

1 SENATE BILL 477

2 **50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011**

3 INTRODUCED BY

4 John M. Sapien

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10 AN ACT

11 RELATING TO INSURANCE; EXTENDING THE CONTINUATION OF ADJUSTER
12 LICENSE TO A BIENNIAL BASIS; ADDING INDICTMENT OR BEING CHARGED
13 WITH A CRIMINAL ACT AS A REASON FOR SUSPENSION, REVOCATION OR
14 REFUSAL TO CONTINUE A LICENSE; ALLOWING THE SUPERINTENDENT OF
15 INSURANCE TO WAIVE, SUSPEND OR EXTEND ADJUSTER LICENSING
16 REQUIREMENTS IN A CATASTROPHE OR EMERGENCY; DEFINING "PUBLIC
17 ADJUSTER"; CLARIFYING BOND REQUIREMENTS FOR INDEPENDENT AND
18 PUBLIC ADJUSTERS; ELIMINATING TEMPORARY LICENSES FOR STAFF
19 ADJUSTERS; EXPANDING RECORD RETENTION REQUIREMENTS OF
20 INDEPENDENT AND PUBLIC ADJUSTERS; REQUIRING WORKERS'
21 COMPENSATION INSURERS TO HAVE A RESIDENT ADJUSTER; PROVIDING
22 REQUIREMENTS FOR PUBLIC ADJUSTER CONTRACTS; REQUIRING CERTAIN
23 DISCLOSURES TO A CLIENT OF A PUBLIC ADJUSTER; PROVIDING FOR A
24 CLIENT'S RIGHT TO RESCIND; REQUIRING A PUBLIC ADJUSTER TO
25 DEPOSIT MONEY FROM A CLIENT IN AN ESCROW OR TRUST ACCOUNT;

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1 PROVIDING STANDARDS OF CONDUCT OF PUBLIC ADJUSTERS; REQUIRING
2 PUBLIC ADJUSTERS TO REPORT ADMINISTRATIVE ACTIONS AGAINST THE
3 PUBLIC ADJUSTER; PROVIDING FOR PENALTIES.

4
5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

6 SECTION 1. Section 59A-6-1 NMSA 1978 (being Laws 1984,
7 Chapter 127, Section 101, as amended) is amended to read:

8 "59A-6-1. FEE SCHEDULE.--The superintendent shall collect
9 the following fees:

- 10 A. insurer's certificate of authority -
 - 11 (1) filing application for certificate of
 - 12 authority, and issuance of certificate of authority, if issued,
 - 13 including filing of all charter documents, financial
 - 14 statements, service of process, power of attorney, examination
 - 15 reports and other documents included with and part of the
 - 16 application \$1,000.00
 - 17 (2) annual continuation of certificate of
 - 18 authority, per kind of insurance, each year
 - 19 continued 200.00
 - 20 (3) reinstatement of certificate of authority
 - 21 (Section 59A-5-23 NMSA 1978) 150.00
 - 22 (4) amendment to certificate of
 - 23 authority 200.00

24 B. charter documents - filing amendment to any
25 charter document (as defined in Section 59A-5-3

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1	NMSA 1978)	10.00
2	C. annual statement of insurer,	
3	filing	200.00
4	D. service of process, acceptance by superintendent	
5	and issuance of certificate of service, where issued	10.00
6	E. agents' licenses and appointments -	
7	(1) filing application for original agent	
8	license and issuance of license, if issued	30.00
9	(2) appointment of agent -	
10	(a) filing appointment, per kind of	
11	insurance, each insurer	20.00
12	(b) continuation of appointment, each	
13	insurer, each year continued	20.00
14	(3) variable annuity agent's license -	
15	(a) filing application for license and	
16	issuance of license, if issued	30.00
17	(b) continuation of appointment each	
18	year	20.00
19	(4) temporary license as to life and health	
20	insurance or both	30.00
21	(a) as to property insurance	30.00
22	(b) as to casualty/surety	
23	insurance	30.00
24	(c) as to vehicle insurance	30.00
25	F. solicitor license -	

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1 (1) filing application for original license
2 and issuance of license, if issued 30.00
3 (2) continuation of appointment, per kind of
4 insurance, each year 20.00
5 G. broker license -
6 (1) filing application for license and
7 issuance of original license, if issued 30.00
8 (2) annual continuation of
9 license 30.00
10 H. insurance vending machine license -
11 (1) filing application for original license
12 and issuance of license, if issued, each machine 25.00
13 (2) annual continuation of license, each
14 machine 25.00
15 I. examination for license, application for
16 examination conducted directly by superintendent, each grouping
17 of kinds of insurance to be covered by the examination as
18 provided by the superintendent's rules, and payable as to each
19 instance of examination 50.00
20 J. surplus line insurer - filing application for
21 qualification as eligible surplus [~~lines~~] line
22 insurer 1,000.00
23 K. surplus line broker license -
24 (1) filing application for original license
25 and issuance of license, if issued 100.00

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1 (2) annual continuation of
2 license 100.00
3 L. adjuster license -
4 (1) filing application for original license
5 and issuance of license, if issued 30.00
6 (2) ~~[annual]~~ biennial continuation of
7 license ~~[30.00]~~ 60.00
8 M. rating organization or rating advisory
9 organization license -
10 (1) filing application for license and
11 issuance of license, if issued 100.00
12 (2) annual continuation of
13 license 100.00
14 N. nonprofit health care plans -
15 (1) filing application for preliminary permit
16 and issuance of permit, if issued 100.00
17 (2) certificate of authority, application,
18 issuance, continuation, reinstatement, charter documents - same
19 as for insurers
20 (3) annual statement, filing 200.00
21 (4) agents and solicitors -
22 (a) filing application for original
23 license and issuance of license, if issued 30.00
24 (b) examination for license conducted
25 directly by superintendent, each instance of

