

By: Representative Upshaw

To: Insurance

HOUSE BILL NO. 1167

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; TO REQUIRE PUBLIC ADJUSTERS TO
 8 ADHERE TO CERTAIN ETHICAL REQUIREMENTS; AND FOR RELATED PURPOSES.

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

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

12 83-17-401. As used in this article, unless the context
 13 otherwise requires:

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

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

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

27 (iii) Persons employed only for the purpose of
 28 furnishing technical assistance to a licensed adjuster, including,
 29 but not limited to, photographers, estimators, private detectives,
 30 engineers, handwriting experts and attorneys at law;

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

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

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

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

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

43 (d) "Public Adjuster" means any person who contracts
44 with an insured to investigate, estimate and assess property and
45 casualty losses on behalf of a claimant, subject to the
46 prohibitions provided in Section 73-3-55. A public adjuster shall
47 not include an attorney at law who adjusts insurance losses from
48 time to time and incidental to the practice of law, and who does
49 not advertise or represent that he is a public adjuster.

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

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

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

63 (2) Any person who violates the provisions of this section
64 shall be guilty of a misdemeanor and, upon conviction thereof,
65 shall be punished by a fine of not more than Two Hundred Fifty
66 Dollars (\$250.00) or by confinement in the county jail for not
67 more than six (6) months, or by both such fine and confinement.

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

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

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

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

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

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

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

91 (d) He is a trustworthy person;

92 (e) He has had experience or special education or
93 training with reference to the handling of loss claims under
94 insurance contracts of sufficient duration and extent to make him

95 competent to fulfill the responsibilities of an insurance
96 adjuster; and

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

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

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

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

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

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

119 (b) An applicant for the renewal of a license issued
120 hereunder;

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

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

128 of the course that such person has completed the course or
129 training program, and has passed an examination testing his
130 knowledge and qualification, as prescribed by the commissioner.

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

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

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

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

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

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

158 83-17-421. (1) A license may be refused, or a license duly
159 issued may be suspended or revoked or the renewal thereof refused
160 by the commissioner, or the commissioner may levy a civil penalty

161 in an amount not to exceed One Thousand Dollars (\$1,000.00) per
162 violation and such penalty shall be deposited into the special
163 fund of the State Treasury designated as the "Insurance Department
164 Fund," if, after notice and hearing as hereinafter provided, he

165 finds that the applicant for, or holder of, such license:

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

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

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

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

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

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

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

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

192 (i) Has obtained or attempted to obtain such license,
193 not for the purpose of holding himself out to the general public

194 as an adjuster or public adjuster, but primarily for the purpose
195 of soliciting, negotiating or procuring insurance or annuity
196 contracts covering himself or members of his family; or

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

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

222 (3) Where the grounds set out in subsection (1)(d) or (1)(g)
223 are the grounds for any hearing, the commissioner may, in his
224 discretion in lieu of the hearing provided for in subsection (2)
225 of this section, file a petition to suspend or revoke any license
226 authorized hereunder in a court of competent jurisdiction of the

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

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

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

245 83-17-425. This article is declared to be cumulative and
246 supplemental to all other valid statutes relating to insurance
247 agents, solicitors, adjusters and public adjusters. The
248 Commissioner of Insurance is directed and authorized to make such
249 reasonable rules and regulations as may be necessary for the
250 administration of this article. With regard to public adjusters,
251 any such rules and regulations shall include the following:

252 (a) A public adjuster shall not testify in any judicial
253 proceeding as an expert witness if the public adjuster has a
254 pecuniary interest in the outcome of the proceeding because of any
255 services performed or provided by the public adjuster; however, in
256 lieu of the compensation provisions of Section 83-17-424(1)(a),
257 the court shall award reasonable compensation for any services
258 performed provided by a public adjuster in any matter for which

259 the public adjuster is prohibited from testifying as an expert by
260 this section;

261 (b) A public adjuster shall not charge, agree to or
262 accept a referral fee from an attorney on any claim for which he
263 has performed services.

264 **SECTION 10.** The following shall be codified as Section
265 83-17-424, Mississippi Code of 1972:

266 83-17-424. (1) Public adjusters shall ensure that all
267 contracts for their services are in writing, signed by the
268 claimant and the public adjuster who solicited the contract, and
269 are subject to the following provisions:

270 (a) No public adjuster shall charge, agree to or accept
271 as compensation or reimbursement any payment, commission, fee or
272 other thing of value equal to more than seven percent (7%) of any
273 insurance settlement involving property damage or loss. The
274 public adjuster's compensation shall be void if the public
275 adjuster is not able to negotiate a settlement and the claimant
276 must initiate a civil lawsuit;

277 (b) No public adjuster shall require, demand or accept
278 any fee retainer, compensation, deposit or other thing of value,
279 prior to settlement of the claims or any part thereof;

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

283 (d) A public adjuster's contract with the claimant
284 shall be revocable or cancelable by the claimant, without penalty
285 or obligation, for a period of fourteen (14) calendar days from
286 and after the date of declaration of a state or federal natural
287 disaster. Following the expiration of such fourteen-day period, a
288 public adjuster's contract with the claimant shall be revocable or
289 cancelable by the claimant, without penalty or obligation, for at
290 least three (3) business days after the contract is entered into.
291 Nothing in this provision shall be construed to prevent a claimant

292 from pursuing any civil remedy after the expiration of these
293 cancellation periods.

294 (2) Public adjusters shall adhere to the following ethical
295 requirements:

296 (a) A public adjuster shall not undertake the
297 adjustment of any claim for which the public adjuster is not
298 currently competent and knowledgeable as to the terms and
299 conditions of the insurance coverage, or which otherwise exceeds
300 the public adjuster's current expertise;

301 (b) No person shall, as a public adjuster, represent
302 any person or entity whose claim the public adjuster has
303 previously adjusted while acting as an independent adjuster
304 representing any insurer, either directly or through an
305 independent adjusting firm retained by the insurer;

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

310 (d) No public adjuster shall knowingly enter into a
311 contract to adjust a residential property claim subsequent to an
312 insurer declaring the property a total loss, unless the services
313 to be provided by the public adjuster can reasonably be expected
314 to result in the claimant obtaining an insurance settlement, net
315 of the public adjuster's compensation, in excess of what the
316 claimant would have obtained without the services of the public
317 adjuster;

318 (e) No public adjuster shall accept any form of
319 compensation or payment, commission, fee or other thing of value
320 for the purpose of referring a claim or case to any other person;

321 (f) No public adjuster shall give any form of
322 compensation or payment, commission, fee or other thing of value
323 to a person who refers to him/her a claim or case.

324 **SECTION 11.** This act shall stand repealed from and after
325 July 1, 2008.

326 **SECTION 12.** This act shall take effect and be in force from
327 and after May 31, 2007.