

SENATE JUDICIARY COMMITTEE SUBSTITUTE FOR
SENATE BILL 88

53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017

AN ACT

RELATING TO INSURANCE; DEFINING "PUBLIC ADJUSTER" AND CERTAIN
OTHER TERMS; REMOVING REFERENCES TO TEMPORARY LICENSES;
ELIMINATING THE ISSUANCE OF TEMPORARY ADJUSTER LICENSES;
ALLOWING INSURERS AND PUBLIC ADJUSTERS TO REQUEST PERMISSION IN
AN EMERGENCY TO USE ADJUSTERS LICENSED IN ANOTHER STATE;
PERMITTING THE SUPERINTENDENT OF INSURANCE TO ALLOW ADJUSTERS
TO OBTAIN CONTINUING EDUCATION THROUGH INSTRUCTION PROVIDED
ONLINE OR THROUGH THE MAIL REGARDLESS OF WHERE THE ADJUSTER IS
LOCATED; PROHIBITING ADJUSTERS WHO ARE CONTRACTORS FROM
ADJUSTING CLAIMS; PROVIDING STANDARDS OF CONDUCT FOR PUBLIC
ADJUSTERS; IMPOSING REQUIREMENTS ON CONTRACTS BETWEEN PUBLIC
ADJUSTERS AND INSURED; REQUIRING PUBLIC ADJUSTERS TO DEPOSIT
FUNDS RECEIVED FOR INSURED IN ESCROW OR TRUST ACCOUNTS;
IMPOSING REQUIREMENTS ON THE RECORDS THAT PUBLIC ADJUSTERS MUST
MAINTAIN; ALLOWING THE SUPERINTENDENT OF INSURANCE TO REVIEW

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underscored material = new
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1 REPORTS OF INSURANCE FRAUD SUBMITTED BY PUBLIC ADJUSTERS.

2
3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

4 SECTION 1. Section 59A-13-2 NMSA 1978 (being Laws 1984,
5 Chapter 127, Section 230, as amended) is amended to read:

6 "59A-13-2. DEFINITIONS.--

7 A. For the purposes of [~~the Insurance Code~~] Chapter
8 59A, Article 13 NMSA 1978:

9 (1) "adjuster" means a person that:

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

17 (b) advises the insured of the insured's
18 rights to settlement and the insured's rights to settle,
19 arbitrate and litigate the dispute;

20 (2) "automated claims adjudication system"
21 means a preprogrammed computer system designed for the
22 collection, data entry, calculation and final resolution of
23 portable electronics insurance claims that shall:

24 (a) only be used by a licensed
25 independent adjuster, licensed agent or supervised individuals

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1 operating pursuant to Subsection C of Section 59A-13-3 NMSA
2 1978;

3 (b) comply with all claims payment
4 requirements of the Insurance Code; and

5 (c) be certified as compliant with the
6 Portable Electronics Insurance Act by a licensed independent
7 adjuster who is an officer of a licensed business entity
8 pursuant to the Insurance Code;

9 [~~(3) "staff adjuster" means an adjuster
10 individual who is a salaried employee of an insurer or
11 affiliates of the employer insurer, representing and adjusting
12 claims solely under policies of the employer insurer;~~]

13 (3) "business entity" means a corporation,
14 association, partnership, limited liability company, limited
15 liability partnership or other legal entity;

16 (4) "home state" means the District of
17 Columbia and any state or territory of the United States in
18 which the adjuster's principal place of residence or principal
19 place of business is located. If neither the state in which
20 the adjuster maintains the principal place of residence nor the
21 state in which the adjuster maintains the principal place of
22 business has substantially similar laws governing adjusters,
23 the adjuster may declare another state in which it becomes
24 licensed and acts as an adjuster to be the home state;

25 [~~(4)~~] (5) "independent adjuster" means an

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1 adjuster who is not a staff adjuster or a public adjuster and
2 includes a representative and an employee of an independent
3 adjuster; [~~and~~]

4 (6) "public adjuster" means an adjuster who
5 acts or aids, solely in relation to first-party claims arising
6 under insurance contracts that insure the real or personal
7 property of the insured, on behalf of an insured in negotiating
8 for, or effecting the settlement of, a claim for loss or damage
9 covered by an insurance contract;

10 [~~(5)~~] (7) "resident adjuster" means an
11 adjuster who resides principally in New Mexico and who conducts
12 business primarily in New Mexico; and

13 (8) "staff adjuster" means an adjuster
14 individual who is a salaried employee of an insurer or
15 affiliate of the employer insurer, representing and adjusting
16 claims solely under the authority of the employer insurer.

