

By: Representative Upshaw

To: Insurance

HOUSE BILL NO. 1401

1 AN ACT TO AMEND SECTIONS 83-17-401, 83-17-403, 83-17-405,  
 2 83-17-413, 83-17-415, 83-17-417, 83-17-419, 83-17-421 AND  
 3 83-17-425, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR THE LICENSURE  
 4 AND REGULATION OF PUBLIC ADJUSTERS BY THE COMMISSIONER OF  
 5 INSURANCE; TO CREATE NEW CODE SECTION 83-17-424, MISSISSIPPI CODE  
 6 OF 1972, TO REQUIRE PUBLIC ADJUSTERS TO ENSURE THAT ALL CONTRACTS  
 7 FOR THEIR SERVICES ARE IN WRITING AND TO REQUIRE PUBLIC ADJUSTERS  
 8 TO ADHERE TO CERTAIN ETHICAL REQUIREMENTS; AND FOR RELATED  
 9 PURPOSES.

10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

11 **SECTION 1.** Section 83-17-401, Mississippi Code of 1972, is  
 12 amended as follows:

13 83-17-401. As used in this article, unless the context  
 14 otherwise requires:

15 (a) "Adjuster" means any person who, as an independent  
 16 contractor, or as an employee of an independent contractor,  
 17 adjustment bureau, association, insurance company or corporation,  
 18 managing general agent or self-insured, investigates or adjusts  
 19 losses on behalf of either an insurer or a self-insured, or any  
 20 person who supervises the handling of claims. "Adjuster" shall  
 21 not include:

22 (i) An attorney at law who adjusts insurance  
 23 losses from time to time and incidental to the practice of law,  
 24 and who does not advertise or represent that he is an adjuster;

25 (ii) A salaried employee of an insurer who is  
 26 regularly engaged in the adjustment, investigation or supervision  
 27 of insurance claims;

28 (iii) Persons employed only for the purpose of  
 29 furnishing technical assistance to a licensed adjuster, including,

30 but not limited to, photographers, estimators, private detectives,  
31 engineers, handwriting experts and attorneys at law;

32 (iv) A licensed agent or general agent of an  
33 authorized insurer who processes undisputed or uncontested losses,  
34 or both, for such insurer under policies issued by the licensed  
35 agent or general agent;

36 (v) A person who performs clerical duties with no  
37 negotiations with the parties on disputed or contested claims, or  
38 both; or

39 (vi) Any person who handles claims arising under  
40 life, accident and health insurance policies.

41 (b) "Insurer" means any insurance company or  
42 self-insured.

43 (c) "Commissioner" means the Commissioner of Insurance.

44 (d) "Public Adjuster" means any person who contracts  
45 with an insured to investigate, estimate and assess property and  
46 casualty losses on behalf of a claimant, subject to the  
47 prohibitions provided in Section 73-3-55.

48 (e) "Claimant" is one who submits a claim for an  
49 incurred loss.

50 **SECTION 2.** Section 83-17-403, Mississippi Code of 1972, is  
51 amended as follows:

52 83-17-403. (1) No person shall act as or hold himself out  
53 to be an adjuster or public adjuster in this state unless he is  
54 licensed therefor by the Commissioner of Insurance in this state,  
55 except that an individual, who is undergoing education and  
56 training as an adjuster under the direction and supervision of a  
57 licensed adjuster for a period not exceeding twelve (12) months  
58 may act as an adjuster without having an adjuster's license, if at  
59 the beginning of such training period, the name of such trainee  
60 has been registered as such with the commissioner.

61 (2) Any person who violates the provisions of this section  
62 shall be guilty of a misdemeanor and, upon conviction thereof,

63 shall be punished by a fine of not more than Two Hundred Fifty  
64 Dollars (\$250.00) or by confinement in the county jail for not  
65 more than six (6) months, or by both such fine and confinement.

66 **SECTION 3.** Section 83-17-405, Mississippi Code of 1972, is  
67 amended as follows:

68 83-17-405. Application for a license as an insurance  
69 adjuster or public adjuster shall be made to the commissioner upon  
70 forms as prescribed and furnished by the commissioner. As a part  
71 of, or in connection with, any such application, the applicant  
72 shall furnish such information concerning his identity, personal  
73 history, experience, business record and any other pertinent facts  
74 as the commissioner may reasonably require.

