

1 HB428
2 128470-1
3 By Representative McMillan
4 RFD: Insurance
5 First Read: 31-MAR-11

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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, who are defined
13 as representing the insured in settling property,
14 casualty, and workers' compensation insurance
15 claims with insurers.

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17 A BILL
18 TO BE ENTITLED
19 AN ACT

20
21 Relating to insurance; to provide for the
22 qualifications and procedures for the licensing of public
23 adjusters, by providing definitions and exceptions to the
24 licensing and registration requirements, by requiring public
25 adjusters to take and pass a written examination, with
26 exceptions, to provide for nonresident licensing, to require
27 public adjusters to complete a minimum of 24 hours of

1 continuing education on a biennial basis, to provide standards
2 of conduct for public adjusters, to require public adjusters
3 to report administrative action taken against them in other
4 jurisdictions, to give the commissioner of insurance authority
5 to promulgate rules necessary to administer and enforce this
6 act, to authorize a delayed effective date for certain
7 provisions and to amend Section 27-4-2, Code of Alabama 1975,
8 to provide license and application fees for public adjusters.
9 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

10 Section 1. This act governs the qualifications and
11 procedures for the licensing of public adjusters. It specifies
12 the duties of and restrictions on public adjusters, which
13 include limiting their licensure to assisting insureds in
14 first party claims.

15 Section 2. For purposes of this act, the following
16 terms shall have the meanings respectively ascribed to them by
17 this section:

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

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

23 (3) HOME STATE. The District of Columbia and any
24 state or territory of the United States in which a public
25 adjuster maintains his, her or its principal place of
26 residence or business and is licensed to act as a resident
27 public adjuster. If the resident jurisdiction does not license

1 public adjusters, the public adjuster shall designate as the
2 adjuster's home state any state in which the public adjuster
3 is licensed and in good standing.

4 (4) INDIVIDUAL. A natural person.

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

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

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

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

14 (9) UNIFORM INDIVIDUAL APPLICATION. The versions of
15 the NAIC Uniform Individual Application for a license and for
16 renewal or continuation of a license current as of the time of
17 use.

18 (10) UNIFORM BUSINESS ENTITY APPLICATION. The
19 versions of the NAIC Uniform Business Entity Application for a
20 license and for renewal or continuation of a license current
21 as of the time of use.

22 Section 3. (a) For purposes of this act, a "public
23 adjuster" is a person who, for compensation or any other thing
24 of value, does any of the following on behalf of an insured:

25 (1) Solely in relation to first party claims arising
26 under insurance contracts that insure the real or personal
27 property of the insured, acts on behalf of or aids an insured

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

3 (2) Advertises for employment as a public adjuster
4 of insurance claims or solicits business or represents himself
5 or herself to the public as a public adjuster of first party
6 insurance claims for losses or damages arising out of policies
7 of insurance that insure real or personal property.

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

15 (b) A "public adjuster" does not include following:

16 (1) Attorneys-at-law admitted to practice in this
17 state when acting in their professional capacity as an
18 attorney.

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

22 (3) A person employed only for the purpose of
23 obtaining facts surrounding a loss or furnishing technical
24 assistance to a licensed public adjuster, including
25 photographers, estimators, private investigators, engineers
26 and handwriting experts.

1 (4) A licensed health care provider, or employee of
2 a licensed health care provider, who prepares or files a
3 health claim form on behalf of a patient.

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

6 (c) Nothing in this act shall be construed as
7 permitting a public adjuster to give legal advice or to
8 otherwise engage in activity constituting the practice of law,
9 or to act on behalf of or aid any person in negotiating or
10 settling a claim relating to bodily injury, death, or
11 noneconomic damages.

12 Section 4. (a) A person shall not act or hold the
13 person out as a public adjuster in this state unless the
14 person is licensed as a public adjuster in accordance with
15 this act.

16 (b) A business entity licensed as a public adjuster
17 shall only designate licensed individual public adjusters to
18 exercise the business entity's license.