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1 examination 50.00

2 (c) annual continuation of

3 appointment 20.00

4 O. prepaid dental plans -

5 (1) certificate of authority, application,

6 issuance, continuation, reinstatement, charter documents - same

7 as for insurers

8 (2) annual report, filing 200.00

9 (3) agents and solicitors -

10 (a) filing application for original

11 license and issuance of license, if issued 30.00

12 (b) examination for license conducted

13 directly by superintendent, each instance of

14 examination 50.00

15 (c) continuation of license, each

16 year 20.00

17 P. prearranged funeral insurance - application for

18 certificate of authority, issuance, continuation,

19 reinstatement, charter documents, filing annual statement,

20 licensing of sales representatives - same as for insurers

21 Q. premium finance companies -

22 (1) filing application for original license

23 and issuance of license, if issued 100.00

24 (2) annual renewal of license 100.00

25 R. motor clubs -

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- 1 (1) certificate of authority -
- 2 (a) filing application for original
- 3 certificate of authority and issuance of certificate of
- 4 authority, if issued 200.00
- 5 (b) annual continuation of certificate
- 6 of authority 100.00
- 7 (2) sales representatives -
- 8 (a) filing application for registration
- 9 or license and issuance of registration or license, if issued,
- 10 each representative 20.00
- 11 (b) annual continuation of registration
- 12 or license, each representative 20.00
- 13 S. bail bondsmen -
- 14 (1) filing application for original license as
- 15 bail bondsman or solicitor, and issuance of license, if
- 16 issued 30.00
- 17 (2) examination for license conducted directly
- 18 by superintendent, each instance of
- 19 examination 50.00
- 20 (3) continuation of appointment, each
- 21 year 20.00
- 22 T. securities salesperson license -
- 23 (1) filing application for license and
- 24 issuance of license, if issued 25.00
- 25 (2) renewal of license, each year . . . 25.00

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1 U. for each signature and seal of the
2 superintendent affixed to any instrument 10.00

3 V. required filing of forms or rates - by all lines
4 of business other than property or casualty -

5 (1) rates 50.00

6 (2) major form - each new policy and each
7 package submission, which can include multiple policy forms,
8 application forms, rider forms, endorsement forms or amendment
9 forms 30.00

10 (3) incidental forms and rates - forms filed
11 for informational purposes; riders, applications, endorsements
12 and amendments filed individually; rate service organization
13 reference filings; rates filed for informational purposes 15.00

14 W. health maintenance organizations -

15 (1) filing an application for a certificate of
16 authority 1,000.00

17 (2) annual continuation of certificate of
18 authority, each year continued 200.00

19 (3) filing each annual report 200.00

20 (4) filing an amendment to organizational
21 documents requiring approval 200.00

22 (5) filing informational
23 amendments 50.00

24 (6) agents and solicitors -

25 (a) filing application for original

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1	license and issuance of license, if issued	30.00
2	(b) examination for license, each	
3	instance of examination	50.00
4	(c) annual continuation of	
5	appointment	20.00
6	X. purchasing groups and foreign risk retention	
7	groups -	
8	(1) original registration	500.00
9	(2) annual continuation of	
10	registration	200.00
11	(3) agent or broker fees same as for	
12	authorized insurers	
13	Y. third party administrators -	
14	(1) filing application for original individual	
15	insurance administrator license	30.00
16	(2) filing application for original officer,	
17	manager or partner insurance administrator	
18	license	30.00
19	(3) continuation or renewal of annual	
20	license	30.00
21	(4) examination for license conducted directly	
22	by the superintendent, each examination	75.00
23	(5) each request for a duplicate license or	
24	for each name change	30.00
25	(6) filing of annual report	50.00.

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1 An insurer shall be subject to additional fees or
2 charges, termed retaliatory or reciprocal requirements,
3 whenever form or rate-filing fees in excess of those imposed
4 by state law are charged to insurers in New Mexico doing
5 business in another state or whenever a condition precedent
6 to the right to issue policies in another state is imposed by
7 the laws of that state over and above the conditions imposed
8 upon insurers by the laws of New Mexico; in those cases, the
9 same form or rate-filing fees may be imposed upon an insurer
10 from another state transacting or applying to transact
11 business in New Mexico so long as the higher fees remain in
12 force in the other state. If an insurer does not comply with
13 the additional retaliatory or reciprocal requirement charges
14 imposed under this subsection, the superintendent may refuse
15 to grant or may withdraw approval of the tendered form or
16 rate filing.

17 All fees are earned when paid and are not refundable."

18 **SECTION 2.** Section 59A-11-10 NMSA 1978 (being Laws
19 1984, Chapter 127, Section 189, as amended) is amended to
20 read:

21 "59A-11-10. CONTINUATION, EXPIRATION OF LICENSE.--

22 A. Each license, other than insurance agent,
23 issued under this article shall continue in force until it is
24 suspended, revoked or otherwise terminated, but except as may
25 be provided pursuant to Section 59A-11-11 NMSA 1978, subject

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1 to payment to the superintendent annually on or before April 1,
2 or December 31 as to motor club representatives, of the
3 applicable continuation fee specified in Section 59A-6-1 NMSA
4 1978 accompanied by request for such continuation:

5 (1) for broker, surplus line broker,
6 independent adjuster, public adjuster, bail bondsman license
7 and similar other independent licensees, request shall be made
8 and signed by the licensee;

9 (2) for agent (other than insurance agent) or
10 staff adjuster, or solicitor license, request shall be made and
11 signed by the employer or other principal, as applicable; or

12 (3) for vending machine, request shall be made
13 and signed by the supervisory agent thereof.