75 **SECTION 4.** Section 83-17-413, Mississippi Code of 1972, is  
76 amended as follows:

77 83-17-413. The commissioner shall license as an insurance  
78 adjuster or public adjuster only an individual who has otherwise  
79 complied with this article and who has furnished evidence  
80 satisfactory to the commissioner that:

81 (a) He is at least eighteen (18) years of age;

82 (b) He is a bona fide resident of this state, or is a  
83 resident of a state or country which will permit residents of this  
84 state to act as insurance adjusters in such other state or  
85 country;

86 (c) If he is a nonresident of the United States, he has  
87 complied with all federal laws pertaining to employment or the  
88 transaction of business in the United States;

89 (d) He is a trustworthy person;

90 (e) He has had experience or special education or  
91 training with reference to the handling of loss claims under  
92 insurance contracts of sufficient duration and extent to make him  
93 competent to fulfill the responsibilities of an insurance  
94 adjuster; and

95 (f) He has successfully passed an examination as  
96 required by the commissioner in accordance with this article or  
97 has been exempted according to the provisions of this article.

98 **SECTION 5.** Section 83-17-415, Mississippi Code of 1972, is  
99 amended as follows:

100 83-17-415. The commissioner shall adopt a procedure for  
101 certifying continuing education programs. Each adjuster or public  
102 adjuster, in order to renew a license issued under this article,  
103 shall participate in a continuing education program(s) for at  
104 least twelve (12) hours each license year.

105 **SECTION 6.** Section 83-17-417, Mississippi Code of 1972, is  
106 amended as follows:

107 83-17-417. (1) Each applicant for a license as an adjuster  
108 or public adjuster, before the issuance of such license, shall  
109 personally take and pass, to the satisfaction of the commissioner,  
110 an examination as a test of his qualifications and competency; but  
111 the requirement of an examination shall not apply to any of the  
112 following:

113 (a) An applicant who for the one-year period next  
114 preceding the effective date of this article has been principally  
115 engaged in the investigation, adjustment or supervision of losses  
116 and who is so engaged on the effective date of this article;

117 (b) An applicant for the renewal of a license issued  
118 hereunder;

119 (c) An applicant who is licensed as an insurance  
120 adjuster, as defined by this article, in another state with which  
121 state a reciprocal agreement has been entered into by the  
122 commissioner; or

123 (d) Any person who has completed a course or training  
124 program in adjusting of losses as prescribed and approved by the  
125 commissioner and is certified to the commissioner upon completion  
126 of the course that such person has completed the course or

127 training program, and has passed an examination testing his  
128 knowledge and qualification, as prescribed by the commissioner.

129 (2) Each examination for a license as an adjuster or public  
130 adjuster shall be as the commissioner may prescribe and shall be  
131 of sufficient scope reasonably to test the applicant's knowledge  
132 relative to the kinds of insurance which may be dealt with under  
133 the license applied for and the duties, responsibilities and laws  
134 of this state applicable to such a licensee.

135 (3) The commissioner shall prepare and make available to  
136 applicants a manual or instructions specifying in general terms  
137 the subjects which may be covered in any examination for such a  
138 license.

139 **SECTION 7.** Section 83-17-419, Mississippi Code of 1972, is  
140 amended as follows:

141 83-17-419. (1) Each license issued to an adjuster or public  
142 adjuster shall expire on May 31 following the date of issue,  
143 unless prior thereto it is revoked or suspended by the  
144 commissioner.

145 (2) Each adjuster or public adjuster shall file an  
146 application for renewal of license on the form and in the manner  
147 prescribed by the commissioner for such purpose. Upon the filing  
148 of such application for renewal of license and the payment of the  
149 required fees, the current license shall continue to be in force  
150 until the renewal license is issued by the commissioner or until  
151 the commissioner has refused for cause to issue such renewal  
152 license, as provided in this article, and has given notice of such  
153 refusal in writing to the adjuster or public adjuster.