19 Section 5. (a) The commissioner may contract with
20 non-governmental entities, including the NAIC, to perform any
21 ministerial functions, including the collection of fees and
22 data, related to licensing that the commissioner may deem
23 appropriate. The commissioner may require that license
24 applications, license renewal applications, and supporting
25 documentation be filed and all required fees and charges be
26 paid electronically through systems operated or maintained by
27 the non-governmental entities.

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

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

10 (2) Is eligible to designate this state as his or
11 her home state.

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

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

16 (5) Has successfully passed the public adjuster
17 examination.

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

20 (c) No resident of another state or of the District
21 of Columbia may be licensed pursuant to this section or may
22 designate Alabama as his or her home state unless the person
23 has successfully passed the public adjuster examination and
24 has otherwise complied with the other applicable portions of
25 this section.

26 (d) A business entity applying for a resident public
27 adjuster license shall apply to the commissioner on the

1 appropriate NAIC Uniform Business Entity Application and
2 declare under penalty of suspension, revocation or refusal of
3 the license that the statements made in the application are
4 true, correct and complete to the best of the business
5 entity's knowledge and belief. Before approving the
6 application, the commissioner shall find that the business
7 entity:

8 (1) Is eligible to designate this state as its home
9 state.

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

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

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

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

22 (d) Before issuing a public adjuster license to an
23 applicant under this section, the commissioner shall also find
24 that the applicant:

25 (1) Is financially responsible to exercise the
26 license and has provided proof of financial responsibility as
27 required in Section 11.

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

5 (e) The commissioner may require any documents
6 reasonably necessary to verify the information contained in
7 the application.

8 Section 6. (a) Unless denied licensure pursuant to
9 Section 10, a person who meets the requirements of Sections 5
10 and 7 shall be issued a public adjuster license.

11 (b) A public adjuster license shall be initially
12 renewed in accordance with a schedule prescribed by the
13 commissioner and shall thereafter be subject to renewal on a
14 biennial basis. A renewal shall be effected by submitting a
15 renewal application, by paying the fee for renewal prescribed
16 in Section 27-4-2, Code of Alabama 1975, and by meeting the
17 requirements for renewal, including any applicable continuing
18 education requirements, before the due date for renewal. A
19 license expires if not renewed by the due date for renewal.

20 (c) Within the first 30 days following the date a
21 public adjuster license expires, a reinstatement retroactive
22 to the expiration date shall be effected by submitting a
23 renewal application, by paying a fee of one and one-half times
24 the renewal fee required in Section 27-4-2, Code of Alabama
25 1975, and by meeting the other requirements for renewal
26 including any applicable continuing education requirements.

1 (d) After the first 30 days following the date a
2 public adjuster license expires but within 12 months after the
3 expiration date, the license may be reinstated effective as of
4 the reinstatement by submitting a renewal application, by
5 paying a fee of double the renewal fee required in Section
6 27-4-2, Code of Alabama 1975, and by meeting the other
7 requirements for renewal including any applicable continuing
8 education requirements.

9 (e) After a public adjuster license has been expired
10 12 months, the person must reapply pursuant to Section 5 to
11 again become licensed.

12 (f) A public adjuster who is unable to comply with
13 license renewal procedures and requirements due to military
14 service, long-term medical disability or some other
15 extenuating circumstance may request a waiver of same and a
16 waiver of any examination requirement, fine or other sanction
17 imposed for failure to comply with renewal procedures.

18 (g) The license shall contain the licensee's name,
19 address, personal identification number, the date of issuance
20 and expiration, and any other information the commissioner
21 deems necessary.

22 (h) The public adjuster shall inform the
23 commissioner of a change in legal name or address within 30
24 days of the change in a manner prescribed by the commissioner.
25 Failure to timely inform the commissioner of a change in legal
26 name or address shall result in a penalty of fifty dollars
27 (\$50). If the penalty is not paid within 30 days after notice

1 of the penalty assessment, the license shall be suspended
2 until the penalty is paid.

3 Section 7. (a) (1) Every individual subject to the
4 examination required in subsection (b) must first complete a
5 prelicensing course consisting of 20 classroom hours, or
6 equivalent individual instruction.

