

1 HB591
2 167567-1
3 By Representative Martin
4 RFD: Insurance
5 First Read: 30-APR-15

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8 SYNOPSIS: Under existing law, insurance adjusters are
9 defined to be representatives of the insurance
10 company and not of the insured.

11 This bill would provide for the licensing
12 and regulation of public adjusters of insurance
13 claims on behalf of insureds.

14
15 A BILL
16 TO BE ENTITLED
17 AN ACT

18
19 Relating to insurance; to provide for the
20 qualifications and procedures for the licensing of public
21 adjusters; to provide definitions and exceptions to the
22 licensing and registration requirements; to require public
23 adjusters to take and pass a written examination, with
24 exception; to provide for nonresident licensing; to require
25 public adjusters to complete a minimum of 24 hours of
26 continuing education on a biennial basis; to provide standards
27 of conduct for public adjusters; to require public adjusters

1 to report administrative action taken against them in other
2 jurisdictions; to give the Commissioner of Insurance authority
3 to promulgate rules necessary to administer and enforce this
4 act; to authorize a delayed effective date for certain
5 provisions; and to amend Section 27-4-2, Code of Alabama 1975,
6 as amended by Act 2014-346, to provide license and application
7 fees for public adjusters.

8 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

9 Section 1. Purpose and Scope.

10 This act governs the qualifications and procedures
11 for the licensing of public adjusters. It specifies the duties
12 of and restrictions on public adjusters, which include
13 limiting their licensure to assisting insureds in first party
14 claims.

15 Section 2. Definitions.

16 For purposes of this act, the following terms shall
17 have the meanings respectively ascribed to them by this
18 section:

19 (1) BUSINESS ENTITY. A corporation, association,
20 partnership, limited liability company, limited liability
21 partnership, or other legal entity.

22 (2) COMMISSIONER. The Alabama Commissioner of
23 Insurance.

24 (3) HOME STATE. The District of Columbia and any
25 state or territory of the United States in which a public
26 adjuster maintains his, her, or its principal place of
27 residence or business and is licensed to act as a resident

1 public adjuster. If the resident jurisdiction does not license
2 public adjusters, the public adjuster shall designate as the
3 adjuster's home state any state in which the public adjuster
4 is licensed and in good standing.

5 (4) INDIVIDUAL. A natural person.

6 (5) NAIC. The National Association of Insurance
7 Commissioners, its subsidiaries and affiliates, and any
8 successor thereof.

9 (6) PERSON. An individual or a business entity.

10 (7) PUBLIC ADJUSTER. As defined in Section 3.

11 (8) STATE OF EMERGENCY. An event for which the
12 existence of a state of emergency has been declared by the
13 Governor or the Legislature under Section 31-9-8, Code of
14 Alabama 1975.

15 (9) UNIFORM BUSINESS ENTITY APPLICATION. The
16 versions of the NAIC Uniform Business Entity Application for a
17 license and for renewal or continuation of a license current
18 as of the time of use.

19 (10) UNIFORM INDIVIDUAL APPLICATION. The versions of
20 the NAIC Uniform Individual Application for a license and for
21 renewal or continuation of a license current as of the time of
22 use.

23 Section 3. "Public adjuster" defined; exclusions.

24 (a) For purposes of this act, a "public adjuster" is
25 a person who, for compensation or any other thing of value,
26 does any of the following on behalf of an insured:

1 (1) Solely in relation to first party claims arising
2 under insurance contracts that insure the real or personal
3 property of the insured, to aid an insured in ascertaining the
4 amount of the damage or loss made the subject of a claim for
5 damage or loss covered by an insurance contract, and to assist
6 in preparation and submission of the claim to an insurer.

7 (2) Investigates or adjusts losses, advises an
8 insured about first-party claims for losses or damages arising
9 out of policies of insurance that insure real or personal
10 property for another person, or engages in the business of
11 adjusting losses or damages covered by an insurance policy for
12 the insured.

13 (b) Nothing in this act, nor the regulations adopted
14 under this act, shall:

15 (1) Authorize any public adjuster or person
16 operating at the discretion of a public adjuster to engage in
17 conduct that is considered the practice of law as defined in
18 Title 34, Chapter 3, Code of Alabama 1975.

19 (2) Apply to a person who is employed by, or under
20 contract to, an insurance company.

21 (3) Affect or alter, in any way, the contractual
22 obligations of an insured to his or her insurance company and
23 the duties each owes to the other.

24 (c) A "public adjuster" does not include following:

25 (1) Attorneys-at-law admitted to practice in this
26 state when acting in their professional capacity as an
27 attorney.

1 (2) A person who negotiates or settles claims
2 arising under a life or health insurance policy or an annuity
3 contract.

4 (3) A person employed only for the purpose of
5 obtaining facts surrounding a loss or furnishing technical
6 assistance to a licensed public adjuster, including
7 photographers, estimators, private investigators, engineers,
8 and handwriting experts.

9 (4) A licensed health care provider, or employee of
10 a licensed health care provider, who prepares or files a
11 health claim form on behalf of a patient.

12 (5) A person who settles subrogation claims between
13 insurers.

14 Section 4. License required.

15 (a) A person shall not act or hold himself or
16 herself out as a public adjuster in this state unless the
17 person is licensed as a public adjuster in accordance with
18 this act.

19 (b) A business entity licensed as a public adjuster
20 shall only designate licensed individual public adjusters to
21 exercise the business entity's license.

22 Section 5. Application for license.

23 (a) The commissioner may contract with
24 nongovernmental entities, including the NAIC, to perform any
25 ministerial functions, including the collection of fees and
26 data, related to licensing that the commissioner may deem
27 appropriate. The commissioner may require that license

1 applications, license renewal applications, and supporting
2 documentation be filed and all required fees and charges be
3 paid electronically through systems operated or maintained by
4 the nongovernmental entities.

