

FISCAL NOTE
Requested by Legislative Council
01/07/2019

Amendment to: HB 1219

- 1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2017-2019 Biennium		2019-2021 Biennium		2021-2023 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues				\$8,625		\$3,450
Expenditures				\$112,970		\$112,970
Appropriations				\$112,970		\$112,970

- 1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

	2017-2019 Biennium	2019-2021 Biennium	2021-2023 Biennium
Counties			
Cities			
School Districts			
Townships			

- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

HB 1219 would create and enact a section of the NDCC relating to public adjuster licensing, as well as contracts between insured homeowners and residential contractors. This would more clearly define the existing licensing requirements as well as provide additional consumer protections.

- B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Section two of the bill defines public adjusters and establishes the licensing requirements, including fees.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

- A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

This bill subjects public adjusters to the fees outlined in 26.1-01-07, which is an initial application fee of \$100 and a \$25 annual renewal fee. The Department estimates that 69 public adjusters will apply in fiscal year 2020, and then renew in the following years. All fees would be deposited into the Insurance Regulatory Trust Fund.

- B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

The Insurance Department would need an additional Licensing Specialist I to handle the increased workload. The total salary and benefits for the biennium would be \$112,970, paid from the Insurance Regulatory Trust Fund.

- C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation or a part of the appropriation is included in the executive budget or relates to a continuing appropriation.*

The Insurance Department would need an additional \$112,970 appropriated from the Insurance Regulatory Trust Fund to fund the FTE outlined above.

Name: Melissa Seifert

Agency: Insurance Department

Telephone: 328-2930

Date Prepared: 01/09/2019

FISCAL NOTE
Requested by Legislative Council
01/07/2019

Bill/Resolution No.: HB 1219

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Cities			
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Agency: Insurance Department

Telephone: 328-2930

Date Prepared: 01/09/2019

2019 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1219

2019 HOUSE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee Peace Garden Room, State Capitol

HB 1219
1/23/2019
31301

- Subcommittee
 Conference Committee

Committee Clerk: Ellen LeTang

Explanation or reason for introduction of bill/resolution:

Criminal history record checks & provide a penalty.

Minutes:

Attachment 1, 2, 3, 4, 5, 6, 7, 8, 9, 10

Chairman Keiser: Opens the hearing on HB 1219.

Pat Ward~Representing the Association of North Dakota Domestic Insurers: Attachment 1.

Rob Hovland~President of the Association of ND Domestic Insurers: Testimony on Attachment 1-on the same attachment that Pat Ward submitted.

13:00

Rep Kasper: Talks about the consumer not knowing. The part of the problem is the agent is not telling the consumer their coverage. Maybe you need to do educating of your agency force so they better alert their customer base.

Rob Hovland: You are absolutely right. The problem we run into in addition to educating them is the older people who don't use email or text, it's too late. All we can do is send that a letter & the letter might not get to them in time until someone already has approached them.

Rep D Ruby: When I look at the additional requirements, it seem the honest people are more affected? The dishonest are still going to doing what you described?

Rob Hovland: To some degree, you can't stop people from being dishonest but there will be some accountability. Right now there is a free for all. Now, with this they have to have proof of responsibility to begin with. The time frame is important as well. Are we going to solve every problem, probably not, but it will bring some accountability to it.

Chairman Keiser: The good adjustors have requirements. If people that come in overnight & act like adjusters need requirements. So we are saying, if you are going to act like one, you must be one. Is that what we are trying to do?

Rob Hovland: Absolutely.

Rep Kasper: I don't see any penalties.

Rob Hovland: Yes, other may be more adverse in speaking to that.

Rep Richter: Is there something in place to enforce this before it happens? If they come in a day after, is there a way to find out before they skip out.

Rob Hovland: I don't know of anything to do to prevent that.

Rep Louser: Someone who claims to be there to help & is gone the next day, how do they end up getting paid?

Rob Hovland: It varies & you should pay us for our services, then add it to the cost of claim. In the end it's comes out of the consumer.

Pat Ward~Submitting Steve Becher~Executive Director of Professional Insurance Agents of ND & Mark Johnston~Regional Vice President-Midwest, National Association of Mutual Insurance Companies (NAMIC): Attachment 2 & 3. Pat continues on his testimony from attachment 1 & talks about their testimonies.

32:10

Rep Louser: Where does the applicant go to study for the test that's required? Secondly, once you're licensed, where's that education coming from?

Pat Ward: The insurance department works with a vender & the administer.

Rep D Ruby: In section 3, a residential contractor, is that a new definition or is it being pulled from a different section?

Pat Ward: It's coming from a Nebraska bill which is the most recent of what's been going on.

Rep D Ruby: It that new?

Pat Ward: I would say probably is.

Chris Oen~On behalf of Nodak Insurance Company: Attachment 4.

40:30

Rep Schauer: Is there date after this legislation, this is what happen?

Chris Oen: I'm not familiar with any type of date about hail & wind.

Rep Kasper: Could you not say in your contract that the only adjuster that may be utilized for your customers is the adjuster you send out?

Chris Oen: There is an assignment of benefits. I don't think a court would allow us to be the judge & jury. We really we wouldn't want to do that. We want it to be a fair process.

Rep Kasper: What's wrong when you require your own adjusters?

Chris Oen: The term of public adjuster, what it really is a public consultant. They don't come in & adjust the lost. They come in & try to manage the lost from the opposite side of the companies at. They might be representing the repair cost or they might be taking part of the payment for the negotiation of the lost for their services & fees. They don't really adjust, estimate or figure the lost itself.

Rep Adams: The public adjuster, could he be working for the roofer?

Chris Oen: Yes, that's the problem.

Rep C Johnson: Is this bill going to affect the independent adjuster hired by the company? They are managed under a different section of the code.

Chris Oen: This will not affect the independent adjuster that is hired on behalf of the insurance company to go out.

Brenda Doll~Director of the ND Association of Farm Mutual Insurance Companies:
Attachments 5 & 6.

Dennis Pathroff~Representing the ND Association Domestic Insurers: Attachment 7

Greg Nelson~Produce Licensing Division Director-ND Insurance Department:
Attachment 8

Rep Louser: So the license fee of the applicant would pay of what the fiscal note says?

Greg Nelson: I would have to ask our accountants where the money comes from.

Chairman Keiser: Anyone here to testify in support of HB 1219, opposition, neutral. Closes the hearing. What are the wishes of the committee?

Vice Chairman Lefor: Moves the amendment.

Rep Laning: Second.

Voice vote ~ motion carried.

Chairman Keiser: Amendment adopted, what are the wishes of the committee?

Vice Chairman Lefor: Moves a Do Pass as Amended & rerefer to appropriations.

Rep Adams: Second.

Roll call was taken for a Do Pass as Amended on HB 1219 with 13 yes, 0 no, 1 absent & Rep C Johnson is the carrier.

Testimony submitted but did not testify.

- ~ **Greg Raab~President of National Association of Public Insurance Adjusters:**
Attachment 9.
- ~ **Steve Schneider~Vice President State Affairs-Midwest Region American Property & Casualty Insurance Association:** Attachment 10

DA 1/03/14

19.0457.03001
Title.04000

Adopted by the Industry, Business and Labor
Committee

January 23, 2019

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1219

Page 13, line 1, replace "seven" with "three"

Page 14, line 24, replace "seven" with "three"

Page 14, line 26, replace "seven" with "three"

Page 18, line 23, after the underscored semicolon insert "or"

Page 18, line 24, remove "; or"

Page 18, remove line 25

Page 18, line 26, remove "residential real estate"

Renumber accordingly

Date: Jan 23, 2019

Roll Call Vote #: 1

2019 HOUSE STANDING COMMITTEE
ROLL CALL VOTES

BILL/RESOLUTION NO. 1219

House _____ Industry, Business and Labor _____ Committee

Subcommittee

Amendment LC# or Description: 19.0457.03001 title .04000

Recommendation

- Adopt Amendment
- Do Pass Do Not Pass Without Committee Recommendation
- As Amended Rerefer to Appropriations
- Place on Consent Calendar

Other Actions Reconsider _____

Motion Made by Rep Lefor Seconded By Rep Laning

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser			Rep O'Brien		
Vice Chairman Lefor			Rep Richter		
Rep Bosch			Rep Ruby		
Rep C Johnson			Rep Schauer		
Rep Kasper			Rep Adams		
Rep Laning			Rep P Anderson		
Rep Louser			Rep M Nelson		

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

voice vote - motion carried

Date: Jan 23, 2019

Roll Call Vote #: 2

2019 HOUSE STANDING COMMITTEE
ROLL CALL VOTES

BILL/RESOLUTION NO. 1219

House _____ Industry, Business and Labor _____ Committee

Subcommittee

Amendment LC# or Description: _____

Recommendation

- Adopt Amendment
- Do Pass Do Not Pass Without Committee Recommendation
- As Amended Rerefer to Appropriations
- Place on Consent Calendar

Other Actions Reconsider _____

Motion Made by Rep Lefor Seconded By Rep Adams

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	X		Rep O'Brien	X	
Vice Chairman Lefor	X		Rep Richter	X	
Rep Bosch	X		Rep Ruby	X	
Rep C Johnson	X		Rep Schauer	X	
Rep Kasper	X		Rep Adams	X	
Rep Laning	X		Rep P Anderson	X	
Rep Louser			Rep M Nelson	Ab	

Total (Yes) 13 No 0

Absent 1

Floor Assignment Rep Johnson

REPORT OF STANDING COMMITTEE

HB 1219: Industry, Business and Labor Committee (Rep. Keiser, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** and **BE REREFERRED** to the **Appropriations Committee** (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1219 was placed on the Sixth order on the calendar.

Page 13, line 1, replace "seven" with "three"

Page 14, line 24, replace "seven" with "three"

Page 14, line 26, replace "seven" with "three"

Page 18, line 23, after the underscored semicolon insert "or"

Page 18, line 24, remove "; or"

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Renumber accordingly

2019 HOUSE APPROPRIATIONS

HB 1219

2019 HOUSE STANDING COMMITTEE MINUTES

Appropriations Committee
Roughrider Room, State Capitol

HB 1219
2/7/2019
32372

- Subcommittee
 Conference Committee

Committee Clerk Risa Bergquist by Caitlin Fleck

Explanation or reason for introduction of bill/resolution:

Relating to public adjuster licensing and to contracts between insured homeowners and residential contractors; to amend and reenact subdivision mm of subsection 2 of section 12-60-24 of the North Dakota Century Code, relating to criminal history record checks; and to provide a penalty.

Minutes:

Chairman Delzer: Opened hearing.

Representative Keiser: This is a bill that will correct a problem that we have defined as public adjusters. Currently there is little to no ability to regulate as to what we are defining as public adjusters. In 2009 that was a large hail storm. What happened after that large storm was that we had people coming from all over and offered our people adjustments to fix their homes. The insurance will cover it and you are available so go ahead and do it. The insurance company comes back and says they aren't going to pay that amount. So this is to make the company become licenses. We are trying to put into the licensing provisions regardless if they are private or public businesses. (Going over page 12 of bill for the requirements.) You've all heard of balanced billing, these adjusters are using balanced billing which is a big problem. There was also an adjuster fee, they want the insured to make the check out to them, and if there's a bank loan they don't want that. They will also charge late fees if you don't operate in a timely manner. There is a fiscal note, we think this is a real problem, the fiscal note is for an employee to manage this. The testimony clearly demonstrates that these people need to be monitored. It's an easy way for them to make a lot of extra money at the expense of our citizens and sometimes the insurance company.

Chairman Delzer: How does this affect people when an insurance company wants to hire someone to go out and adjust?

Representative Keiser: No they are already licensed in our state, they are separate from the public adjuster, and they are called something else.

Chairman Delzer: Why instead of regulating do we not just out law?

Representative Keiser: They come in and set up camp and offer the services when there is a major disaster. During the flood there was a team of government employees that went out and found these people and asked for their permits. When they couldn't provide the permits, they walked off the job and left it or we would come in after them.

Chairman Delzer: This is only going to catch the ones that are following the rules, wouldn't it be easier to say that they can't come in and do this?

Representative Keiser: A lot of these are businesses and they come in and say what is the law in this state and they follow the law if there is a law. If there is no law, then they can do whatever they want because there is no law on it. What they are doing now is not illegal.

Chairman Delzer: Well what if you put into the law that the public adjusters cannot operate in this state?

Representative Keiser: You could be putting yourself out 4-6 months because the adjusters are swamped. The public adjusters can serve a function if they are regulated correctly. Without them, you will have to wait a while for an adjuster to come out.

Chairman Delzer: Page 20 and 21, I don't know that I have ever seen underlined capitalized letters before?

Representative Keiser: I don't know that I have ever seen it, I didn't draft the bill. This is capitalized and 14 point typed.

Hearing closed.

2019 HOUSE STANDING COMMITTEE MINUTES

Appropriations Committee
Roughrider Room, State Capitol

HB 1219
2/12/2019
32608

- Subcommittee
 Conference Committee

Committee Clerk: Risa Bergquist

Explanation or reason for introduction of bill/resolution:

Relating to public adjuster licensing and to contracts between insured homeowners and residential contractors

Minutes:

Chairman Delzer: Revenues on the fiscal note of roughly 8 thousand, cost expenditures in appropriation will be 112. I do not believe there is any appropriation in the bill. We have insurance the second half, we can decide then if we want that FTE. We could outlaw them but there are times that they are needed if they are a good guy. Any further discussion? What are your wishes?

Representative Monson: I'll make a motion for **Do pass**

Representative Beadle: Second

Chairman Delzer: It is one that we don't have tons of knowledge, when we look at the budget we will have to look and see whether or not if they need a FTE.

Representative Monson: It looks like it is all from special funds, insurance regulatory trust fund so it's not going to have an impact on the general fund.

Representative Kempenich: I've gotten letters and when you have natural disasters they flood the area, so it does separate out some of the good and the bad.

Representative Monson: Over the years there have been times when we had to bring in out of state adjusters, so there is a time for them but they do need to be regulated.

Chairman Delzer: If you ask them to come in then the insurance company is controlling them. This is for the independent ones that are competing in not asked by the insurance companies.

Representative Monson: They would still be independent contracts.

Chairman Delzer: I don't think they would fall under this as a public adjuster.

Representative Schatz: I would want to talk to my adjuster not anyone else.

Chairman Delzer: I think it's because of the time frame. Any further discussion? We will call the roll

A Roll Call vote was taken. Yea: 18 Nay: 3 Absent: 0

Motion Carries, Representative C. Johnson will carry the bill.

Chairman Delzer: With that we will close this meeting.

Date: 2/12/2019
 Roll Call Vote #: 1

**2019 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. HB 1219**

House Appropriations Committee

Subcommittee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar

Other Actions: Reconsider _____

Motion Made By Representative Monson Seconded By Representative Beadle

Representatives	Yes	No	Representatives	Yes	No
Chairman Delzer	X				
Representative Kempenich	X				
Representative Anderson	X		Representative Schobinger	X	
Representative Beadle	X		Representative Vigesaa	X	
Representative Bellew		X			
Representative Brandenburg	X				
Representative Howe	X		Representative Boe	X	
Representative Kreidt	X		Representative Holman	X	
Representative Martinson	X		Representative Mock	X	
Representative Meier	X				
Representative Monson	X				
Representative Nathe	X				
Representative J. Nelson	X				
Representative Sanford	X				
Representative Schatz		X			
Representative Schmidt		X			

Total (Yes) 18 No 3

Absent 0

Floor Assignment Representative C. Johnson

Motion Carries

REPORT OF STANDING COMMITTEE

HB 1219, as engrossed: Appropriations Committee (Rep. Delzer, Chairman)
recommends **DO PASS** (18 YEAS, 3 NAYS, 0 ABSENT AND NOT VOTING).
Engrossed HB 1219 was placed on the Eleventh order on the calendar.

2019 SENATE INDUSTRY, BUSINESS AND LABOR

HB 1219

2019 SENATE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee Roosevelt Park Room, State Capitol

HB 1219
3/6/2019
Job #33322

- Subcommittee
 Conference Committee

Committee Clerk: Amy Crane

Explanation or reason for introduction of bill/resolution:

relating to public adjuster licensing and to contracts between insured homeowners and residential contractors;

Minutes:

Att. #1-7

Chairman Klein: Opened the hearing on HB 1219. All members were present.

Representative Keiser, District 47: introduced the bill. Told personal story about hail disaster in 2001 in Bismarck. Insurance companies react very quickly. Roofers reacted almost as quickly. Public adjuster licensing bill, we have created this term public adjuster for people that turn up and provide estimates on damage. This bill does, because of lack of oversight and regulation for these people, it provides licenses. This bill also licenses businesses. Went through the bill page by page to show some problems the bill aims to address.

(8:51)Vice Chairman Vedaa: I don't see many out of state plates or unfamiliar faces here. Is this just gonna keep out the illegitimate ones but keep the good ones in?

Representative Keiser: It should keep the legitimate ones in. They are going to have to operate within the regulations of the department of insurance, which protects our citizens. The bad ones we can go after, and try and keep them out.

Vice Chairman Vedaa: By having one of these in print, if I sign one of these illegal ones it will keep me out of court?

Representative Keiser: That is correct.

Senator Burckhard: I disagree. I think with the workforce issues we have, they'll still come anyway. You made reference to balanced billing, what does that mean?

Representative Keiser: Balanced billing is however you're going to work it out with them in terms of payment. they're gonna bill you for the difference between what your insurance company paid, and what their bill was and you are going to be liable for that amount.

