

By: Senator(s) Kirby

To: Insurance

COMMITTEE SUBSTITUTE  
FOR  
SENATE BILL NO. 2938

1 AN ACT TO PROVIDE FOR THE LICENSURE AND REGULATION OF PUBLIC  
2 ADJUSTERS BY THE COMMISSIONER OF INSURANCE; TO REQUIRE PUBLIC  
3 ADJUSTERS TO ENSURE THAT ALL CONTRACTS FOR THEIR SERVICES ARE IN  
4 WRITING; TO LIMIT THE COMPENSATION PAID TO PUBLIC ADJUSTERS; TO  
5 REQUIRE PUBLIC ADJUSTERS TO ADHERE TO CERTAIN ETHICAL  
6 REQUIREMENTS; AND FOR RELATED PURPOSES.

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

8 **SECTION 1.** As used in this act, unless the context otherwise  
9 requires:

10 (a) "Certified" means, except as used in Section 10(2)  
11 of this act, written representations addressed to the commissioner  
12 concerning the integrity, competence and qualifications of a  
13 person, in form and content satisfactory to the commissioner, or  
14 concerning other matters as the commissioner may by regulation  
15 hereafter prescribe.

16 (b) "Commissioner" means the Commissioner of Insurance.

17 (c) "Department" means the Mississippi Insurance  
18 Department.

19 (d) "Insurer" means any insurance company or  
20 self-insured person or entity.

21 (e) "Public adjuster" means any person who, for  
22 compensation or any other thing of value on behalf of the insured  
23 and subject to the prohibition provided in Section 73-3-55:

24 (i) Acts or aids, solely in relation to  
25 first-party claims arising under insurance contracts that insure  
26 the real or personal property of the insured, on behalf of an  
27 insured in negotiating for, or effecting the settlement of, a  
28 claim for loss or damage covered by an insurance contract;

29                   (ii) Advertises for employment as a public  
30 adjuster of insurance claims or solicits business or represents  
31 himself or herself to the public as a public adjuster of first  
32 party insurance claims for losses or damages arising out of  
33 policies of insurance that insure real or personal property; or

34                   (iii) Directly or indirectly solicits business,  
35 investigates or adjusts losses, or advises an insured about first  
36 party claims for losses or damages arising out of policies of  
37 insurance that insure real or personal property for another person  
38 engaged in the business of adjusting losses or damages covered by  
39 an insurance policy, for the insured.

40           A public adjuster shall not include an attorney at law who  
41 does not advertise or represent that he is a public adjuster.

42           **SECTION 2.** (1) No person shall act as or hold himself out  
43 to be a public adjuster in this state unless he is licensed  
44 therefor by the commissioner, except that an individual, who is  
45 undergoing education and training as a public adjuster under the  
46 direction and supervision of a licensed public adjuster for a  
47 period not exceeding twelve (12) months may act as a public  
48 adjuster without having a public adjuster's license, if at the  
49 beginning of such training period, the name of such trainee has  
50 been registered as such with the commissioner.

51           (2) Any person who violates the provisions of this section  
52 shall be guilty of a misdemeanor and, upon conviction thereof,  
53 shall be punished by a fine of not more than One Thousand Dollars  
54 (\$1,000.00) or by confinement in the county jail for not more than  
55 one (1) year, or by both such fine and confinement.

56           **SECTION 3.** Application for a license as a public adjuster  
57 shall be made to the commissioner upon forms as prescribed and  
58 furnished by the commissioner. As a part of, or in connection  
59 with, any such application, the applicant shall furnish such  
60 information concerning his identity, personal history, experience,

61 business record and any other pertinent facts as the commissioner  
62 may reasonably require.

63 **SECTION 4.** The commissioner may waive any license  
64 requirement for an applicant with a valid license from another  
65 state having license requirements substantially equivalent to  
66 those of this state.