5 (b) An individual applying for a resident public
6 adjuster license shall apply to the commissioner on the
7 appropriate NAIC Uniform Individual Application and declare
8 under penalty of perjury and suspension, revocation, or
9 refusal of the license that the statements made in the
10 application are true, correct, and complete to the best of the
11 individual's knowledge and belief. Before approving the
12 application, the commissioner shall find that the individual:

13 (1) Is at least 18 years of age.

14 (2) Is eligible to designate this state as his or
15 her home state.

16 (3) Has not committed any act that is a ground for
17 probation, suspension, revocation, or refusal of a public
18 adjuster's license as set forth in Section 10.

19 (4) Has completed a prelicensing course of study.

20 (5) Has successfully passed the public adjuster
21 examination.

22 (6) Has paid the fees set forth in Section 27-4-2,
23 Code of Alabama 1975.

24 (c) No resident of another state or of the District
25 of Columbia may be licensed pursuant to this section or may
26 designate Alabama as his or her home state unless the person
27 has successfully passed the public adjuster examination and

1 has otherwise complied with the other applicable portions of
2 this section.

3 (d) A business entity applying for a resident public
4 adjuster license shall apply to the commissioner on the
5 appropriate NAIC Uniform Business Entity Application and
6 declare under penalty of perjury, suspension, revocation, or
7 refusal of the license that the statements made in the
8 application are true, correct, and complete to the best of the
9 business entity's knowledge and belief. Before approving the
10 application, the commissioner shall find that the business
11 entity:

12 (1) Is eligible to designate this state as its home
13 state.

14 (2) As applicable, has qualified or registered with
15 the office of the Alabama Secretary of State to engage in
16 business in this state.

17 (3) Has designated an individual public adjuster
18 licensed in this state as responsible for the business
19 entity's compliance with this act and with the insurance laws,
20 rules, and regulations of this state.

21 (4) Has not committed an act that is a ground for
22 probation, suspension, revocation, or refusal of a public
23 adjuster's license as set forth in Section 10.

24 (5) Has paid the fees set forth in Section 27-4-2,
25 Code of Alabama 1975.

1 (e) Before issuing a public adjuster license to an
2 applicant under this section, the commissioner shall also find
3 that the applicant:

4 (1) Is financially responsible to exercise the
5 license and has provided proof of financial responsibility as
6 required in Section 11.

7 (2) Maintains an office in the home state with
8 public access by reasonable appointment or regular business
9 hours. This requirement shall not be deemed to prohibit
10 maintenance of such an office in the applicant's home.

11 (f) The commissioner may require any documents
12 reasonably necessary to verify the information contained in
13 the application.

14 Section 6. License; license renewal; name or address
15 change.

16 (a) Unless denied licensure pursuant to Section 10,
17 a person who meets the requirements of Sections 5 and 7 shall
18 be issued a public adjuster license.

19 (b) A public adjuster license shall be initially
20 renewed in accordance with a schedule prescribed by the
21 commissioner and shall thereafter be subject to renewal on a
22 biennial basis. A renewal shall be effected by submitting a
23 renewal application, by paying the fee for renewal prescribed
24 in Section 27-4-2, Code of Alabama 1975, and by meeting the
25 requirements for renewal, including any applicable continuing
26 education requirements, before the due date for renewal. A
27 license expires if not renewed by the due date for renewal.

1 (c) Within the first 30 days following the date a
2 public adjuster license expires, a reinstatement retroactive
3 to the expiration date shall be effected by submitting a
4 renewal application, by paying a fee of one and one-half times
5 the renewal fee required in Section 27-4-2, Code of Alabama
6 1975, and by meeting the other requirements for renewal
7 including any applicable continuing education requirements.

8 (d) After the first 30 days following the date a
9 public adjuster license expires but within 12 months after the
10 expiration date, the license may be reinstated effective as of
11 the reinstatement by submitting a renewal application, by
12 paying a fee of double the renewal fee required in Section
13 27-4-2, Code of Alabama 1975, and by meeting the other
14 requirements for renewal including any applicable continuing
15 education requirements.

16 (e) After a public adjuster license has been expired
17 12 months, the person must reapply pursuant to Section 5 to
18 again become licensed.

19 (f) A public adjuster who is unable to comply with
20 license renewal procedures and requirements due to military
21 service, long-term medical disability, or some other
22 extenuating circumstance may request a waiver of same and a
23 waiver of any examination requirement, fine, or other sanction
24 imposed for failure to comply with renewal procedures.

25 (g) The license shall contain the licensee's name,
26 address, personal identification number, the date of issuance

1 and expiration, and any other information the commissioner
2 deems necessary.

3 (h) The public adjuster shall inform the
4 commissioner of a change in legal name or address within 30
5 days of the change in a manner prescribed by the commissioner.
6 Failure to timely inform the commissioner of a change in legal
7 name or address shall result in a penalty of fifty dollars
8 (\$50). If the penalty is not paid within 30 days after notice
9 of the penalty assessment, the license shall be suspended
10 until the penalty is paid.

11 Section 7. Prelicensing course and examination.

12 (a) (1) Every individual subject to the examination
13 required in subsection (b) must first complete a prelicensing
14 course consisting of 20 classroom hours, or equivalent
15 individual instruction.

16 (2) The prelicensing course must have been completed
17 within 12 months before the date of the examination as shown
18 on the certificate furnished by the prelicensing course
19 provider.

20 (3) Every prelicensing course provider shall apply
21 annually for the continued authority to issue certificates of
22 completion under rules to be prescribed by the commissioner.

23 (4) At the time of initial approval and annually
24 thereafter the commissioner shall collect from each
25 prelicensing course provider a fee set by the commissioner not
26 to exceed one hundred dollars (\$100). The fee shall be
27 deposited in the State Treasury to the credit of the Insurance

1 Department Fund. Public institutions shall be exempt from
2 paying the fee but shall otherwise be subject to the rules and
3 regulations applicable to other providers.