17 B. Except as otherwise provided, "adjuster" does
18 not include:

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

22 (2) a licensed agent or general agent of an
23 authorized insurer or an employee of an agent or general agent
24 who adjusts claims or losses under specific authority from the
25 insurer and solely under policies issued by the insurer;

1 (3) an agent or employee of a life or health
2 insurer who adjusts claims or losses under the insurer's
3 policies or contracts to administer policies or benefits of
4 that type;

5 (4) a salaried or part-time claims agent or
6 investigator employed by a self-insured person; ~~[or]~~

7 (5) an individual who, for purposes of
8 portable electronics insurance claims, collects claim
9 information from, or furnishes claim information to, insureds
10 or claimants, and who conducts data entry, including entering
11 data into an automated claims adjudication system; provided
12 that the individual is an employee of a licensed independent
13 adjuster or its affiliate where no more than twenty-five such
14 persons are under the supervision of one licensed independent
15 adjuster or licensed agent who is exempt from licensure
16 pursuant to Paragraph (2) of this subsection;

17 (6) a property damage appraiser or other
18 individual who is 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 investigate,
22 negotiate, settle or adjust claims;

23 (7) a person who is employed solely for the
24 purpose of obtaining facts surrounding a loss or furnishing
25 technical assistance to an adjuster, such as a photographer,

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1 estimator, private investigator, engineer or handwriting
2 expert;

3 (8) 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 (9) a person who settles subrogation claims
7 between insurers;

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

11 (11) an employee of an insurer who receives
12 loss reports from insureds and who may advise an insured
13 regarding the claim process or coverage available to the
14 insured but who does not act as an adjuster on the claim."

15 SECTION 2. Section 59A-13-3.1 NMSA 1978 (being Laws 2016,
16 Chapter 89, Section 55) is amended to read:

17 "59A-13-3.1. EXAMINATION FOR LICENSE.--

18 A. ~~[A resident]~~ An individual applying for a
19 license as an adjuster shall, prior to issuance of a license,
20 personally take and pass a written examination. The
21 examination shall test the knowledge of the individual
22 concerning the duties and responsibilities of an adjuster and
23 the insurance laws and rules of this state. Examinations
24 required by this section shall be developed and conducted under
25 rules prescribed by the superintendent.

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1 B. The superintendent may contract with an outside
2 testing service for administering examinations and collecting
3 the nonrefundable fee set forth in Section 59A-6-1 NMSA 1978.

4 C. Each individual applying for an examination shall
5 remit a nonrefundable fee as prescribed by the superintendent as
6 set forth in Section 59A-6-1 NMSA 1978.

7 D. An individual who fails to appear for an
8 examination as scheduled or fails to pass the examination shall
9 reapply for an examination and remit all required fees and forms
10 before being rescheduled for another examination.

11 E. No examination shall be required:

12 (1) for renewal or continuation of an existing
13 license, except as provided in Subsection D of Section 59A-11-10
14 NMSA 1978; or

15 ~~[(2) of applicants for a temporary license as
16 provided in Section 59A-13-6 NMSA 1978; or~~

17 ~~(3)]~~ (2) if the applicant took and passed a
18 similar examination in a state in which the applicant is already
19 licensed, subject to Section 59A-5-33 NMSA 1978."