Chairman Klein: Generally, its referenced when you have a medical procedure and the doctor is not in the network and you get a surprise bill from a doctor who is a specialist for an additional \$5,000 but you have to pay because the balanced bill is not covered by insurance.

Representative Keiser: This is the first time I've heard of balanced billing in the insurance business outside of medicine.

Pat Ward, Association of North Dakota Domestic Insurers: see attachment #1 for testimony in support.

Rob Hovland, President, Center Mutual in Rugby, President, Association of North Dakota Domestic Insurers: testified in support of the bill. Refer to attachment #1 for testimony.

See attachments #2-3 for additional testimony submitted to the committee.

(24:45)Pat Ward's testimony continues. See testimony #1.

Vice Chairman Vedaa: I see we have a letter from the national insurance adjusters. This isn't going to make it difficult for current North Dakota insurance adjusters to do their jobs is it?

Pat: There are three kinds of insurance adjusters. There is a resident adjuster that basically works directly for a company, for example like from a large company like State Farm. Another type of adjuster is an independent adjuster, that is somebody who works for insurance companies on a contract basis. They are contracted with the insurance company. This bill does nothing to regulate either of those. This only applies to public insurance adjusters who are representing consumers, or they say they are representing the individual homeowner. It's generally speaking, a homeowner or a car owner after a storm.

Senator Kreun: This is basically for hail storms?

Pat: There may be other forms of natural disasters that apply, such as a large wind storm or something like that where there is a large deal of damage.

Senator Kreun: What about catastrophic events like a flood?

Pat: I think it would also apply in that scenario as well.

Senator Kreun: Well flood damage is usually long-term fixes. Do you know how this would handle an issue like that? Have you talked to any of these communities that have had damage like this and how they handle their contract licensing for short-term issues?

Pat: Let me do some checking and get back to you and see if that applies. As far as I know we have not reached out to that.

Senator Kreun: How do you enforce this?

Pat: This bill does not preempt any of the other licensing requirements for contractors. The state enforces that as well. You need a permit to work in North Dakota, on any kind of job.

Chris Oen, Association of North Dakota Insurers: see attachment #4 for testimony in support of the bill.

Chairman Klein: But at the end of the day, these guys are gonna be here and gone and folks are gonna get dinged and not everybody knows that this is in the code. Those folks know how to work the system and they'll be gone before we can get any recourse.

Chris: That will continue to happen. But what this really does is I can call the commissioner's office and say this is the name of the person, he's not operating under the regulations that we've got, they can address this situation in a lot cleaner and easier way.

Steve Becher, Executive Director, Professional Insurance Agents of North Dakota: see attachment #5 for testimony in support.

Greg Nelson, Producer Licensing Division Director, North Dakota Insurance Department: see attachment #6 for testimony in support of the bill.

Chairman Klein: Are we already following up on bad actions?

Greg: You try to with what you can. The current consultant law is pretty vague.

Chairman Klein: So we're already expending resources? And those resources are coming from within the current budget and what we would be doing is expending additional resources for an additional person to do this all the time?

Greg: That's correct.

Jeff Ubben, Deputy Insurance Commissioner: testified in support of the bill. Here to answer questions about enforcement. How will the insurance department practically enforce these issues, what does that look like? We need to start with educating our state's insurance agents, companies, and consumers to be on the lookout for these practices after large storm events. If we put people on the ground, they'll be able to tell what's going on. Especially in a smaller community if we have people out there and they see these adjusters going house to house and they approach them and ask to see their credentials and if they are practicing without being licensed with us, that's a class C felony.

Chairman Klein: And you would have that legal authority?

Jeff: Yes, if this bill passes it will make doing this a class C felony. If folks try to flee the state and we bring criminal charges on them for practicing without a license, then there can be a warrant issued and if they have a warrant out in North Dakota they will be a lot less likely to come back and rip off North Dakotans. Are we going to catch everybody? Probably not but this will be a significant step towards policing the practice.

Chairman Klein: closed the hearing on HB 1219.

See attachment #7 for additional testimony that was submitted to the committee.

Senator Kreun: Moved a Do Pass and Rerefer to appropriations.

Senator Roers: Seconded.

A Roll Call Vote Was Taken: 5 yeas, 1 nays, 0 absent.

Motion Carried.

Chairman Klein will carry the bill.

**2019 SENATE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 1219**

Senate Industry, Business and Labor Committee

Subcommittee

Amendment LC# or Description: _____

- Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
 Other Actions: Reconsider _____

Motion Made By Kreun Seconded By Roers

Senators	Yes	No	Senators	Yes	No
Chairman Klein	X		Senator Piepkorn	X	
Vice Chairman Vedaa	X				
Senator Burckhard		X			
Senator Kreun	X				
Senator Roers	X				

Total (Yes) 5 No 1

Absent 0

Floor Assignment Klein

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1219, as engrossed: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends DO PASS and BE REREFERRED to the Appropriations Committee (5 YEAS, 1 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1219 was rereferred to the Appropriations Committee.

2019 SENATE APPROPRIATIONS

HB 1219

2019 SENATE STANDING COMMITTEE MINUTES

Appropriations Committee Harvest Room, State Capitol

HB 1219
3/12/2019
JOB # 33582

- Subcommittee
 Conference Committee

Committee Clerk: Alice Delzer / Pam Dever

Explanation or reason for introduction of bill/resolution:

A BILL for an Act to create and enact chapter 26.1-26.8 and chapter 26.1-39.2 of the North Dakota Century Code, relating to public adjuster licensing and to contracts between insured homeowners and residential contractors; to amend and reenact subdivision mm of subsection 2 of section 12-60-24 of the North Dakota Century Code, relating to criminal history record checks; and to provide a penalty.

Minutes:

No testimony submitted

Chairman Holmberg: Called the Committee to order on HB 1219. All committee members were present except Senator Dever. Alex Cronquist, Legislative Council and Larry Martin, OMB were also present.

Chairman Holmberg: If there is anyone else that needs to come we will hold it open. We have HB1219 before us.

(0.00.31) Representative George Keiser, District 47, Bismarck: This is the public adjuster license bill. As we tried in our committee, we tried to identify the problem. I will do that somewhat briefly, but give you a case study. In the city of Bismarck, we had a hail storm, that was unprecedented in N.D. The damage was unbelievable. It was the 4th largest natural disaster of that year in the US. I made the mistake of going to 5:30 mass that day. The hail storm hit, and I had a car that was 2 weeks old, and it had \$9600 damage. This city was in turmoil. The underpasses were filled with hail, and a hail river was going down Washington Street. MedCenter had low entrance doors and the hail entered and got in 60 feet into the hospital. What happens after that specifically within a very short time. Far faster that the insurance adjusters could set up tents, there came in groups of organized people that came to Bismarck. We had one on our street. They brought their 5th wheelers and parked everywhere. They set up a social network that they could have evening meetings. The doorbell rang, and a woman with a pickup truck with Florida plates asked if my roof was damaged. I am an appraiser, an adjuster, and I can determine if you had damage. Fortunately, I know a little bit about insurance, so I told them to go ahead. She said your roof is totaled. She said this is what it will cost to repair it. She said we have a crew working in the area. If you want, we can put you on the list. We can try and get you on top of the list. That sounds pretty good; but we cut out my insurance agent and my insurance company

which is very important. The price she gave was significantly higher than the eventual price that I got from a different adjuster licensed by N.D. I couldn't get to a contractor for about 4 or 6 months. That was the way it was because every roof in the state was damaged. What this bill does is addresses that issue. We are creating a category known as public adjuster. This will run through the insurance department. There is currently a total lack of regulation and oversight in these kinds of adjustments. The impact on insurance owners and claims is a problem. What this bill is does is to license individual public adjusters, but also companies that come in and become the public adjuster and hire people. Both need to be licensed. The insurance department has oversight. Once they apply for a license, there will be a background check. There will be a surety bond required. Turn to page 12, and it goes through a contract. Please read that information that is all required to be done. **(0.07.09)** In item two, the adjuster must be named as a copay on the insurance plan. The exact percentage of the share of compensation must be specified. On page 13, item 7, a public adjuster contract may not contain a contract term that allows for a balanced billing of the insured. (7.40) That is what occurred in Bismarck. The contract you signed by the people coming from wherever was found to be binding. You have to pay the extra amount. They were doing balance billing. This bill does not allow it. This allows only in the name of the public adjuster. One of the tricks they did, was say you will pay us and we will take care and balance bill you. Not good. We had a similar problem with glass in cars., relative to this issue. We can do these things. There is a fiscal note of about \$112,000. That is way we are here today. **(0.09.15)** The insurance department supports the bill. They think it's a level of protection for ND consumers. I don't know if it has ever been an issue with flooding. It certainly is an issue with hail storms. That is the purpose of the bill. Any questions?

(0.10.01) Senator Grabinger: Don't some of our communities have local ordinances that address this issue? I know in Jamestown, the bonding requirements for contracting and general contracting are covered. Don't they cover some of that to prevent what happened in Bismarck?

(0.10.32) Representative Keiser: I don't know if they do or don't. I don't know if that applies without this legislation. These people are not seeking a contract; they just act as though they were this category of individual. This creates problems for consumers and insurance companies. Right now, they don't have to be licensed. They just come into the community and operate.

(0.11.18) Senator Sorvaag: So they come in and do it anyway. Are there any consequences?

Representative Keiser: There is violation of this chapter. The contract is void. I am not sure what the insurance department has come up with.

Senator Oehlke: The FTE for 69 public adjusters that get to be added the first year. I am looking at the fiscal note. Is that the insurance departments that they need 69 people?

Representative Keiser: We asked, do you need one full time person to do this. They indicated the oversight required the registration and was needed. We could not disprove it.

Chairman Holmberg: Keep in mind there is no money in this bill, so if this bill were to pass, the insurance department would have to work with their budget to see if they could convince the money to be added there; the money isn't added in this bill, as I understand it.

(0.13.15) Representative Keiser: I understand that the insurance Department operates on the revenues that they get through licensing, filings, etc. It's true there isn't specific dollars in this, but this would result in \$117,000 less potential transfer to the general fund at the end of their budget.

(0.13.52) Chairman Holmberg: We would have to approve that. Where is that budget right now?

Larry Martin, OMB: In Government Opts.

Chairman Holmberg: Have you visited with those folks too, so they might be aware of this. He was told yes. Any other questions? Thank you for rushing down and rushing back. Was there anyone else testifying?

Jeff Ubben, Deputy Insurance Commissioner: If this bill would become law, a full investigation would have to happen if you have a storm. You need to make sure that the people are licensed to adjust. We would need boots on the ground to investigate these folks and tract to make sure they are following our rules. If we had another bad hail storm this summer, we would not have the resources to investigate it. Our two people are up to eyeballs investigating insurance fraud right now. **(0.15.31)** Insurance fraud is the second most profitable crime in America today. Illegal drug sales cost every N.D. family a \$1,000 per year. If we don't get this FTE, I would be pulling fraud investigators off and diverting them to public adjusters. That is the reason for the request.

Chairman Holmberg: Have you made that made known to the government opts folks? Are you waiting to see about this bill?

Jeff Ubben: We have not addressed that specifically with government opts. That did go through the House Appropriations committee before cross over, and I believe they approved that FTE, but we have not addressed that specifically.

(0.16.23) Chairman Holmberg: I would suggest you talk to them and quickly.

Senator Oehlke: The sponsor said the insurance department was in full support. Is that true?

Jeff Ubben: We are in full support, and have seen firsthand how these unlicensed adjusters have taken advantage of consumers. There needs to be regulation, and I feel we are the appropriate party to do it. We just need resources to do it. **(0.16.56)**

V. Chairman Krebsbach: On page 11 of the bill, is a continuing education clause. Is that in Code now for the current adjusters?

Jeff Ubben: It is not, because the current adjusters are not required to be licensed.

V. Chairman Krebsbach: But here it says they shall complete this continuing education.

Jeff Ubben: If this bill were to pass, then yes, they would be required to comply. This would not apply to independent adjusters because they are not considered public adjuster. Example, Farmer Union adjusters are not considered public adjusters. **(0.18.26)**

Chairman Holmberg: Is there anyone else who is going to talk to us?

Pat Ward, Association of ND Insurers (ANDI) We did put this bill in. A Nebraska bill essentially. It has two components to it. One is to license the public adjusters and the other is to deal with our workers and contractors who come in. I won't go into all the policy reasons, both the policy committees supported it strongly. But I will say we did agree when we presented this to the department that we would support the FTE and we can see the need for it and we would encourage you to support this bill. Thank you very much for your time.

Chairman Holmberg: You might whisper that to the House Government Opts Committee. That was confirmed by Mr. Ward. We will close the hearing on HB 1219.

2019 SENATE STANDING COMMITTEE MINUTES

Appropriations Committee Harvest Room, State Capitol

HB 1219
3/28/2019
JOB # 34311

- Subcommittee
 Conference Committee

Committee Clerk: Alice Delzer

Explanation or reason for introduction of bill/resolution:

A BILL for an Act to create and enact chapter 26.1-26.8 and chapter 26.1-39.2 of the North Dakota Century Code, relating to public adjuster licensing and to contracts between insured homeowners and residential contractors; to amend and reenact subdivision mm of subsection 2 of section 12-60-24 of the North Dakota Century Code, relating to criminal history record checks; and to provide a penalty. (DO PASS)

Minutes:

No testimony submitted

V. Chairman Krebsbach: opened the hearing on HB 1219. All committee members were present except Senator Hogue. Alex Cronquist, Legislative Council and Larry Martin, OMB were also present. This bill was brought forward because of unscrupulous adjusters coming in after a major hail storm that took place here in Bismarck and not only they did the adjusting, they brought their own construction crew and the work at best was shoddy, unstable and unsafe thus we have this bill. Seems to me there's a lot of verbiage in here. Everything from the licensing, application, non-residence, examinations, exemptions.

Senator Robinson: Moved a Do Pass. 2nd V. Chairman Wanzek.

Senator Bekkedahl: I think we can trust the research that has been done on this. it's a lengthy bill. And its other funds. the special funds coming out of the Regulatory Trust Fund. It also talks about the insurance department needing an FTE, a licensing specialist 1 to handle the increased work load. Does that authority need to come in a different vehicle or is it just granted here with the passage of the bill?

Senator Robinson: The department made their case with the subcommittee. Many of these agencies have bills that impact their respective agency, and as those bills are passed or approved if they're passed at this juncture, they have to make their case with the department to include it in the budget or in some cases, absorb it. Right, good point.

(0.02.50) Larry Martin, OMB: the insurance department has approached Government Ops with this amendment to add this FTE to their budget bill.

Senator Dever: I just glanced on page 21, it says "it is a violation of the insurance laws of ND to rebate any portion of an insurance deductible as an inducement to the insurance to accept the residential contractors proposal. Several sessions ago we had an issue involving a glass repair shop that advertised that they would rebate the deductible, same sponsor, the bill passed. It went to court, and it was overturned.

V. Chairman Krebsbach: And that is included in this bill. on page 21.

Senator Dever: I voted no on that bill by the way because I thought the insurance companies can handle that.

V. Chairman Wanzek: I visited with some folks from NoDAK Insurance. what we are doing here is licensing typically adjusters work for the company and adjust the claim. As I understand, this is an adjuster that is working on behalf of the claimant, or comes and going to represent the person who has the claim rather than the company. But what happens we have a hail storm, they show up, and they come in and I think it's the rebating and the offering all these things that entice people to sign the agreement and there is a lot of unscrupulous behavior there and how they complete the job and settle the claim. There is a legitimate purpose for maybe these people but they want to be able to license them and register them, just like we are doing that with grain buyers. It's come to the point where there are people out there trying to take advantage of people and we need to regulate that to some degree. The rebating thing is used as a bait to get people to sign the agreement and then they settle the whole claim right there.

Senator Dever: I just bring that up. Every bill we pass is considered constitutional until its challenged and decided otherwise.

V. Chairman Krebsbach: Is there an exception in this bill because it says its a violation of insurance laws to rebate any portion of the insurance deductible as an inducement?

Senator Oehlke: commented that auto glass losses are different than this issue.

V. Chairman Krebsbach: Any further discussion? Call the roll on 1219.

**A Roll Call vote was taken. Yea:13; Nay: 0; Absent: 1. This goes back to IBL.
Senator Klein will carry the bill.**

Senator Dever: It may not be in the insurance laws now, but if we pass this bill it will be.

V. Chairman Krebsbach: There it is. The hearing was closed on HB 1219.

Date: 3-28-19

Roll Call Vote #: 1

2019 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1219

Senate Appropriations Committee

Subcommittee

Amendment LC# or Description: _____

- Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
Other Actions: Reconsider _____

Motion Made By Robinson Seconded By Wanzek

Senators	Yes	No	Senators	Yes	No
Senator Holmberg	✓		Senator Mathern	✓	
Senator Krebsbach	✓		Senator Grabinger	✓	
Senator Wanzek	✓		Senator Robinson	✓	
Senator Erbele	✓				
Senator Poolman	✓				
Senator Bekkedahl	✓				
Senator G. Lee	✓				
Senator Dever	✓				
Senator Sorvaag	✓				
Senator Oehlke	✓				
Senator Hogue	A				

Total (Yes) 13 No 0

Absent 1

Floor Assignment IBL - Klein

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1219, as engrossed: Appropriations Committee (Sen. Holmberg, Chairman)
recommends **DO PASS** (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING).
Engrossed HB 1219 was placed on the Fourteenth order on the calendar.