4 (b) (1) An individual intending to apply for a public
5 adjuster license must pass a written examination unless exempt
6 pursuant to Section 8.

7 (2) The examination shall test the knowledge of the
8 individual concerning property insurance, the duties and
9 responsibilities of a public adjuster, and the insurance laws
10 and regulations of this state. The examination required by
11 this section shall be developed and conducted under rules and
12 regulations prescribed by the commissioner.

13 (3) Each individual applying for the examination
14 shall furnish a certificate of completion of the prelicensing
15 course from an authorized prelicensing course provider and pay
16 a nonrefundable fee prescribed by the commissioner as set
17 forth in Section 27-4-2, Code of Alabama 1975.

18 (4) The commissioner may make arrangements,
19 including contracting with an outside testing service, for
20 administering examinations and collecting the nonrefundable
21 fee set forth in Section 27-4-2, Code of Alabama 1975.

22 (5) An individual who fails to appear for the
23 examination as scheduled or fails to pass the examination,
24 shall reapply for an examination and remit all required fees
25 and forms before being rescheduled for another examination.

26 (6) No individual who has taken and failed to pass
27 two examinations given pursuant to this section shall be

1 entitled to take any further examination until after the
2 expiration of three months from the date of the last
3 examination which the individual failed to pass. If the
4 individual thereafter fails to pass the examination after two
5 more attempts, the individual shall not be eligible to take
6 any further examination until after the expiration of six
7 months from the date of the last unsuccessful examination. An
8 examination fee shall be paid for each and every examination.

9 Section 8. Exemptions from examination.

10 (a) An individual applicant for a public adjuster
11 license in this state shall not be required to complete any
12 prelicensing course or examination if the person is currently
13 licensed in another state as a public adjuster based on a
14 public adjuster examination that meets or exceeds the
15 examination required as developed and conducted under rules
16 and regulations prescribed by the commissioner. The applicant
17 must either provide certification from the other state that
18 the applicant's license is currently in good standing or the
19 state's public adjuster database records maintained by the
20 NAIC must indicate that the applicant is licensed in good
21 standing.

22 (b) A person licensed as a public adjuster in
23 another state based on a public adjuster examination, who,
24 within 90 days of establishing legal residency in this state,
25 applies to become a resident public adjuster pursuant to
26 Section 6 shall not be required to complete a prelicensing
27 course or an examination.

1 (c) An individual who applies for a public adjuster
2 license in this state who was previously licensed as a public
3 adjuster in this state shall not be required to complete a
4 prelicensing course or examination, but this exemption is only
5 available if the application is received within 12 months of
6 the cancellation of the applicant's previous license in this
7 state and if, at the time of cancellation, the applicant was
8 in good standing in this state.

9 Section 9. Nonresident license.

10 (a) Unless refused licensure pursuant to Section 10,
11 a nonresident person shall receive a nonresident public
12 adjuster license if:

13 (1) The person is currently licensed in good
14 standing as a resident public adjuster in his, her, or its
15 resident or home state.

16 (2) The person has applied for a license and has
17 paid the fees required by Section 27-4-2, Code of Alabama
18 1975.

19 (3) If a business entity, and as applicable, the
20 entity has qualified or registered with the office of the
21 Alabama Secretary of State to engage in business in this
22 state.

23 (4) The person's designated home state awards
24 nonresident public adjuster licenses to residents of this
25 state on the same basis.

26 (b) The commissioner may verify the public
27 adjuster's licensing status through any appropriate database,

1 including the public adjuster database maintained by the NAIC
2 or may request certification of good standing as described in
3 subsection (a) of Section 8.

4 (c) As a condition to continuation of a nonresident
5 public adjuster license in this state, the licensee shall
6 maintain a resident public adjuster license in the adjuster's
7 home state. A licensee shall notify the commissioner within 30
8 days if the licensee's resident public adjuster license
9 terminates for any reason and shall include the new address if
10 the licensee has obtained a resident license in a new home or
11 resident state. Termination of a resident or home state
12 license shall terminate the nonresident public adjuster
13 license in this state unless the termination is due to the
14 public adjuster being issued a new resident public adjuster
15 license in the adjuster's new resident or home state, provided
16 the new resident or home state awards nonresident public
17 adjuster licenses to persons of this state on the same basis.

18 Section 10. License denial, nonrenewal, or
19 revocation.

20 (a) The commissioner may place on probation,
21 suspend, revoke, or refuse to issue or renew a public
22 adjuster's license, or may levy a civil penalty in accordance
23 with subsection (d), or any combination of actions, for any
24 one or more of the following causes:

25 (1) Providing incorrect, misleading, incomplete, or
26 materially untrue information in the license application.

1 (2) Violating any insurance laws, regulations,
2 subpoena, or order of the commissioner or of another state's
3 insurance regulator.

4 (3) Obtaining or attempting to obtain a license
5 through misrepresentation or fraud.

6 (4) Improperly withholding, misappropriating, or
7 converting any monies or properties received in the course of
8 acting as an adjuster of any type or in otherwise doing
9 insurance business in this state or elsewhere.

10 (5) Intentionally misrepresenting the terms of an
11 actual insurance contract.

12 (6) Having been convicted of a felony or other
13 offense involving dishonesty, fraud, deceit, or
14 misrepresentation in a final decision of a court of competent
15 jurisdiction.

16 (7) Having admitted or been found to have committed
17 any insurance unfair trade practice or fraud.

18 (8) Using fraudulent, coercive or dishonest
19 practices, or demonstrating incompetence, untrustworthiness or
20 financial irresponsibility, in the course of acting as an
21 adjuster of any type or otherwise in the conduct of business
22 in this state or elsewhere.

