

STATE OF OKLAHOMA

2nd Session of the 59th Legislature (2024)

HOUSE BILL 3094

By: Tedford

AS INTRODUCED

An Act relating to insurance; creating the Public Adjuster Regulation Act; providing definitions; limiting certain compensation; prohibiting public adjusters from participation in lawsuits and certain rewards; requiring certain contract to act as a public insurance adjuster; providing required contents of contracts with insured; prohibiting contract from containing certain limiting and nullifying terms or conditions; requiring contracts conform to certain requirements; requiring submission of original or renewal of adjusters license application with contracts; clarifying that failure to comply with certain contract procedures may result in certain penalties; requiring public adjuster to provide certain requested contracts to the insurer; prohibiting construction contractors from certain actions without a license; prohibiting entities from acting as both the public adjuster to and construction contractor; prohibiting construction contractors from hiring public adjusters; prohibiting public adjuster from having certain financial interest; permitting owner's representatives to work a claim in certain circumstances; providing a certain financial penalty; directing monies be deposited into state general revenue fund; amending 36 O.S. 2021, Section 6212, which relates to notification of change in information of licensees; modifying citation; amending 36 O.S. 2021, Section 6220, as amended by Section 5, Chapter 196, O.S.L. 2023 (36 O.S. Supp. 2023, Section 6220), which relates to the suspension, revocation, or refusal to renew license; prohibiting public adjusters from engaging in certain claims related to certain property covered by interlocal

1           entity insurance contract; providing for  
2           codification; and providing an effective date.

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4 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

5           SECTION 1.       NEW LAW       A new section of law to be codified  
6 in the Oklahoma Statutes as Section 6224 of Title 36, unless there  
7 is created a duplication in numbering, reads as follows:

8           This act shall be known and may be cited as the "Public Adjuster  
9 Regulation Act".

10          SECTION 2.       NEW LAW       A new section of law to be codified  
11 in the Oklahoma Statutes as Section 6225 of Title 36, unless there  
12 is created a duplication in numbering, reads as follows:

13          As used in this act:

14          1. "Construction contractor" means an entity that is either a  
15 trade contractor or general contractor that actually performs  
16 construction trades or collects funds for the performing of  
17 construction work. This does not include a consultant or owner's  
18 representative;

19          2. "Construction manager" means a person or entity managing a  
20 construction project for a fee while not engaging in actual  
21 construction;

22          3. "Consultant" means a person or entity giving advice for a  
23 fee;  
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1       4. "Owner's representative" means a person or entity  
2 representing a property owner to other parties; and

3       5. "Public adjuster" means a licensed person or entity that  
4 negotiates an insurance claim on behalf of the claimant.

5       SECTION 3.       NEW LAW       A new section of law to be codified  
6 in the Oklahoma Statutes as Section 6226 of Title 36, unless there  
7 is created a duplication in numbering, reads as follows:

8       A. Under any method of compensation, the total commission  
9 payable to the public insurance adjuster, including expenses, direct  
10 costs, or any other costs accrued by the public insurance adjuster,  
11 shall not exceed ten percent (10%) of the amount of the insurance  
12 settlement.

13       B. Public adjusters shall not participate in any lawsuits nor  
14 receive judgment rewards.

15       SECTION 4.       NEW LAW       A new section of law to be codified  
16 in the Oklahoma Statutes as Section 6227 of Title 36, unless there  
17 is created a duplication in numbering, reads as follows:

18       A. A public insurance adjuster may not, directly or indirectly,  
19 act within this state as a public insurance adjuster without having  
20 first entered into a written contract executed in duplicate by the  
21 licensee and the insured or the insured's duly authorized  
22 representative.

23       B. A public insurance adjuster's written contract with an  
24 insured must contain:  
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1       1. The name, address, and license number of the public  
2 insurance adjuster negotiating the contract, and if applicable, the  
3 name, address, and license number of the public insurance adjuster's  
4 employing public insurance adjuster, with each page of the contract  
5 prominently displaying the license number(s);

6       2. The public insurance adjuster's telephone and fax number,  
7 including area code;

8       3. The mailing and physical addresses to which notice of  
9 cancellation and all communications to the public insurance adjuster  
10 may be delivered;

11       4. If any part of the contract or solicitation is made via the  
12 Internet, the email and website address to which notice of contract  
13 cancellation and all communications to the public insurance adjuster  
14 may be delivered;

15       5. The date and time the contract was signed;

16       6. For each nonresident public insurance adjuster named in the  
17 contract, the name and address of the nonresident public insurance  
18 adjuster's agent for service of process;

19       7. The following separate statements in twelve-point bold type  
20 font on the signature page of the contract:

21           a. "NOTICE: The insured may cancel this contract by  
22               written notice to the public insurance adjuster within  
23               seventy-two (72) hours of signature for any reason.",

