

NATIONAL ASSOCIATION OF PUBLIC INSURANCE ADJUSTERS



MEMORANDUM IN OPPOSITION

S0991 (Fogarty)

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The National Association of Public Insurance Adjusters (NAPIA) strongly **OPPOSES** S.0991 and urges the Senate Judiciary to not provide favorable discharge of this legislation. This legislation is not only injurious to the licensed and regulated profession of public insurance adjusting, but it will also harm the insurance consumer at a time when a policyholder most needs help: when they have incurred an insurance loss. The legislation also fails to address the problems most likely harming the public presently which is the unauthorized practice of public adjusting (UPPA).

Impact on the public adjusting profession: Public insurance adjusters are licensed and regulated by the Rhode Island Insurance Department, and by insurance regulators in 45 states. The conduct of public adjusters, like that of insurance agents, carriers and other insurance professionals, is carefully monitored by the insurance department, and enforcement actions are taken when a public adjuster, or any other insurance licensee, is found to be operating improperly. NAPIA members also adhere to a rigid code of conduct, the association prohibits its members from also serving as restoration contractors, and NAPIA maintains a close working relationship with insurance commissioners through the National Association of Insurance Commissioners in order to assure that its members are operating in an ethical and prudent manner at all times.

This bill inexplicably singles out public insurance adjusters for disparate and unfair treatment. Nowhere in the legislation or Legislative Council's explanation of the bill does it explain why public adjusters, as opposed to insurance company adjusters, roofers, board-up companies or any other commercial enterprises, are to be prohibited from soliciting business or entering a property until 24 hours after release of control of the property by a fire department or state fire marshal. The State of

Rhode Island, if this legislation is enacted, would be prohibiting a validly-licensed and regulated entity from engaging in a lawful practice while not doing anything concerning the actions of those not licensed by the state, many of whom may very well be engaging in an unauthorized adjusting of an insurance claim.

As structured, the bill would also make the state fire marshal a de facto regulator of public insurance adjusters already licensed and regulated by another state agency. Is it really the role of the state fire marshal to manage the activities of public adjusters, including solicitations of potential clients? Further, the bill does not define the term “investigation” and does not address the potential conflict between an investigation that may be ongoing and the return of a premises to an owner or tenant. On all counts, the language of the bill will only complicate the already-difficult job facing the state fire marshal and their staff.

The State of Florida recently tried to impose an untoward restriction upon the lawful practice of public insurance adjusting, and that state’s Supreme Court rightfully found a prohibition on solicitation to be unconstitutional as restricting commercial free speech. There are similarities between the underlying legislation in Florida and the legislation proposed in Rhode Island, and the constitutionality of this glaringly one-sided legislation will likely be called into question. (See Atwater v. Kortum)

Adverse impact upon consumers: For many insurance policyholders, the only advocate they have in the aftermath of an insured loss is a public insurance adjuster. Public adjusters only work for the policyholder, and do so to assure that the policyholder gets everything that an insurance policy provides in restoring that insured after a loss. To bar public adjusters from contacting a claimant or visiting the site of a loss for the arbitrary period of 24 hours after a property has been released from a public agency’s control would subject a claimant to one-sided barrages of inquiries and offers from insurance carriers, restoration contractors, and others who would prey upon unsuspecting and unknowledgeable policyholders.

The legislation is also silent as to the implications of a policyholder’s outreach to a public adjuster. If a consumer desired the assistance of a public adjuster, this legislation would essentially frustrate that wish by forcing a fire chief or fire marshal to deny the insured’s efforts to get a quick start on the insurance claim process

with a licensed and regulated representative supporting them in that process. It is unfathomable that the public policy of Rhode Island would intentionally or otherwise visit such a handcuff to any of its citizens at as stressful a time as an insurance loss, yet this legislation would do just that to the state's residents.

De facto support for the unauthorized practice of public adjusting: For public insurance adjusters and insurance carriers alike, the scourge of UPPA is sweeping the nation. The infiltration of roofing contractors, board-up contractors and others who assume the role of representative of an insured in negotiating an insurance settlement is leaving millions of insurance policyholders at risk of being fleeced. By forcing licensed and regulated public adjusters to the sidelines would give these unregulated contractors unfettered access to claimants with no one to inform the policyholder that they are about to be taken by someone who is either untrained in insurance coverages, unethical by putting themselves out as qualified to negotiate with insurance carriers, or unlawful as most state insurance laws prohibit anyone but a licensed insurance professional or attorney from representing the interests of a claimant before an insurance company. There is currently no law in Rhode Island or elsewhere requiring insurance companies to work with only licensed entities on behalf of consumers, so the consumer is on their own when trying to decide if a contractor is the right person to represent their interest with an insurance company.

For consumers, insurers and state fire marshals, the problems become far worse when these parties identify themselves as public adjusters. Most times, no one seeks to confirm the credentials of those presenting themselves as public adjusters, so when things go bad for any or all of them, they are left thinking that a public adjuster is the problem when one is not even involved in the matter.

NAPIA feels strongly about this legislation because it does present such a direct threat to the profession and the many insurance consumers the profession serves every day. NAPIA strongly encourages the sponsors to rethink this issue, identify the problem they seek to solve, and engage the profession in an open dialogue as to how service to the public can be improved by all who serve them in the aftermath of loss. NAPIA stands ready to engage in such a positive discussion, but in the meantime must strongly advocate in opposition to this legislation.