23 (9) Having a public adjuster license, independent
24 adjuster license, company or employee adjuster license,
25 emergency adjuster license or registration or its equivalent,
26 or insurance producer license or its equivalent suspended,

1 revoked, or refused in any other state, province, district, or
2 territory.

3 (10) Forging another's name to any document or
4 impersonating the insured related to an insurance transaction
5 or in connection with a claim being adjusted by the adjuster.

6 (11) Cheating, including improperly using notes or
7 any other reference material, to complete an examination for
8 an insurance license.

9 (12) Failing to comply with an administrative or
10 court order imposing a child support obligation.

11 (13) Failing to pay state income tax or comply with
12 any administrative or court order directing payment of state
13 income tax which remains unpaid.

14 (14) Violation of one or more of the standards of
15 conduct prescribed in Section 17.

16 (15) If not actively licensed as an attorney in
17 Alabama, engaging in conduct in exercise of a public
18 adjuster's license which is the practice of law.

19 (16) Knowingly accepting insurance business from an
20 individual who is not licensed by the commissioner who is
21 required to be so licensed.

22 (17) Allowing a person not licensed under this act
23 to perform actions requiring licensure under this act.

24 (18) Failing to notify the insured, verbally or in
25 writing, of the statutory requirements of this act, as they
26 pertain to solicitation, contracting, and recision and the
27 time frames contained in this act.

1 (b) In the event the action by the commissioner is
2 to refuse application for licensure or renewal of an existing
3 license, the commissioner shall notify the applicant or
4 licensee in writing, advising of the reason for the refusal.
5 The applicant or licensee may make written demand upon the
6 commissioner within 30 days for a hearing before the
7 commissioner to determine the reasonableness of the refusal.
8 The hearing shall be held pursuant to Chapter 2 of Title 27,
9 Code of Alabama 1975.

10 (c) The license of a business entity may be placed
11 on probation, suspended, or revoked if the commissioner finds,
12 after a hearing, that an individual licensee's violation
13 occurred while acting on behalf of or representing the
14 business entity and that the violation was known or should
15 have been known by one or more of the business entity's
16 partners, officers, or managers and that the violation was
17 neither reported to the commissioner nor was corrective action
18 taken in relation thereto.

19 (d) In the absence of a greater fine specifically
20 provided elsewhere in Title 27 of the Code of Alabama 1975,
21 and in addition to or in lieu of any applicable probation,
22 suspension, revocation or refusal, a person, in the sole
23 discretion of the commissioner after a hearing, may be subject
24 additionally to a civil fine in an amount not to exceed ten
25 thousand dollars (\$10,000) per violation.

26 (e) The commissioner shall retain the authority to
27 enforce the provisions of and impose any penalty or remedy

1 authorized by this act or elsewhere in Title 27 of the Code of
2 Alabama 1975, against any person who is under investigation
3 for or charged with a violation of this act or Title 27 even
4 if the person's license or registration has been surrendered
5 or has lapsed by operation of law.

6 (f) The commissioner shall promptly report to the
7 Alabama State Bar any evidence that a person licensed as a
8 public adjuster on an emergency or permanent basis, but not
9 also actively licensed as an attorney in Alabama is engaging,
10 or has engaged, in activities which appear to be the practice
11 of law.

12 Section 11. Bond or letter of credit.

13 (a) Prior to issuance of a license as a public
14 adjuster and for the duration of the license, the applicant
15 shall secure evidence of financial responsibility in a format
16 prescribed by the commissioner through either a security bond
17 or irrevocable letter of credit.

18 (b) The surety bond must be executed and issued by
19 an insurer authorized to issue surety bonds in this state, and
20 meet all of the following requirements:

21 (1) It shall be in the minimum amount of fifty
22 thousand dollars (\$50,000).

23 (2) It shall be in favor of this state and shall
24 specifically authorize recovery by the commissioner on behalf
25 of any person in this state who sustained damages as the
26 result of erroneous acts, failure to act, conviction of fraud,

1 or conviction of unfair practices in his or her capacity as a
2 public adjuster.

3 (3) It shall not be terminated unless at least 30
4 days' prior written notice has been filed with the
5 commissioner and given to the licensee.

6 (c) The letter of credit must be irrevocable, issued
7 by a qualified financial institution, and meet all of the
8 following requirements:

9 (1) It shall be in the minimum amount of fifty
10 thousand dollars (\$50,000).

11 (2) It shall be to an account to the commissioner
12 and subject to lawful levy of execution on behalf of any
13 person to whom the public adjuster has been found to be
14 legally liable as the result of erroneous acts, failure to
15 act, fraudulent acts, or unfair practices in his or her
16 capacity as a public adjuster.

17 (3) It shall not be terminated unless at least 30
18 days' prior written notice has been filed with the
19 commissioner and given to the licensee.

20 (d) The issuer of the evidence of financial
21 responsibility shall notify the commissioner upon termination
22 of the bond or letter of credit, unless otherwise directed by
23 the commissioner.

24 (e) The commissioner may ask for the evidence of
25 financial responsibility at any time the commissioner deems
26 relevant.

1 (f) The authority to act as a public adjuster shall
2 automatically terminate if the evidence of financial
3 responsibility terminates or becomes impaired.

4 Section 12. Continuing education.

5 (a) An individual who holds a public adjuster
6 license and who is not exempt under subsection (b) shall
7 satisfactorily complete a minimum of 24 hours of continuing
8 education courses as may be approved by the commissioner, of
9 which three hours must be in ethics, reported to the
10 commissioner on a biennial basis in conjunction with the
11 license renewal cycle.

12 (b) This section shall not apply to:

13 (1) Licensees not licensed for one full year prior
14 to the end of the applicable continuing education biennium.

15 (2) Licensees holding nonresident public adjuster
16 licenses who have met the continuing education requirements of
17 their home state and whose home state gives credit to
18 residents of this state on the same basis.