14 B. Subject to Section 59A-11-11 NMSA 1978, any
15 license referred to in Subsection A of this section not so
16 continued shall be deemed to have terminated as of midnight on
17 April 30, or December 31 as to motor club representatives then
18 current; except that the superintendent may effectuate a
19 request for continuation received within thirty days thereafter
20 if accompanied by [~~annual~~] a continuation fee equal to one
21 hundred fifty percent of the continuation fee otherwise
22 required.

23 C. Within sixty days of obtaining an agent license,
24 the licensee shall become appointed by an authorized insurer to
25 act as its agent; otherwise the license shall expire. A person

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1 shall not act as an agent of an insurer unless the person
2 becomes appointed as an agent of the insurer. Within fifteen
3 days from the date an agency contract is executed or the first
4 insurance application from the person is accepted by the
5 insurer, the insurer shall file a notice of appointment on a
6 form approved by the superintendent. The agent or the insurer
7 may terminate an appointment by notifying the superintendent
8 and the other party in writing of the termination. If at any
9 time all of the licensee's appointments have been terminated
10 for a period of sixty days, the agent's license shall expire.

11 D. If the superintendent has reason to believe that
12 the competence of any licensee, or individual designated to
13 exercise license powers, is questionable, the superintendent
14 may require as condition to continuation of the license or
15 license powers that the licensee or individual take and pass to
16 the superintendent's satisfaction a written examination as
17 required under the Insurance Code of new individual applicants
18 for similar license.

19 E. This section shall not apply as to temporary
20 licenses, which shall be for such duration and subject to
21 extension as provided in the respective sections of the
22 Insurance Code by which such licenses are authorized.

23 F. All licenses and appointments as to an insurer
24 or other principal [~~which~~] that ceases to be authorized to
25 transact business in this state shall automatically terminate

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1 without notice as of date of such cessation.

2 G. A license shall also terminate upon death of the
3 licensee, if an individual, or dissolution if a corporation, or
4 change in partnership members if a firm; subject, in case of a
5 firm, to continuation of the license for a reasonable period
6 while application for new license is being made or pending,
7 under reasonable conditions provided in regulations of the
8 superintendent."

9 SECTION 3. Section 59A-11-14 NMSA 1978 (being Laws 1984,
10 Chapter 127, Section 193, as amended) is amended to read:

11 "59A-11-14. SUSPENSION, REVOCATION, REFUSAL TO CONTINUE
12 LICENSE--GROUNDS.--

13 A. In addition to a reason [~~therefor~~] provided
14 under other provisions of the Insurance Code as to particular
15 licenses, the superintendent may suspend, revoke or refuse to
16 continue [~~any~~] a license issued under Chapter 59A, Article 11
17 NMSA 1978 for any of the following reasons applicable as to
18 licensee:

19 (1) for any cause for which issuance of the
20 license could have been refused had it then existed and been
21 known to the superintendent;

22 (2) violation of [~~any~~] a provision of the
23 Insurance Code or other law applicable to the business
24 transacted under the license;

25 (3) willful failure to comply with, or willful

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1 violation of, [~~any~~] a lawful order or rule of the
2 superintendent;

3 (4) material misstatement, misrepresentation
4 or fraud in obtaining the license;

5 (5) failure to pass [~~any~~] an examination
6 required by the superintendent, subsequent to issue of license,
7 under Subsection D of Section 59A-11-10 NMSA 1978;

8 (6) misappropriation, conversion or unlawful
9 withholding, or failure or refusal to pay over upon demand,
10 [~~any~~] money belonging to insurers or others and received in
11 conduct of business under the license;

12 (7) fraudulent or dishonest practices in
13 conduct of business under the license;

14 (8) being charged or indicted for a criminal
15 act related to the duties under the license;

16 [~~(8)~~] (9) intentional material
17 misrepresentation of the terms of [~~any~~] an existing or proposed
18 insurance policy, contract or other service within scope of the
19 license;

20 [~~(9)~~] (10) conviction by final judgment of a
21 felony involving dishonesty or breach of trust;

22 [~~(10)~~] (11) aiding, abetting or assisting
23 another person to violate [~~any~~] a provision of the Insurance
24 Code; or

25 [~~(11)~~] (12) if in conduct of affairs under the

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1 license, the licensee has used fraudulent, coercive or
2 dishonest practices, or [~~has~~] is shown [~~himself~~] to be
3 incompetent, untrustworthy, financially irresponsible or a
4 source of injury and loss to the public; or that the interests
5 of the insureds or the public are not being properly served
6 under the license.

7 B. The superintendent may suspend, revoke or refuse
8 to continue the license of a firm or corporation for any [~~of~~
9 ~~such causes~~] cause as [~~relate~~] relates to [~~any~~] an individual
10 designated in or registered as to the license to exercise its
11 powers.

12 C. The superintendent may require a criminal
13 history background investigation of a current license holder by
14 means of fingerprint checks by the department of public safety
15 and the federal bureau of investigation, at the expense of the
16 license holder, using the license holder's fingerprints or
17 other identifying information. The information shall be used
18 by the superintendent solely in determining whether to suspend,
19 revoke or refuse to continue a license."

