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SENATE BILL NO. 194

Offered January 12, 2022

Prefiled January 10, 2022

A *BILL to amend and reenact § 38.2-1845.12 of the Code of Virginia, relating to insurance; public adjusters; standards of conduct.*

Patron—Mason

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:**1. That § 38.2-1845.12 of the Code of Virginia is amended and reenacted as follows:****§ 38.2-1845.12. Standards of conduct for public adjusters.**

A. A public adjuster shall be fair and honest in any and all respects in any communications with an insured and with an insurer or its representatives.

B. No person except a public adjuster duly licensed under this article shall:

1. Accept a commission, fee, or other compensation for investigating or settling claims;

2. Prepare, complete, or file an insurance claim on behalf of an insured;

3. Aid or act on behalf of an insured in negotiating for or effecting the settlement of a claim for loss or damage covered by an insurance contract;

4. Advertise for employment as a public adjuster; or

5. Solicit, investigate, or adjust a claim on behalf of a public adjuster or an insured.

C. A *No* public adjuster shall have ~~no~~ a financial interest in any aspect of an insured's claim other than the salary, fee, commission, or compensation that may be established in the written contract between the insured and the public adjuster. *For the purposes of this subsection, "financial interest" includes participation by a public adjuster, directly or indirectly, in the reconstruction, repair, or restoration of damaged property that is the subject of a claim adjusted by that public adjuster.*

D. A *No* public adjuster shall ~~not~~ refer or direct an insured needing repairs or other services in connection with a loss to any person in which the public adjuster has an ownership interest nor to any person who will or is reasonably anticipated to provide the public adjuster with any direct or indirect compensation for the referral of any resulting business; ~~however, this subsection shall not be construed to prohibit the execution of a bona fide written repair agreement between an insured and a contractor pursuant to which the contractor undertakes to assume the insured's obligation to compensate a public adjuster pursuant to the terms of a preexisting agreement between the public adjuster and the insured meeting the requirements of this article, including §§ 38.2-1845.13 and 38.2-1845.14.~~

E. A *No* public adjuster shall ~~not~~ prevent or attempt to dissuade an insured from communicating with an insurer, the insurer's adjuster, an independent adjuster representing the insurer, an attorney, or any other person regarding the settlement of the insured's claim.

F. The public adjuster's full consideration for the public adjuster's services shall be stated in the written contract with the insured. If the consideration is based on a share of the insurance proceeds, the exact percentage shall be specified.

G. Any choice of counsel to represent the insured shall be made solely by the insured.

H. A *No* public adjuster ~~may not~~ *shall* settle a claim unless the terms and conditions of the settlement are approved by the insured in writing.

I. A *No* public adjuster shall ~~not~~ acquire any interest in salvage property except with the express written permission of the insured after settlement with the insurer.

J. A *No* public adjuster shall ~~not~~ permit an unlicensed employee or representative of the public adjuster to conduct business for which a license is required under this article.

K. No public adjuster ~~may~~ *shall* represent or act as a company adjuster or independent adjuster on the same claim.

L. No public adjuster shall enter into a contract or accept a power of attorney that vests in the public adjuster the effective authority to choose the persons who shall perform repair work.

M. A *No* public adjuster shall ~~not~~ solicit or attempt to solicit a client during the progress of a loss producing occurrence as covered by the insurance contract.

N. ~~Public adjusters may not~~ *No public adjuster shall* solicit a client for employment from 8:00 p.m. to 8:00 a.m. daily.

O. A public adjuster shall notify, in writing, the insured or claimant in advance of the name and location of any proposed contractor, architect, engineer, or similar professional before any bid or proposal by any of these persons may be used by the public adjuster in estimating the loss. The insured

59 or claimant may exercise veto power of any of these persons, in which case that person shall not be
60 used in estimating costs.

61 P. A public adjuster shall ensure that any professional used in formulating estimates, the practice of
62 whose profession in the Commonwealth requires a license issued pursuant to Title 54.1, including any
63 architect or engineer as defined in § 54.1-400 and any contractor as defined in § 54.1-1100, holds a
64 current license from the appropriate licensing authority of the Commonwealth.

65 Q. No person shall advertise or promise to pay or rebate all or any portion of any insurance
66 deductible as an inducement to the sale of the services of a public adjuster. As used in this subsection,
67 the term "promise to pay or rebate" includes (i) granting any allowance or offering any discount against
68 the fees to be charged, including, but not limited to, an allowance or discount in return for displaying a
69 sign or other advertisement at the insured's premises or (ii) paying the insured or any person directly or
70 indirectly associated with the property any form of compensation, gift, prize, bonus, coupon, credit,
71 referral fee, or other item of monetary value for any reason.

72 R. *No public adjuster shall engage in any activity that may reasonably be construed as a conflict of*
73 *interest, including soliciting or accepting any remuneration of any kind or nature, directly or indirectly,*
74 *except as set forth in a public adjusting contract with an insured.*