7 (2) The prelicensing course must have been completed
8 within 12 months before the date of the examination as shown
9 on the certificate furnished by the prelicensing course
10 provider.

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

14 (4) At the time of initial approval and annually
15 thereafter the commissioner shall collect from each
16 prelicensing course provider a fee set by the commissioner not
17 to exceed one hundred dollars (\$100). The fee shall be
18 deposited in the State Treasury to the credit of the Insurance
19 Department Fund. Public institutions shall be exempt from
20 paying the fee but shall otherwise be subject to the rules and
21 regulations applicable to other providers.

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

25 (2) The examination shall test the knowledge of the
26 individual concerning property insurance, the duties and
27 responsibilities of a public adjuster, and the insurance laws

1 and regulations of this state. The examination required by
2 this section shall be developed and conducted under rules and
3 regulations prescribed by the commissioner.

4 (3) Each individual applying for the examination
5 shall furnish a certificate of completion of the prelicensing
6 course from an authorized prelicensing course provider and pay
7 a non-refundable fee prescribed by the commissioner as set
8 forth in Section 27-4-2, Code of Alabama 1975.

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

13 (5) An individual who fails to appear for the
14 examination as scheduled or fails to pass the examination,
15 shall reapply for an examination and remit all required fees
16 and forms before being rescheduled for another examination.

17 (6) No individual who has taken and failed to pass
18 two examinations given pursuant to this section shall be
19 entitled to take any further examination until after the
20 expiration of three months from the date of the last
21 examination which the individual failed to pass. If the
22 individual thereafter fails to pass the examination after two
23 more attempts, the individual shall not be eligible to take
24 any further examination until after the expiration of six
25 months from the date of the last unsuccessful examination. An
26 examination fee shall be paid for each and every examination.

1 Section 8. (a) An individual applicant for a public
2 adjuster license in this state shall not be required to
3 complete any prelicensing course or examination if the person
4 is currently licensed in another state as a public adjuster
5 based on a public adjuster examination or if such state
6 license has expired and the application is received by this
7 state within 90 days of expiration. The applicant must either
8 provide certification from the other state that the
9 applicant's license is currently in good standing or was in
10 good standing at the time of expiration or the state's
11 producer database records maintained by the NAIC must indicate
12 that the applicant is or was licensed in good standing.

13 (b) A person licensed as a public adjuster in
14 another state based on a public adjuster examination who,
15 within 90 days of establishing legal residency in this state,
16 applies to become a resident public adjuster pursuant to
17 Section 6 shall not be required to complete a prelicensing
18 course or an examination.

19 (c) An individual who applies for a public adjuster
20 license in this state who was previously licensed as a public
21 adjuster in this state shall not be required to complete a
22 prelicensing course or examination, but this exemption is only
23 available if the application is received within 12 months of
24 the cancellation of the applicant's previous license in this
25 state and if, at the time of cancellation, the applicant was
26 in good standing in this state.

1 Section 9. (a) Unless refused licensure pursuant to
2 Section 10, a nonresident person shall receive a nonresident
3 public adjuster license if:

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

7 (2) The person has applied for a license and has
8 paid the fees required by Section 27-4-2, Code of Alabama
9 1975.

10 (3) If a business entity, and as applicable, the
11 entity has qualified or registered with the office of the
12 Alabama Secretary of State to engage in business in this
13 state.

14 (4) The person's designated home state awards
15 non-resident public adjuster licenses to residents of this
16 state on the same basis.

17 (b) The commissioner may verify the public
18 adjuster's licensing status through any appropriate database,
19 including the Producer Database maintained by the NAIC or may
20 request certification of good standing as described in
21 subsection (a) of Section 8.

22 (c) As a condition to continuation of a nonresident
23 public adjuster license in this state, the licensee shall
24 maintain a resident public adjuster license in the adjuster's
25 home state. A licensee shall notify the commissioner within 30
26 days if the licensee's resident public adjuster license
27 terminates for any reason and shall include the new address if

1 the licensee has obtained a resident license in a new home or
2 resident state. Termination of a resident or home state
3 license shall terminate the nonresident public adjuster
4 license in this state unless the termination is due to the
5 public adjuster being issued a new resident public adjuster
6 license in the adjuster's new resident or home state, provided
7 the new resident or home state awards nonresident public
8 adjuster licenses to persons of this state on the same basis.