20 SECTION 4. A new section of Chapter 59A, Article 11 NMSA
21 1978 is enacted to read:

22 "[NEW MATERIAL] ADJUSTER LICENSES--PROVISIONS DURING
23 CATASTROPHE OR EMERGENCY.--The superintendent may waive,
24 suspend or extend the licensing requirements of any adjuster
25 handling claims in the state in the event of a catastrophe or

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1 emergency as determined by the superintendent."

2 SECTION 5. Section 59A-13-2 NMSA 1978 (being Laws 1984,
3 Chapter 127, Section 230, as amended) is amended to read:

4 "59A-13-2. DEFINITIONS.--~~[A.]~~ For the purposes of the
5 Insurance Code:

6 [~~(1)~~] ~~"adjuster" is a person that:~~

7 ~~(a) investigates, negotiates, settles or~~
8 ~~adjusts a loss or claim arising under an insurance contract on~~
9 ~~behalf of an insurer, insured or self-insurer, for a fee,~~
10 ~~commission or other compensation; however, an adjuster acting~~
11 ~~on behalf of an insured shall not investigate, negotiate,~~
12 ~~settle or adjust a claim involving personal injury to the~~
13 ~~insured; and~~

14 ~~(b) advises the insured of the insured's~~
15 ~~rights to settlement and the insured's rights to settle,~~
16 ~~arbitrate and litigate the dispute;~~

17 ~~(2) "staff adjuster" is an adjuster individual~~
18 ~~who is a salaried employee of an insurer or affiliates of the~~
19 ~~employer insurer, representing and adjusting claims solely~~
20 ~~under policies of the employer insurer; and~~

21 ~~(3) "independent adjuster" is an adjuster who~~
22 ~~is not a staff adjuster and includes a representative and an~~
23 ~~employee of an independent adjuster.~~

24 ~~B. Except as otherwise provided, "adjuster" does~~
25 ~~not include:~~

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1 ~~(1) an attorney at law who adjusts insurance~~
2 ~~losses or claims from time to time incidental to practice of~~
3 ~~law and who does not advertise or represent as an adjuster;~~

4 ~~(2) a licensed agent or general agent of an~~
5 ~~authorized insurer or an employee of an agent or general agent~~
6 ~~who adjusts claims or losses under specific authority from the~~
7 ~~insurer and solely under policies issued by the insurer;~~

8 ~~(3) an agent or employee of a life or health~~
9 ~~insurer who adjusts claims or losses under the insurer's~~
10 ~~policies or contracts to administer policies or benefits of~~
11 ~~that type; or~~

12 ~~(4) a salaried or part-time claims agent or~~
13 ~~investigator employed by a self-insured person.]~~

14 A. "adjuster" means an individual who:

15 (1) investigates, negotiates or settles a loss
16 or claim arising under an insurance contract on behalf of a
17 client, insurer, insured or self-insurer, for a fee, commission
18 or other compensation but does not, on behalf of an insured or
19 client, investigate, negotiate, settle or adjust a claim
20 involving personal injury to the insured or client;

21 (2) advises the client or insured of the
22 client's or the insured's rights to settlement and the client's
23 or insured's rights to settle, arbitrate and litigate the
24 dispute; and

25 (3) is not:

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1 (a) an attorney-at-law who adjusts
2 insurance losses or claims from time to time incidental to
3 practice of law and who does not advertise or represent as an
4 adjuster;

5 (b) a licensed agent or general agent of
6 an authorized insurer or an employee of an agent or general
7 agent who adjusts claims or losses under specific authority
8 from the authorized insurer and solely under policies issued by
9 the authorized insurer;

10 (c) an agent or employee of a life or
11 health insurer who adjusts claims or losses under the insurer's
12 policies or contracts to administer policies or benefits of
13 that type;

14 (d) a claims agent or investigator
15 employed by a self-insurer for the adjustment of claims for the
16 self-insurer;

17 (e) an appraiser or other individual who
18 is principally employed by an insurer, third-party
19 administrator, independent adjuster or self-insurer who
20 inspects and provides monetary estimates of damages sustained
21 by an insured or third party and does not adjust, investigate
22 or negotiate claims;

23 (f) a person employed only for the
24 purpose of obtaining facts surrounding a loss or furnishing
25 technical assistance to an adjuster, including photographers,

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1 estimators, private investigators, engineers and handwriting
2 experts;

3 (g) a licensed health care provider or
4 employee of a licensed health care provider who prepares or
5 files a health claim on behalf of a patient;

6 (h) a person that settles subrogation
7 claims between insurers; or

8 (i) a person who is employed to
9 investigate suspected fraudulent insurance claims but does not
10 adjust losses or determine claim payments;

11 B. "client" means an insured or a third-party
12 claimant that hires the services of a public adjuster;

13 C. "independent adjuster" means an adjuster who:

14 (1) is not a public adjuster or a staff
15 adjuster;

16 (2) independently contracts with insurers or
17 self-insurers for compensation or is a representative or an
18 employee of an independent adjuster; and

19 (3) investigates, negotiates or settles
20 property, casualty or workers' compensation claims for insurers
21 or self-insurers;

22 D. "public adjuster" means an adjuster who:

23 (1) acts or aids in relation to first party
24 claims arising under insurance contracts that insure the real
25 or personal property of a client, on behalf of the client in