24           b. "We represent the insured only.", and  
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1           c.    "You are entering into a service contract.  You are  
2               being charged a fee for this service.  You do not have  
3               to enter into this contract to make a claim for loss  
4               or damage on a policy of insurance.";

5           8.   The statement: "If the insurance carrier pays or commits in  
6   writing to pay to the insured the policy limits of the insurance  
7   policy within seventy-two (72) hours of the loss being reported to  
8   the insurer, the public insurance adjuster is not entitled to  
9   compensation based on a percentage of the insurance settlement, but  
10   is entitled to reasonable compensation for the public insurance  
11   adjuster's time and expenses provided to the insured before the  
12   claim was paid or the written commitment to pay was received.";

13          9.   The statement:  "NOTICE: A public insurance adjuster may not  
14   participate directly or indirectly in the reconstruction, repair, or  
15   restoration of damaged property that is the subject of a claim  
16   adjusted by the public insurance adjuster or engage in any other  
17   activities that may reasonably be construed as presenting a conflict  
18   of interest, including soliciting or accepting any remuneration  
19   from, or having a financial interest in, any salvage firm, repair  
20   firm, or other firm that obtains business in connection with any  
21   claim the public insurance adjuster has a contract or agreement to  
22   adjust.";

23          10.  On the first or second page of the contract, the following  
24   English notice in ten-point bold type font:  
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1 "IMPORTANT NOTICE: You may contact the Oklahoma Insurance  
2 Department to get information about public insurance adjusters, your  
3 rights as a consumer, or information about how to file a complaint  
4 by calling 1-800-522-0071; or you may write the Oklahoma Insurance  
5 Department at 400 NE 50th St., Oklahoma City, OK 73105.";

6 11. A statement that under any method of compensation, the  
7 total commission payable to the public insurance adjuster, including  
8 expenses, direct costs, or any other costs accrued by the public  
9 insurance adjuster, must not exceed ten percent (10%) of the amount  
10 of the insurance settlement;

11 12. If applicable, a statement disclosing how payments issued  
12 before the effective date of the contract will be used in  
13 determining compensation to the public insurance adjuster; and

14 13. A clear and prominent statement of the public insurance  
15 adjuster's commission including:

16 a. the method of calculating the commission for the  
17 public insurance adjuster, whether an hourly rate,  
18 flat fee, percentage of settlement, or another method  
19 of compensation, specifically:

20 (1) if an hourly rate, the contract must state the  
21 hourly rate and how it will be applied to hours  
22 of service provided by the public insurance  
23 adjuster to calculate the amount payable,  
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1 (2) if a flat fee, the contract must state the amount  
2 that will be payable to the public insurance  
3 adjuster,

4 (3) if a percentage, the contract must state the  
5 exact percentage that will be applied to the  
6 settlement on the claim to calculate the amount  
7 payable to the public insurance adjuster, or

8 (4) if another method of calculation is chosen, the  
9 contract must include a detailed explanation of  
10 how the amount payable will be determined based  
11 on services provided by the public insurance  
12 adjuster,

13 b. a general description of services the public insurance  
14 adjuster will provide under the contract,

15 c. a description of the claim and property damage,  
16 location, and event date, and

17 d. if based on an hourly rate, a provision that the  
18 public insurance adjuster will provide an invoice for  
19 services that includes a detailed listing of services  
20 provided and separate costs payable to the public  
21 insurance adjuster as part of the commission based on  
22 the claim settlement, including expenses, direct  
23 costs, and any other accrued costs.

1 C. The contract must not contain any terms or conditions that  
2 have the effect of limiting or nullifying any requirements of the  
3 Oklahoma Statutes, this act, or other rules of the Department.

4 D. All public insurance adjusters in Oklahoma must use a  
5 written contract that is in the form prescribed by the Department  
6 and that complies with all relevant statutory requirements and  
7 department rules. Public insurance adjusters must select from the  
8 following contract form options:

- 9 1. A standard language contract developed by the Department; or  
10 2. A contract filed and approved by the Department before use.

11 E. All contracts must be submitted with an original adjuster  
12 license application or an application for renewal to the  
13 Department's agent and adjuster licensing Office. Contracts also  
14 must be submitted to the office upon any modification or amendment  
15 of terms or conditions between license renewals.

16 F. The failure by a public insurance adjuster or other  
17 individual to use a properly authorized and approved contract may  
18 result in suspension, nonrenewal, revocation of the adjuster's  
19 license, or other administrative penalty.