9 Section 10. (a) The commissioner may place on
10 probation, suspend, revoke or refuse to issue or renew a
11 public adjuster's license, or may levy a civil penalty in
12 accordance with subsection (d), or any combination of actions,
13 for any one or more of the following causes:

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

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

19 (3) Obtaining or attempting to obtain a license
20 through misrepresentation or fraud.

21 (4) Improperly withholding, misappropriating, or
22 converting any monies or properties received in the course of
23 acting as an adjuster of any type or in otherwise doing
24 insurance business in this state or elsewhere.

25 (5) Intentionally misrepresenting the terms of an
26 actual insurance contract.

27 (6) Having been convicted of a felony.

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

3 (8) Using fraudulent, coercive or dishonest
4 practices, or demonstrating incompetence, untrustworthiness or
5 financial irresponsibility, in the course of acting as an
6 adjuster of any type or otherwise in the conduct of business
7 in this state or elsewhere.

8 (9) Having a public adjuster license, independent
9 adjuster license, company or employee adjuster license,
10 emergency adjuster license or registration or its equivalent,
11 or insurance producer license or its equivalent suspended,
12 revoked or refused in any other state, province, district, or
13 territory.

14 (10) Forging another's name to any document related
15 to an insurance transaction or in connection with a claim
16 being adjusted by the adjuster.

17 (11) Cheating, including improperly using notes or
18 any other reference material, to complete an examination for
19 an insurance license.

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

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

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

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 Section 11. (a) Prior to issuance of a license as a
7 public adjuster and for the duration of the license, the
8 applicant shall secure evidence of financial responsibility in
9 a format prescribed by the commissioner through a either a
10 security bond or irrevocable letter of credit.

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

14 (1) It shall be in the minimum amount of twenty
15 thousand dollars (\$20,000).

16 (2) It shall be in favor of this state and shall
17 specifically authorize recovery by the commissioner on behalf
18 of any person in this state who sustained damages as the
19 result of erroneous acts, failure to act, conviction of fraud,
20 or conviction of unfair practices in his or her capacity as a
21 public adjuster.

22 (3) It shall not be terminated unless at least 30
23 days' prior written notice will have been filed with the
24 commissioner and given to the licensee.

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

1 (1) It shall be in the minimum amount of twenty
2 thousand dollars (\$20,000).

3 (2) It shall be to an account to the commissioner
4 and subject to lawful levy of execution on behalf of any
5 person to whom the public adjuster has been found to be
6 legally liable as the result of erroneous acts, failure to
7 act, fraudulent acts, or unfair practices in his or her
8 capacity as a public adjuster.

9 (3) It shall not be terminated unless at least 30
10 days' prior written notice will have been filed with the
11 commissioner and given to the licensee.

12 (d) The issuer of the evidence of financial
13 responsibility shall notify the commissioner upon termination
14 of the bond or letter of credit, unless otherwise directed by
15 the commissioner.

16 (e) The commissioner may ask for the evidence of
17 financial responsibility at any time the commissioner deems
18 relevant.

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

22 Section 12. (a) An individual who holds a public
23 adjuster license and who is not exempt under subsection (b)
24 shall satisfactorily complete a minimum of 24 hours of
25 continuing education courses as may be approved by the
26 commissioner, of which three hours must be in ethics, reported

1 to the commissioner on a biennial basis in conjunction with
2 the license renewal cycle.

3 (b) This section shall not apply to:

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

6 (2) Licensees holding nonresident public adjuster
7 licenses who have met the continuing education requirements of
8 their home state and whose home state gives credit to
9 residents of this state on the same basis.