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1 negotiating for, or effecting the settlement of, a claim for
2 loss or damage covered by an insurance contract;

3 (2) acts or aids in relation to a third-party
4 claim, or represents a third-party claimant, against an insured
5 or insurer, on behalf of the third party in negotiating for or
6 effecting the settlement of a claim for loss of real or
7 personal property;

8 (3) advertises for employment as a public
9 adjuster of insurance claims or solicits business or represents
10 to the public as being a public adjuster of insurance claims
11 for losses or damages arising out of policies of insurance that
12 insure real or personal property; or

13 (4) directly or indirectly solicits business,
14 investigates or adjusts losses or advises a client about claims
15 for losses or damages arising out of policies of insurance that
16 insure real or personal property for another person engaged in
17 the business of adjusting losses or damages covered by an
18 insurance policy for the insured;

19 E. "resident adjuster" means an adjuster who
20 resides and conducts business primarily in the state; and

21 F. "staff adjuster" means an adjuster who is a
22 salaried employee of an insurer or affiliates of the insurer,
23 representing and adjusting claims solely under policies of the
24 insurer."

25 SECTION 6. Section 59A-13-3 NMSA 1978 (being Laws 1984,

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1 Chapter 127, Section 231, as amended) is amended to read:

2 "59A-13-3. LICENSE REQUIRED.--

3 A. No person shall, in this state, act as, or [~~hold~~
4 ~~himself out to be~~] make any representation as being, an
5 adjuster unless licensed as such by the superintendent under
6 the Insurance Code.

7 B. No person, regardless of location, shall act as,
8 or [~~hold himself out to be~~] make any representation as being,
9 an adjuster with respect to workers' compensation claims of
10 claimants [~~resident~~] residing or located in New Mexico unless
11 licensed as such by the superintendent under the Insurance
12 Code.

13 C. The superintendent may assess penalties pursuant
14 to Section 59A-1-18 NMSA 1978 against an insurer that employs,
15 contracts with or otherwise uses as an adjuster an individual
16 who is not licensed as an adjuster under the Insurance Code."

17 SECTION 7. Section 59A-13-4 NMSA 1978 (being Laws 1984,
18 Chapter 127, Section 232) is amended to read:

19 "59A-13-4. QUALIFICATIONS FOR LICENSE AS ADJUSTER.--

20 A. The superintendent shall license as an adjuster
21 only an individual who is otherwise in compliance with [~~this~~
22 ~~article and Article 11 (licensing procedures) of the Insurance~~
23 ~~Code~~] Chapter 59A, Articles 11 and 13 NMSA 1978, and who has
24 furnished evidence satisfactory to the superintendent that the
25 applicant for license:

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1 (1) is not less than eighteen [~~(18)~~] years of
2 age;

3 [~~(2)~~] ~~is a bona fide resident of this state, or~~
4 ~~of a state or country that permits residents of this state to~~
5 ~~act as adjusters therein, except that under circumstances of~~
6 ~~necessity the superintendent may waive the requirement of~~
7 ~~reciprocity;~~

8 ~~(3)]~~ (2) can demonstrate a good business
9 reputation, and intends to engage in a bona fide manner in the
10 business of adjusting insurance claims;

11 [~~(4)~~] (3) except as to temporary license
12 provided for under Section [~~234 of this article~~] 59A-13-6 NMSA
13 1978, has had at least one year's experience or special
14 education or training in handling of losses or claims under
15 insurance contracts, such experience, education and training to
16 be of such nature and extent as to demonstrate applicant's
17 competence to fulfill the responsibilities of an adjuster; and

18 [~~(5)~~] (4) has [~~filed the bond required under~~]
19 met the requirements of Section [233 of this article] 59A-13-5
20 NMSA 1978.

21 B. [~~Paragraphs (2) and (5) above~~] Paragraph (4) of
22 Subsection A of this section shall not apply [~~as~~] to staff
23 adjusters.

24 C. Individuals holding licenses as adjusters on the
25 effective date of the Insurance Code shall be deemed to meet

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1 the qualifications for the license except as in [~~Article 11~~
2 (~~licensing procedures~~) of the Insurance Code and in this
3 ~~article hereinafter provided~~] Chapter 59A, Articles 11 and 13
4 NMSA 1978."

5 SECTION 8. Section 59A-13-5 NMSA 1978 (being Laws 1984,
6 Chapter 127, Section 233) is amended to read:

7 "59A-13-5. BOND.--

8 A. With application for license, temporary or
9 otherwise, as an adjuster other than as staff adjuster, the
10 applicant shall file with the superintendent a surety bond in
11 favor of the superintendent in aggregate amount of not less
12 than ten thousand dollars (\$10,000), if an independent
13 adjuster, except as provided in Subsection D of this section,
14 and not less than twenty thousand dollars (\$20,000) if a public
15 adjuster, conditioned to pay actual damages resulting to the
16 state of New Mexico or any member of the public in New Mexico
17 from violation of law by the licensee while acting as an
18 adjuster. The bond shall be one executed by an authorized
19 surety insurer.

20 B. The bond shall remain in effect for the duration
21 of the license, or until the surety is released from liability
22 by the superintendent, or until cancelled by the surety.
23 Without prejudice to any liability accrued prior to
24 cancellation, the surety may cancel a bond by giving written
25 notice to the superintendent at least thirty [~~(30)~~] days prior

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1 to effective date of cancellation.

2 C. The applicant or licensee may file with the
3 superintendent a cash bond in like amount, in lieu of surety
4 bond.

5 D. An independent adjuster whose employer maintains
6 a bond equivalent to the bond described in Subsection A of this
7 section is exempt from the provisions of this section."