19 (c) Only continuing education courses and providers
20 approved by the commissioner shall be used to satisfy the
21 continuing education requirements of this section. Continuing
22 education providers and courses shall be subject to the same
23 requirements and fees set forth in Chapter 8A of Title 27 of
24 the Code of Alabama 1975.

25 (d) The commissioner shall prescribe the number of
26 hours of continuing education credit for each continuing
27 education course approved. Continuing education courses

1 submitted in accordance with a reciprocal agreement the
2 commissioner enters with other states shall be approved
3 according to the provisions of the reciprocal agreement.

4 (e) If a continuing education course requires
5 successful completion of a written examination, no continuing
6 education credit shall be given to licensees who do not
7 successfully complete the written examination.

8 (f) An individual teaching any approved continuing
9 education course shall qualify for the same number of hours of
10 continuing education credit as would be granted to a licensee
11 taking and satisfactorily completing the course.

12 Section 13. Public adjuster fees.

13 (a) A public adjuster shall not pay a commission,
14 service fee, or other valuable consideration to a person for
15 rendering public adjuster services under this act in this
16 state if that person is required to be licensed under this act
17 and is not so licensed.

18 (b) A person shall not accept a commission, service
19 fee, or other valuable consideration for rendering public
20 adjuster services under this act in this state if that person
21 is required to be licensed under this act and is not so
22 licensed.

23 (c) Pursuant to Section 34-3-25, Code of Alabama
24 1975, a person shall not accept a commission, service fee, or
25 other valuable consideration from a person licensed to
26 practice law.

1 (d) A public adjuster may pay or assign commissions,
2 service fees, or other valuable consideration to persons who
3 obtain facts surrounding a loss or furnish technical
4 assistance pursuant to subdivision (3) of subsection (c) of
5 Section 3.

6 (e) In the event of a state of emergency, no public
7 adjuster shall charge or agree to or accept as compensation or
8 reimbursement any payment, commission, fee, or other thing of
9 value more than the payment, commission, fee or other thing of
10 value established by the public adjuster if it were not a
11 state of emergency.

12 (f) No public adjuster shall require, demand, or
13 accept any fee, retainer, compensation, deposit, or other
14 thing of value, prior to settlement of a claim.

15 (g) No public adjuster shall receive or accept a
16 commission, service fee, or other valuable consideration for
17 referral of an insured to any construction firm, salvage firm,
18 building appraisal firm, motor vehicle repair shop, or any
19 other firm that performs any work in conjunction with damages
20 caused by the insured loss. "Firm" includes any corporation,
21 partnership, association, joint stock company, or individual.

22 Section 14. Contract between public adjuster and
23 insured.

24 (a) Public adjusters shall ensure that all contracts
25 for their services are in writing and contain all of the
26 following terms:

- 1 (1) Legible full name of the adjuster signing the
2 contract, as specified in Department of Insurance records.
- 3 (2) Permanent home state business address and phone
4 number.
- 5 (3) Department of Insurance license number.
- 6 (4) Title of "Public Adjuster Contract."
- 7 (5) The insured's full name, street address,
8 insurance company name and policy number, if known or upon
9 notification.
- 10 (6) A description of the loss and its location, if
11 applicable.
- 12 (7) Description of services to be provided to the
13 insured.
- 14 (8) Signatures of the public adjuster and the
15 insured.
- 16 (9) Date contract was signed by the public adjuster
17 and date the contract was signed by the insured.
- 18 (10) Attestation language stating that the public
19 adjuster is fully bonded pursuant to state law.
- 20 (11) Full salary, fee, commission, compensation, or
21 other considerations the public adjuster is to receive for
22 services.
- 23 (12) Expenses to be reimbursed to a public adjuster
24 as provided under subdivision 3 of subsection (c) of Section 3
25 shall be specified by type, with dollar estimates set forth in
26 the contract and with any additional expenses to first be
27 approved by the insured.

1 (13) Compensation provisions in a public adjusting
2 contract shall not be redacted in any copy of the contract
3 provided to the commissioner. Such a redaction shall
4 constitute an omission of a material fact is hereby declared a
5 deceptive act in violation of Chapter 12 of Title 27, Code of
6 Alabama 1975.

7 (b) The contract shall provide that the insured has
8 the right to cancel the contract without penalty or obligation
9 within three business days after the date the contract was
10 signed, provided that during any state of emergency declared
11 under Section 31-9-8, Code of Alabama 1975, and for a period
12 of one year after the date of the loss, the insured shall have
13 five business days after the date on which the contract is
14 executed to cancel the contract. The contract may provide that
15 notice of cancellation be in writing and sent to the public
16 adjuster or in a form of mailing which provides proof of
17 delivery, at the address in the contract or the last
18 reasonably ascertained address within the cancellation period.
19 The contract shall provide that if the insured exercises the
20 right to cancel the contract, anything of value given by the
21 insured under the contract will be returned to the insured
22 within 15 business days following the receipt by the public
23 adjuster of the cancellation notice.

24 (c) If the insurer, not later than 72 hours after
25 the date on which the loss is reported to the insurer, either
26 pays or commits in writing to pay to the insured the policy
27 limit of the insurance policy, the public adjuster shall:

1 (1) Not receive a commission consisting of a
2 percentage of the total amount paid by an insurer to resolve a
3 claim.

4 (2) Inform the insured that loss recovery amount
5 might not be increased by insurer.

6 (3) Be entitled only to reasonable compensation from
7 the insured for services provided by the public adjuster on
8 behalf of the insured, based on the time spent on a claim and
9 expenses incurred by the public adjuster, until the claim is
10 paid or the insured receives a written commitment to pay from
11 the insurer.

12 (d) A public adjuster shall provide the insured a
13 written disclosure concerning any direct or indirect financial
14 interest including, but not limited to, ownership that the
15 public adjuster has with any other party involved in any
16 aspect of the claim.