10 (c) Only continuing education courses and providers
11 approved by the commissioner shall be used to satisfy the
12 continuing education requirements of this section. Continuing
13 education providers and courses shall be subject to the same
14 requirements and fees set forth in Chapter 8A of Title 27 of
15 the Code of Alabama 1975.

16 (d) The commissioner shall prescribe the number of
17 hours of continuing education credit for each continuing
18 education course approved. Continuing education courses
19 submitted in accordance with a reciprocal agreement the
20 commissioner enters with other states shall be approved
21 according to the provisions of the reciprocal agreement.

22 (e) If a continuing education course requires
23 successful completion of a written examination, no continuing
24 education credit shall be given to licensees who do not
25 successfully complete the written examination.

26 (f) An individual teaching any approved continuing
27 education course shall qualify for the same number of hours of

1 continuing education credit as would be granted to a licensee
2 taking and satisfactorily completing the course.

3 Section 13. (a) A public adjuster shall not pay a
4 commission, service fee, or other valuable consideration to a
5 person for investigating or settling claims in this state if
6 that person is required to be licensed under this act and is
7 not so licensed.

8 (b) A person shall not accept a commission, service
9 fee, or other valuable consideration for investigating or
10 settling claims in this state if that person is required to be
11 licensed under this act and is not so licensed.

12 (c) A public adjuster may pay or assign commissions,
13 service fees, or other valuable consideration to persons who
14 do not investigate or settle claims in this state.

15 (d) In the event of a state of emergency, no public
16 adjuster shall charge or agree to or accept as compensation or
17 reimbursement any payment, commission, fee, or other thing of
18 value equal to more than 10 percent of any insurance
19 settlement or proceeds for claims resulting from the state of
20 emergency.

21 (e) No public adjuster shall require, demand, or
22 accept any fee, retainer, compensation, deposit, or other
23 thing of value, prior to settlement of a claim.

24 Section 14. (a) Public adjusters shall ensure that
25 all contracts for their services are in writing and contain
26 all of the 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 (b) (1) The contract may specify that the public
24 adjuster shall be named as a co-payee on an insurer's payment
25 of a claim.

26 (2) If the compensation is based on a share of the
27 insurance settlement, the exact percentage shall be specified.

1 (3) Initial expenses to be reimbursed to the public
2 adjuster from the proceeds of the claim payment shall be
3 specified by type, with dollar estimates set forth in the
4 contract and with any additional expenses first approved by
5 the insured.

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

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

1 business days following the receipt by the public adjuster of
2 the cancellation notice.

3 (d) If the insurer, not later than 72 hours after
4 the date on which the loss is reported to the insurer, either
5 pays or commits in writing to pay to the insured the policy
6 limit of the insurance policy, the public adjuster shall:

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

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

12 (3) Be entitled only to reasonable compensation from
13 the insured for services provided by the public adjuster on
14 behalf of the insured, based on the time spent on a claim and
15 expenses incurred by the public adjuster, until the claim is
16 paid or the insured receives a written commitment to pay from
17 the insurer.

18 (e) A public adjuster shall provide the insured a
19 written disclosure concerning any direct or indirect financial
20 interest that the public adjuster has with any other party who
21 is involved in any aspect of the claim, other than the salary,
22 fee, commission or other consideration established in the
23 written contract with the insured, including but not limited
24 to any ownership of, other than as a minority stockholder, or
25 any compensation expected to be received from, any
26 construction firm, salvage firm, building appraisal firm,
27 motor vehicle repair shop, or any other firm which that

1 provides estimates for work, or that performs any work, in
2 conjunction with damages caused by the insured loss on which
3 the public adjuster is engaged. The word "firm" shall include
4 any corporation, partnership, association, joint-stock
5 company, or person.

6 (f) A public adjuster contract may not contain any
7 contract term that:

8 (1) Allows the public adjuster's percentage fee to
9 be collected when money is due from an insurance company, but
10 not paid, or that allows a public adjuster to collect the
11 entire fee from the first check issued by an insurance
12 company, rather than as percentage of each check issued by an
13 insurance company.

14 (2) Requires the insured to authorize an insurance
15 company to issue a check only in the name of the public
16 adjuster.