8 SECTION 9. Section 59A-13-6 NMSA 1978 (being Laws 1984,
9 Chapter 127, Section 234) is amended to read:

10 "59A-13-6. TEMPORARY LICENSE.--

11 A. Upon application by an applicant meeting all
12 qualifications for license except as to experience, education
13 or training referred to in Section [~~232 of this article~~]
14 59A-13-4 NMSA 1978, the superintendent may issue a temporary
15 license as adjuster, except as provided in Subsection B of this
16 section, under which an individual employed by a licensed
17 adjuster and undergoing education or training as an adjuster
18 under direction and supervision of [~~such~~] the licensed
19 adjuster, or an insurer's claim supervisor may act as an
20 adjuster. Application for the license must be made, and the
21 applicant registered with the superintendent, at beginning of
22 the training period, and the license may be in force for a
23 period not to exceed twelve [~~(12)~~] months, without right of
24 renewal or continuation.

25 B. [~~The superintendent may issue a temporary~~

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1 ~~license as adjuster to an individual employed by a licensed~~
2 ~~adjuster or an authorized insurer due to a catastrophe or~~
3 ~~emergency requiring immediate expansion of adjuster services in~~
4 ~~this state. Application for the license must be made through~~
5 ~~such licensed adjuster or insurer. Responsibility for the~~
6 ~~conduct of a temporary licensee rests jointly on the licensee~~
7 ~~and the employer adjuster or insurer. The temporary license~~
8 ~~may be in force for a period not to exceed three (3) months,~~
9 ~~without right of renewal or continuation. In considering the~~
10 ~~application for temporary license the superintendent may waive~~
11 ~~such of the qualifications for license stated in Section 232 of~~
12 ~~this article as the superintendent deems advisable.] A~~
13 temporary license shall not be issued to a staff adjuster."

14 SECTION 10. Section 59A-13-9 NMSA 1978 (being Laws 1984,
15 Chapter 127, Section 237, as amended) is amended to read:

16 "59A-13-9. PLACE OF BUSINESS.--

17 A. A licensed resident adjuster shall have and
18 maintain a principal place of business in the state that is
19 easily accessible to the public and is the place where the
20 adjuster principally conducts transactions under the license.

21 B. The address of the principal place of business
22 of an adjuster licensed in the state, including an adjuster who
23 does not reside in the state, shall appear on the application
24 for license and on the license. The licensee shall promptly
25 notify the superintendent of a change of address of the

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1 principal place of business. Failure to notify the
2 superintendent of a change of address within twenty days shall
3 subject the licensee to a penalty in the amount of fifty
4 dollars (\$50.00)."

5 SECTION 11. Section 59A-13-10 NMSA 1978 (being Laws 1984,
6 Chapter 127, Section 238) is amended to read:

7 "59A-13-10. RECORDS OF INDEPENDENT OR PUBLIC ADJUSTER.--

8 A. [~~Each~~] An independent adjuster shall keep at the
9 business address shown on [~~his~~] the independent adjuster's
10 license a record of all transactions under the license. The
11 record shall include:

12 (1) the documents relating to all
13 investigations or adjustments undertaken; and

14 (2) a statement of any fee, commission or
15 other compensation received or to be received by the adjuster
16 on account of [~~such~~] the investigation or adjustment.

17 B. [~~The~~] An independent adjuster or the independent
18 adjuster's employer shall make [~~such~~] the records available for
19 examination by the superintendent at all reasonable times, and
20 shall retain records as to a particular investigation or
21 adjustment for not less than three [~~(3)~~] years after completion
22 of [~~such~~] the investigation or adjustment, except if an
23 independent adjuster or the independent adjuster's employer
24 provides a complete copy of a record to the entity that hired
25 the independent adjuster for an investigation or adjustment.

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1 C. A public adjuster shall keep at the public
2 adjuster's principal place of business a complete record of all
3 transactions under the public adjuster license. A record shall
4 include:

5 (1) the name of the client;

6 (2) the date, location and amount of the loss;

7 (3) a copy of the contract between the public
8 adjuster and the client;

9 (4) the name of the insurer and the amount,
10 expiration date and number of each policy carried with respect
11 to the loss;

12 (5) an itemized statement of the client's
13 recoveries;

14 (6) an itemized statement of all compensation
15 received by the public adjuster in connection with the loss;

16 (7) a register of all money received,
17 deposited, disbursed or withdrawn in connection with a
18 transaction with a client, including fees, transfers and
19 disbursements from a trust account and all transactions
20 concerning interest-bearing accounts;

21 (8) the name of the public adjuster who
22 executed the contract;

23 (9) the name of the attorney representing the
24 client, if applicable, and the names of the claims
25 representatives of the insurer; and

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1 (10) evidence of financial responsibility in a
2 format prescribed by the superintendent.

3 D. A public adjuster shall make the records
4 required in Subsection C of this section available for
5 examination by the superintendent at all reasonable times and
6 shall retain records as to a particular investigation or
7 adjustment for not less than three years after completion of
8 the investigation or adjustment. Records submitted by a public
9 adjuster that contain information identified in writing as
10 proprietary shall be considered confidential trade secrets
11 pursuant to the Uniform Trade Secrets Act."