17 (e) A public adjuster contract may not contain any
18 contract term that:

19 (1) Allows the public adjuster's percentage fee to
20 be collected when money is due from an insurance company, but
21 not paid, or that allows a public adjuster to collect the
22 entire fee from the first check issued by an insurance
23 company, rather than as percentage of each check issued by an
24 insurance company.

25 (2) Requires the insured to authorize an insurance
26 company to issue a check only in the name of the public
27 adjuster or as a co-payee.

1 (3) Imposes collection costs or late fees.

2 (4) Precludes an insured from pursuing civil
3 remedies.

4 (f) Prior to the signing of the contract the public
5 adjuster shall provide the insured with a separate disclosure
6 document regarding the claim process that states:

7 "(1) Property insurance policies obligate the
8 insured to present a claim to his or her insurance company for
9 consideration. There are three types of adjusters that could
10 be involved in that process. The definitions of the three
11 types are as follows:

12 "a. "Company adjuster" means the insurance adjusters
13 who are employees of an insurance company. They represent the
14 interest of the insurance company and are paid by the
15 insurance company. They will not charge you a fee.

16 "b. "Independent adjuster" means the insurance
17 adjusters who are hired on a contract basis by an insurance
18 company to represent the insurance company's interest in the
19 settlement of the claim. They are paid by your insurance
20 company. They will not charge you a fee.

21 "c. "Public adjuster" means the insurance adjusters
22 who do not work for any insurance company. They work for the
23 insured to assist in the preparation, presentation, and
24 settlement of the claim. The insured hires them by signing a
25 contract agreeing to pay them a fee.

1 "(2) The insured is not required to hire a public
2 adjuster to help the insured meet his or her obligations under
3 the policy, but has the right to do so.

4 "(3) The insured has the right to initiate direct
5 communications with the insured's attorney, the insurer, the
6 insurer's adjuster, and the insurer's attorney, or any other
7 person regarding the settlement of the insured's claim.

8 "(4) The public adjuster is not a representative or
9 employee of the insurer.

10 "(5) The salary, fee, commission, or other
11 consideration of the public adjuster is the obligation of the
12 insured, not the insurer.

13 "(6) If the insured also hires an attorney, the fees
14 and expenses to be paid to the attorney will be in addition to
15 the fees and expenses charged by the public adjuster."

16 (g) The contracts shall be executed in duplicate to
17 provide an original contract to the public adjuster and an
18 original contract to the insured. The public adjuster's
19 original contract shall be available at all times for
20 inspection without notice by the commissioner.

21 (h) The public adjuster shall provide the insurer a
22 notification letter, which has been signed by the insured,
23 authorizing the public adjuster to provide the insurer
24 information on the insured's behalf.

25 Section 15. Insurance funds.

1 A public adjuster shall not receive, accept, or hold
2 any funds on behalf of an insured towards the settlement of a
3 claim for loss or damage.

4 Section 16. Record retention.

5 (a) A public adjuster shall maintain a complete
6 record of each transaction as a public adjuster. The records
7 required by this section shall include the following:

8 (1) Name of the insured.

9 (2) Date, location, and amount of the loss.

10 (3) Copy of the contract between the public adjuster
11 and insured.

12 (4) Name of the insurer, amount, expiration date,
13 and number of each policy carried with respect to the loss.

14 (5) Itemized statement of the insured's recoveries.

15 (6) Itemized statement of all compensation received
16 by the public adjuster, from any source whatsoever, in
17 connection with the loss.

18 (7) A register of all monies received, deposited,
19 disbursed, or withdrawn in connection with a transaction with
20 an insured, including fees transfers and disbursements from a
21 trust account and all transactions concerning all interest
22 bearing accounts.

23 (8) Name of the public adjuster who executed the
24 contract.

25 (9) Name of the attorney representing the insured,
26 if applicable, and the name of the claims representatives of
27 the insurance company.

1 (10) Evidence of financial responsibility in a
2 format prescribed by the insurance commissioner.

3 (b) Records shall be maintained for at least five
4 years after the termination of the transaction with an insured
5 and shall be open to examination by the commissioner at all
6 times.

7 (c) Records submitted to the commissioner in
8 accordance with this section that contain information
9 identified in writing as proprietary by the public adjuster
10 shall be treated as confidential by the commissioner and shall
11 not be subject to any open record laws of this state.

12 Section 17. Standards of conduct of public adjuster.

13 (a) A public adjuster is obligated, under the
14 adjuster's license, to serve with objectivity and complete
15 loyalty the interest of the client alone; and to render to the
16 insured such information, counsel, and service, as within the
17 knowledge, understanding, and opinion in good faith of the
18 licensee, as will best serve the insured's insurance claim
19 needs and interest.

20 (b) A public adjuster shall not misrepresent to a
21 claimant that the adjuster is an adjuster representing an
22 insurer in any capacity, including acting as an employee of
23 the insurer or acting as an independent adjuster unless so
24 appointed by an insurer in writing to act on the insurer's
25 behalf for that specific claim or purpose. A licensed public
26 adjuster is prohibited from charging that specific claimant a

1 fee when appointed by the insurer and the appointment is
2 accepted by the public adjuster.

3 (c) A public adjuster shall not solicit, or attempt
4 to solicit, an insured during the progress of a loss-producing
5 occurrence, as defined in the insured's insurance contract.

6 (d) A public adjuster shall not permit an unlicensed
7 employee or representative of the public adjuster to conduct
8 business for which a license is required under this act.

9 (e) A public adjuster shall not have a direct or
10 indirect ownership interest in any aspect of the claim, other
11 than the salary, fee, commission, or other consideration
12 established in the written contract with the insured, unless
13 full written disclosure has been made to the insured as set
14 forth in subsection (h).

15 (f) A public adjuster shall not acquire, directly or
16 indirectly, any interest in salvage of property subject to the
17 contract with the insured.