2019 TESTIMONY

HB 1219

Testimony of Pat Ward on HB 1219

Good morning Chairman Keiser and members of the House Industry, Business, and Labor Committee. My name is Pat Ward and I am an attorney with the Zuger, Kirmis & Smith law firm in Bismarck. I am here today representing the Association of North Dakota Domestic Insurers. Some of our domestic insurers, including (1) Center Mutual; (2) Nodak Mutual; (3) Family Mutual; and (4) North Dakota Farmers Union, are here today and several of these domestic insurers will be testifying.

We stand in support of HB 1219. HB 1219 is the Public Adjuster Licensing & Insured Homeowner Protection Bill. This two-part bill aims to provide protections for insureds when they are (1) dealing with public adjusters and (2) dealing with roofers and contractors, oftentimes after severe weather events. Passing this legislation will protect consumers from predators who follow behind storms and pressure people into signing contracts.

Before I walk you through the specific provisions of HB 1219, I'd like to have Rob Hovland, who is the President of Center Mutual in Rugby and also the President of the Association of North Dakota Domestic Insurers, explain why this legislation is needed in North Dakota. After Rob's testimony, I will walk you through HB 1219 and take any questions.

ROB HOVLAND TESTIMONY

Chairman Keiser and members of the committee, for the record, I'm Pat Ward. Now that you have a general sense of the need for this legislation, I will walk you through the specifics of HB 1219.

HB 1219 is based on Nebraska's Public Adjuster Licensing Act and Insured Homeowner Protection Act. We did work with the insurance department while drafting this bill. Currently, the insurance department requires public adjusters to be licensed as consultants under chapter 26.1-26 of the Century Code. The consultant definition is very broad and does not specifically address public adjusters.

With the adoption of this bill, North Dakota will join the majority of other states that separately license public adjusters. Additionally, HB 1219 gives the insurance department the ability to regulate the frequently out of state "storm chasers" and "facilitators" who pressure insureds into signing contracts, oftentimes after severe weather events, like hail storms.

I'll now walk you through the bill.

Section 1 of HB 1219 authorizes the department to conduct criminal history background checks on public adjusters.

Section 2 of HB 1219 creates a new chapter of the code (chapter 26.1-26.8), which governs procedures for licensing public adjusters.

Section 1 of chapter 26.1-26.8 explains the scope of the public adjuster licensing portion of the bill

Section 2 provides definitions for the chapter

Section 3 explains that a license from the department is required to practice public adjusting. Note, subsection 3 explains a public adjuster may not enter an agreement to repair or replace property on which the adjuster has engaged to adjust claims of the insured

Section 4 explains the application process for resident public adjusters

Section 5 explains the application process for non-resident public adjusters

Section 6 explains the application process for a business entity public adjuster

Section 7 requires an examination in order to receive a public adjuster license

Section 8 provides exemptions from the examination requirement

Section 9 explains the renewal process for public adjuster licensees

Section 10 provides that the commissioner may suspend, revoke, or refuse to renew public adjuster licenses

Section 11 requires a public adjuster to provide a twenty thousand dollar bond or proof of insurance to protect insureds from insolvent public adjusters

Section 12 explains the requirements for continuing education

Section 13 explains the requirements and restrictions on contracts between public adjusters and insureds. This is one of **the most important parts of the bill** as it provides many consumer protections

- Name and contact info of the public adjuster
- Description of services to be provided by the public adjuster
- The specific amount of compensation the public adjuster is to receive
- The ability for the insured to cancel the contract within 7 days after the claim is submitted to the insurer

Section 14 requires the public adjuster to retain records for at least 6 years and make them available to the commissioner

Section 15 provides standards of conduct required by the public adjuster. The standards prohibit a public adjuster from referring the insured to obtain repairs from a person (1) which with the public adjuster has a financial interest and (2) from which the public adjuster may receive compensation for the referral

Section 16 addresses fees

Sections 17 through 21 address powers of the commissioner

Section 22 explains the statute of limitations for recovery of damages against public adjusters

Section 3 of HB 1219 creates another new chapter to the code (chapter 26.1-39.2), which is the **insured homeowner protection portion of the bill**. This section will protect insureds when they enter into agreements with roofers and contractors that are to be paid from proceeds of a property and casualty insurance policy.

Section 1 of chapter 26.1-39.2 provides definitions

Section 2 provides requirements and restrictions on agreements between contractors and insureds when the contractor is paid from proceeds of insurance policies

- Insured may cancel contract within 5 days of entering into the contract or receiving notice from the insurer that the claim is not a covered loss

Section 3 prohibits a contractor from **rebating** a portion of an insurance deductible as an inducement to the sale of services

Section 4 addresses post-loss **assignment of benefits**. This is an important section of the bill. The section requires a conspicuous statement on a contract indicating that the insured is assigning certain rights under its policy. The insurance industry has seen great abuse by contractors regarding the assignment of insureds' benefits. For example, contractors often require homeowners to sign broadly worded assignment of benefits before agreeing to make repairs. The assignment transfers complete control of the homeowner's claim to the contractor. Homeowners are then prohibited from working with their insurance company to reach a reasonable settlement. This may lead to confusion, frustration, and litigation.

Section 5 requires a contractor to provide an itemized description of work prior to commencement of repair

Section 6 requires certain notices in the agreement between the contractor and insured

Section 7 explains the penalty of not complying with the chapter

Section 8 gives the commissioner the ability to adopt rules to carry out the chapter

Again, the purpose of this bill is to protect consumers from predators who follow behind storms and pressure people into signing contracts. The first part of HB 1219 provides a definition of "public adjuster" and allows the department to regulate the profession. The second part of HB 1219 provides protections for insureds when dealing with contractors who are paid from the proceeds of insurance claims. We think HB 1219 is needed to protect North Dakotans.

Several other domestic insurers, including Nodak Mutual and Family Mutual will be following me and providing real life examples highlighting the need for this legislation.

Please vote "do pass" on HB 1219. I would be happy to answer your questions.

CHRIS OEN TESTIMONY

ROD WARNER TESTIMONY

Attachment 2
Jan 23, 2019

Testimony for HB 1219 – ND House IBL Committee

Chairman Keiser and members of the House Industry, Business, and Labor Committee for the record my name is Steve Becher and I am Executive Director of the Professional Insurance Agents of ND. PIA of ND represents over 300 main street insurance agencies with over 1000 agents across the state of North Dakota. I am providing testimony today and asking you for a Do Pass recommendation on House Bill **1219**.

A major complaint from consumers and insurance companies after a big storm is the contractor that goes door to door and offers to “check” for damage for the homeowner. In many cases these contractors are from out of state with no local presence after the work is completed and they chase storms across the country. Invariably the contractor finds “damage”, writes up the estimate, and then offers to work with the insurance company on behalf of the homeowner. The homeowner signs a contract for the work that allows the contractor to work with the insurance company and then the contractor starts the work before a claim is submitted to the carrier. The main issue is that the claim is in essence being adjusted by a contractor that has a monetary interest in making the claim larger and many times the insurance company is not notified until the work is near completion. One of my agents shared with me that a company adjuster had driven up to a house after one of our recent storms to check for damage on a claim and actually caught the contractor on the roof with a hammer hitting the shingles to make it look like hail damage.

In some cases the insured assigns the benefits of the claim over to the contractor who then deals directly with the insurance company to get paid for the work.

There is nothing wrong with assignment of benefits as long as the insurance company knows about the assignment and can work with the contractor before the work is started to determine the amount of damage and the cost to fix. The problem comes about when the contractor completes the work, submits a bill to the insurance company for damage the company never got to inspect, and because of the assignment the insurance company is forced to work with the contractor and not the people that they have a contract with, their insureds.

Our insurance agents and their clients are negatively affected by these practices. In some cases these contractors go door to door in every neighborhood and tell all of the homeowners that they see storm damage on their home. Many of these homeowners then call in a claim to their agent who submits the paperwork to the insurance company and they send out an adjuster. When the adjuster inspects the home they would find no damage and the insurance company would have numerous claims with no payout. This results in some insureds feeling that their insurance company is not paying them for damage just to get out of a claim when in reality there was no damage to begin with. This can result in bad relations between the insured, agent, and insurance company all because a contractor who would benefit from doing any work told them they saw damage. In addition, with all of these fictitious claims being turned in the insureds that have legitimate damage are delayed in getting their claims processed.

HB 1219 actually helps in two ways as it makes these contractors that are basically holding themselves out as claims adjusters to be licensed as a public

HB 1219

Attachment 2
Jan 23, 2019

adjuster and provides some consumer protection for consumers that enter into contracts with these contractors. This bill provides criteria for the public adjuster such as licensing, continuing education, certain contract provisions and prohibitions, disclosure notices, and rescission rights. It also includes standards of conduct to protect the consumer from conflicts of interest where the public adjuster has a financial interest in the payment for the completed work. It protects the consumer by allowing them to cancel the contract within a reasonable amount of time after signing it or after being notified by the insurance company that part or the entire claim is not covered. The bill also prohibits the contractor from rebating the deductible as an inducement to do the work and makes them provide an itemized description of work prior to starting the job.

In the interest of protecting consumers and insurance companies from predatory contractors as well as making those persons that are holding themselves out to be a public adjuster be licensed as such, I would urge a "Do Pass" on House Bill 1219.



HB 1219

23

January 23, 2019

The Honorable George Keiser
Chairman, House Industry, Business and Labor Committee
State Capitol Building
600 East Boulevard
Bismarck, North Dakota 58505

Re: Letter in Support of HB 1219 – January 23, 2019 Hearing

Dear Chairman Keiser and Committee Members:

NAMIC is the largest property/casualty insurance trade association in the country, with more than 1,400 member companies representing 40 percent of the total market. NAMIC supports regional and local mutual insurance companies on main streets across America and many of the country's largest national insurers. NAMIC member companies serve more than 170 million policyholders. In North Dakota, we have 169 member companies, including 17 domiciled companies, which underwrite 49% of the state's insurance coverage.

NAMIC writes to express our strong support for HB 1219, which will enhance protections for consumers during the stressful period after a disaster. The bill does this by addressing the role of public adjusters and by providing a fair and balanced framework for the allocation of rights and obligations between consumers and contractors when a decision is made for the consumer to assign it rights under a policy to a third-party.

It needs to be stressed that NAMIC member companies work on a daily basis with residential contractors. The work they do is absolutely essential for the homeowner and insurers. North Dakota is fortunate to have so many quality contractors in communities across the state.

We are seeing a problem in parts of the Midwest that when problem arises, some contractors, particularly those from elsewhere who flock to the state after a disaster strikes, misuse what are generally called "assignment of benefits" contracts. Some of these contracts go far beyond what is necessary to guarantee that the contractor will be paid its rightful amount from the proceeds. The contractor mandates homeowners sign them in the critical hours after disaster. They also completely transfer control of the homeowner's claim to the contractor. Homeowners can be prohibited from working with companies to achieve a reasonable settlement of the claim.

In some cases unscrupulous contractors have inflated repair costs and refused to make repairs before reaching a final agreement on payment. Homeowners are then often surprised to learn they have relinquished their rights under the policy.



Attachment 3

The Honorable George Keiser
January 23, 2019
Page Two ← 23

HB 1219

HB 1219 addresses this by requiring minimum standards for the assignment contract. They include:

- Giving the homeowner the right to cancel the contract;
- Allowing the assignment to be used as a way to assure payment of the insurance proceeds to the contractor while avoiding the wholesale transfer of the homeowner's rights under the policy;
- Requiring that the assignment be provided in a timely manner to the insurer so to reduce claims processing problems; and
- Mandating that the assignment include an itemized description of the work to be done.

The enactment of HB 1219 will save North Dakota citizens from many of the problems that have been seen elsewhere after disaster strikes. It is a good faith bill that allows well-regarded contractors to get to work while protecting the insurance purchasing public from the harm.

NAMIC appreciates your attention to this issue. If you have any questions or comments, please do not hesitate to contact me. In the meantime, I remain,

Sincerely,

Mark Johnston
Regional Vice President – Midwest

cc: Mr. Rod Warner, NDAFMIC
Mr. Rob Hovland, ANDI

Jan 23, 2019

Testimony – ND House Bill 1219
Public Adjuster Act
Support for a “Do Pass” vote: by Nodak Insurance Company
Chris Oen, Director of Claims

On behalf of Nodak Insurance Company, a domestic North Dakota based insurance company and member of The Association of North Dakota Insurers (ANDI), Nodak encourages support and a “do pass” recommendation by this committee for House Bill 1219. This bill creates the parameters for the definition, licensing, and standards of conduct for a person or entity operating as a Public Adjuster within the State of North Dakota.

Simply, a public adjuster is an entity that works on behalf of the policyholder as an advocate for their claim against the insurance company. On many claims, the public adjuster serves a positive role in the claim process. However when public adjusting is unregulated, the opportunity to increase claim costs through unmitigated fees, threats of legal action, unclear contracts, and predatory tactics create unforeseen dangers for the policyholder entitled to claim settlement proceeds.

In 2011, former Insurance Commissioner Adam Hamm posted a notice regarding caution of public adjusters operating in the Minot, ND area after the 2011 flood. There were complaints to the Insurance Department of opportunistic parties offering to represent individuals dealing with their insurance company offering to handle claims on behalf of property owners. Commissioner Hamm’s notice shared an example of claim costs rising 15-20% when the public adjusters became involved.

The purpose of this bill is not to ban or restrict the operation of a public adjuster within North Dakota. Forty Four states have adopted laws regarding the licensing, supervision, and code of conduct for public adjusters.

This bill allows for clear scope of contracts, knowing who’s licensed or not, and operating procedures; allowing the Insurance Department to better monitor public adjusting activities within the State. The bill also clearly defines business practices and conduct that protects policyholders from predatory actions by anyone representing themselves as a public adjuster.

House bill 1219 was crafted after a public adjuster bill passed in 2018 in Nebraska. Both the North Dakota Bill 1219 and Nebraska bills are modeled after the National Association of Insurance Commissioners (NAIC) Public Adjuster Licensing Model Act (MDL-228) adopted in October 2005.

The North Dakota Century Code already gives the Commissioner’s Office the right to license insurance agents and consultants. Until now, a public adjuster would fall into the Code that governs consultants. However, there is no definition to what the term “consultant” is. This language clarifies the specific actions of a consultant or public adjuster.

House Bill 1219 also addresses the assignment of claims benefits, putting parameters and disclosures required for the assignment to be executed in a manner that informs and protects the policyholder.

As part of this testimony, attached are references supporting HB 1219’s benefits. Of note, there is information from the Nebraska Department of Insurance advising property owners of their rights after the installation of the similar bill. Hopefully the committee can visualize how Nebraska has used this very similar law to protect the policyholders in their state, and how Nodak Insurance Company and the industry anticipates the protection House Bill 1219 will do the same for residents of North Dakota.



Jon Godfread, Commissioner

Welcome | Bio



Home > Communications > News

Hamm urges consumers to use caution with public adjusters and consultants

Post date: Aug 05, 2011

BISMARCK, N.D.-North Dakota Insurance Commissioner Adam Hamm alerted flood victims across the state today that they should exercise caution before signing a contract with a public adjuster or insurance consultant as they begin the recovery process. The Department has already received inquiries related to these entities in some of the flooded areas of the state.

Public adjusters, who in North Dakota must be licensed as insurance consultants, sign contracts with insurance policyholders and, for a fee, claim to work on the insured's behalf in negotiating a settlement with the insurance company. Generally, public adjusters perform an appraisal of the loss and then negotiate the amount to be paid by the company. They commonly charge a fee of 10 to 20 percent of the total amount of the settlement.

"In order for consumers to come out ahead by hiring a public adjuster, they have to achieve a settlement of 10 to 20 percent above what the insurance company would have offered them directly," Hamm said. "If there is already a maximum amount allowed for the loss, the consumers could end up with less money than if they settled the claim alone."

If you decide to sign a contract with a public adjuster, be aware that he or she cannot perform those services without first obtaining a license from the North Dakota Insurance Department and having an approved contract. Contact the Department at 1-800-247-0560 to find out if the adjuster may do business in the state.

"If you are considering signing a contract with a public adjuster or insurance consultant, I urge you to carefully consider whether their services will truly benefit you," Hamm added.

Consumers with questions about public adjusters are encouraged to call the Department at 1-800-247-0560.

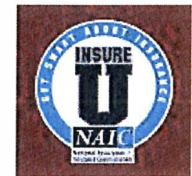
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North Dakota Insurance Department

600 E. Boulevard Ave.
Bismarck, ND 58505-0320
Phone 701.328.2440
Toll free 800.247.0560
Fax 701.328.4880

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Jon Godfread, Commissioner

Welcome | Bio



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Consultant

Any person who, for a fee, is engaged in the business of offering any advice, counsel, opinion or service with respect to the benefits, advantages or disadvantages promised under any insurance policy that could be issued in this state, must be licensed as a consultant unless exempted by Subsection 26.1-26-10 of the North Dakota Century Code.

Public adjusters must be licensed as consultants.

Consultants cannot concurrently hold a license as an insurance producer and cannot sell, solicit or negotiate insurance in North Dakota.

In advance of rendering any service as a consultant, the written agreement (on the form that has been approved by the Commissioner) shall be signed by both the consultant and the client. The consultant shall retain a copy of the agreement and make it available to the Department upon request. See N.D.C.C. § 26.1-26-35. A sample/model agreement form is available near the bottom of this page. The form must be approved by the Commissioner prior to its use in North Dakota.