12 SECTION 12. Section 59A-13-11 NMSA 1978 (being Laws 1989,
13 Chapter 313, Section 2) is amended to read:

14 "59A-13-11. RESIDENT CLAIMS [~~REPRESENTATIVE FOR PAYMENT~~]
15 REQUIREMENTS OF WORKERS' COMPENSATION [~~CLAIMS~~] ADJUSTERS.--Each
16 workers' compensation insurer shall have at least one [~~claims~~
17 ~~representative within New Mexico, licensed as an adjuster~~]
18 resident adjuster to pay workers' compensation claims of
19 claimants [~~resident~~] residing or located in New Mexico. Such
20 claims shall be paid promptly through such representatives from
21 accounts in financial institutions located within New Mexico."

22 SECTION 13. A new section of Chapter 59A, Article 13 NMSA
23 1978 is enacted to read:

24 "[NEW MATERIAL] PUBLIC ADJUSTER--DISCLOSURES--CONTRACT
25 REQUIREMENTS--PROHIBITED PROVISIONS--CLIENT'S RIGHT TO

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1 RESCIND--NOTIFICATION TO INSURER.--

2 A. Prior to the signing of a contract with a
3 client, a public adjuster shall provide a disclosure statement
4 to the client that states:

5 "Property insurance policies obligate an insured to
6 present a claim to the insured's insurance company for
7 consideration. There are three types of adjusters that could
8 be involved in that process. The three types of adjusters are:

9 (1) "Company Staff Adjuster" is an insurance
10 adjuster who is an employee of an insurance company. A Company
11 Staff Adjuster represents the interest of the insurance company
12 and is paid by the insurance company and will not charge you a
13 fee.

14 (2) "Independent Adjuster" is an insurance adjuster
15 who is hired on a contract basis by an insurance company to
16 represent an insurance company's interest in the settlement of
17 a claim. An Independent Adjuster is paid by the insurance
18 company and will not charge you a fee.

19 (3) "Public Adjuster" is an insurance adjuster who
20 does not work for an insurance company. A Public Adjuster
21 works for you to assist in the preparation, presentation and
22 settlement of your claim. A Public Adjuster is hired by
23 signing a contract in which you agree to pay the Public
24 Adjuster a fee or commission based on a percentage of a
25 settlement, or other method of compensation.

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1 You are not required to hire a Public Adjuster to help you
2 meet your obligations under your insurance policy, but you have
3 the right to do so.

4 The Public Adjuster's fee, commission or other method of
5 compensation is your obligation, not that of the insurance
6 company.

7 You have the right to rescind this contract within three
8 business days after this contract is signed. Your rescission
9 must be in writing and mailed or delivered to the Public
10 Adjuster at the address in the contract within the three-
11 business-day period.

12 If an insurer pays or commits to pay your claim within
13 three days of reporting the loss to the insurer, the Public
14 Adjuster cannot receive as compensation a percentage of the
15 total amount paid by the insurer to resolve the claim. The
16 Public Adjuster is only entitled to receive a reasonable
17 compensation from you for services provided by the Public
18 Adjuster on your behalf, based on the time spent on your claim
19 and expenses incurred by the Public Adjuster.

20 You have the right to initiate direct communications with
21 your attorney, the insurer, the insurer's adjuster, the
22 insurer's attorney or any other person regarding the settlement
23 of your claim."

24 B. A public adjuster's contract with a client shall
25 be in writing, signed and dated by the public adjuster and the

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1 client and executed in duplicate to provide an original
2 contract to the public adjuster and the client.

3 C. A public adjuster's contract shall be designated
4 as a "public adjuster contract" and shall include:

5 (1) the public adjuster's full name as
6 specified on the public adjuster's license;

7 (2) the public adjuster's principal place of
8 business address and phone number;

9 (3) the public adjuster's license number;

10 (4) the client's full name, street address and
11 name of insurer and policy number, if known to the client;

12 (5) a description of the loss and its
13 location, if applicable;

14 (6) a description of the services to be
15 provided to the client;

16 (7) attestation language stating that the
17 public adjuster is fully bonded pursuant to state law;

18 (8) the type and amount of compensation the
19 public adjuster is to receive for services;

20 (9) expenses to be reimbursed to the public
21 adjuster from proceeds of the claim payment, specified by type
22 and with the approval of the client;

23 (10) a statement that the client has the right
24 to rescind the public adjuster contract within three business
25 days after the public adjuster contract is signed; and

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1 (11) a statement that, if an insurer pays or
2 commits to pay a claim within three days of receiving notice of
3 the loss, the public adjuster shall:

4 (a) not receive as compensation a
5 percentage of the total amount paid by the insurer to resolve
6 the claim; and

7 (b) only be entitled to receive a
8 reasonable compensation from the client for services provided
9 by the public adjuster on behalf of the client, based on the
10 time spent on a claim and expenses incurred by the public
11 adjuster.

12 D. A public adjuster contract shall not contain a
13 provision that:

14 (1) allows a fee based on a percentage of
15 settlement to be collected when money is due from an insurer,
16 but not paid, or that allows a public adjuster to collect the
17 entire fee from the first check issued by an insurer, rather
18 than as a percentage of each check issued by an insurer;

19 (2) requires the client to authorize an
20 insurer to issue a check or other payment only in the name of
21 the public adjuster;

22 (3) imposes collection costs or late fees; or

23 (4) precludes a client from pursuing civil
24 remedies.

25 E. Compensation provisions in a public adjuster

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1 contract shall not be redacted in a copy of the contract
2 provided to the superintendent.