20 **SECTION 3.** Section 59A-13-4 NMSA 1978 (being Laws 1984,
21 Chapter 127, Section 232, as amended) is amended to read:

22 "59A-13-4. QUALIFICATIONS FOR LICENSE AS ADJUSTER.--

23 A. The superintendent shall license as an adjuster
24 only an individual who is otherwise in compliance with Chapter
25 59A, Articles 11 and 13 NMSA 1978 and who has furnished evidence

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1 satisfactory to the superintendent that the applicant for
2 license:

3 (1) is not less than eighteen years of age;

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

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

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

19 ~~(5)]~~ (4) has passed any examination required
20 for licensing; and

21 ~~[(6)]~~ (5) has filed the bond required under
22 Section 59A-13-5 NMSA 1978.

23 B. Paragraphs (2) and ~~[(6)]~~ (5) of Subsection A of
24 this section shall not apply as to staff adjusters.

25 C. Individuals holding licenses as adjusters on the

1 effective date of the Insurance Code shall be deemed to meet the
 2 qualifications for the license except as provided in Chapter
 3 59A, Articles 11 and 13 NMSA 1978.

4 D. A business entity applying for an independent
 5 adjuster license for the purposes of portable electronics
 6 insurance in New Mexico shall submit the names, addresses,
 7 social security numbers, criminal and administrative histories,
 8 background checks, biographical statements and fingerprints of
 9 all executive officers and directors of the applicant and of all
 10 executive officers and directors of entities owning and any
 11 individuals owning, directly or indirectly, fifty-one percent or
 12 more of the outstanding voting securities of the applicant. Any
 13 nonresident business entity applicant whose resident state has
 14 enacted into law provisions that are substantively duplicative
 15 of the provisions of this subsection shall not be required to
 16 submit criminal histories, background checks, biographical
 17 statements and fingerprints for its executive officers,
 18 directors and owners of outstanding voting securities."

19 SECTION 4. Section 59A-13-5 NMSA 1978 (being Laws 1984,
 20 Chapter 127, Section 233) is amended to read:

21 "59A-13-5. BOND.--

22 A. With application for license [~~temporary or~~
 23 otherwise] as an adjuster other than as staff adjuster, the
 24 applicant shall file with the superintendent a surety bond in
 25 favor of the superintendent in aggregate amount of not less than

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1 ten thousand dollars (\$10,000), conditioned to pay actual
2 damages resulting to the state of New Mexico or any member of
3 the public in New Mexico from violation of law by the licensee
4 while acting as an adjuster. The bond shall be one executed by
5 an authorized surety insurer.

6 B. The bond shall remain in effect for the duration
7 of the license, or until the surety is released from liability
8 by the superintendent, or until [~~cancelled~~] canceled by the
9 surety. Without prejudice to any liability accrued prior to
10 cancellation, the surety may cancel a bond by giving written
11 notice to the superintendent at least thirty [~~(30)~~] days prior
12 to effective date of cancellation.

13 C. The applicant or licensee may file with the
14 superintendent a cash bond in like amount, in lieu of surety
15 bond."

16 SECTION 5. Section 59A-13-6 NMSA 1978 (being Laws 1984,
17 Chapter 127, Section 234) is amended to read:

18 "59A-13-6. [~~TEMPORARY LICENSE~~] EMERGENCY ADJUSTERS.--

19 [~~A. Upon application by an applicant meeting all~~
20 ~~qualifications for license except as to experience, education or~~
21 ~~training referred to in Section 232 of this article, the~~
22 ~~superintendent may issue a temporary license as adjuster under~~
23 ~~which an individual employed by a licensed adjuster and~~
24 ~~undergoing education or training as an adjuster under direction~~
25 ~~and supervision of such licensed adjuster, may act as an~~

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1 ~~adjuster. Application for the license must be made, and the~~
2 ~~applicant registered with the superintendent, at beginning of~~
3 ~~the training period, and the license may be in force for a~~
4 ~~period not to exceed twelve (12) months, without right of~~
5 ~~renewal or continuation.~~

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

19 A. In the event of an emergency requiring the
20 immediate expansion of adjuster services in New Mexico, an
21 insurer or a public adjuster licensed in New Mexico may request
22 authority from the superintendent to employ adjusters to assist
23 with the emergency who are not licensed in New Mexico but who
24 have fulfilled all licensing requirements in their home state
25 and are in good standing in their home state. An insurer or