To apply for the license:

Use the [NAIC uniform paper application forms](#) to apply for a North Dakota consultant license. Write on top of the form that you wish to apply for a consultant license. The initial license fee is \$100.

Non-resident individuals must hold a similar license in their resident state. If the resident license cannot be verified on the National Insurance Producer Registry Producer DataBase (PDB), applicants must provide evidence of an active license in their home state.

Resident applicants must qualify by exam for the lines of authority they want on their North Dakota consultant license.

Business entities must have at least one designated responsible individual licensed as a consultant in North Dakota.

The business entity should also contact the North Dakota [Secretary of State](#) (701.328.4284) to ensure compliance with North Dakota corporate law.

IMPORTANT: Make sure you answer all questions completely and disclose all information requested. You must disclose all criminal convictions and pending criminal charges. Question number one allows you to exclude misdemeanor traffic citations or convictions involving driving under the influence (DUI) or driving while intoxicated (DWI), driving without a license, reckless driving or driving with a suspended or revoked license and juvenile offenses. You must disclose all other criminal convictions and pending charges including, but not limited to, NSF checks and Minor in Possession. All criminal convictions must be disclosed regardless of when they occurred. If you have any questions about what needs to be disclosed, contact the Department before submitting your application.

The consultant agreement that the consultant intends to use in North Dakota must be attached to the application form. The agreement shall substantially comply with the model form available from the Department.

A sample/model agreement form is available near the bottom of this page. The form must be approved by the Commissioner prior to its use in North Dakota.

Consultant license renewals

All licenses must be renewed by April 30 of each year up to 90 days prior to the expiration date. The renewal fee is \$25.

Licenses that are not renewed by April 30 will be canceled. There is no grace period.

Please submit the renewal application electronically through the National Insurance Producer Registry (NIPR) <http://www.nipr.com/licensing/index.html>. The renewal fee is \$25 and the transaction fee is \$5.

Hints for completing the electronic renewal

1. Individuals do not need to complete the section asking about agency or business entity affiliations. This is not required for North Dakota.
2. Your addresses cannot be updated by making changes on the renewal application. If the addresses are wrong or incomplete, file a separate address change request. [File an electronic address change](#) (no charge), or print out the paper address change form and mail or fax to the Department.

After your application has been approved, you can confirm your new license expiration date by using the [agent/agency search](#).

If you are unable to submit your renewal application electronically, print the NAIC uniform application form. Complete, sign and date the form and mail it with the renewal fee of \$25. If submitting a paper application, allow additional processing time. The form must contain an original signature. Send by mail to:

North Dakota Insurance Department
600 E. Boulevard Ave.
Bismarck, ND 58505-0320

[Electronic renewal application for individuals or business entities](#)

[Paper NAIC Uniform Application for Business Entity Insurance License Renewal/Continuation](#)

[Paper NAIC Uniform Individual Producer License Renewal/Continuation](#)

North Dakota law and rules regarding consultants:

The following sections of the North Dakota Century Code apply to consultants:

- 26.1-26-02(4)
- 26.1-26-10
- 26.1-26-31.1
- 26.1-26-35
- 26-1-26-41

The following sections of the North Dakota Administrative Code apply to consultants:

- 45-02-02-09
- 45-02-02-10

Use the links below to access the North Dakota Century Code and the North Dakota Administrative Code.

ndlicensing@nd.gov
State Capitol, fifth floor
Dept. 401
600 E. Boulevard Ave.
Bismarck, ND 58505-0320

701.328.2440
701.328.4880 fax
800.247.0560 toll free
800.366.6888 TTY line

ND Administrative Code

<http://www.legis.nd.gov/agency-rules/north-dakota-administrative-code>

ND Century Code

Paper business entity renewal application form

[naicuniformapplicationforbusinessentityrenewal.pdf](#) file size: 400 kb

Paper individual renewal application form

[naicuniformapplicationforindividualrenewal.pdf](#) file size: 392 kb

Sample: Insurance consultant agreement

[insuranceconsultantagreement.doc](#) file size: 31 kb

Sample: Public adjuster consultant agreement

[publicadjusterconsultantagreement.doc](#) file size: 33 kb

North Dakota Insurance Department

600 E. Boulevard Ave.
Bismarck, ND 58505-0320
Phone 701.328.2440
Toll free 800.247.0560
Fax 701.328.4880

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Banking Commerce and Insurance

Insurance producer, public adjuster requirements approved

March 15, 2018 [Sen. Brett Lindstrom, LB743 LB220](#)

A bill that would amend state law related to insurance producers was approved March 15.

[LB743](#), introduced by Omaha Sen. Brett Lindstrom, creates regulations for public adjusters—individuals who provide compensated assistance to an insured in the filing and settlement of a property claim against an insurer—through adoption of the National Association of Insurance Commissioners model law.



Sen. Brett Lindstrom

Among other provisions, the bill:

- establishes criteria for resident and nonresident public adjusters;
- provides for administration of exams and licensure requirements;
- creates a continuing education requirement for public adjusters;
- eliminates a pre-licensing requirement for insurance producers;
- requires public adjusters to secure a minimum \$20,000 surety bond;
- provides criteria for a business entity to become a public adjuster in Nebraska;
- removes a paper certificate requirement for insurance producer continuing-education activities and limits approval of those activities to four years; and
- prohibits an individual from acting as a public adjuster without being licensed in accordance with the act, misrepresenting that they work for

Search



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an insurer or entering an agreement to repair property that the adjuster was engaged to adjust.

The bill was amended to include provisions of LB220, introduced by Omaha Sen. Burke Harr, which provide protections for consumers who assign their property insurance rights or benefits to a contractor following a loss. Those provisions:

- expand the definition of a residential contractor;
- provide that an assignment of rights or benefits to a residential contractor may authorize the contractor to be named as a copayee for payment of benefits under a property and casualty insurance policy;
- expand notice provisions in order to inform an insured homeowner that with an assignment, the residential contractor would be entitled to pursue any rights or remedies that the insured homeowner has under the insurance policy; and
- require that the itemized description of the work, materials, labor, fees and total amount to be paid be furnished to the insured and insurer prior to commencement of repair or replacement work.

In addition, the bill specifies that the itemized description does not limit the insured or a residential contractor from identifying other goods and services necessary to complete repairs or replacements.

The bill passed on a 48-0 vote.



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<	Sun	Mon	Tue	Wed	Thu	Fri
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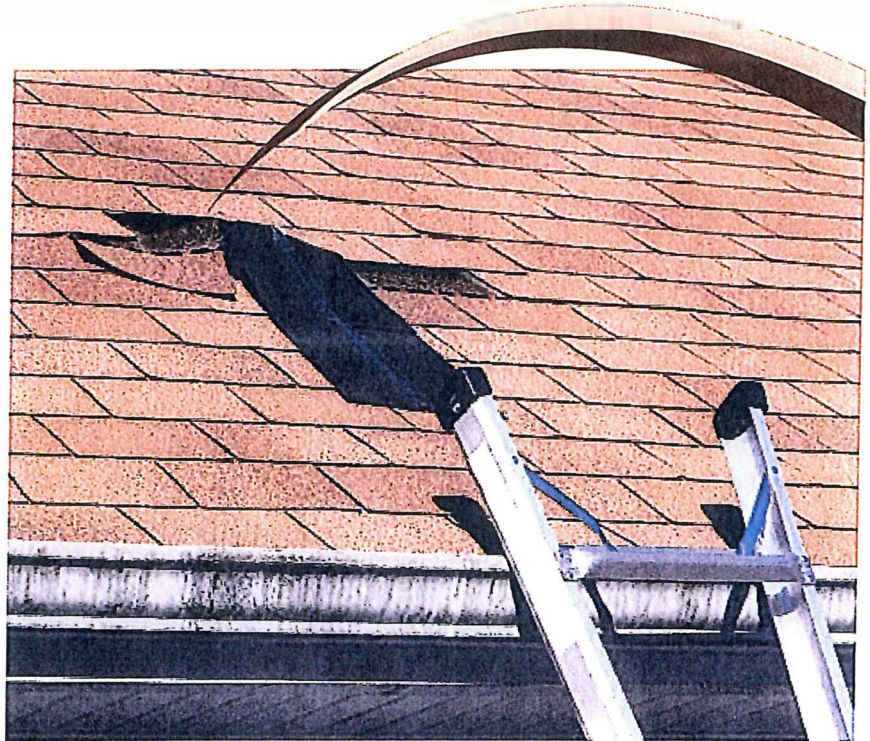
Select Month ▾

← Vacant property registration ordinances approved

TIF rules updated →

Nebraska Insured Homeowners Protection Act

An important step in helping yourself with post-loss issues is to become familiar with the Act.



Whether you are a homeowner, an insurance producer, an insurer or residential contractor, being familiar with the "Insured Homeowners Protection Act" can be an important step in helping yourself or others deal with post-loss repair issues.

The act applies to the business of contracting or offering to contract to repair or replace a roof system or to perform any other exterior repair, replacement, construction, or reconstruction work on residential real estate or to perform interior or exterior cleanup services on residential real estate.

As a means of protection to homeowners, the act permits homeowners the ability to mail written notice of cancellation of a contract with a residential contractor prior to midnight on the later of the third business day after the person has (1) entered into a contract, or (2) received written notice from the person's insurer that all or part of the claim or contract is not a covered loss under the insurance policy.

In the event of such a cancellation, the residential contractor is required to return any partial payments or deposits to the homeowner. If the contractor violates any provisions of this law, the contract between the homeowner and contractor is void.

The act also prohibits residential contractors from promising to rebate or offset any portion of an insurance deductible as an inducement for the sale of goods or services.

The full provisions of the act are located in Neb. Rev. Stat. §§ 44-8601 to 44-8608.



NEBRASKA

Good Life. Great Opportunity.

DEPARTMENT OF INSURANCE

PO Box 82089
Lincoln, Nebraska 68501-2089

Consumer Hotline:
1-877-564-7323

Local Phone:
402-471-2201

www.doi.nebraska.gov

Department of Insurance

Consumer Alert**NEBRASKA**
Good Life. Great Opportunity.**Post-Loss Assignments of Claims****What You Should Know Before You Sign on the Dotted Line Following a Storm**

The Nebraska Department of Insurance urges consumers to be cautious when signing post-loss assignments for homeowner's insurance claims. It is important for policyholders to recognize and understand the significance of these contracts.

What is a Post-Loss Assignment?

A post-loss assignment of a claim is a contract signed by a *homeowner*, after a covered loss, granting a contractor all rights and duties of the claim under the insurance policy. Once signed, the contractor owns and controls the claim without any input from the insured.

When is a Post-Loss Assignment Signed?

A loss occurs when a covered risk causes damage to the insured property. In a weather related case, the insured property is damaged by wind, hail, rain, and/or a tornado that requires repairs to the roof, siding, gutters, deck, windows, etc. After the damage, the insured files a claim with the insurer and the insurer completes an estimate of the damage. The insured hires a contractor and signs a contract for the repair work. Typically, the contractor requires the homeowner to sign the post-loss assignment at the same time the repair work contract is signed. The contractor does not typically explain the significance of the assignment, rather, the contractor declares that the assignment enables the contractor to negotiate or communicate with the insurer on the claim.

Concerns

Once you sign the assignment, the contractor now owns all rights and duties to the claim. This has important continuing ramifications for you as a policyholder.

- There may be a time when the insurer and contractor disagree about payment for the claim. If they cannot reach an agreement on payment, the contractor will sue the insurer. The suit will be filed in your name against your insurer. The contractor does not need your permission to file this suit. You will not be notified of the suit nor will you have any active involvement in it. However, the suit may have an impact on insurance rates and insurability of you in the future. This has recently happened to hundreds of Nebraskans.
- You may still be financially responsible to the contractor for the difference in the contractor's price and the insurer's payment. The contractor may file a lien against your property.
- You may be dissatisfied with how your insurer has handled your claim and wish to file suit against your insurer. You no longer have the ability to do so because that right now belongs to your contractor.
- You may be displeased or have a disagreement concerning the quality or scope of work with your contractor. If you wish to fire your contractor and hire a new contractor, the assignment is still valid. This means that your prior contractor still owns all rights, including payment, on your insurance claim.

Tips

- A homeowner is **not** required to sign a post-loss assignment.
- Prior to signing an assignment, consult your own attorney to discuss ramifications of executing the assignment.
- Know what you are agreeing to. Carefully read any agreement or estimate before signing.
- Many homeowner's insurance policies explicitly prohibit assignment of the insurance claim, however, the Nebraska Supreme Court issued a ruling in 2016 that these assignments were binding and valid.
- Do your homework before hiring a contractor.
 - ⇒ Ask your family, neighbors, co-workers and others for contractor recommendations.
 - ⇒ Receive written estimates from multiple contractors and compare those estimates to your insurer's estimate.
 - ⇒ Review the Better Business Bureau's ratings of the contractor.
 - ⇒ Ask the prospective contractor about business practices you may be concerned with, including whether they want you to sign an assignment. Many contractors do not use assignments.
 - ⇒ Check to make sure the contractor has registered with the Nebraska Department of Labor at <https://www.dol.nebraska.gov/conreg/Search>.
 - ⇒ The Nebraska Department of Insurance does not regulate contractors' conduct. Complaints filed with the Department of Insurance concerning the conduct of contractors, even if an insurance payment is involved, will not be investigated, unless insurance fraud is suspected.

Insured Homeowners Protection Act

The Nebraska Homeowners Protection Act, see Neb. Rev. Stat. §§ 44-8601 to 44-8608, requires a residential contractor to comply with all the following in regards to post-loss assignments:

- 1) Provide the insurer with notice of the assignment within five business days of execution;
- 2) Include a statement in the assignment that the contractor has not made assurances that the loss will be fully covered by insurance;
- 3) Prohibits a contractor from rebating all or a portion of the insurance deductible to the insured;
- 4) Cannot impair the rights of a mortgagee;
- 5) Cannot prohibit or prevent an insured or mortgagee from directly communicating with the insurer; and
- 6) Prior to beginning any repair work, the contractor is required to provide the insured and the insurer with an itemized description of the work to be done, and the materials, labor, and fees for repair and the total itemized amount agreed to be paid for the work performed.

If the contractor violates any provisions of the **Nebraska Insured Homeowners Protection Act**, the contract between the homeowner and the contractor is void.

More Information

The Department of Insurance can be reached at 402-471-2201, or on its toll-free consumer hotline at 1-877-564-7323. Additional insurance-related information can also be found on the Department's website at www.doi.nebraska.gov.

NEBRASKA

Good Life. Great Opportunity.

Department of Insurance

NR-1702

Media Contact:
Peg Jasa - 402-471-2201

FOR IMMEDIATE RELEASE

After a Storm: Before You Sign on the Dotted Line

The Nebraska Department of Insurance urges consumers to be cautious when signing post-loss assignments for homeowner's insurance claims. It is important for policyholders to recognize and understand the significance of these contracts.

What is a Post-Loss Assignment?

A post-loss assignment of a claim is a contract signed by a *homeowner*, after a covered loss, granting a contractor all rights and duties of the claim under the insurance policy. Once signed, the contractor owns and controls the claim without any input from the insured.

When is a Post-Loss Assignment Signed?

A loss occurs when a covered risk causes damage to the insured property. In a weather related case, the insured property is damaged by wind, hail, rain, and/or a tornado that requires repairs to the roof, siding, gutters, deck, windows, etc. After the damage, the insured files a claim with the insurer and the insurer completes an estimate of the damage. The insured hires a contractor and signs a contract for the repair work. Typically, the contractor requires the homeowner to sign the post-loss assignment at the same time the repair work contract is signed. The contractor does not typically explain the significance of the assignment, rather, the contractor declares that the assignment enables the contractor to negotiate or communicate with the insurer on the claim.

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---more---

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- You may still be financially responsible to the contractor for the difference in the contractor's price and the insurer's payment. The contractor may file a lien against your property.
- You may be dissatisfied with how your insurer has handled your claim and wish to file suit against your insurer. You no longer have the ability to do so because that right now belongs to your contractor.
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 - Ask your family, neighbors, co-workers and others for contractor recommendations.
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 - Review the Better Business Bureau's ratings of the contractor.
 - Ask the prospective contractor about business practices you may be concerned with, including whether they want you to sign an assignment. Many contractors do not use assignments.
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###

HB 1219

Attachment 4
Jan 23, 2019

Nodak Mutual Insurance Company

1101 1st Ave. N, P.O. Box 2502

Fargo, ND 58108-2502

Date: September 13, 2018

Attn: Claims Department,

We, [REDACTED] are the policyholders of a **Nodak Mutual Insurance Company** homeowners' insurance policy. We have not been satisfied with the claim service we have received from **Nodak Mutual** on our Hail Claim that occurred on **07/10/2016** for our Claim# [REDACTED]. We strongly disagree with the **Nodak Mutual** adjuster as to the damage repairs and associated costs that need to be done to put our property back to whole. We are in dispute with these items as well as the dollar amount **Nodak Mutual** is willing to pay for the damaged repairs.

We would also like to note our displeasure with **Nodak Mutual Insurance Company's** Adjuster, [REDACTED]. After sending in our request for appraisal in January, we agreed to hold off on completing the appraisal process as [REDACTED] our contractor of choice, **Timber Creek Builders & Exteriors, LLC**, and we attempted to reach a settlement without resorting to appraisal. Since agreeing to delay appraisal, it has taken Matt multiple weeks and/or multiple attempts at communication to return phone calls or emails. At this point Mr. Horner has not returned communications from our contractor of choice for over six weeks, and we feel that **Nodak Mutual Insurance Company** and/or its representative [REDACTED] are acting in bad faith and preventing the full indemnification of our property.