18 (g) A public adjuster shall abstain from referring
19 or directing the insured to get needed repairs or services in
20 connection with a loss from any person, unless disclosed to
21 the insured with whom the public adjuster has an ownership
22 interest.

23 (h) A public adjuster shall disclose to an insured
24 if the adjuster has any ownership interest in any construction
25 firm, salvage firm, building appraisal firm, motor vehicle
26 repair shop, or any other firm that performs any work in
27 conjunction with damages caused by the insured loss. The word

1 "firm" shall include any corporation, partnership,
2 association, joint stock company, or individual.

3 (i) Any compensation or anything of value in
4 connection with an insured's specific loss that will be
5 received by a public adjuster shall be disclosed by the public
6 adjuster to the insured in writing including the source and
7 amount of the compensation.

8 (j) A public adjuster shall not give or offer to
9 give a monetary loan or advance to a client or prospective
10 client.

11 (k) A public adjuster or any individual or entity
12 acting on behalf of a public adjuster shall not directly or
13 indirectly give or offer to give any article of merchandise
14 having a value in excess of fifteen dollars (\$15) to any
15 individual for the purpose of advertising or as an inducement
16 to enter into a contract with a public adjuster.

17 (l) A public adjuster shall not invite an insured to
18 submit a claim by offering monetary or other valuable
19 inducement.

20 (m) A public adjuster shall not invite an insured to
21 submit a claim by stating there is "no risk" to the insured by
22 submitting such claim.

23 (n) A public adjuster shall not use any statement,
24 representation, logo, or shield that would imply or could be
25 mistakenly construed that the solicitation was issued or
26 distributed by a governmental agency, insurer, or is
27 sanctioned or endorsed by a governmental agency or insurer.

1 (o) A public adjuster shall be required to add the
2 following disclaimer in bold print and capital letters in
3 typeface no smaller than the typeface of the body of the text
4 to all written advertisement by any public adjuster:

5 "THIS IS A SOLICITATION FOR BUSINESS. IF YOU HAVE
6 HAD A CLAIM FOR AN INSURED PROPERTY LOSS OR DAMAGE AND YOU ARE
7 SATISFIED WITH THE PAYMENT BY YOUR INSURER, YOU MAY DISREGARD
8 THIS ADVERTISEMENT."

9 (p) Public adjusters shall adhere to the following
10 general ethical requirements:

11 (1) A public adjuster shall not undertake the
12 adjustment of any claim if the public adjuster is not
13 competent and knowledgeable as to the terms and conditions of
14 the insurance coverage, or which otherwise exceeds the public
15 adjuster's current expertise.

16 (2) A public adjuster shall not knowingly make any
17 oral or written material misrepresentations or statements
18 which are false or maliciously critical and intended to injure
19 any person engaged in the business of insurance to any insured
20 client or potential insured client.

21 (3) No public adjuster, while so licensed by the
22 department, may represent or act as a company adjuster or
23 independent adjuster on the same claim.

24 (4) The contract shall not be construed to prevent
25 an insured from pursuing any civil remedy after the three
26 business day revocation or cancellation period.

1 (5) A public adjuster shall not enter into a
2 contract or accept a power of attorney that vests in the
3 public adjuster the effective authority to do anything outside
4 of what is allowed under this act, choose the persons who
5 shall perform repair work, or perform the repair work, except
6 as allowed under this act with proper disclosure.

7 (6) A public adjuster shall ensure that all
8 contracts for the public adjuster's services are in writing
9 and set forth all terms and conditions of the engagement.

10 (q) A public adjuster who is not actively licensed
11 as an attorney in this state shall not give legal advice or
12 otherwise engage in activities which are the practice of law.

13 Section 18. Reporting of actions.

14 (a) A public adjuster shall report to the
15 commissioner any administrative action taken against the
16 public adjuster in another jurisdiction or by another
17 governmental agency in this state within 30 days of the final
18 disposition of the matter. This report shall include a copy of
19 the order, consent to order, or other relevant legal
20 documents.

21 (b) Within 30 days of the initial pretrial hearing
22 date, a public adjuster shall report to the commissioner any
23 criminal action taken against the public adjuster in this or
24 any jurisdiction. The report shall include a copy of the
25 initial complaint filed, the order resulting from the hearing,
26 and any other relevant legal documents.

27 Section 19. Fingerprints.

1 (a) In order to make a determination of license
2 eligibility, the commissioner is authorized to require
3 fingerprints of applicants and submit the fingerprints and the
4 fee required to perform the criminal history record checks to
5 the Alabama Department of Public Safety and the Federal Bureau
6 of Investigation (FBI) for state and national criminal history
7 record checks.

8 (b) The commissioner is authorized to require a
9 criminal history record check on each applicant in accordance
10 with this section. The commissioner shall require each
11 applicant to submit a full set of fingerprints (including a
12 scanned file from a hard copy fingerprint) in order for the
13 commissioner to obtain and receive national criminal history
14 records from the FBI Criminal Justice Information Services
15 Division. In the case of business entity applicants, the
16 commissioner shall require the submission of fingerprints of
17 all of the following:

18 (1) All executive officers and directors of the
19 applicant.

20 (2) Any individual owning, directly or indirectly,
21 51 percent or more of the outstanding voting securities of the
22 applicant.

23 (3) All executive officers and directors of entities
24 owning 51 percent or more of the outstanding voting securities
25 of the applicant.

26 (c) The commissioner may contract for the
27 collection, transmission, and resubmission of fingerprints

1 required under this section. If the commissioner does so, the
2 fee for collecting, transmitting, and retaining fingerprints
3 shall be payable directly to the contractor by the person. The
4 commissioner may agree to a reasonable fingerprinting fee to
5 be charged by the contractor.

6 (d) The commissioner may waive submission of
7 fingerprints by any person who has previously furnished
8 fingerprints and those fingerprints are on file with the
9 centralized repository of the NAIC.