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1 public adjuster requesting such authority shall provide the
2 superintendent with the following information:

3 (1) the nature of the emergency and the
4 affected region of the state;

5 (2) a list of the adjusters that the insurer
6 or public adjuster shall use that are not licensed in New
7 Mexico. This list shall include each adjuster's name, home
8 address, last four digits of social security number, national
9 producer number, home state and the effective date of the
10 contract between the adjuster and the insurer or public
11 adjuster;

12 (3) the name, contact information, national
13 producer number and New Mexico license number for the individual
14 designated by the insurer or public adjuster who will be
15 responsible for the conduct of these adjusters; and

16 (4) any other information that the
17 superintendent may require.

18 B. The adjustment of claims by the adjusters listed
19 in Paragraph (2) of Subsection A of this section shall be
20 limited to claims arising from the emergency.

21 C. Use of the listed adjusters shall be limited to
22 the ninety days immediately following the emergency, unless an
23 extension of time is requested by the insurer or public adjuster
24 and granted by the superintendent.

25 D. A request by an insurer or public adjuster to

1 employ adjusters to assist with an emergency who are not
 2 licensed in New Mexico but who are currently licensed and in
 3 good standing in their home state shall be deemed approved if
 4 such a request is not disapproved by the superintendent within
 5 three business days of its submission to the superintendent.

6 E. An insurer or public adjuster that requests
 7 authorization pursuant to this section may commence employing
 8 the adjusters listed in Paragraph (2) of Subsection A of this
 9 section while awaiting the superintendent's decision on their
 10 request."

11 SECTION 6. Section 59A-13-12 NMSA 1978 (being Laws 2016,
 12 Chapter 89, Section 56) is amended to read:

13 "59A-13-12. CONTINUING EDUCATION.--

14 A. The superintendent shall require as a condition
 15 to continuation of an adjuster license that during the
 16 twenty-four months next preceding expiration of the current
 17 license period, the licensee has attended the minimum number of
 18 hours of formal class instruction, lectures or seminars required
 19 and approved by the superintendent.

20 B. Instruction shall be designed to refresh the
 21 licensee's understanding of basic principles and coverages
 22 involved, recent and prospective changes, applicable laws and
 23 rules of the superintendent, proper conduct of the licensee's
 24 business and duties and responsibilities of the licensee.

25 C. The superintendent may permit licensees [~~who,~~

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1 ~~because of remoteness of residence or business, cannot with~~
2 ~~reasonable convenience attend formal instruction sessions] to~~
3 successfully complete an equivalent course of study and
4 instruction online or by mail.

5 D. The superintendent may impose a penalty not to
6 exceed fifty dollars (\$50.00) for a licensee's failure to timely
7 report continuing education credits.

8 E. The superintendent shall charge, at the time of
9 certifying each licensee's continuing education credits as a
10 condition of continuation of license, a fee of one dollar
11 (\$1.00) per credit hour of continuing education; provided that
12 the superintendent may contract with an independent agency to
13 receive and review a continuing education compliance report, and
14 in such a case, the fee shall be a reasonable amount fixed by
15 the superintendent and payable to the contracting agency."

16 SECTION 7. A new section of Chapter 59A, Article 13 NMSA
17 1978 is enacted to read:

18 "[NEW MATERIAL] PROHIBITED CONDUCT REGARDING THE
19 ADJUSTMENT AND REPAIR OF PROPERTY DAMAGE.--

20 A. An adjuster may not adjust a loss related to
21 physical damage of a property on which the adjuster is also a
22 contractor, acts as a contractor or is employed as a contractor,
23 including a roofing contractor, building contractor or plumbing
24 contractor, or otherwise provides building repairs or products,
25 including building or plumbing repairs or products, for

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1 compensation or is a controlling person in a business relating
2 to such contracting.

3 B. A contractor or a roofing contractor may not act
4 as an adjuster or advertise to adjust claims for any property
5 for which the contractor is providing or may provide roofing,
6 building, plumbing or other contractor services, regardless of
7 whether the contractor is a licensed adjuster.