Listed below are the items in dispute, but not limited to only these items:

1. Quantities and costs associated with agreed scope of work
2. Project Management Expenses
3. Applicable General Contractor Overhead and Profit

Due to our dissatisfaction with the **Nodak Mutual** adjuster's conclusions on our claim, and his failure to work with our contractor to resolve these issues, we are invoking our right to the **Appraisal Process** specified within our policy, and we are submitting a written request to **Nodak Mutual** for an **Appraisal** of the above-mentioned claim number. In appraisal, we will be seeking an award for all of the storm damage repairs to the

HB 1219

Attachment 4
Jan 23, 2019

exterior of our property including **General Contractor Overhead and Profit** on the entire claim for the hail damage repairs that happened to our property on or about the previously noted peril date, plus statutory interest as allowed by North Dakota laws.

We have selected [REDACTED] as our appraiser, his information is below. Please have your appraiser contact him so that the two of them can choose an umpire and the three of them can schedule a date for the appraisal.

Appraiser Information:

[REDACTED]
[REDACTED]

Cell: [REDACTED]
Fax: [REDACTED]
Email: [REDACTED]

Sincerely,

[REDACTED]
[REDACTED]

Killdeer, ND 58640

Jan 23, 2019

Hi Matt,

I have received the attached paperwork by Priority Mail from [REDACTED] (Timbercreek) yesterday 9-17-18 P.M.

Gary & I both agree we will not sign the appraisal form b/cuz it states "we are dissatisfied with our insurance co" and that is a fake statement.

I am still working on the info we talked about in our last conversation.

I am still not feeling well. Was to the doctor again this A.M. But am better and working as I can.

I will not call Tom until after I talk with you - so you may call me at anytime suitable for you.

I will be gone on thurs, 9-20 - an appt @ 11:30 A.M. any other day would be good -

[REDACTED]

HB 1219

AGREEMENT



701-354-2001

1139 S 12th St., Bismarck ND 58504

LIC # 34533

INSURED AND BONDED

RE-LEAF REP

PHONE



OWNER	DATE <u>3/31/17</u>	EMAIL ADDRESS
STREET	CELL PHONE	WORK PHONE
CITY <u>LINDSEY</u>	STATE <u>ND</u>	ZIP <u>58504</u>
		HOME PHONE

Furnish All Materials, Labor and Permits Protect Property as Needed Daily Delivery Instructions Left Right Other

ROOF SPECS

- Tear Off Existing Roof Type T-LOCK
- Inspect All Sheathing for Nailable Surface 7 INCHES
- Install Ice/Water Shield Around All Penetrations and to Code
- Underlayment 15 lb. 30 lb. Other SMURFIT
- Metal Edge Color BROWN
- Install New Roof with CERTAINTEEN LOWIMPACT
- Color to be CHARCOAL GREY Customer Initial J.A.
- Appropriate Nails 1 1/4" GALVANIZED
- Valley VIA Closed Open
- Hip and Ridge to Cap Off Roof
- Ventilation Box Ridge Other ?
- Pipe Flashings
- Seal Around All Vents, Pipes and Flashings
- Clean All Gutter/Downspout Debris
- Haul Away All Debris
- Roll Magnetic Roller Around to Protect Area

SIDING SPECS

- Tear Off Existing Siding Type _____
- Inspect All Sheathing for Nailable Surface
- Install House Wrap Insulation Board
- Install New Siding with _____
Size _____ Profile _____ Color _____
- Ventilation _____
- Seal Around All Trim and Openings
- Haul Away All Debris
- Roll Magnetic Roller Around to Protect Area

GUTTER SPECS

- Tear Off Existing Gutters Type _____
- Inspect All Fascia Boards
- Install New Prefinish Seamless Gutters
 5" 6" Other _____
- Color to be _____ Customer Initial _____
- Hidden Hanger Attachment with Screws
- Install New Prefinish Downspouts
 2x3 3x4 Other _____
- Gutter Protection _____
- Seal Around All End Caps, Miters and Outlets
- Haul Away All Debris
- Roll Magnetic Roller Around to Protect Area

MISC SPECS

WARRANTY WITH ADJUSTED TO DISCUSS SCOPE OF DAMAGES



SPEN Lifetime Warranty

IF INSURANCE CLAIM IS INVOLVED

Aspen to meet insurance company onsite for scope of work to be completed. This Agreement is contingent upon insurance company price and approval. This does not obligate the Customer or Company in any way unless it is approved by Customer's insurance company and accepted by Company. In situations where supplements for additional work are necessary outside of the original scope of work (ex. additional layers or mismeasurements), Company will seek approval from insurance company and payment from owner. Customer's out of pocket expense not to exceed deductible plus upgrades for non-insurance related claim items.
Payment Method: Payment Upon Completion Of Each Trade. Zero money down.

Insurance Company _____	Date of Loss <u>6/17/16</u>	Claim # <u>0000193895</u>
Roofing Estimate <input type="checkbox"/> Repair <input checked="" type="checkbox"/> Replacement	<u>FULL REPLACEMENT PER APPROVAL</u>	\$ <u>INSURANCE</u>
Siding Estimate <input type="checkbox"/> Repair <input type="checkbox"/> Replacement		\$ <u>ALLOWANCE</u>
Gutter Estimate <input type="checkbox"/> Repair <input type="checkbox"/> Replacement		\$ _____
Misc Estimate for: _____		\$ _____
Additional Upgrades or Non-Insurance Related Items _____		\$ _____
Overhead & Profit for the Complexity of Multiple Trades _____		\$ _____
Total Cost _____		\$ _____

Accepted by Owner By: _____ Date: _____
 Representative Signature: _____ Date: 3/31/17

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HB1219

Attachment 4

Jan 23, 2019

ADDITIONAL TERMS AND CONDITIONS

- Initial Agreement: This is for Company to work with insurance company on scope of loss and price for scope of work. What trades and what specific items of those trades will be completed by Company and paid for before any work starts.
- Agreed Price: The full amount of all monies as specified by the Agreed Price, does not include any change orders that might arise during the work. Company shall be responsible for damages arising from delay due to inclement weather, strikes, fires, accidents, or any causes beyond Company's reasonable control.
- Access to Property: Customer agrees to provide Company access to Customer's property as required for start and completion of the work. Customer will manage and be responsible for protection of vehicles away from Company work.
- Job Completion: Job completion shall be the date on which Company's work is substantially finished (as distinguished from the date of Customer's acceptance thereof) or the date of Company's last item of work at the property, whichever is earlier. In the event Customer chooses not to pay for a part of the building system as a whole, Customer releases Company of its obligations for the performance of that component with regard to the integrity of the representative.
- Extra Material: Extra material is delivered to jobsite to ensure timely work and no delays. Any extra materials will be picked up and returned by Company.
- Payments: Payments are made upon completion of each trade. Payments are made to the Company and not any individual.
- Warranty: A written warranty will be offered on workmanship and materials provided pursuant to this Agreement on the terms and conditions reflected in any written warranty materials provided. If Company is not paid in full in accordance with this Agreement, all such warranties are null and void.
- Past Due Amounts: Customer agrees to pay for all collection costs, including all attorneys' fees and costs Company incurs in either collection of and/or protection of its interests in Customer's past due account or performance of this Agreement.
- Hazardous Materials: Nothing contained in this Agreement shall be construed to require Company to determine the presence or absence of any hazardous materials or asbestos-containing materials affecting the property or to require Company to remove or protect such materials. In the event that Company learns of the presence of such materials on Customer's property, Company reserves the right to immediately stop work, notify owner and negotiate a change order for such additional work as may be required.
- Liability: Company is not responsible for damage or loss caused in whole or in part by: the acts or omissions of other parties, trades or contractors; lightning force winds (above 50 mph); hailstorms; ice damage; hurricanes, tornados, floods, earthquakes or other unusual phenomena of the elements; structural settlement; failure movement cracking or excess deflection of the roof deck; defects or failure of materials used as a roof substrate, siding or gutter over which Company's material is applied; faulty chimneys, supports or other parts of the building; vapor condensation beneath the roof or siding; erosion, crack and porosity of mortar and brick; dry rot, or other conditions beyond the control of Company; termites or other insects; rodents or other animals; fire; or harmful chemicals, oils, acids and the like that come into contact with Customer's property and cause a leak or otherwise damage Customer's property. If Customer property fails to maintain a watertight condition because of damage by reason of any of the foregoing, any applicable written warranty shall immediately become null and void for the balance of its term.
- Hold Harmless: Customer agrees to hold Company harmless in connection with the work described herein and that Customer's maximum recourse shall be limited to the amount of the maximum liability under this Agreement shall be limited to, the amount Company billed to or paid by Customer to Company. Customer understands and acknowledges that Company does not warrant or guarantee previous workmanship or pre-existing materials. Company shall not be responsible for rework required as a result of the acts or errors of others.
- Liens: Should default be made in payment of this Agreement, a lien will be placed on the property and charges will be added from the date of substantial completion at the maximum rate allowed by law. If placed in the hands of an attorney for collection, Customer will pay all attorney and legal fees.
- Entire Agreement: This Agreement constitutes the entire agreement and understanding of Company and Customer relating to all of the subject matter hereof, and supersedes all prior agreements, arrangements and understandings, written or oral between the parties concerning such subject matter.

PRE-LIEN NOTICE: COMPANY HEREBY PROVIDES NOTIFICATION THAT ANY PERSON OR COMPANY SUPPLYING LABOR OR MATERIAL FOR THIS IMPROVEMENT TO YOUR PROPERTY MAY FILE A LIEN AGAINST YOUR PROPERTY IF THAT PERSON OR COMPANY IS NOT PAID FOR THE CONTRIBUTIONS.

CONTRACTOR NOTIFICATION: COMPANY HEREBY PROVIDES NOTIFICATION THAT AS OF THE DATE OF THE AGREEMENT, COMPANY MAINTAINS PERSONAL INJURY LIABILITY INSURANCE IN THE AMOUNT OF \$2,000,000 PER OCCURRENCE AND PROPERTY DAMAGE LIABILITY INSURANCE IN THE AMOUNT OF \$2,000,000 PER OCCURRENCE PER STATE STATUTES. COMPANY ALSO HEREBY PROVIDES NOTIFICATION THAT WORKMAN COMPENSATION HAS BEEN PROCURED PER STATE STATUTES.

THE TERMS ON THE REVERSE SIDE HEREOF ARE SPECIFICALLY AGREED TO AND INCORPORATED HEREIN.

Aspen Contracting, Inc.
316 North Fifth Street, P.O. Box 1695, Bismarck, ND 58502

RIGHT OF CANCELLATION PURSUANT TO FEDERAL REGULATION AND NORTH DAKOTA STAT. § 51-18-04: YOU MAY CANCEL THIS TRANSACTION AT ANY TIME PRIOR TO MIDNIGHT OF THE THIRD BUSINESS DAY AFTER THE DATE OF THIS TRANSACTION.

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125
60

000
750

CONTRIBUTIONS.

HB 1219

Attachment 4

Jan 23, 2019

PROVIDES NOTIFICATION THAT AS OF THE DATE OF THIS
LIABILITY INSURANCE IN THE AMOUNT OF \$2,000,000 PER
OCCURRENCE IN THE AMOUNT OF \$2,000,000 PER OCCURRENCE.
THAT WORKMAN COMPENSATION HAS BEEN PROCURED PER

SPECIFICALLY AGREED TO AND INCORPORATED HEREIN.

Contracting, Inc.

Box 1695, Bismarck, ND 58502

REGULATION AND NORTH DAKOTA STAT. § 51-18-04: YOU MAY
WITHIN ONE NIGHT OF THE THIRD BUSINESS DAY AFTER THE DATE OF

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HB 1219

Attachment 4
Jan 23, 2019

NOTICE: COMPANY HEREBY PROVIDES NOTIFICATION THAT ANY PERSON OR COMPANY SUPPLYING
OR MATERIAL FOR THIS IMPROVEMENT TO YOUR PROPERTY MAY FILE A LIEN AGAINST YOUR PROPERTY IF
PERSON OR COMPANY IS NOT PAID FOR THE CONTRIBUTIONS.

CONTRACTOR NOTIFICATION: COMPANY HEREBY PROVIDES NOTIFICATION THAT AS OF THE DATE OF THIS
AGREEMENT, COMPANY MAINTAINS PERSONAL INJURY LIABILITY INSURANCE IN THE AMOUNT OF \$2,000,000 PER
OCCURRENCE AND PROPERTY DAMAGE LIABILITY INSURANCE IN THE AMOUNT OF \$2,000,000 PER OCCURRENCE.
COMPANY ALSO HEREBY PROVIDES NOTIFICATION THAT WORKMAN COMPENSATION HAS BEEN PROCURED PER
STATE STATUTES.

THE TERMS ON THE REVERSE SIDE HEREOF ARE SPECIFICALLY AGREED TO AND INCORPORATED HEREIN.

Aspen Contracting, Inc
316 North Fifth Street P.O. Box 1699 Bismarck ND 58502

RIGHT OF CANCELLATION PURSUANT TO FEDERAL REGULATION AND NORTH DAKOTA STAT § 51-18-04: YOU MAY
CANCEL THIS TRANSACTION AT ANY TIME PRIOR TO MIDNIGHT OF THE THIRD BUSINESS DAY AFTER THE DATE OF
THIS TRANSACTION.

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ND 06 16

My name is Brenda Doll. I serve as the Executive Director of the North Dakota Association of Farm Mutual Insurance Companies. I also worked 38 years at Southwest Mutual Insurance Company in New Salem, North Dakota.

There are currently 11 county mutual insurance companies in North Dakota – serving over 11,700 policyholders. As Executive Director of the Association, I am authorized to testify to you and the Committee, that all 11 county mutual companies support the passage of HB 1219.

The county mutual insurance companies have experienced difficulties with contractors who have approached insureds and informed them of damage to their property, even though the insured has not reported damage to their insurance company. There are also situations where the insurance company has adjusted the claim, and out of the blue a contractor contacts the insurance company with an inflated adjustment. The contractors also claim they represent the insured, and most of the time, the insureds are not aware of the communication occurring between the contractor and their insurance company.

Chairman Keiser and Members of the Committee, on behalf of the North Dakota Association of Farm Mutual Insurance Companies, I respectfully request a do pass recommendation on House Bill 1219.

Thank you.

Attachment 6
Jan 23, 2019

HOUSE BILL 1219

TESTIMONY

CHAIRMAN KAISER, VICE CHAIRMAN LEFOR AND MEMBERS OF THE COMMITTEE. MY NAME IS RYAN DREGER AND THE MANAGER OF DUNDEE MUTUAL INSURANCE COMPANY IN PARK RIVER, ND. OUR COMPANY IS ONE OF 11 COUNTY MUTUALS THAT PROVIDE PROPERTY/CASUALTY INSURANCE. I AM HERE TODAY TO ASK FOR YOUR SUPPORT OF HOUSE BILL 1219.

WE HAD A CLAIM IN 2018 WITH A COMPANY CALLED GREENGUARD CONSTRUCTION IN EGAN, MN. OUR ADJUSTER HAD ADJUSTED THE LOSS AT AROUND \$21,000 WITH AROUND \$4,100 RECOVERABLE DEPRECIATION. THIS COMPANY CAME IN WITH A BID FOR WORK TO BE COMPLETED AT \$35,870.

AFTER CALLING THE INSURED TO DISCUSS THIS, HE WAS SURPRISED ON THE TOTAL WHEN WE WENT OVER THE BILL. HE UNDERSTOOD HE WAS GETTING PAID TO FIX WHAT WAS "ACTUALLY" DAMAGED AND AGREED TO THE ESTIMATES THAT WERE GIVEN TO HIM ORIGINALLY. HE HAD NO IDEA WHAT WAS BEING DISCUSSED BECAUSE THIS COMPANY NEVER COMMUNICATED ANYTHING WITH HIM AT THIS POINT OF THE CLAIM.

WHEN THE ADJUSTER CALLED AND DISCUSSED THIS WITH THE CONTRACTOR, WE MADE A SMALL INCREASE TO THE CLAIM FOR A FEW ITEMS MISSED AND

HB 1219

Attachment 6
Jan 23, 2019

THE CLAIM WAS SETTLED ON THE APPROPRIATE VALUE BETWEEN
EVERYONE.

WITH CLAIMS BEING INFLATED UNNECESSIARILY, IT CAUSES COMPANIES LIKE
OURS TO CONTINUE TO RAISE RATES TO COVER OUR LOSSES. OUR GOAL
WITH THE SUPPORT OF THE INSURANCE DEPARTMENT AND OTHER
COPMANIES LIKE OUR ACROSS THE STATE, IS TO CONTINUE TO KEEPS COSTS
DOWN BY PAYING FOR WHAT'S "ACTUALLY" DAMAGED AND TO PROTECT OUR
CUSTOMERS AND SURPLUS.

BECAUSE OF CLAIMS LIKE THIS AND TO PROTECT OUR CUSTOMERS,
CHAIRMAN KAISER AND MEMBERS OF THE COMMITTEE, I RESPECTFULLY ASK
FOR A DO PASS ON HOUSE BILL 1219. THANK YOU.