20 SECTION 5. NEW LAW A new section of law to be codified  
21 in the Oklahoma Statutes as Section 6228 of Title 36, unless there  
22 is created a duplication in numbering, reads as follows:

23 Public insurance adjusters shall provide a copy of a contract  
24 with an insured to the insurer upon request.  
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1       SECTION 6.       NEW LAW       A new section of law to be codified  
2 in the Oklahoma Statutes as Section 6229 of Title 36, unless there  
3 is created a duplication in numbering, reads as follows:

4       A. Construction contractors are prohibited from settling claims  
5 or negotiating claims without first being issued a public adjuster  
6 license.

7       B. No person or entity may act as a public adjuster and a  
8 construction contractor on the same claim.

9       C. Construction contractors are prohibited from hiring a public  
10 adjuster.

11       D. A public adjuster shall not have a financial interest in a  
12 construction contractor employed on a claim worked by the public  
13 adjuster.

14       E. Owner's representatives are allowed to work a claim with a  
15 related public adjuster as long as neither engages as a construction  
16 contractor.

17       F. Any violation of this section shall result in a fine of up  
18 to One Thousand Dollars (\$1,000.00) per violation. Fine monies  
19 shall be deposited into the State General Revenue Fund.

20       SECTION 7.       AMENDATORY       36 O.S. 2021, Section 6212, is  
21 amended to read as follows:

22       Section 6212. A. The Insurance Commissioner or an  
23 administrator approved by the Insurance Commissioner shall collect a  
24 fee of Twenty Dollars (\$20.00) for an examination for an adjuster's  
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1 license in any of the following single classes of business. The fee  
2 for any examination which includes two or more classes of business  
3 shall not exceed Forty Dollars (\$40.00). The classes of business  
4 are:

- 5 1. Motor vehicle physical damage;
- 6 2. Fire and allied lines (property);
- 7 3. Casualty;
- 8 4. Workers' compensation;
- 9 5. Crime and fidelity bonds; and
- 10 6. Crop/hail.

11 B. The Commissioner shall collect the following fees for an  
12 adjuster's license:

- 13 1. For a license in any single class of business, every two (2)  
14 years, Thirty Dollars (\$30.00);
- 15 2. For a license in any combination of two or more classes of  
16 business, every two years, Fifty Dollars (\$50.00);
- 17 3. Public adjuster, every two years, Thirty Dollars (\$30.00);
- 18 4. Emergency adjuster, as provided for in Section 6218 of this  
19 title, each year, Fifteen Dollars (\$15.00); and
- 20 5. Apprentice adjuster, as provided for in Section 6204.1 of  
21 this title, Twenty Dollars (\$20.00).

22 C. The fees prescribed in this section shall accompany the  
23 application for an original license or a renewal of a license.

1 D. The fee for the original license or renewal license shall be  
2 collected in advance of issuance. Late application for renewal  
3 shall require a fee of double the amount of the original license  
4 fee.

5 E. The Commissioner may issue a duplicate license for any lost,  
6 stolen, or destroyed license issued pursuant to the provisions of  
7 the Insurance Adjusters Licensing Act if an affidavit is submitted  
8 by the licensee to the Commissioner concerning the facts of such  
9 loss, theft, or destruction. The affidavit shall be in a form  
10 prescribed by the Commissioner. The fee for a duplicate license  
11 shall be one-half (1/2) the fee of the license.

12 F. Licensees shall inform by any means acceptable to the  
13 Commissioner of a change of legal name, address or e-mail address  
14 within thirty (30) days of the change to permit the Commissioner to  
15 give proper notice to licensees. A change in legal name or address  
16 submitted more than thirty (30) days after the change shall include  
17 an administrative fee of Fifty Dollars (\$50.00). Failure to provide  
18 acceptable notification of a change of legal name or address to the  
19 Commissioner within forty-five (45) days of the date the  
20 administrative fee is assessed shall result in penalties pursuant to  
21 subsection ~~B~~ C of Section 6220 of this title.

22 SECTION 8. AMENDATORY 36 O.S. 2021, Section 6220, as  
23 amended by Section 5, Chapter 196, O.S.L. 2023 (36 O.S. Supp. 2023,  
24 Section 6220), is amended to read as follows:  
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1       Section 6220. A. The Insurance Commissioner may censure,  
2 suspend, revoke, or refuse to issue or renew a license pursuant to  
3 the Insurance Adjusters Licensing Act, levy a civil penalty in  
4 accordance with subsection ~~B~~ C of this section, or any combination  
5 of actions for any of the following causes:

6       1. Material misrepresentation or fraud in obtaining an  
7 adjuster's license;

8       2. Any cause for which original issuance of a license could  
9 have been refused;

10       3. Misappropriation, conversion to the personal use of the  
11 licensee, or illegal withholding of monies required to be held by  
12 the licensee in a fiduciary capacity;

13       4. Material misrepresentation of the terms and effect of any  
14 insurance contract, with intent to deceive, or engaging in, or  
15 attempting to engage in, any fraudulent transaction with respect to  
16 a claim or loss that the licensee or the trainee is adjusting and,  
17 in the case of a public adjuster, misrepresentation of the services  
18 offered or the fees or commission to be charged;