17 (3) Imposes collection costs or late fees.

18 (4) Precludes an insured from pursuing civil
19 remedies.

20 (g) Prior to the signing of the contract the public
21 adjuster shall provide the insured with a separate disclosure
22 document regarding the claim process that states:

23 "(1) Property insurance policies obligate the
24 insured to present a claim to his or her insurance company for
25 consideration. There are three types of adjusters that could
26 be involved in that process. The definitions of the three
27 types are as follows:

1 a. "Company adjuster" means the insurance adjusters
2 who are employees of an insurance company. They represent the
3 interest of the insurance company and are paid by the
4 insurance company. They will not charge you a fee.

5 b. "Independent adjuster" means the insurance
6 adjusters who are hired on a contract basis by an insurance
7 company to represent the insurance company's interest in the
8 settlement of the claim. They are paid by your insurance
9 company. They will not charge you a fee.

10 c. "Public adjuster" means the insurance adjusters
11 who do not work for any insurance company. They work for the
12 insured to assist in the preparation, presentation and
13 settlement of the claim. The insured hires them by signing a
14 contract agreeing to pay them a fee or commission based on a
15 percentage of the settlement, or other method of compensation.

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

19 (3) The insured has the right to initiate direct
20 communications with the insured's attorney, the insurer, the
21 insurer's adjuster, and the insurer's attorney, or any other
22 person regarding the settlement of the insured's claim.

23 (4) The public adjuster is not a representative or
24 employee of the insurer.

25 (5) The salary, fee, commission or other
26 consideration of the public adjuster is the obligation of the
27 insured, not the insurer."

1 (h) The contracts shall be executed in duplicate to
2 provide an original contract to the public adjuster and an
3 original contract to the insured. The public adjuster's
4 original contract shall be available at all times for
5 inspection without notice by the commissioner.

6 (i) The public adjuster shall provide the insurer a
7 notification letter, which has been signed by the insured,
8 authorizing the public adjuster to represent the insured's
9 interest.

10 Section 15. A public adjuster who receives, accepts,
11 or holds any funds on behalf of an insured towards the
12 settlement of a claim for loss or damage shall deposit the
13 funds in a non-interest bearing escrow or trust account in a
14 financial institution that is insured by an agency of the
15 federal government in the public adjuster's home state or
16 where the loss occurred.

17 Section 16. (a) A public adjuster shall maintain a
18 complete record of each transaction as a public adjuster. The
19 records required by this section shall include the following:

20 (1) Name of the insured.

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

22 (3) Copy of the contract between the public adjuster
23 and insured.

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

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

1 (6) Itemized statement of all compensation received
2 by the public adjuster, from any source whatsoever, in
3 connection with the loss.

4 (7) A register of all monies received, deposited,
5 disbursed, or withdrawn in connection with a transaction with
6 an insured, including fees transfers and disbursements from a
7 trust account and all transactions concerning all interest
8 bearing accounts.

9 (8) Name of the public adjuster who executed the
10 contract.

11 (9) Name of the attorney representing the insured,
12 if applicable, and the name of the claims representatives of
13 the insurance company.

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

16 (b) Records shall be maintained for at least five
17 years after the termination of the transaction with an insured
18 and shall be open to examination by the commissioner at all
19 times.

20 (c) Records submitted to the commissioner in
21 accordance with this section that contain information
22 identified in writing as proprietary by the public adjuster
23 shall be treated as confidential by the commissioner and shall
24 not be subject to any open record laws of this state.

25 Section 17. (a) A public adjuster is obligated,
26 under the adjuster's license, to serve with objectivity and
27 complete loyalty the interest of the client alone; and to

1 render to the insured such information, counsel, and service,
2 as within the knowledge, understanding, and opinion in good
3 faith of the licensee, as will best serve the insured's
4 insurance claim needs and interest.

5 (b) A public adjuster shall not misrepresent to a
6 claimant that the adjuster is an adjuster representing an
7 insurer in any capacity, including acting as an employee of
8 the insurer or acting as an independent adjuster unless so
9 appointed by an insurer in writing to act on the insurer's
10 behalf for that specific claim or purpose. A licensed public
11 adjuster is prohibited from charging that specific claimant a
12 fee when appointed by the insurer and the appointment is
13 accepted by the public adjuster.