10 (e) The commissioner is authorized to receive
11 criminal history record information in lieu of the Alabama
12 Department of Public Safety that submitted the fingerprints to
13 the FBI.

14 (f) The commissioner is authorized to submit
15 electronic fingerprint records and necessary identifying
16 information to the NAIC for permanent retention in a
17 centralized repository. The purpose of such a centralized
18 repository is to provide insurance commissioners with access
19 to fingerprint records in order to perform criminal history
20 record checks.

21 (g) The commissioner shall treat and maintain an
22 applicant's fingerprints and any criminal history record
23 information obtained under this section as confidential and
24 shall apply security measures consistent with the Criminal
25 Justice Information Services Division of the Federal Bureau of
26 Investigation standards for the electronic storage of
27 fingerprints and necessary identifying information and limit

1 the use of records solely to the purposes authorized in this
2 section. The fingerprints and any criminal history record
3 information shall not be subject to subpoena, other than one
4 issued in a criminal action or investigation, and shall be
5 confidential.

6 Section 20. Rules.

7 (a) The commissioner may promulgate reasonable rules
8 as are necessary or proper to carry out the purposes of this
9 act in accordance with Chapter 2 of Title 27, Code of Alabama
10 1975.

11 (b) The commissioner, by rule, may provide for
12 delayed enforcement dates of up to 24 months following the
13 effective date of this act to allow for the implementation of
14 the provisions of this act relating to fingerprinting, the
15 prelicensing course and examination, and continuing education.

16 Section 21. Civil actions; liability.

17 The commissioner, the Attorney General, the district
18 attorney of a county within which an alleged violation has
19 occurred, or any person may bring a civil action against a
20 person or business entity violating this act in the
21 appropriate court in the county where the alleged violator
22 resides or where the principal place of business of the
23 alleged violator is located or in the county where the alleged
24 violation occurred. Upon a proper showing of a violation, the
25 court may temporarily, preliminarily, or permanently enjoin
26 the defendant from violations of this act and award any other
27 legal or equitable relief, including actual damages and

1 punitive damages, as may be appropriate in light of the nature
2 of the violation.

3 Section 22. Section 27-4-2, Code of Alabama 1975, as
4 amended by Act 2014-346, is amended to read as follows:

5 "§27-4-2.

6 "(a) The Commissioner of Insurance shall collect in
7 advance fees, licenses, and miscellaneous charges as follows:

8 "(1) Certificate of authority:

9 "a. Initial application for original certificate of
10 authority, including the filing with the commissioner of all
11 documents incidental thereto \$500

12 "b. Issuance of original certificate of authority
13 500

14 "c. Annual continuation or renewal fee 500

15 "d. Reinstatement fee 500

16 "(2) Charter documents, filing with the commissioner
17 amendment to articles of incorporation or of association, or
18 of other charter documents or to bylaws 25

19 "(3) Solicitation permit, filing application and
20 issuance 250

21 "(4) Annual statement of insurer, except when filed
22 as part of application for original certificate of authority,
23 filing 25

24 "(5) Producer licenses (resident or nonresident):

25 "a. Individuals:

26 "1. Application fee (For filing of initial
27 application for license) 20

1 "2. License fee (For issuance of original license)
2 40

3 "b. Business entities:

4 "1. Application fee (For filing of initial
5 application for license) 20

6 "2. License fee (For original license and each
7 biennial renewal) 100

8 "c. Examination fees (For producer examination or
9 reexamination, each classification of examination) 50

10 "(6) Producer appointment fee:

11 "a. Filing notice of appointment 30

12 "b. Annual continuation of appointment 10

13 "(7) Reinsurance intermediary license:

14 "a. Filing application for license 30

15 "b. Issuance of initial license 140

16 "c. Annual continuation of license 100

17 "(8) Managing general agent license:

18 "a. Application fee (For filing of initial
19 application for license, each insurer) 30

20 "b. Issuance of initial license, each insurer
21 125

22 "c. Annual continuation of license, each insurer
23 75

24 "(9) Service representative's license:

25 "a. Application fee (For filing of initial
26 application for license, each insurer) 20

1 "b. Appointment fee, property and casualty, each
2 insurer (For original appointment and each annual renewal)
3 30

4 "(10) Surplus line broker:

5 "a. Application fee (For filing of initial
6 application for license) 20

7 "b. License fee (For original license and each
8 annual renewal):

9 "1. Individual licensees 200

10 "2. Business entity licensees 500

11 "(11) Adjusters (independent and public; resident or
12 nonresident):

13 "a. Application fee (For filing of initial
14 application for license; individuals and business entities)
15 20

16 "b. License fee (For original license and each
17 biennial continuation)

18 "1. Individual licensees 80

19 "2. Business entity licensees 200

20 "c. Examination fee, an amount set by the
21 commissioner not to exceed 100

22 "(12) Miscellaneous services:

23 "a. For copies of documents, records on file in
24 Insurance Department, per page 1

25 "b. For each certificate under seal of the
26 commissioner, other than licenses 5

1 "(13) The commissioner shall collect a fee of fifty
2 dollars (\$50) when, in acting as agent for service of process
3 for any insurance company, fraternal benefit society, mutual
4 aid association, nonresident producer, nonresident independent
5 or public adjuster, or nonresident surplus line broker, he or
6 she accepts the service of legal process as provided by the
7 laws of this state. The commissioner shall refuse to receive
8 and file or serve any process unless the process is
9 accompanied by the aforementioned fee, which shall be taxed as
10 costs in the action.

11 "(b) The fees and licenses specified in subsection
12 (a) shall be deposited in the State Treasury with 50 percent
13 credited to the General Fund and 50 percent credited to the
14 Insurance Department Fund."

15 Section 23. This act shall become effective on the
16 first day of January next following its passage and approval
17 by the Governor, or its otherwise becoming law.