154 **SECTION 8.** Section 83-17-421, Mississippi Code of 1972, is  
155 amended as follows:

156 83-17-421. (1) A license may be refused, or a license duly  
157 issued may be suspended or revoked or the renewal thereof refused  
158 by the commissioner, or the commissioner may levy a civil penalty  
159 in an amount not to exceed One Thousand Dollars (\$1,000.00) per

160 violation and such penalty shall be deposited into the special  
161 fund of the State Treasury designated as the "Insurance Department  
162 Fund," if, after notice and hearing as hereinafter provided, he  
163 finds that the applicant for, or holder of, such license:

164 (a) Has willfully violated any provision of the  
165 insurance laws of this state; or

166 (b) Has intentionally made a material misstatement in  
167 the application for such license; or

168 (c) Has obtained, or attempted to obtain, such license  
169 by fraud or misrepresentation; or

170 (d) Has misappropriated or converted to his own use or  
171 illegally withheld money belonging to an insurer or beneficiary;  
172 or

173 (e) Has otherwise demonstrated lack of trustworthiness  
174 or competence to act as an adjuster or public adjuster; or

175 (f) Has been guilty of fraudulent or dishonest  
176 practices or has been convicted of a felony; or

177 (g) Has materially misrepresented the terms and  
178 conditions of insurance policies or contracts; or willfully  
179 exaggerated prospective returns on investment features of policies  
180 or fails to identify himself as an adjuster or public adjuster and  
181 in so doing receives a compensation for his participation in the  
182 sale of insurance; or

183 (h) Has made or issued, or caused to be made or issued,  
184 any statement misrepresenting or making incomplete comparisons  
185 regarding the terms or conditions of any insurance or annuity  
186 contract legally issued by any insurer, for the purpose of  
187 inducing or attempting to induce the owner of such contract to  
188 forfeit or surrender such contract or allow it to lapse for the  
189 purpose of replacing such contract with another; \* \* \*

190 (i) Has obtained or attempted to obtain such license,  
191 not for the purpose of holding himself out to the general public  
192 as an adjuster, but primarily for the purpose of soliciting,

193 negotiating or procuring insurance or annuity contracts covering  
194 himself or members of his family; or

195 (j) Has violated any insurance laws, or any regulation,  
196 subpoena or order of the commissioner or of another state's  
197 commissioner.

198 (2) Before any license shall be refused (except for failure  
199 to pass a required written examination) or suspended or revoked or  
200 the renewal thereof refused hereunder, the commissioner shall give  
201 notice of his intention so to do, by registered mail, to the  
202 applicant for or holder of such license and the insurer whom he  
203 represents or who desires that he be licensed, and shall set a  
204 date not less than twenty (20) days from the date of mailing such  
205 notice when the applicant or licensee and a duly authorized  
206 representative of the insurer may appear to be heard and produce  
207 evidence. Such notice shall constitute automatic suspension of  
208 license if the person involved is a licensed adjuster or public  
209 adjuster. In the conduct of such hearing, the commissioner or any  
210 regular salaried employee specially designated by him for such  
211 purpose shall have power to administer oaths, to require the  
212 appearance of and examine any person under oath and to require the  
213 production of books, records or papers relevant to the inquiry  
214 upon his own initiative or upon the request of the applicant or  
215 licensee. Upon the termination of such hearing, findings shall be  
216 reduced to writing and, upon approval by the commissioner, shall  
217 be filed in his office; and notice of the findings shall be sent  
218 by registered mail to the applicant or licensee and the insurer  
219 concerned.

220 (3) Where the grounds set out in subsection (1)(d) or (1)(g)  
221 are the grounds for any hearing, the commissioner may, in his  
222 discretion in lieu of the hearing provided for in subsection (2)  
223 of this section, file a petition to suspend or revoke any license  
224 authorized hereunder in a court of competent jurisdiction of the  
225 county or district in which the alleged offense occurred. In such

226 cases, subpoenas may be issued for witnesses, and mileage and  
227 witness fees paid as in other cases. All costs of such cause  
228 shall be paid by the defendant, if found guilty, and if costs  
229 cannot be made and collected from the defendant, such costs shall  
230 be assessed against the company issuing the contract involved in  
231 such cause.

