

ONE HUNDRED FIFTH LEGISLATURE - SECOND SESSION - 2018
COMMITTEE STATEMENT
LB743

Hearing Date: Tuesday January 16, 2018
Committee On: Banking, Commerce and Insurance
Introducer: Lindstrom
One Liner: Adopt the Public Adjusters Licensing Act and change continuing education and prelicensing education provisions

Roll Call Vote - Final Committee Action:
Advanced to General File

Vote Results:

Aye: 8 Senators Baker, Brewer, Harr, Kolterman, Lindstrom, McCollister, Schumacher, Williams
Nay:
Absent:
Present Not Voting:

Verbal Testimony:

Proponents:

Senator Brett Lindstrom
Director Bruce Ramge
Ann Frohman
James Dobler
James Cavanaugh
Mick Mines
Nicole Fox
Coleen Nielsen
Theodore Fraizer

Representing:

Introducer
NE Dept. of Insurance
National Assn. of Public Insurance Adjusters
Professional Insurance Agents of NE
Independent Insurance Agents of NE
NAIFA-NE
Platte Institute
NE Insurance Information Service
American Insurance Assn.

Opponents:

Steven McCaffrey
Bub Windle
James Eggers
Theodore Boecker

Representing:

American Assn. of Public Insurance Adjusters
Millard Roofing & Gutter
Millard Roofing
Self

Neutral:

Representing:

Summary of purpose and/or changes:

LB743 was introduced on behalf of the Department of Insurance and changes provisions relating to insurance producer continuing education, eliminates prelicensing education requirements for insurance producers, and adopts the National Association of Insurance Commissioners model law on the licensing of public adjusters, persons that provide compensated assistance to an insured on first party claims for loss or damage to property. The legislation would provide, section by section, as follows:

Section 1 identifies sections 1 to 19 as the Public Adjusters Licensing Act.

Section 2 declares the purpose of the act to govern qualifications and procedures for licensing public adjusters in this state and to specify the duties and responsibilities of public adjusters.

Section 3 provides the definitions of the act.

Section 4 provides prohibitions on persons acting as a public adjuster without being licensed in accordance with the act, on public adjusters misrepresenting that they work for an insurer, and on a public adjuster entering an agreement to repair property that the adjuster has engaged to adjust. Section 4 does not apply to certain people listed in subsection (4) of section 4, including attorneys.

Section 5 establishes the criteria for a resident public adjuster. The criteria include age, residence or primary place of business in this state, has not committed prohibited acts, payment of a fee, trustworthiness, proof of financial responsibility, and maintenance of an office in this state.

Section 6 established the criteria for a nonresident public adjuster. Criteria include being licensed in good standing as a public adjuster in the individual's home state, paying the fee, and maintaining a license in good standing in the home state.

Section 7 provides the criteria for a business entity to become a public adjuster in this state, including the payment of a fee and the designation of a resident public adjuster as the responsible designated adjuster.

Section 8 provides that an individual must pass an exam to become a resident public adjuster. This section allows the director to contract with an outside testing service for the administration of the exam.

Section 9 provides exemptions from examination for certain individuals.

Section 10 provides the term of the license for both an individual and business entity. Additionally, this section provides the information provided on the license and duties on the licensee to inform the Department of Insurance of various occurrences including name changes, administrative actions, and criminal prosecutions. It also establishes that licensees are subject to both the Unfair Insurance Trade Practices Act and the Unfair Insurance Claims Settlement Practices Act.

Section 11 establishes the authority of the Director of Insurance to penalize public adjusters for actions listed in the section. This section mirrors the penalty statute for insurance producers.

Section 12 requires public adjusters to secure a surety bond in the minimum amount of \$20,000.

Section 13 creates a continuing education requirement for public adjusters.

Section 14 governs the contract between the public adjuster and the insured. It provides a duty on public adjusters to ensure that all contracts for their services contain certain provisions listed in this section. This section also lists prohibited contract provisions. This section allows a contract to specify that a public adjuster may be listed as a co-payee of an insurance settlement, but that if the compensation is based on a share of the settlement, such percentage shall be listed. This section also provides that commission shall not be paid if the insurer pays within 72 hours of the loss being reported.

Additionally, this section requires the public adjuster to provide a disclosure to the insured regarding the claim process. The disclosure must include several provisions related to the process and the insured's rights.

If the contract is executed, the public adjuster must provide a duplicate to the insured and inform, in writing, the insurer.

The insured has the right to rescind the contract within three business days.

Section 15 places an escrow requirement on the public adjuster if the public adjuster holds settlement funds.

Section 16 establishes record keeping requirements on the public adjuster and provides the authority to the department to examine such records.

Section 17 provides ethical duties towards the insured that the public adjuster must follow. These include loyalty to the insured, lack of a conflict of interest with firms completing the repairs, and making false statements.

Section 18 addresses public adjuster fees. It prohibits collection of a fee in excess of fifteen percent of the settlement. In the event of a catastrophe, the percentage is lowered to ten percent.

Section 19 provides the director with the authority to issue rules and regulations, if necessary.

Section 20 amends section 44-2614 to remove the term public adjusters from the insurance consultants act.

Section 21 amends section 44-3905 to provide that approved continuing education activities shall be deemed approved for four years. The amended language also allow the director to recertify an activity if it meets certain criteria. Additionally, this section is amended to conform to current practice as it relates to the criteria for a sponsor to be removed from the approved continuing education sponsor list by removing antiquated criteria and inserting modern criteria.

Section 22 amends section 44-3908 to make the director's rulemaking authority for continuing education permissive.

Section 23 amends section 44-4053 to remove a reference to prelicensing education.

Section 24 amends section 44-4056 to remove references to prelicensing education.

Section 25 amends section 44-4068 to remove a reference to prelicensing education.

Section 26 amends section 44-4521 to remove a reference to prelicensing education.

Section 27 amends section 44-8105 to harmonize a cross reference.

Section 28 is the amendatory repealer.

Section 29 outright repeals sections requiring prelicensing education, sections 44-3909, 44-3910, 44-3911, 44-3912, and 44-3913.

Brett Lindstrom, Chairperson