67 **SECTION 5.** In the event of a catastrophe or emergency which  
68 arises out of a disaster, act of God, riot, civil commotion,  
69 conflagration or other similar occurrence, the commissioner, upon  
70 application, may issue an emergency license to persons who are  
71 residents or nonresidents of this state and who may or may not be  
72 otherwise licensed public adjusters. Such emergency license shall  
73 remain in force for a period not to exceed ninety (90) days,  
74 unless extended for an additional period of ninety (90) days by  
75 the commissioner. The applicant must be certified by (a) a person  
76 licensed under the provisions of this act, or by (b) such other  
77 person as may be approved by the commissioner. The licensed  
78 public adjuster or other person who certifies the applicant under  
79 the provisions of this section shall be responsible for the loss  
80 or claims practices of the emergency license holder.

81 Within five (5) days of any applicant beginning work as a  
82 public adjuster under this section, the application and  
83 certification provided for in the preceding paragraph shall be  
84 provided to the commissioner without such public adjuster being  
85 deemed in violation of this act, provided that the commissioner,  
86 after notice and hearing, may revoke the emergency license upon  
87 the grounds as otherwise contained in this act providing for  
88 revocation of a public adjuster's license.

89 The fee for an emergency license shall be in an amount not to  
90 exceed Fifty Dollars (\$50.00) as determined by the commissioner  
91 and shall be due and payable within thirty (30) days of the  
92 issuance of such emergency license.

93           **SECTION 6.** The commissioner shall license as a public  
94 adjuster only an individual who has otherwise complied with this  
95 act and who has furnished evidence satisfactory to the  
96 commissioner that:

97           (a) He is at least twenty-one (21) years of age;

98           (b) He is a bona fide resident of this state, or is a  
99 resident of a state which will permit residents of this state to  
100 act as public adjusters in such other state;

101           (c) He is a trustworthy person;

102           (d) He has had experience or special education or  
103 training with reference to the handling of loss claims under  
104 insurance contracts of sufficient duration and extent to make him  
105 competent to fulfill the responsibilities of a public adjuster;  
106 and

107           (e) He has successfully passed an examination as  
108 required by the commissioner in accordance with this act or has  
109 been exempted according to the provisions of this act.

110           **SECTION 7.** The commissioner shall adopt a procedure for  
111 certifying continuing education programs for public adjusters.  
112 Each public adjuster, in order to renew a license issued under  
113 this act, shall participate in a continuing education program(s)  
114 for at least twelve (12) hours each license year.

115           **SECTION 8.** (1) Each applicant for a license as a public  
116 adjuster, before the issuance of such license, shall personally  
117 take and pass, to the satisfaction of the commissioner, an  
118 examination as a test of his qualifications and competency; but  
119 the requirement of an examination shall not apply to any of the  
120 following:

121           (a) An applicant for the renewal of a license issued  
122 hereunder;

123           (b) An applicant who is licensed as a public adjuster,  
124 as defined by this act, in another state with which state a  
125 reciprocal agreement has been entered into by the commissioner; or

126           (c) Any person who has completed a course or training  
127 program in adjusting for losses as prescribed and approved by the  
128 commissioner and is certified to the commissioner upon completion  
129 of the course that such person has completed the course or  
130 training program, and has passed an examination testing his  
131 knowledge and qualifications, as prescribed by the commissioner.

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

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

142           **SECTION 9.** (1) Each license issued to a public adjuster  
143 shall expire on May 31 following the date of issue, unless prior  
144 thereto it is revoked or suspended by the commissioner.

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

154           **SECTION 10.** (1) A license may be refused, or a license duly  
155 issued may be suspended or revoked or the renewal thereof refused  
156 by the commissioner, or the commissioner may levy a civil penalty  
157 in an amount not to exceed Five Thousand Dollars (\$5,000.00) per  
158 violation, or both, and any such penalty shall be deposited into

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

163 (a) Has intentionally made a material misstatement in  
164 the application for such license; or

165 (b) Has obtained, or attempted to obtain, such license  
166 by fraud or misrepresentation; or

167 (c) Has misappropriated or converted to his own use or  
168 illegally withheld money belonging to another person or entity; or