232 (4) No licensee whose license has been revoked hereunder  
233 shall be entitled to file another application for a license as an  
234 adjuster or public adjuster within one (1) year from the effective  
235 date of such revocation or, if judicial review of such revocation  
236 is sought, within one (1) year from the date of final court order  
237 or decree affirming such revocation. Such application, when  
238 filed, may be refused by the commissioner unless the applicant  
239 shows good cause why the revocation of his license shall not be  
240 deemed a bar to the issuance of a new license.

241 **SECTION 9.** Section 83-17-425, Mississippi Code of 1972, is  
242 amended as follows:

243 83-17-425. This article is declared to be cumulative and  
244 supplemental to all other valid statutes relating to insurance  
245 agents, solicitors, adjusters and public adjusters. The  
246 Commissioner of Insurance is directed and authorized to make such  
247 reasonable rules and regulations as may be necessary for the  
248 administration of this article.

249 **SECTION 10.** The following shall be codified as Section  
250 83-17-424, Mississippi Code of 1972:

251 83-17-424. (1) Public adjusters shall ensure that all  
252 contracts for their services are in writing, signed by the  
253 claimant and the public adjuster who solicited the contract and  
254 are subject to the following provisions:

255 (a) No public adjuster shall charge, agree to or accept  
256 as compensation or reimbursement any payment, commission, fee or  
257 other thing of value equal to more than seven percent (7%) of any  
258 insurance settlement or proceeds;



259           (b) No public adjuster shall require, demand or accept  
260 any fee retainer, compensation, deposit or other thing of value,  
261 prior to settlement of the claims;

262           (c) Any costs to be reimbursed to the public adjuster  
263 out of the proceeds shall be specified by type, with dollar  
264 estimates set forth in contract;

265           (d) A public adjuster's contract with the claimant  
266 shall be revocable or cancelable by the claimant, without penalty  
267 or obligation, for at least fourteen (14) business days after the  
268 contract is entered into. Nothing in this provision shall be  
269 construed to prevent a claimant from pursuing any civil remedy  
270 after the fourteen (14) business day cancellation period.

271           (2) Public adjusters shall adhere to the following ethical  
272 requirements:

273           (a) A public adjuster shall not undertake the  
274 adjustment of any claim for which the public adjuster is not  
275 currently competent and knowledgeable as to the terms and  
276 conditions of the insurance coverage, or which otherwise exceeds  
277 the public adjuster's current expertise;

278           (b) No person shall, as a public adjuster, represent  
279 any person or entity whose claim the public adjuster has  
280 previously adjusted while acting as an independent adjuster  
281 representing any insurer, either directly or through an  
282 independent adjusting firm retained by the insurer;

283           (c) A public adjuster shall not represent or imply to  
284 any client or potential client that insurers, company adjusters or  
285 independent adjusters routinely attempt to, or do in fact, deprive  
286 claimants of their full rights under an insurance policy;

287           (d) No public adjuster shall knowingly enter into a  
288 contract to adjust a residential property claim subsequent to an  
289 insurer declaring the property a total loss, unless the services  
290 to be provided by the public adjuster can reasonably be expected  
291 to result in the claimant's obtaining an insurance settlement, net

292 of the public adjuster's compensation, in excess of what the  
293 claimant would have obtained without the services of the public  
294 adjuster;

295           (e) A public adjuster shall not testify in any judicial  
296 proceeding as an expert witness if the public adjuster has a  
297 pecuniary interest in the outcome of the proceeding because of any  
298 services performed or provided by the public adjuster; however, in  
299 lieu of the compensation provisions of paragraph (a) of this  
300 section, the court shall award reasonable compensation for any  
301 services performed provided by a public adjuster in any matter for  
302 which the public adjuster is prohibited from testifying as an  
303 expert by this paragraph;

304           (f) A Public adjuster shall not charge, agree to or  
305 accept a referral fee from an attorney on any claim for which he  
306 has performed services.

307           **SECTION 11.** This act shall take effect and be in force from  
308 and after May 31, 2006.