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

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

20 (e) A public adjuster shall not have a direct or
21 indirect financial interest in any aspect of the claim, other
22 than the salary, fee, commission, or other consideration
23 established in the written contract with the insured, unless
24 full written disclosure has been made to the insured as set
25 forth in subsection (h).

26 (f) A public adjuster shall not acquire any interest
27 in salvage of property subject to the contract with the

1 insured unless the public adjuster obtains written permission
2 from the insured after settlement of the claim with the
3 insurer as set forth in subsection (h).

4 (g) A public adjuster shall abstain from referring
5 or directing the insured to get needed repairs or services in
6 connection with a loss from any person, unless disclosed to
7 the insured:

8 (1) With whom the public adjuster has a financial
9 interest.

10 (2) From whom the public adjuster may receive direct
11 or indirect compensation for the referral.

12 (h) A public adjuster shall disclose to an insured
13 if the adjuster has any interest in or will be compensated by
14 any construction firm, salvage firm, building appraisal firm,
15 motor vehicle repair shop, or any other firm that performs any
16 work in conjunction with damages caused by the insured loss.
17 The word "firm" shall include any corporation, partnership,
18 association, joint-stock company or individual.

19 (i) Any compensation or anything of value in
20 connection with an insured's specific loss that will be
21 received by a public adjuster shall be disclosed by the public
22 adjuster to the insured in writing including the source and
23 amount of the compensation.

24 (j) A public adjuster shall not give or offer to
25 give a monetary loan or advance to a client or prospective
26 client.

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

7 (1) Public adjusters shall adhere to the following
8 general ethical requirements:

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

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

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

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

25 (5) A public adjuster shall not enter into a
26 contract or accept a power of attorney that vests in the

1 public adjuster the effective authority to choose the persons
2 who shall perform repair work.

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

6 (m) A public adjuster may not agree to any loss
7 settlement without the insured's knowledge and consent.

8 Section 18. (a) A public adjuster shall report to
9 the commissioner any administrative action taken against the
10 public adjuster in another jurisdiction or by another
11 governmental agency in this state within 30 days of the final
12 disposition of the matter. This report shall include a copy of
13 the order, consent to order, or other relevant legal
14 documents.

15 (b) Within 30 days of the initial pretrial hearing
16 date, a public adjuster shall report to the commissioner any
17 criminal action taken against the public adjuster in this or
18 any jurisdiction. The report shall include a copy of the
19 initial complaint filed, the order resulting from the hearing,
20 and any other relevant legal documents.

21 Section 19. (a) In order to make a determination of
22 license eligibility, the commissioner is authorized to require
23 fingerprints of applicants and submit the fingerprints and the
24 fee required to perform the criminal history record checks to
25 the Alabama Department of Public Safety and the Federal Bureau
26 of Investigation (FBI) for state and national criminal history
27 record checks.

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

11 (1) All executive officers and directors of the
12 applicant.

13 (2) Any individual owning, directly or indirectly,
14 51 percent or more of the outstanding voting securities of the
15 applicant.

16 (3) All executive officers and directors of entities
17 owning 51 percent or more of the outstanding voting securities
18 of the applicant.

19 (c) The commissioner may contract for the
20 collection, transmission and resubmission of fingerprints
21 required under this section. If the commissioner does so, the
22 fee for collecting, transmitting and retaining fingerprints
23 shall be payable directly to the contractor by the person. The
24 commissioner may agree to a reasonable fingerprinting fee to
25 be charged by the contractor.

26 (d) The commissioner may waive submission of
27 fingerprints by any person who has previously furnished

1 fingerprints and those fingerprints are on file with the
2 centralized repository of the NAIC.

3 (e) The commissioner is authorized to receive
4 criminal history record information in lieu of the Alabama
5 Department of Public Safety that submitted the fingerprints to
6 the FBI.