169 (d) Has otherwise demonstrated lack of trustworthiness  
170 or competence to act as a public adjuster; or

171 (e) Has been guilty of fraudulent or dishonest  
172 practices or has been convicted of a felony; or

173 (f) Has materially misrepresented the terms and  
174 conditions of insurance policies or contracts or failed to  
175 identify himself as a public adjuster; or

176 (g) Has obtained or attempted to obtain such license  
177 for a purpose other than holding himself out to the general public  
178 as a public adjuster; or

179 (h) Has violated any insurance laws, or any regulation,  
180 subpoena or order of the commissioner or of another state's  
181 Commissioner of Insurance.

182 (2) Before any license shall be refused (except for failure  
183 to pass a required written examination) or suspended or revoked or  
184 the renewal thereof refused hereunder, the commissioner shall give  
185 notice of his intention so to do, by certified mail, return  
186 receipt requested, to the applicant for or holder of such license,  
187 and shall set a date not less than twenty (20) days from the date  
188 of mailing such notice when the applicant or licensee may appear  
189 to be heard and produce evidence in opposition to such refusal,  
190 suspension or revocation. Such notice shall constitute automatic  
191 suspension of license if the person involved is a licensed public

192 adjuster. In the conduct of such hearing, the commissioner or any  
193 regular salaried employee of the department specially designated  
194 by him for such purpose shall have the power to administer oaths,  
195 to require the appearance of and examine any person under oath,  
196 and to require the production of books, records or papers relevant  
197 to the inquiry upon his own initiative or upon the request of the  
198 applicant or licensee. Upon the termination of such hearing,  
199 findings shall be reduced to writing and, upon approval by the  
200 commissioner, shall be filed in his office; and notice of the  
201 findings shall be sent by certified mail, return receipt  
202 requested, to the applicant or licensee.

203 (3) Where the grounds provided in paragraph (c) or (f) of  
204 subsection (1) are the grounds for any hearing, the commissioner  
205 may, in his discretion in lieu of the hearing provided for in  
206 subsection (2), file a petition requesting the court to suspend or  
207 revoke any license authorized hereunder in a court of competent  
208 jurisdiction of the county or district in which the alleged  
209 offense occurred. In such cases, subpoenas may be issued for  
210 witnesses, and mileage and witness fees paid as in other cases.  
211 All costs of such cause shall be paid by the defendant, if the  
212 finding of the court be against him.

213 (4) No licensee whose license has been revoked hereunder  
214 shall be entitled to file another application for a license as a  
215 public adjuster within one (1) year from the effective date of  
216 such revocation or, if judicial review of such revocation is  
217 sought, within one (1) year from the date of final court order or  
218 decree affirming such revocation. An application filed after such  
219 one-year period shall be refused by the commissioner unless the  
220 applicant shows good cause why the revocation of his license shall  
221 not be deemed a bar to the issuance of a new license.

222 **SECTION 11.** Any person aggrieved by any action or decision  
223 of the commissioner under the provisions of this act may appeal  
224 therefrom to the Circuit Court of the First Judicial District of

225 Hinds County in the manner provided by law. The circuit court  
226 shall have the authority and jurisdiction to hear the appeal and  
227 render its decision in regard thereto in termtime or vacation.

228 **SECTION 12.** (1) Public adjusters shall ensure that all  
229 contracts for their services are in writing, signed by the insured  
230 and the public adjuster who solicited the contract, and a copy of  
231 the contract shall be provided to the insured upon execution. All  
232 such contracts shall be subject to the following provisions:

233 (a) No public adjuster shall charge, agree to, or  
234 accept as compensation any payment, commission, fee or other thing  
235 of value equal to more than ten percent (10%) of any insurance  
236 settlement or the proceeds of any claim investigated.

237 (b) No public adjuster shall require, demand or accept  
238 any fee, retainer, compensation, deposit or other thing of value,  
239 prior to partial or full settlement of a claim.

240 (c) Any costs to be reimbursed to a public adjuster out  
241 of the proceeds of a settlement shall be specified by kind and  
242 estimated amounts.