3 F. A client has a right to rescind a public
4 adjuster's contract within three business days after the
5 contract is signed by both the public adjuster and the client.
6 The rescission shall be in writing and mailed or delivered to
7 the public adjuster's address in the public adjuster contract
8 within the three-business-day period. If a client exercises
9 the right to rescind, anything of value given by the client to
10 the public adjuster under the public adjuster contract shall be
11 returned to the client within fifteen business days after the
12 public adjuster has received the notice of rescission.

13 G. Prior to entering discussions with a client's
14 insurer regarding a client's claim, a public adjuster shall
15 provide the client's insurer with a notification letter, signed
16 by the client, authorizing the public adjuster to represent the
17 client's interest."

18 SECTION 14. A new section of Chapter 59A, Article 13 NMSA
19 1978 is enacted to read:

20 "[NEW MATERIAL] PROCEDURE--WHEN INSURER PAYS A CLAIM
21 WITHIN THREE DAYS OF REPORT OF LOSS.--If an insurer, within
22 three business days after the date a loss is reported to the
23 insurer, pays or commits to pay to the client the limit of the
24 insurance policy, a public adjuster shall:

25 A. not receive as compensation a percentage of the

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1 total amount paid by an insurer to resolve a claim;

2 B. inform the client that the loss recovery amount
3 may not be increased by the insurer; and

4 C. only be entitled to a reasonable compensation
5 from the client for services provided by the public adjuster on
6 behalf of the client, based on the time spent on a claim and
7 expenses incurred by the public adjuster."

8 SECTION 15. A new section of Chapter 59A, Article 13 NMSA
9 1978 is enacted to read:

10 "[NEW MATERIAL] ESCROW OR TRUST ACCOUNTS OF PUBLIC
11 ADJUSTERS.--A public adjuster who receives, accepts or holds
12 any funds on behalf of a client toward the settlement of a
13 claim for loss or damage shall deposit the funds in a non-
14 interest-bearing escrow or trust account in a financial
15 institution insured by an agency of the federal government in
16 the state of the public adjuster's principal place of business
17 or in the state where the loss or damage occurred."

18 SECTION 16. A new section of Chapter 59A, Article 13 NMSA
19 1978 is enacted to read:

20 "[NEW MATERIAL] STANDARDS OF CONDUCT OF PUBLIC ADJUSTER.--

21 A. A public adjuster is obligated to serve with
22 objectivity and complete loyalty in the interest of a client
23 and to render to the client information, counsel and service
24 within the knowledge, understanding and opinion in good faith
25 of the public adjuster as will best serve the client's

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1 insurance claim needs and interests.

2 B. A public adjuster shall not act or make any
3 representation as being an independent or staff adjuster
4 representing on the same claim.

5 C. A public adjuster shall not solicit or attempt
6 to solicit a client during the progress of a loss-producing
7 occurrence, as defined in the client's insurance contract.

8 D. A public adjuster shall not permit an unlicensed
9 employee or representative of the public adjuster to conduct
10 business for which a license is required under the Insurance
11 Code.

12 E. A public adjuster shall not have a direct or
13 indirect financial interest in any aspect of a claim, other
14 than the salary, fee, commission or other consideration
15 established in a public adjuster contract with the client,
16 including:

17 (1) acquiring an interest in salvage of
18 property subject to a public adjuster contract with a client;
19 and

20 (2) referring or directing the client to get
21 needed repairs or services in connection with a loss from any
22 person or entity, if the public adjuster maintains or receives
23 any financial interest in the person or entity to which the
24 referral is made.

25 F. A public adjuster shall not adjust a claim if

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1 the public adjuster is not competent and knowledgeable as to
2 the terms and conditions of the insurance coverage or the
3 adjustment otherwise exceeds the public adjuster's current
4 expertise.

5 G. A public adjuster shall not knowingly make any
6 oral or written material misrepresentations or statements that
7 are false or maliciously critical and intended to injure any
8 person engaged in the business of insurance to any client or
9 potential client.

10 H. A public adjuster shall not enter into a
11 contract or accept a power of attorney that vests in the public
12 adjuster the effective authority to choose the persons who
13 shall perform repair work for the client.

14 I. A public adjuster shall not agree to any loss
15 settlement without the client's knowledge and consent."

16 SECTION 17. A new section of Chapter 59A, Article 13 NMSA
17 1978 is enacted to read:

18 "[NEW MATERIAL] REPORTING OF ACTIONS.--

19 A. An adjuster shall report to the superintendent
20 any administrative action taken against the adjuster in the
21 adjuster's professional capacity, in any jurisdiction or by any
22 governmental agency in the state, within thirty days of the
23 final disposition of the matter. The report shall include a
24 copy of the order, consent to order or other relevant legal
25 documents.

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1 B. An adjuster shall report to the superintendent
2 any criminal prosecution of the adjuster taken in any
3 jurisdiction within thirty days of an initial pretrial hearing.
4 The report shall include a copy of the initial complaint filed,
5 the order resulting from the hearing and any other relevant
6 legal documents."

7 SECTION 18. A new section of Chapter 59A, Article 13 NMSA
8 1978 is enacted to read:

9 "[NEW MATERIAL] SUPERINTENDENT--RULES.--The superintendent
10 may adopt rules that the superintendent deems necessary to
11 carry out the purposes of Chapter 59A, Article 13 NMSA 1978."

12 SECTION 19. SEVERABILITY.--If any part or application of
13 this act is held invalid, the remainder or its application to
14 other situations or persons shall not be affected.

15 SECTION 20. EFFECTIVE DATE.--The effective date of the
16 provisions of this act is July 1, 2011.