January 23, 2019

AMENDMENT TO HOUSE BILL 1219:

Page 18, remove lines 25 and 26. This amendment is needed to correct the bill because contractors as unlicensed public adjusters may not represent policyholders.

Page 13, line 1, replace "seven" with "three"; Page 14, line 24, replace "seven" with "three"; Page 14, line 26, replace "seven" with "three". This change from seven to three days is needed to conform with all other states that license public adjusters, as well as the National Association of Insurance Commissioner's Public Adjuster Licensing Model Act. This change will acknowledge that many of the most important decisions in the claims process are made in the first few days, and will chart the course and influence the financial impact on both the insured and the insurer. This change will allow for the best protection for the insureds interests and fairness for the public adjuster's services.

HOUSE BILL NO. 1219

Presented by: Greg Nelson
Producer Licensing Division Director
North Dakota Insurance Department

Before: House Industry, Business and Labor Committee
Representative George Keiser, Chairman

Date: January 23, 2019

TESTIMONY

Good morning, Chairman Keiser and Members of the House Industry, Business and Labor Committee. My name is Greg Nelson and I am the Division Director for the North Dakota Insurance Department Producer Licensing Division. I am here today to provide testimony on HB 1219.

Pursuant to Title 26.1 of the Century Code, the Insurance Commissioner is responsible for licensing and regulating the conduct of resident, as well as non-resident, insurance producers and business entities operating in the state of North Dakota. Currently, the Department licenses more than 85,000 individuals and business entities combined. This bill would specifically govern the qualifications and procedures for licensing public adjusters in this state and specify the duties of and the restrictions on public adjusters, including limitation of licensure to assisting only insureds.

HB 1219

Attachment 8
Jan 23, 2019

HB 1219 would create and enact a section of the North Dakota Century Code relating specifically to public adjuster licensing. Currently, 41 other states license public adjusters in the same or a similar manner.

HB 1219 would provide additional consumer protections by ensuring public adjusters and contractors do not have a conflict of interest related to insured.

Currently, it is difficult to identify the exact number of independent or staff adjusters actively operating in North Dakota. It is important to note any number identified is subject to change with each event or disaster in an area. There are licensed public adjusters out there who travel the country targeting disaster areas and when an area has been serviced, they move on to other parts of the country.

HB 1219 would require public adjusters to go through a background process similar to the process of resident and non-resident producers. Resident public adjusters would be fingerprinted and subject to a criminal history background. They would also be required to pay the licensing and renewal fees, be trustworthy, reliable and of good reputation just to name a few of the requirements.

Lastly, it is important to note, once licensed, all of the new public adjusters would need to be serviced continually and renewed biannually. In addition, any complaints that come in would require resources to investigate. Whether these complaints are founded or unfounded, criminal in nature or regulatory, these complaints often require the use of additional resources from various divisions including the Consumer Assistance Division, Producer Licensing Division, as well as the Legal Division. It is for these reasons we have asked for an additional FTE in the attached fiscal note to ensure we have the appropriate resources to license and investigate complaints against public adjusters.

With that, I am happy to take any questions.

NATIONAL ASSOCIATION OF PUBLIC INSURANCE ADJUSTERS



HB 1219

January 23, 2019

Representative George Keiser
Chairman, House Industry, Business & Labor Committee
600 East Boulevard
Bismarck, ND 58505

RE: Support HB 1219

Dear Representative Keiser,

On behalf of the National Association of Public Insurance Adjusters, I write to support House Bill 1219, which codifies licensing, continuing education, and ethics requirements for public adjusters in the state of North Dakota, provided there is an amendment changing the right of rescission from seven days to three days.

The National Association of Public Insurance Adjusters (NAPIA), is the oldest association of its kind in the United States, serving the public adjuster profession since 1967 and striving for excellence in the practice of public adjusting. Its members are experts primarily focused on complex commercial claims and some residential claims services. We have joined together for the express purpose of providing professional education and promoting a rigid code of conduct and ethics, to ensure best representation of the policyholder in the claims process. There are approximately 600 members in the organization.

We would request an amendment to the bill that would change the right of rescission from seven days to three. No state that currently licenses public adjusters has a seven day right of rescission, and the National Association of Insurance Commissioner's Public Adjuster Licensing Model Act has the requested three day right of rescission. The model act calls for public adjuster contracts to be void if a carrier agrees in writing to pay the policy limits in the first 72 hours, recognizing the fact that after 72 hours, the public adjuster is entrenched in the claim. The first seven days after signing a loss, especially a recent loss, are typically the busiest and most important of the adjustment process. During this time, the public adjuster:

PRESIDENT
GREG RAAB
126 Business Park Drive
Utica, NY 13502
FIRST VICE PRESIDENT
JEFF O'CONNOR, SPPA
9449 Priority Way West Drive
Suite 210
Indianapolis, IN 46240
SECOND VICE PRESIDENT
JODIE PAPA
One NFA Park
Amherst, NY 14228
THIRD VICE PRESIDENT
ANITA TAFF
1225 Johnson Ferry Road
Marietta, GA 30068
FOURTH VICE PRESIDENT
CLAY MORRISON, CPPA
2951 Marina Bay Drive, #130-315
League City, TX 77573

TREASURER
CHRIS ALDRICH
217 Washington Street
Toms River, NJ 08753

SECRETARY
MATTHEW BLUMKIN
16542 Ventura Blvd., Suite 200
Encino, CA 91436

DIRECTORS
RAY ALTIERI III
518 N. Tampa St., Suite 200
Tampa, FL 33602
SCOTT DELUISE, SPPA
340 East 1st Avenue, Suite 300
Feld, CO 80020

EVANS
43rd St., Suite 406
New York, NY 10017

JEFF GOULD, CPA
602 E. Joppa Rd.
Baltimore, MD 21286

ROBERT JOSLIN, CPPA
2020 Main Street, Suite 31D
Wailuku, Maui, Hawaii 96793

ANDREW KNOX
217 Washington Street
Toms River, NJ 08753

JUSTIN SKIPTON
8710 E. Vista Bonita Dr.
Scottsdale, AZ 85255

DIANE SWERLING
36 Washington St., Suite 110
Wellesley Hills, MA 02481

JUDITH VICKERS, SPPA
761 Peachtree Pkwy
Cumming, GA 30041

MATT THANNISCH
1717 W. 6th St. Suite 220
Austin, TX 78703

TIM WOODARD
922 W. Greens Rd.
Houston, TX 90067

ALICE YOUNG, SPPA
611 E. McKellips Road
Mesa, AZ 85203

COUNSEL
BRIAN GOODMAN, ESQ.
One South Street, Suite 2600
Baltimore, MD 21202
Ph: (410) 752-6030
Fx: (410) 361-8215
bgoodman@kg-law.com
www.krimmonandgraham.com

EXECUTIVE DIRECTOR
BARRACK
Hitfield Place, #105
Falls, VA 20165
Ph: (703) 433-9217
Fx: (703) 433-0369
info@napia.com
www.napia.com

NATIONAL ASSOCIATION OF PUBLIC INSURANCE ADJUSTERS

HB - 1219

Representative George Keiser

January 23, 2019

Page 2

- Reviews the policy
- Assists the insured in making decisions regarding mitigation and securing the property
- Arranges temporary housing
- In commercial claims, discusses the insureds needs, determines what the policy will pay for, develops a recovery plan, discusses the plan with the insurer and begins to implement it

In most cases, insurers do not want to wait seven days to begin requesting documents or asking questions of the insured, and most insureds want their public adjusters involved in this process. Additionally, in most cases carriers begin building take offs and contents inventories in the first seven days, and it is beneficial for both the insured and the carrier to allow the public adjuster to complete their inventories side-by-side with the carrier for efficiency to allow for issues to be resolved up front.

Many of the most important decisions in the claim process made in the first few days will chart the course and influence the financial impact on both the insured and insurer. If a cancellation occurs after this time, it will be impossible to determine what benefit the public adjuster provided to the insured and what fair compensation would be for the adjusting services. Thus, we would respectfully request an amendment to this bill that changes the right of rescission from seven to three days to allow for the best protection of the insureds interests and fairness for the public adjuster's services.

Finally, we believe an amendment is warranted to correct the bill so that contractors as unlicensed public adjusters may not represent policyholders.

With these changes, we support advancement of House Bill 1219.

Very truly yours,



Greg Raab
President NAPIA

APCI/American Property and Casualty Insurance Association

January 23, 2019

House Industry, Business, and Labor Committee

Support HB 1219

Chairman Keiser and Members of the Committee,

Representing nearly 60 percent of the U.S. property casualty insurance market, the American Property Casualty Insurance Association (APCI) promotes and protects the viability of private competition for the benefit of consumers and insurers. APCI represents the broadest cross-section of home, auto, and business insurers of any national trade association. APCI members represent all sizes, structures, and regions, which protect families, communities, and businesses in the U.S. and across the globe.

House Bill 1219 includes provisions on public adjusters, residential contractors, and assignment of benefits. The bill provides a number of important protections for both insurers and consumers.

APCI supports HB 1219 because it establishes a regulatory framework for public adjusters. Among its many provisions, HB 1219 gives the insured the right to rescind a contract with a public adjuster, requires public adjusters to be licensed, pay fees and maintain an office within the state, requires that a public adjuster notify an insurer of any agreement for services with the insured, requires itemized statements of the loss and compensation to the public adjuster, imposes a compensation cap of ten percent of the insurance settlement proceeds on the public adjuster and it requires that public adjusters follow a code of conduct (p.16) which will limit fraud and any exploitation of consumers.

Further, the legislation also enacts provisions governing residential contractors. Rebating is prohibited and insureds are given the right to rescind a contract with a residential contractor within three business days. Also, the bill contains important "Assignment of Benefits" provisions such as requiring that a conspicuous disclaimer be included in 14 point font in any assignment agreement stating that the insured is giving up certain important rights under the policy and it also requires that the insurer be notified of an assignment of benefits within 5 business days.

We respectfully urge the committee to support HB 1219.

For more information, please contact Steve Schneider, Vice President State Affairs, Midwest Region American Property and Casualty Insurance Association (APCIA).

sschneider@aiadc.org

312.782.7720

Testimony of Pat Ward on Engrossed HB 1219

Good morning Chairman Klein and members of the Senate Industry, Business, and Labor Committee. My name is Pat Ward and I am an attorney with the Zuger, Kirmis & Smith law firm in Bismarck. I am here today representing the Association of North Dakota Domestic Insurers. Some of our domestic insurers, including Center Mutual and Nodak Mutual, are here today and will be testifying.

We stand in support of Engrossed HB 1219. Engrossed HB 1219 is the Public Adjuster Licensing & Insured Homeowner Protection Bill. This two-part bill aims to provide protections for insureds when they are (1) dealing with public adjusters and (2) dealing with roofers and contractors, oftentimes after severe weather events. Passing this legislation will protect consumers from predators who follow behind storms and pressure people into signing contracts.

Before I walk you through the specific provisions of Engrossed HB 1219, I'd like to have Rob Hovland, who is the President of Center Mutual in Rugby and also the President of the Association of North Dakota Domestic Insurers, explain why this legislation is needed in North Dakota. After Rob's testimony, I will walk you through Engrossed HB 1219 and take any questions.

ROB HOVLAND TESTIMONY

Chairman Klein and members of the committee, for the record, I'm Pat Ward. Now that you have a general sense of the need for this legislation, I will walk you through the specifics of the bill.

Engrossed HB 1219 is based on Nebraska's Public Adjuster Licensing Act and Insured Homeowner Protection Act. We did work with the insurance department while drafting this bill. Currently, the insurance department requires public adjusters to be licensed as consultants under chapter 26.1-26 of the Century Code. The consultant definition is very broad and does not specifically address public adjusters.

With the adoption of this bill, North Dakota will join the majority of other states that separately license public adjusters. Additionally, Engrossed HB 1219 gives the insurance department the ability to regulate the frequently out of state "storm chasers" and "facilitators" who pressure insureds into signing contracts, oftentimes after severe weather events, like hail storms.

I'll now walk you through the bill.

Section 1 of Engrossed HB 1219 authorizes the department to conduct criminal history background checks on public adjusters.

Section 2 of Engrossed HB 1219 creates a new chapter of the code (chapter 26.1-26.8), which governs procedures for licensing public adjusters.

Section 1 of chapter 26.1-26.8 explains the scope of the public adjuster licensing portion of the bill

Section 2 provides definitions for the chapter

Section 3 explains that a license from the department is required to practice public adjusting. Note, subsection 3 explains a public adjuster may not enter an agreement to repair or replace property on which the adjuster has engaged to adjust claims of the insured

Section 4 explains the application process for resident public adjusters

Section 5 explains the application process for non-resident public adjusters

Section 6 explains the application process for a business entity public adjuster

Section 7 requires an examination in order to receive a public adjuster license

Section 8 provides exemptions from the examination requirement

Section 9 explains the renewal process for public adjuster licenses

Section 10 provides that the commissioner may suspend, revoke, or refuse to renew public adjuster licenses

Section 11 requires a public adjuster to provide a twenty thousand dollar bond or proof of insurance to protect insureds from insolvent public adjusters

Section 12 explains the requirements for continuing education

Section 13 explains the requirements and restrictions on contracts between public adjusters and insureds. This is one of **the most important parts of the bill** as it provides many consumer protections:

- Name and contact info of the public adjuster
- Description of services to be provided by the public adjuster
- The specific amount of compensation the public adjuster is to receive
- The ability for the insured to cancel the contract within 3 days after the claim is submitted to the insurer

Section 14 requires the public adjuster to retain records for at least 6 years and make them available to the commissioner

Section 15 provides standards of conduct required by the public adjuster. The standards prohibit a public adjuster from referring the insured to obtain repairs from a person (1) which with the public adjuster has a financial interest and (2) from which the public adjuster may receive compensation for the referral

Section 16 addresses fees

Sections 17 through 21 address powers of the commissioner

Section 22 explains the statute of limitations for recovery of damages against public adjusters

Section 3 of Engrossed HB 1219 creates another new chapter to the code (chapter 26.1-39.2), which is the **insured homeowner protection portion of the bill**. This section will protect insureds when they enter into agreements with roofers and contractors that are to be paid from proceeds of a property and casualty insurance policy.

Section 1 of chapter 26.1-39.2 provides definitions

Section 2 provides requirements and restrictions on agreements between contractors and insureds when the contractor is paid from proceeds of insurance policies

- Insured may cancel contract within 5 days of entering into the contract or receiving notice from the insurer that the claim is not a covered loss

Section 3 prohibits a contractor from **rebating** a portion of an insurance deductible as an inducement to the sale of services

Section 4 addresses post-loss **assignment of benefits**. This is an important section of the bill. The section requires a conspicuous statement on a contract indicating that the insured is assigning certain rights under its policy. The insurance industry has seen great abuse by contractors regarding the assignment of insureds' benefits. For example, contractors often require homeowners to sign broadly worded assignment of benefits before agreeing to make repairs. The assignment transfers complete control of the homeowner's claim to the contractor. Homeowners are then prohibited from working with their insurance company to reach a reasonable settlement. This may lead to confusion, frustration, and litigation.

Section 5 requires a contractor to provide an itemized description of work prior to commencement of repair

Section 6 requires certain notices in the agreement between the contractor and insured

Section 7 explains the penalty of not complying with the chapter

Section 8 gives the commissioner the ability to adopt rules to carry out the chapter

Again, the purpose of this bill is to protect consumers from predators who follow behind storms and pressure people into signing contracts. We think Engrossed HB 1219 is needed to protect North Dakotans.

Other domestic insurers will be following me and highlighting the need for this legislation.

Please vote "do pass" on Engrossed HB 1219. I would be happy to answer your questions.

CHRIS OEN TESTIMONY



HB 1219 3/6/19 Att #2 p.1

317.875.5250 | [F] 317.879.8408
3601 Vincennes Road, Indianapolis, Indiana 46268

202.628.1558 | [F] 202.628.1601
20 F Street N.W., Suite 510 | Washington, D.C. 20001

March 4, 2019

The Honorable Jerry Klein
Chairman, Senate Industry, Business and Labor Committee
State Capitol Building
600 East Boulevard
Bismarck, North Dakota 58505

Re: Letter in Support of HB 1219 – March 6, 2019 Hearing

Dear Chairman Klein and Committee Members:

NAMIC is the largest property/casualty insurance trade association in the country, with more than 1,400 member companies representing 40 percent of the total market. NAMIC supports regional and local mutual insurance companies on main streets across America and many of the country's largest national insurers. NAMIC member companies serve more than 170 million policyholders. In North Dakota, we have 169 member companies, including 17 domiciled companies, which underwrite 49% of the state's insurance coverage.

NAMIC writes to express our strong support for HB 1219, which will enhance protections for consumers during the stressful period after a disaster. The bill does this by addressing the role of public adjusters and by providing a fair and balanced framework for the allocation of rights and obligations between consumers and contractors when a decision is made for the consumer to assign it rights under a policy to a third-party.

It needs to be stressed that NAMIC member companies work on a daily basis with residential contractors. The work they do is absolutely essential for the homeowner and insurers. North Dakota is fortunate to have so many quality contractors in communities across the state.