243 (d) A public adjuster's contract with the insured shall  
244 be revocable or cancelable by the insured without cause and  
245 without penalty or obligation for at least five (5) business days  
246 after the contract is executed by the insured. Nothing in this  
247 provision shall be construed to prevent a insured from pursuing  
248 any civil legal remedy to revoke or cancel the contract after the  
249 expiration of such cancellation period.

250 (2) Public adjusters shall adhere to the following ethical  
251 requirements:

252 (a) No public adjuster shall undertake the adjustment  
253 of any claim for which the public adjuster is not currently  
254 competent and knowledgeable as to the terms and conditions of the  
255 insurance coverage, or which otherwise exceeds the public  
256 adjuster's current expertise.

257           (b) No public adjuster shall, as a public adjuster,  
258 represent any person or entity whose claim the public adjuster has  
259 previously adjusted while acting as an independent adjuster  
260 representing any insurer, either directly or through an  
261 independent adjusting firm retained by the insurer.

262           (c) A public adjuster shall not knowingly make any oral  
263 or written material misrepresentations or statements to any  
264 insured or potential insured which are false and intended to  
265 injure any person engaged in the business of insurance.

266           (d) No public adjuster shall knowingly enter into a  
267 contract to adjust a residential property claim subsequent to a  
268 declaration of total loss by an insurer, unless the services to be  
269 provided by the public adjuster can reasonably be expected to  
270 result in the insured obtaining an insurance settlement, net of  
271 the public adjuster's compensation, in excess of the amount the  
272 insured would have obtained without the services of the public  
273 adjuster.

274           (e) A public adjuster shall advise each insured that  
275 the insured has the right to retain an attorney at law of his  
276 choice throughout the public adjuster's investigation and  
277 adjustment of the claim.

278           (f) No public adjuster shall refer an insured to any  
279 particular attorney at law, but, if the claim is not settled by  
280 the public adjuster, the public adjuster shall advise the insured  
281 that the insured has the right to retain an attorney at law of his  
282 choice.

283           (g) No public adjuster shall contract for, agree to, or  
284 receive anything of value from any attorney at law or other person  
285 acting in concert with any attorney at law (i) for referring  
286 claims to the attorney, or (ii) in connection with any claim for  
287 which the public adjuster has performed or intends to perform  
288 services.

289 (h) No public adjuster shall split any attorney's fee  
290 with any attorney at law.

291 (i) A public adjuster shall not testify as an expert  
292 witness in any judicial or administrative proceeding while  
293 maintaining a pecuniary interest in the outcome of the proceeding,  
294 as otherwise permitted by Section 12(1)(a) of this act; provided,  
295 however, that a public adjuster may testify as an expert witness  
296 if pursuant to the terms of his contract his compensation is  
297 converted to a specified hourly rate, which rate (i) is subject to  
298 such limitations as may be prescribed by the commissioner, and  
299 (ii) is not subject to any contingencies. In the event of a  
300 conversion of the public adjuster's contract to an hourly rate  
301 agreement, the prior fee arrangement shall be inadmissible at  
302 trial.

303 **SECTION 13.** This act shall not be construed as entitling a  
304 person who is not licensed by the Mississippi Supreme Court to  
305 practice law in this state.

306 **SECTION 14.** This act is declared to be cumulative and  
307 supplemental to all other valid statutes relating to insurance  
308 agents, solicitors, adjusters and public adjusters. The  
309 Commissioner of Insurance is directed and authorized to make such  
310 reasonable rules and regulations as may be necessary for the  
311 administration of this act, including, but not limited to, rules  
312 and regulations (a) establishing procedures for the filing and  
313 approval of contracts to be used by public adjusters and/or  
314 prescribing one or more model contracts for use by public  
315 adjusters, (b) regulating solicitations by public adjusters, and  
316 (c) establishing bonding and/or errors and omissions insurance  
317 requirements for public adjusters.

318 **SECTION 15.** This act shall take effect and be in force from  
319 and after July 1, 2007.