8 C. In those instances in which an adjuster who is
9 also a contractor is performing either as an adjuster or as a
10 contractor on behalf of an insured, the adjuster shall provide
11 the insured with a disclaimer, on a form promulgated by the
12 superintendent and signed by the adjuster, indicating in which
13 of these two capacities the adjuster is serving the insured and
14 affirming that the adjuster is not serving the insured in the
15 other capacity. The adjuster shall retain copies of such signed
16 disclaimers and make them available to the superintendent upon
17 the superintendent's request."

18 SECTION 8. A new section of Chapter 59A, Article 13 NMSA
19 1978 is enacted to read:

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

21 A. All adjusters shall adhere to the following
22 standards of conduct:

23 (1) an adjuster shall not permit an unlicensed
24 employee or representative of the adjuster to conduct business
25 for which a license is required pursuant to the Insurance Code;

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1 (2) an adjuster shall not pay a commission,
2 service fee or other valuable consideration to a person for
3 investigating or settling claims in New Mexico if that person is
4 required to be licensed pursuant to the Insurance Code and is
5 not so licensed;

6 (3) an adjuster shall not undertake the
7 adjustment of any claim if the adjuster is not competent and
8 knowledgeable as to the terms and conditions of the insurance
9 coverage, or which otherwise exceeds the adjuster's current
10 experience;

11 (4) an adjuster shall not have a direct or
12 indirect financial interest in any aspect of the claim, other
13 than the salary, fee, commission or other consideration
14 established in a written contract; unless, in the case of a
15 public adjuster, full written disclosure has been made to the
16 insured as set forth in Subsection G of Section 9 of this 2017
17 act;

18 (5) an adjuster shall not acquire any interest
19 in salvage of property subject to adjustment; unless, in the
20 case of a public adjuster, written permission is obtained from
21 the insured; and

22 (6) an adjuster shall disclose to an insured
23 if the adjuster has any interest or will be compensated by any
24 construction firm, salvage firm, building appraisal firm, motor
25 vehicle repair shop or any other business entity that performs

1 any work in conjunction with damages caused by the insured loss.

2 B. Public adjusters shall also adhere to the
3 following standards of conduct:

4 (1) a public adjuster is obligated, under the
5 public adjuster's license, to serve with objectivity and
6 complete loyalty in the interest of the public adjuster's client
7 alone and to render to the insured such information, counsel and
8 service, as within the knowledge, understanding and opinion in
9 good faith of the public adjuster, as will best serve the
10 insured's insurance claim needs and interest;

11 (2) a public adjuster shall not solicit, or
12 attempt to solicit, an insured during the progress of a
13 loss-producing occurrence, as defined in the insured's insurance
14 contract;

15 (3) the public adjuster shall abstain from
16 referring or directing the insured to get needed repairs or
17 services in connection with a loss from any person, unless
18 disclosed to the insured:

19 (a) with whom the public adjuster has a
20 financial interest; or

21 (b) from whom the public adjuster may
22 receive direct or indirect compensation for the referral;

23 (4) any compensation or anything of value in
24 connection with an insured's specific loss that will be received
25 by a public adjuster shall be disclosed by the public adjuster

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1 to the insured in writing, including the source and amount of
2 any such compensation;

3 (5) a public adjuster shall not agree to any
4 settlement without the insured's knowledge and consent;

5 (6) no public adjuster, while so licensed by
6 the superintendent, shall represent or act as a staff adjuster
7 or an independent adjuster;

8 (7) the contract shall not be construed to
9 prevent an insured from pursuing any civil remedy after the
10 three-business day revocation or cancellation period; and

11 (8) a public adjuster shall ensure that all
12 contracts for the public adjuster's services are in writing and
13 set forth all terms and conditions of the engagement.

14 C. A person shall not accept a commission, service
15 fee or other valuable consideration for investigating or
16 settling claims in New Mexico if that person is required to be
17 licensed under the Insurance Code and is not so licensed."