We are seeing a problem in parts of the Midwest that when problem arises, some contractors, particularly those from elsewhere who flock to the state after a disaster strikes, misuse what are called are generally called "assignment of benefits" contracts. Some of these contracts go far beyond what is necessary to guarantee that the contractor will be paid its rightful amount from the proceeds. The contractor mandates homeowners sign them in the critical hours after disaster. They also completely transfer control of the homeowner's claim to the contractor. Homeowners can be prohibited from working with companies to achieve a reasonable settlement of the claim. In some cases unscrupulous contractors have inflated repair costs and refused to make repairs before reaching a final agreement on payment. Homeowners are then often surprised to learn they have relinquished their rights under the policy.



The Honorable Jerry Klein
March 4, 2019
Page Two

HB 1219 addresses this by requiring minimum standards for the assignment contract. They include:

- Giving the homeowner the right to rescind the contract;
- Allowing the assignment to be used as a way to assure payment of the insurance proceeds to the contractor while avoiding the wholesale transfer of the homeowner's rights under the policy;
- Requiring that the assignment be provided in a timely manner to the insurer so to reduce claims processing problems; and
- Mandating that the assignment include an itemized description of the work to be done.

The enactment of HB 1219 will save North Dakota citizens from many of the problems that have been seen elsewhere after disaster strikes. It is a good faith bill that allows well-regarded contractors to get to work while protecting the insurance purchasing public from the harm.

NAMIC appreciates your attention to this issue. If you have any questions or comments, please do not hesitate to contact me. In the meantime, I remain,

Sincerely,

Mark Johnston
Regional Vice President – Midwest

cc: Mr. Rod Warner, NDAFMIC
Mr. Rob Hovland, ANDI

HB 1219 3/6/19 Att #3

NATIONAL ASSOCIATION OF PUBLIC INSURANCE ADJUSTERS



March 6, 2019

PRESIDENT
GREG RAAB
126 Business Park Drive
Utica, NY 13502

FIRST VICE PRESIDENT
JEFF O'CONNOR, SPPA
9449 Priority Way West Drive
Suite 210
Indianapolis, IN 46240

SECOND VICE PRESIDENT
JODIE PAPA
One NFA Park
Amherst, NY 14228

THIRD VICE PRESIDENT
ANITA TAFF
1225 Johnson Ferry Road
Marietta, GA 30068

FOURTH VICE PRESIDENT
CLAY MORRISON, CPPA
2951 Marina Bay Drive, #130-315
League City, TX 77573

TREASURER
CHRIS ALDRICH
217 Washington Street
Toms River, NJ 08753

SECRETARY
MATTHEW BLUMKIN
16542 Ventura Blvd., Suite 200
Encino, CA 91436

DIRECTORS
RAY ALTIERI III
518 N. Tampa St., Suite 200
Tampa, FL 33602

SCOTT DELUISE, SPPA
340 East 1st Avenue, Suite 300
Durham, CO 80020

IAN EVANS
100 W. 43rd St., Suite 406
New York, NY 10017

JEFF GOULD, CPA
602 E. Joppa Rd.
Baltimore, MD 21286

ROBERT JOSLIN, CPPA
2020 Main Street, Suite 3D
Wailuku, Maui, Hawaii 96793

ANDREW KNOX
217 Washington Street
Toms River, NJ 08753

JUSTIN SKIPTON
8710 E. Vista Bonita Dr.
Scottsdale, AZ 85255

DIANE SWERLING
36 Washington St., Suite 310
Wellesley Hills, MI 02481

JUDITH VICKERS, SPPA
761 Peachtree Pkwy
Cumming, GA 30041

MATT THANNISCH
1717 W. 6th St. Suite 220
Austin, TX 78703

TIM WOODARD
922 W. Greens Rd.
Houston, TX 90067

ALICE YOUNG, SPPA
611 E. McKellips Road
Mesa, AZ 85203

COUNSEL
BRIAN GOODMAN, ESQ.
One South Street, Suite 2600
Baltimore, MD 21202
Ph: (410) 752-6030
Fx: (410) 361-8215
bgoodman@kg-law.com
www.kramonandgraham.com

EXECUTIVE DIRECTOR
MID BARRACK
Whitfield Place, #105
Blacksburg, VA 20165
Ph: (703) 433-9217
Fx: (703) 433-0369
info@napia.com
www.napia.com

Senator Jerry Klein
Chairman Senate Industry, Business & Labor Committee
600 East Boulevard
Bismarck, ND 58505

RE: Support HB 1219

Dear Senator Klein,

On behalf of the National Association of Public Insurance Adjusters, I write to support House Bill 1219 as amended, which codifies licensing, continuing education, and ethics requirements for public adjusters in the state of North Dakota.

The National Association of Public Insurance Adjusters (NAPIA), is the oldest association of its kind in the United States, serving the public adjuster profession since 1967 and striving for excellence in the practice of public adjusting. Its members are experts primarily focused on complex commercial claims and some residential claims services. We have joined together for the express purpose of providing professional education and promoting a rigid code of conduct and ethics, to ensure best representation of the policyholder in the claims process. There are approximately 600 members in the organization.

We fully support advancement of House Bill 1219.

Very truly yours,

Greg Raab
President NAPIA

HB 1219 3/6/19 AH*4 p.1



1101 1st Ave. N, P.O. Box 2502
Fargo, ND 58108-2502

P: 701-298-4200 T: 877-814-5011

nodakins.com

Testimony – ND House Bill 1219
Public Adjuster Act
Support for a “Do Pass” vote: by Nodak Insurance Company
Chris Oen, Director of Claims

On behalf of Nodak Insurance Company, a domestic North Dakota based insurance company and member of The Association of North Dakota Insurers (ANDI), Nodak encourages support and a “do pass” recommendation by this committee for House Bill 1219. This bill creates the parameters for the definition, licensing, and standards of conduct for a person or entity operating as a Public Adjuster within the State of North Dakota.

Simply, a public adjuster is an entity that works on behalf of the policyholder as an advocate for their claim against the insurance company. On many claims, the public adjuster serves a positive role in the claim process. However when public adjusting is unregulated, the opportunity to increase claim costs through unmitigated fees, threats of legal action, unclear contracts, and predatory tactics create unforeseen dangers for the policyholder entitled to claim settlement proceeds.

In 2011, former Insurance Commissioner Adam Hamm posted a notice regarding caution of public adjusters operating in the Minot, ND area after the 2011 flood. There were complaints to the Insurance Department of opportunistic parties offering to represent individuals dealing with their insurance company offering to handle claims on behalf of property owners. Commissioner Hamm’s notice shared an example of claim costs rising 15-20% when the public adjusters became involved.

The purpose of this bill is not to ban or restrict the operation of a public adjuster within North Dakota. Forty Four states have adopted laws regarding the licensing, supervision, and code of conduct for public adjusters.

This bill allows for clear scope of contracts, knowing who’s licensed or not, and operating procedures; allowing the Insurance Department to better monitor public adjusting activities within the State. The bill also clearly defines business practices and conduct that protects policyholders from predatory actions by anyone representing themselves as a public adjuster.

House bill 1219 was crafted after a public adjuster bill passed in 2018 in Nebraska. Both the North Dakota Bill 1219 and Nebraska bills are modeled after the National Association of Insurance Commissioners (NAIC) Public Adjuster Licensing Model Act (MDL-228) adopted in October 2005.

The North Dakota Century Code already gives the Commissioner’s Office the right to license insurance agents and consultants. Until now, a public adjuster would fall into the Code that governs consultants. However, there is no definition to what the term “consultant” is. This language clarifies the specific actions of a consultant or public adjuster.

House Bill 1219 also addresses the assignment of claims benefits, putting parameters and disclosures required for the assignment to be executed in a manner that informs and protects the policyholder.

As part of this testimony, attached are references supporting HB 1219’s benefits. Of note, there is information from the Nebraska Department of Insurance advising property owners of their rights after the installation of the similar bill. Hopefully the committee can visualize how Nebraska has used this very similar law to protect the policyholders in their state, and how Nodak Insurance Company and the industry anticipates the protection House Bill 1219 will do the same for residents of North Dakota.



Jon Godfread, Commissioner

Welcome | Bio



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Hamm urges consumers to use caution with public adjusters and consultants

Post date: Aug 05, 2011

BISMARCK, N.D.-North Dakota Insurance Commissioner Adam Hamm alerted flood victims across the state today that they should exercise caution before signing a contract with a public adjuster or insurance consultant as they begin the recovery process. The Department has already received inquiries related to these entities in some of the flooded areas of the state.

Public adjusters, who in North Dakota must be licensed as insurance consultants, sign contracts with insurance policyholders and, for a fee, claim to work on the insured's behalf in negotiating a settlement with the insurance company. Generally, public adjusters perform an appraisal of the loss and then negotiate the amount to be paid by the company. They commonly charge a fee of 10 to 20 percent of the total amount of the settlement.

"In order for consumers to come out ahead by hiring a public adjuster, they have to achieve a settlement of 10 to 20 percent above what the insurance company would have offered them directly," Hamm said. "If there is already a maximum amount allowed for the loss, the consumers could end up with less money than if they settled the claim alone."

If you decide to sign a contract with a public adjuster, be aware that he or she cannot perform those services without first obtaining a license from the North Dakota Insurance Department and having an approved contract. Contact the Department at 1-800-247-0560 to find out if the adjuster may do business in the state.

"If you are considering signing a contract with a public adjuster or insurance consultant, I urge you to carefully consider whether their services will truly benefit you," Hamm added.

Consumers with questions about public adjusters are encouraged to call the Department at 1-800-247-0560.

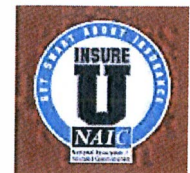
###

North Dakota Insurance Department

600 E. Boulevard Ave.
Bismarck, ND 58505-0320
Phone 701.328.2440
Toll free 800.247.0560
Fax 701.328.4880

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Jon Godfread, Commissioner

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Consultant

Any person who, for a fee, is engaged in the business of offering any advice, counsel, opinion or service with respect to the benefits, advantages or disadvantages promised under any insurance policy that could be issued in this state, must be licensed as a consultant unless exempted by Subsection 26.1-26-10 of the North Dakota Century Code.

Public adjusters must be licensed as consultants.

Consultants cannot concurrently hold a license as an insurance producer and cannot sell, solicit or negotiate insurance in North Dakota.

In advance of rendering any service as a consultant, the written agreement (on the form that has been approved by the Commissioner) shall be signed by both the consultant and the client. The consultant shall retain a copy of the agreement and make it available to the Department upon request. See N.D.C.C. § 26.1-26-35. A sample/model agreement form is available near the bottom of this page. The form must be approved by the Commissioner prior to its use in North Dakota.

To apply for the license:

Use the [NAIC uniform paper application forms](#) to apply for a North Dakota consultant license. Write on top of the form that you wish to apply for a consultant license. The initial license fee is \$100.

Non-resident individuals must hold a similar license in their resident state. If the resident license cannot be verified on the National Insurance Producer Registry Producer DataBase (PDB), applicants must provide evidence of an active license in their home state.

Resident applicants must qualify by exam for the lines of authority they want on their North Dakota consultant license.

Business entities must have at least one designated responsible individual licensed as a consultant in North Dakota.

The business entity should also contact the North Dakota [Secretary of State](#) (701.328.4284) to ensure compliance with North Dakota corporate law.

IMPORTANT: Make sure you answer all questions completely and disclose all information requested. You must disclose all criminal convictions and pending criminal charges. Question number one allows you to exclude misdemeanor traffic citations or convictions involving driving under the influence (DUI) or driving while intoxicated (DWI), driving without a license, reckless driving or driving with a suspended or revoked license and juvenile offenses. You must disclose all other criminal convictions and pending charges including, but not limited to, NSF checks and Minor in Possession. All criminal convictions must be disclosed regardless of when they occurred. If you have any questions about what needs to be disclosed, contact the Department before submitting your application.

The consultant agreement that the consultant intends to use in North Dakota must be attached to the application form. The agreement shall substantially comply with the model form available from the Department.

A sample/model agreement form is available near the bottom of this page. The form must be approved by the Commissioner prior to its use in North Dakota.

Consultant license renewals

All licenses must be renewed by April 30 of each year up to 90 days prior to the expiration date. The renewal fee is \$25.

Licenses that are not renewed by April 30 will be canceled. There is no grace period.

Please submit the renewal application electronically through the National Insurance Producer Registry (NIPR) <http://www.nipr.com/licensing/index.html>. The renewal fee is \$25 and the transaction fee is \$5.

Hints for completing the electronic renewal

1. Individuals do not need to complete the section asking about agency or business entity affiliations. This is not required for North Dakota.
2. Your addresses cannot be updated by making changes on the renewal application. If the addresses are wrong or incomplete, file a separate address change request. [File an electronic address change](#) (no charge), or print out the paper address change form and mail or fax to the Department.

After your application has been approved, you can confirm your new license expiration date by using the [agent/agency search](#).

If you are unable to submit your renewal application electronically, print the NAIC uniform application form. Complete, sign and date the form and mail it with the renewal fee of \$25. If submitting a paper application, allow additional processing time. The form must contain an original signature. Send by mail to:

North Dakota Insurance Department
600 E. Boulevard Ave.
Bismarck, ND 58505-0320

[Electronic renewal application for individuals or business entities](#)

[Paper NAIC Uniform Application for Business Entity Insurance License Renewal/Continuation](#)

[Paper NAIC Uniform Individual Producer License Renewal/Continuation](#)

North Dakota law and rules regarding consultants:

The following sections of the North Dakota Century Code apply to consultants:

26.1-26-02(4)
26.1-26-10
26.1-26-31.1
26.1-26-35
26-1-26-41

The following sections of the North Dakota Administrative Code apply to consultants:

45-02-02-09
45-02-02-10

Use the links below to access the North Dakota Century Code and the North Dakota Administrative Code.

ndlicensing@nd.gov
State Capitol, fifth floor
Dept. 401
600 E. Boulevard Ave.
Bismarck, ND 58505-0320

701.328.2440
701.328.4880 fax
800.247.0560 toll free
800.366.6888 TTY line

ND Administrative Code

<http://www.legis.nd.gov/agency-rules/north-dakota-administrative-code>

ND Century Code

Paper business entity renewal application form

[naicuniformapplicationforbusinessentityrenewal.pdf](#) file size: 400 kb

Paper individual renewal application form

[naicuniformapplicationforindividualrenewal.pdf](#) file size: 392 kb

Sample: Insurance consultant agreement

[insuranceconsultantagreement.doc](#) file size: 31 kb

Sample: Public adjuster consultant agreement

[publicadjusterconsultantagreement.doc](#) file size: 33 kb

North Dakota Insurance Department

600 E. Boulevard Ave.
Bismarck, ND 58505-0320
Phone 701.328.2440
Toll free 800.247.0560
Fax 701.328.4880

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HB 1219 3/6/19 AH#4 p.5

Tuesday, January 15, 2019 Latest: Updated BillTracker now available Day three bill introduction

UNICAMERAL UPDATE

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Banking Commerce and Insurance

Insurance producer, public adjuster requirements approved

March 15, 2018 Sen. Brett Lindstrom, LB743 LB220

A bill that would amend state law related to insurance producers was approved March 15.

LB743, introduced by Omaha Sen. Brett Lindstrom, creates regulations for public adjusters—individuals who provide compensated assistance to an insured in the filing and settlement of a property claim against an insurer—through adoption of the National Association of Insurance Commissioners model law.

Among other provisions, the bill:

- establishes criteria for resident and nonresident public adjusters;
- provides for administration of exams and licensure requirements;
- creates a continuing education requirement for public adjusters;
- eliminates a pre-licensing requirement for insurance producers;
- requires public adjusters to secure a minimum \$20,000 surety bond;
- provides criteria for a business entity to become a public adjuster in Nebraska;
- removes a paper certificate requirement for insurance producer continuing-education activities and limits approval of those activities to four years; and
- prohibits an individual from acting as a public adjuster without being licensed in accordance with the act, misrepresenting that they work for



Sen. Brett Lindstrom

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an insurer or entering an agreement to repair property that the adjuster was engaged to adjust.

The bill was amended to include provisions of LB220, introduced by Omaha Sen. Burke Harr, which provide protections for consumers who assign their property insurance rights or benefits to a contractor following a loss. Those provisions:

- expand the definition of a residential contractor;
- provide that an assignment of rights or benefits to a residential contractor may authorize the contractor to be named as a copayee for payment of benefits under a property and casualty insurance policy;
- expand notice provisions in order to inform an insured homeowner that with an assignment, the residential contractor would be entitled to pursue any rights or remedies that the insured homeowner has under the insurance policy; and
- require that the itemized description of the work, materials, labor, fees and total amount to be paid be furnished to the insured and insurer prior to commencement of repair or replacement work.

In addition, the bill specifies that the itemized description does not limit the insured or a residential contractor from identifying other goods and services necessary to complete repairs or replacements.

The bill passed on a 48-0 vote.



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Nebraska Insured Homeowners Protection Act

An important step in helping yourself with post-loss issues is to become familiar with the Act.



Whether you are a homeowner, an insurance producer, an insurer or residential contractor, being familiar with the "Insured Homeowners Protection Act" can be an important step in helping yourself or others deal with post-loss repair issues.

The act applies to the business of contracting or offering to contract to repair or replace a roof system or to perform any other exterior repair, replacement, construction, or reconstruction work on residential real estate or to perform interior or exterior cleanup services on residential real estate.

As a means of protection to homeowners, the act permits homeowners the ability to mail written notice of cancellation of a contract with a residential contractor prior to midnight on the later of the third business day after the person has (1) entered into a contract, or (2) received written notice from the person's insurer that all or part of the claim or contract is not a covered loss under the insurance policy.