7 (f) The commissioner is authorized to submit
8 electronic fingerprint records and necessary identifying
9 information to the NAIC for permanent retention in a
10 centralized repository. The purpose of such a centralized
11 repository is to provide insurance commissioners with access
12 to fingerprint records in order to perform criminal history
13 record checks.

14 (g) The commissioner shall treat and maintain an
15 applicant's fingerprints and any criminal history record
16 information obtained under this section as confidential and
17 shall apply security measures consistent with the Criminal
18 Justice Information Services Division of the Federal Bureau of
19 Investigation standards for the electronic storage of
20 fingerprints and necessary identifying information and limit
21 the use of records solely to the purposes authorized in this
22 section. The fingerprints and any criminal history record
23 information shall not be subject to subpoena, other than one
24 issued in a criminal action or investigation, and shall be
25 confidential.

26 Section 20. (a) The commissioner may promulgate
27 reasonable rules as are necessary or proper to carry out the

1 purposes of this act in accordance with Chapter 2 of Title 27,
2 Code of Alabama 1975.

3 (b) The commissioner may by rule provide for delayed
4 enforcement dates of up to 24 months following the effective
5 date of this act to allow for the implementation of the
6 provisions of this act relating to fingerprinting, the
7 prelicensing course and examination, and continuing education.

8 Section 21. Section 27-4-2, Code of Alabama 1975, is
9 amended to read as follows:

10 "§27-4-2.

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

13 "(1) Certificate of authority:

14 "a. Initial application for original certificate of
15 authority, including the filing with the commissioner of all
16 documents incidental thereto \$500

17 "b. Issuance of original certificate of authority
18 500

19 "c. Annual continuation or renewal fee 500

20 "d. Reinstatement fee 500

21 "(2) Charter documents, filing with the commissioner
22 amendment to articles of incorporation or of association, or
23 of other charter documents or to bylaws 25

24 "(3) Solicitation permit, filing application and
25 issuance 250

1 "(4) Annual statement of insurer, except when filed
2 as part of application for original certificate of authority,
3 filing 25

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

5 "a. Individuals:

6 "1. Application fee (For filing of initial
7 application for license) 20

8 "2. License fee (For issuance of original license)
9 40

10 "b. Business entities:

11 "1. Application fee (For filing of initial
12 application for license) 20

13 "2. License fee (For original license and each
14 biennial renewal) 100

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

17 "(6) Producer appointment fee:

18 "a. Filing notice of appointment 30

19 "b. Annual continuation of appointment 10

20 "(7) Reinsurance intermediary license:

21 "a. Filing application for license 30

22 "b. Issuance of initial license 140

23 "c. Annual continuation of license 100

24 "(8) Managing general ~~agent's~~ agent license:

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

1 "b. Issuance of initial license, each insurer

2 125

3 "c. Annual continuation of license, each insurer

4 75

5 "(9) Service representative's license:

6 "a. Application fee (For filing of initial

7 application for license, each insurer) 20

8 "b. Appointment fee, property and casualty, each

9 insurer (For original appointment and each annual renewal)

10 30

11 "(10) Surplus line broker:

12 "a. Application fee (For filing of initial

13 application for license) 20

14 "b. License fee (For original license and each

15 annual renewal):

16 "1. Individual licensees 200

17 "2. Business entity licensees 500

18 "(11) Adjusters (independent and public; resident or

19 nonresident):

20 "a. Application fee (For filing of initial

21 application for license; individuals and business entities)

22 20

23 "b. License fee (For original license and each

24 biennial continuation) 1. Individual licensees 80

25 "2. Business entity licensees 200

26 "c. Examination fee, an amount set by the

27 commissioner not to exceed 100

1 "(12) Miscellaneous services:

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

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

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

16 "(b) The fees and licenses specified in subsection
17 (a) shall be deposited in the State Treasury with 50 percent
18 credited to the General Fund and 50 percent credited to the
19 Insurance Department Fund."

20 Section 22. This act shall become effective on the
21 first day of January next following its passage and approval
22 by the Governor, or its otherwise becoming law.