19       5. Conviction of or pleading guilty or nolo contendere to a  
20 felony pursuant to the laws of this state, any other state, the  
21 United States, or any foreign country;

22       6. If in the conduct of business affairs, the licensee or  
23 trainee has shown ~~himself~~ themselves to be, and is so deemed by the  
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1 Commissioner, incompetent, untrustworthy or a source of injury to  
2 the public;

3 7. Refusal to comply with any lawful order of the Commissioner;

4 8. Violation of any provision of the Insurance Adjusters  
5 Licensing Act;

6 9. Adjusting losses or negotiating claim settlements arising  
7 pursuant to provisions of insurance contracts on behalf of an  
8 insurer or insured without proper licensing from the Commissioner  
9 and authority from the licensed insurer or the insured party;

10 10. Failing to respond to any inquiry (including electronic  
11 communications) from the Department within thirty (30) calendar days  
12 of receipt of such inquiry;

13 11. Forging another's name to any document;

14 12. Improperly using notes or any other reference material to  
15 complete an examination for an insurance license;

16 13. Having admitted or been found to have committed any  
17 insurance unfair trade practice or insurance fraud;

18 14. Having an insurance adjuster license or its equivalent  
19 denied, suspended, censured, placed on probation or revoked in any  
20 other state, province, district or territory;

21 15. Failing to inform the Department, by any means acceptable  
22 to the Department, of a change of address, change of legal name or  
23 change of information submitted on the application within thirty  
24 (30) days of the change; or  
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1       16. Providing services as a public adjuster, company adjuster  
2 or independent adjuster on the same claim.

3       B. 1. Notwithstanding any provision of law to the contrary, it  
4 is hereby expressly prohibited for a public adjuster, or for any  
5 individual acting for a licensed public adjuster firm, association,  
6 company, or corporation, to engage in claims adjustment activities  
7 on behalf of any school district or other Oklahoma educational  
8 institution with respect to property losses either covered or  
9 potentially covered under an insurance contract issued by an  
10 interlocal entity;

11       2. In the event the prohibition set forth in this subsection is  
12 violated, the Commissioner shall:

- 13           a. for the first offense, immediately revoke the public  
14 adjuster's license and, for a period of time not less  
15 than five (5) years, refuse to renew, reinstate, or  
16 otherwise grant a license to the public adjuster, and  
17           b. for the second offense, immediately revoke the public  
18 adjuster's license and permanently refuse to renew,  
19 reinstate, or otherwise grant a license to the public  
20 adjuster; and

21       3. As used in this subsection:

- 22           a. "Claims adjustment activities" means the  
23 investigation, evaluation, negotiation, or settling of  
24 insurance claims related to property losses, and  
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1           **b.**     "Interlocal entity" means an entity organized pursuant  
2                     to the Interlocal Cooperation Act for the purpose of  
3                     transacting insurance that insures a school district  
4                     or other Oklahoma educational institution.

5           **C.**     In addition to or in lieu of any applicable denial,  
6                     suspension, or revocation of a license, any person violating the  
7                     provisions of the Insurance Adjusters Licensing Act may be subject  
8                     to a civil fine of not more than One Thousand Dollars (\$1,000.00)  
9                     for each violation. This fine may be enforced in the same manner in  
10                    which civil judgment may be enforced.

11           ~~C.~~ **D.**     The Commissioner shall not reinstate a license to any  
12                     person whose license has been suspended, revoked, or refused renewal  
13                     until the Commissioner determines that the cause or causes for the  
14                     suspension, revocation, or nonrenewal of the license no longer  
15                     exist.

16           ~~D.~~ **E.**     The Department shall retain the authority to enforce the  
17                     provisions of and impose any penalty or remedy authorized by this  
18                     title against any person who is under investigation for or charged  
19                     with a violation even if the person's license or registration has  
20                     been surrendered or has lapsed by operation of law.

21           ~~E.~~ **F.**     It shall be unlawful for any person, firm, association,  
22                     company or corporation to act as an adjuster without first obtaining  
23                     a license pursuant to the Insurance Adjusters Licensing Act. Any  
24                     person convicted of violating the provisions of this subsection  
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1 shall be guilty of a misdemeanor and shall be punished as set forth  
2 in Section 10 of Title 21 of the Oklahoma Statutes. The restriction  
3 set forth in this subsection shall apply regardless of whether the  
4 person, firm, association, company or corporation has obtained power  
5 of attorney from an insurance claimant or has entered into any other  
6 agreement with an insurance claimant to act on the behalf of the  
7 claimant.

8 SECTION 9. This act shall become effective November 1, 2024.

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10 59-2-8571 MJ 01/12/24

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