1) A public adjuster shall complete, on a
25 biennial basis, a minimum of 15 credits of continuing education, including 3 credits

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1 of ethics. Each credit shall consist of at least 50 minutes of instruction and shall be
2 approved by the commissioner. A public adjuster shall report the credits in
3 conjunction with the registration renewal under s. 629.02 (4).

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

11 **629.12 Reporting of administrative and criminal actions.** (1) A public
12 adjuster shall report to the commissioner any administrative action related to the
13 business of insurance that is taken against the public adjuster by a governmental
14 agency or regulatory body. The report shall be made no later than 30 days after the
15 final disposition of the matter and shall include a copy of the order, consent to order,
16 or similar document.

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

22 **629.13 Denial, suspension, or revocation of registration.** The
23 commissioner may, after a hearing, deny, suspend, revoke, or refuse to renew an
24 individual's registration under s. 629.02 (2) or (4) or may levy a civil penalty, or both,
25 upon a finding that the individual has done any of the following:

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

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

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

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

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

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

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

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

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

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

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

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

23 (13) Failed to maintain evidence of financial responsibility as required by the
24 commissioner.

25 **SECTION 8. Effective date.**