In the event of such a cancellation, the residential contractor is required to return any partial payments or deposits to the homeowner. If the contractor violates any provisions of this law, the contract between the homeowner and contractor is void.

The act also prohibits residential contractors from promising to rebate or offset any portion of an insurance deductible as an inducement for the sale of goods or services.

The full provisions of the act are located in Neb. Rev. Stat. §§ 44-8601 to 44-8608.



PO Box 82089
Lincoln, Nebraska 68501-2089

Consumer Hotline:
1-877-564-7323

Local Phone:
402-471-2201

www.doi.nebraska.gov

Department of Insurance

Consumer Alert



Post-Loss Assignments of Claims

What You Should Know Before You Sign on the Dotted Line Following a Storm

The Nebraska Department of Insurance urges consumers to be cautious when signing post-loss assignments for homeowner's insurance claims. It is important for policyholders to recognize and understand the significance of these contracts.

What is a Post-Loss Assignment?

A post-loss assignment of a claim is a contract signed by a *homeowner*, after a covered loss, granting a contractor all rights and duties of the claim under the insurance policy. Once signed, the contractor owns and controls the claim without any input from the insured.

When is a Post-Loss Assignment Signed?

A loss occurs when a covered risk causes damage to the insured property. In a weather related case, the insured property is damaged by wind, hail, rain, and/or a tornado that requires repairs to the roof, siding, gutters, deck, windows, etc. After the damage, the insured files a claim with the insurer and the insurer completes an estimate of the damage. The insured hires a contractor and signs a contract for the repair work. Typically, the contractor requires the homeowner to sign the post-loss assignment at the same time the repair work contract is signed. The contractor does not typically explain the significance of the assignment, rather, the contractor declares that the assignment enables the contractor to negotiate or communicate with the insurer on the claim.

Concerns

Once you sign the assignment, the contractor now owns all rights and duties to the claim. This has important continuing ramifications for you as a policyholder.

- There may be a time when the insurer and contractor disagree about payment for the claim. If they cannot reach an agreement on payment, the contractor will sue the insurer. The suit will be filed in your name against your insurer. The contractor does not need your permission to file this suit. You will not be notified of the suit nor will you have any active involvement in it. However, the suit may have an impact on insurance rates and insurability of you in the future. This has recently happened to hundreds of Nebraskans.
- You may still be financially responsible to the contractor for the difference in the contractor's price and the insurer's payment. The contractor may file a lien against your property.
- You may be dissatisfied with how your insurer has handled your claim and wish to file suit against your insurer. You no longer have the ability to do so because that right now belongs to your contractor.
- You may be displeased or have a disagreement concerning the quality or scope of work with your contractor. If you wish to fire your contractor and hire a new contractor, the assignment is still valid. This means that your prior contractor **still** owns all rights, including payment, on your insurance claim.

Tips

- A homeowner is **not** required to sign a post-loss assignment.
- Prior to signing an assignment, consult your own attorney to discuss ramifications of executing the assignment.
- Know what you are agreeing to. Carefully read any agreement or estimate before signing.
- Many homeowner's insurance policies explicitly prohibit assignment of the insurance claim, however, the Nebraska Supreme Court issued a ruling in 2016 that these assignments were binding and valid.
- Do your homework before hiring a contractor.
 - ⇒ Ask your family, neighbors, co-workers and others for contractor recommendations.
 - ⇒ Receive written estimates from multiple contractors and compare those estimates to your insurer's estimate.
 - ⇒ Review the Better Business Bureau's ratings of the contractor.
 - ⇒ Ask the prospective contractor about business practices you may be concerned with, including whether they want you to sign an assignment. Many contractors do not use assignments.
 - ⇒ Check to make sure the contractor has registered with the Nebraska Department of Labor at <https://www.dol.nebraska.gov/conreg/Search>.
 - ⇒ The Nebraska Department of Insurance does not regulate contractors' conduct. Complaints filed with the Department of Insurance concerning the conduct of contractors, even if an insurance payment is involved, will not be investigated, unless insurance fraud is suspected.

Insured Homeowners Protection Act

The Nebraska Homeowners Protection Act, see Neb. Rev. Stat. §§ 44-8601 to 44-8608, requires a residential contractor to comply with all the following in regards to post-loss assignments:

- 1) Provide the insurer with notice of the assignment within five business days of execution;
- 2) Include a statement in the assignment that the contractor has not made assurances that the loss will be fully covered by insurance;
- 3) Prohibits a contractor from rebating all or a portion of the insurance deductible to the insured;
- 4) Cannot impair the rights of a mortgagee;
- 5) Cannot prohibit or prevent an insured or mortgagee from directly communicating with the insurer; and
- 6) Prior to beginning any repair work, the contractor is required to provide the insured and the insurer with an itemized description of the work to be done, and the materials, labor, and fees for repair and the total itemized amount agreed to be paid for the work performed.

If the contractor violates any provisions of the **Nebraska Insured Homeowners Protection Act**, the contract between the homeowner and the contractor is void.

More Information

The Department of Insurance can be reached at 402-471-2201, or on its toll-free consumer hotline at 1-877-564-7323. Additional insurance-related information can also be found on the Department's website at www.doi.nebraska.gov.

NEBRASKA

Good Life. Great Opportunity.

Department of Insurance

NR-1702

Media Contact:
Peg Jasa - 402-471-2201

FOR IMMEDIATE RELEASE

After a Storm: Before You Sign on the Dotted Line

The Nebraska Department of Insurance urges consumers to be cautious when signing post-loss assignments for homeowner's insurance claims. It is important for policyholders to recognize and understand the significance of these contracts.

What is a Post-Loss Assignment?

A post-loss assignment of a claim is a contract signed by a *homeowner*, after a covered loss, granting a contractor all rights and duties of the claim under the insurance policy. Once signed, the contractor owns and controls the claim without any input from the insured.

When is a Post-Loss Assignment Signed?

A loss occurs when a covered risk causes damage to the insured property. In a weather related case, the insured property is damaged by wind, hail, rain, and/or a tornado that requires repairs to the roof, siding, gutters, deck, windows, etc. After the damage, the insured files a claim with the insurer and the insurer completes an estimate of the damage. The insured hires a contractor and signs a contract for the repair work. Typically, the contractor requires the homeowner to sign the post-loss assignment at the same time the repair work contract is signed. The contractor does not typically explain the significance of the assignment, rather, the contractor declares that the assignment enables the contractor to negotiate or communicate with the insurer on the claim.

Concerns

Once you sign the assignment, the contractor now owns all rights and duties to the claim. This has important continuing ramifications for you as a policyholder.

- There may be a time when the insurer and contractor disagree about payment for the claim. If they cannot reach an agreement on payment, the contractor will sue the insurer. The suit will be filed in your name against your insurer. The contractor does not need your permission to file this suit. You will not be notified of the suit nor will you have any active involvement in it. However, the suit may have an impact on insurance rates and insurability of you in the future. This has recently happened to hundreds of Nebraskans.

---more---

- You may still be financially responsible to the contractor for the difference in the contractor's price and the insurer's payment. The contractor may file a lien against your property.
- You may be dissatisfied with how your insurer has handled your claim and wish to file suit against your insurer. You no longer have the ability to do so because that right now belongs to your contractor.
- You may be displeased or have a disagreement concerning the quality or scope of work with your contractor. If you wish to fire your contractor and hire a new contractor, the assignment is still valid. This means that your prior contractor **still** owns all rights, including payment, on your insurance claim.

Tips

- A homeowner is **not** required to sign a post-loss assignment.
- Prior to signing an assignment, consult your own attorney to discuss ramifications of executing the assignment.
- Know what you are agreeing to. Carefully read any agreement or estimate before signing.
- Many homeowner's insurance policies explicitly prohibit assignment of the insurance claim, however, the Nebraska Supreme Court issued a ruling in 2016 that these assignments were binding and valid.
- Do your homework before hiring a contractor.
 - Ask your family, neighbors, co-workers and others for contractor recommendations.
 - Receive written estimates from multiple contractors and compare those estimates to your insurer's estimate.
 - Review the Better Business Bureau's ratings of the contractor.
 - Ask the prospective contractor about business practices you may be concerned with, including whether they want you to sign an assignment. Many contractors do not use assignments.
- The Nebraska Department of Insurance does not regulate contractors' conduct. Complaints filed with the Department of Insurance concerning the conduct of contractors, even if an insurance payment is involved, will not be investigated, unless insurance fraud is suspected.

More Information

The Department of Insurance can be reached at 402-471-2201, or on its toll-free consumer hotline at 1-877-564-7323. Additional insurance-related information can also be found on the Department's website at www.doi.nebraska.gov.

Testimony for HB 1219 – ND Senate IBL Committee

Chairman Klein and members of the Senate Industry, Business, and Labor Committee for the record my name is Steve Becher and I am Executive Director of the Professional Insurance Agents of ND. PIA of ND represents over 300 main street insurance agencies with over 1000 agents across the state of North Dakota. I am providing testimony today and asking you for a Do Pass recommendation on House Bill **1219**.

A major complaint from consumers and insurance companies after a big storm is the contractor that goes door to door and offers to “check” for damage for the homeowner. In many cases these contractors are from out of state with no local presence after the work is completed and they chase storms across the country. Invariably the contractor finds “damage”, writes up the estimate, and then offers to work with the insurance company on behalf of the homeowner. The homeowner signs a contract for the work that allows the contractor to work with the insurance company and then the contractor starts the work before a claim is submitted to the carrier. The main issue is that the claim is in essence being adjusted by a contractor that has a monetary interest in making the claim larger and many times the insurance company is not notified until the work is near completion. One of my agents shared with me that a company adjuster had driven up to a house after one of our recent storms to check for damage on a claim and actually caught the contractor on the roof with a hammer hitting the shingles to make it look like hail damage.

In some cases the insured assigns the benefits of the claim over to the contractor who then deals directly with the insurance company to get paid for the work. There is nothing wrong with assignment of benefits as long as the insurance company knows about the assignment and can work with the contractor before the work is started to determine the amount of damage and the cost to fix. The problem comes about when the contractor completes the work, submits a bill to the insurance company for damage the company never got to inspect, and because of the assignment the insurance company is forced to work with the contractor and not the people that they have a contract with, their insureds.

Our insurance agents and their clients are negatively affected by these practices. In some cases these contractors go door to door in every neighbor and tell all of the homeowners that they see storm damage on their home. Many of these homeowners then call in a claim to their agent who submits the paperwork to the insurance company and they send out an adjuster. When the adjuster inspects the home they would find no damage and the insurance company would have numerous claims with no payout. This results in some insureds feeling that their insurance company is not paying them for damage just to get out of a claim when in reality there was no damage to begin with. This can result in bad relations between the insured, agent, and insurance company all because a contractor who would benefit from doing any work told them they saw damage. In addition, with all of these fictitious claims being turned in the insureds that have legitimate damage are delayed in getting their claims processed.

HB 1219 actually helps in two ways as it makes these contractors that are basically holding themselves out as claims adjusters to be licensed as a public

adjuster and provides some consumer protection for consumers that enter into contracts with these contractors. This bill provides criteria for the public adjuster such as licensing, continuing education, certain contract provisions and prohibitions, disclosure notices, and rescission rights. It also includes standards of conduct to protect the consumer from conflicts of interest where the public adjuster has a financial interest in the payment for the completed work. It protects the consumer by allowing them to cancel the contract within a reasonable amount of time after signing it or after being notified by the insurance company that part or the entire claim is not covered. The bill also prohibits the contractor from rebating the deductible as an inducement to do the work and makes them provide an itemized description of work prior to starting the job.

In the interest of protecting consumers and insurance companies from predatory contractors as well as making those persons that are holding themselves out to be a public adjuster be licensed as such, I would urge a "Do Pass" on House Bill 1219.

HOUSE BILL NO. 1219

Presented by: Greg Nelson
Producer Licensing Division Director
North Dakota Insurance Department

Before: Senate Industry, Business and Labor Committee
Senator Jerry Klein, Chairman

Date: March 6, 2019

TESTIMONY

Good morning, Chairman Klein and Members of the Senate Industry, Business and Labor Committee. My name is Greg Nelson and I am the Division Director for the North Dakota Insurance Department Producer Licensing Division. I am here today to provide testimony on HB 1219.

Pursuant to Title 26.1 of the Century Code, the Insurance Commissioner is responsible for licensing and regulating the conduct of resident, as well as non-resident, insurance producers and business entities operating in the state of North Dakota. Currently, the Department licenses more than 85,000 individuals and business entities combined. This bill would specifically govern the qualifications and procedures for licensing public adjusters in this state and specify the duties of and the restrictions on public adjusters, including limitation of licensure to assisting only insureds.

HB 1219 would create and enact a section of the North Dakota Century Code relating specifically to public adjuster licensing. Currently, 41 other states license public adjusters in the same or a similar manner.

HB 1219 would provide additional consumer protections by ensuring public adjusters and contractors do not have a conflict of interest related to insured.

Currently, it is difficult to identify the exact number of independent or staff adjusters actively operating in North Dakota. It is important to note any number identified is subject to change with each event or disaster in an area. There are licensed public adjusters out there who travel the country targeting disaster areas and when an area has been serviced, they move on to other parts of the country.

HB 1219 would require public adjusters to go through a background process similar to the process of resident and non-resident producers. Resident public adjusters would be fingerprinted and subject to a criminal history background. They would also be required to pay the licensing and renewal fees, be trustworthy, reliable and of good reputation just to name of a few of the requirements.

Lastly, it is important to note, once licensed, all of the new public adjusters would need to be serviced continually and renewed biannually. In addition, any complaints that come in would require resources to investigate. Whether these complaints are founded or unfounded, criminal in nature or regulatory, these complaints often require the use of additional resources from various divisions including the Consumer Assistance Division, Producer Licensing Division, as well as the Legal Division. It is for these reasons we have asked for an additional FTE in the attached fiscal note to ensure we have the appropriate resources to license and investigate complaints against public adjusters.

With that, I am happy to take any questions.

HB1219 3/6/19 Alt#6
p.3

19.0457.04000

FISCAL NOTE
Requested by Legislative Council
01/07/2019

Amendment to: HB 1219

- 1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2017-2019 Biennium		2019-2021 Biennium		2021-2023 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues				\$8,625		\$3,450
Expenditures				\$112,970		\$112,970
Appropriations				\$112,970		\$112,970

- 1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

	2017-2019 Biennium	2019-2021 Biennium	2021-2023 Biennium
Counties			
Cities			
School Districts			
Townships			

- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

HB 1219 would create and enact a section of the NDCC relating to public adjuster licensing, as well as contracts between insured homeowners and residential contractors. This would more clearly define the existing licensing requirements as well as provide additional consumer protections.

- B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Section two of the bill defines public adjusters and establishes the licensing requirements, including fees.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

- A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

This bill subjects public adjusters to the fees outlined in 26.1-01-07, which is an initial application fee of \$100 and a \$25 annual renewal fee. The Department estimates that 69 public adjusters will apply in fiscal year 2020, and then renew in the following years. All fees would be deposited into the Insurance Regulatory Trust Fund.

- B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

The Insurance Department would need an additional Licensing Specialist I to handle the increased workload. The total salary and benefits for the biennium would be \$112,970, paid from the Insurance Regulatory Trust Fund.

- C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation or a part of the appropriation is included in the executive budget or relates to a continuing appropriation.*

The Insurance Department would need an additional \$112,970 appropriated from the Insurance Regulatory Trust Fund to fund the FTE outlined above.

Name: Melissa Seifert

Agency: Insurance Department

Telephone: 328-2930

Date Prepared: 01/09/2019

HB 1219 3/6/19 Att # 7

APCIA/American Property and Casualty Insurance Association

March 6, 2019

Senate Industry, Business, and Labor Committee

Support HB 1219

Chairman Klein and Members of the Committee,

Representing nearly 60 percent of the U.S. property casualty insurance market, the American Property Casualty Insurance Association (APCIA) promotes and protects the viability of private competition for the benefit of consumers and insurers. APCIA represents the broadest cross-section of home, auto, and business insurers of any national trade association. APCIA members represent all sizes, structures, and regions, which protect families, communities, and businesses in the U.S. and across the globe.

House Bill 1219 includes provisions on public adjusters, residential contractors, and assignment of benefits. The bill provides a number of important protections for both insurers and consumers.

APCIA supports HB 1219 because it establishes a regulatory framework for public adjusters. Among its many provisions, HB 1219 gives the insured the right to rescind a contract with a public adjuster, requires public adjusters to be licensed, pay fees and maintain an office within the state, requires that a public adjuster notify an insurer of any agreement for services with the insured, requires itemized statements of the loss and compensation to the public adjuster, imposes a compensation cap of ten percent of the insurance settlement proceeds on the public adjuster and it requires that public adjusters follow a code of conduct (p.16) which will limit fraud and any exploitation of consumers.

Further, the legislation also enacts provisions governing residential contractors. Rebating is prohibited and insureds are given the right to rescind a contract with a residential contractor within three business days. Also, the bill contains important "Assignment of Benefits" provisions such as requiring that a conspicuous disclaimer be included in 14 point font in any assignment agreement stating that the insured is giving up certain important rights under the policy and it also requires that the insurer be notified of an assignment of benefits within 5 business days.

We respectfully urge the committee to support HB 1219.

For more information, please contact Steve Schneider, Vice President State Affairs, Midwest Region American Property and Casualty Insurance Association (APCIA).

steve.schneider@apci.org

312.782.7720