18 SECTION 9. A new section of Chapter 59A, Article 13 NMSA
19 1978 is enacted to read:

20 "[NEW MATERIAL] CONTRACT BETWEEN PUBLIC ADJUSTER AND
21 INSURED.--

22 A. Public adjusters shall ensure that all contracts
23 for their service are in writing and contain the following
24 terms:

25 (1) legible full name of the adjuster signing

1 the contract, as specified in the office of superintendent of
2 insurance records;

3 (2) permanent home state business name and
4 phone number;

5 (3) office of superintendent of insurance
6 license number;

7 (4) title of "Public Adjuster Contract";

8 (5) the insured's full name, street address,
9 insurance company name and policy number, if known or upon
10 notification;

11 (6) description of the loss and its location,
12 if applicable;

13 (7) description of services to be provided to
14 the insured;

15 (8) signatures of the public adjuster and the
16 insured;

17 (9) date the contract was signed by the public
18 adjuster and date the contract was signed by the insured;

19 (10) attestation language stating that the
20 public adjuster is fully bonded; and

21 (11) full salary, fee, commission,
22 compensation or other considerations the public adjuster is to
23 receive for services.

24 B. The contract may specify that the public adjuster
25 shall be named as a co-payee on an insurer's payment of a claim.

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1 C. If the compensation is based on a share of the
2 insurance settlement, the exact percentage shall be specified.

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

8 E. Compensation provisions in the public adjusting
9 contract shall not be redacted in any copy of the contract
10 provided to the superintendent.

11 F. If the insurer, not later than seventy-two hours
12 after the date on which the loss is reported to the insurer,
13 either pays or commits in writing to pay to the insured the
14 policy limit of the insurance policy, the public adjuster shall:

15 (1) inform the insured that, due to the
16 insurer's payment or commitment to pay the policy limit, the
17 loss recovery amount might not be increased by the insurer;

18 (2) not receive a commission consisting of a
19 percentage of the total amount paid by an insurer to resolve the
20 claim; and

21 (3) be entitled only to reasonable
22 compensation from the insured for the time spent and expenses
23 incurred on the claim by the public adjuster, until the claim is
24 paid or the insured receives a written commitment to pay from
25 the insurer.

1 G. A public adjuster shall provide the insured a
2 written disclosure concerning any direct or indirect financial
3 interest that the public adjuster has with any party that is
4 involved in any aspect of the claim, other than the salary, fee,
5 commission or other consideration established in the written
6 contract with the insured, including any ownership of, other
7 than as a minority stockholder, or any compensation expected to
8 be received from, any construction firm, salvage firm, building
9 appraisal firm, motor vehicle repair shop or any other business
10 entity that provides estimates for work, or that performs any
11 work, in conjunction with damages caused by the insured loss on
12 which the public adjuster is engaged.

13 H. A public adjuster contract may not contain any
14 contract term that:

15 (1) allows the public adjuster's percentage
16 fee to be collected when money is due from but not yet paid by
17 an insurance company;

18 (2) allows a public adjuster to collect the
19 entire fee from the first check issued by an insurance company,
20 rather than as percentage of each check issued by an insurance
21 company;

22 (3) requires the insured to authorize an
23 insurance company to issue a check only in the name of the
24 public adjuster;

25 (4) imposes collection costs or late fees; or

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1 (5) precludes a public adjuster from pursuing
2 civil remedies.

3 I. Prior to the signing of the contract, the public
4 adjuster shall provide the insured with a separate disclosure
5 document regarding the claim process that states the following:

6 "(1) Your public adjuster is forbidden by law
7 from acting as your contractor on this claim.

8 (2) You must notify your insurance company of
9 your loss and submit a claim. The insurance company will assign
10 an adjuster to handle your claim. You may allow their adjuster
11 to handle your claim or you may hire a public adjuster at your
12 own expense.

13 (3) Public adjusters do not work for insurance
14 companies. They work for you to assist you in the preparation,
15 presentation and settlement of your claim. You hire them by
16 signing a contract agreeing to pay them a fee or commission.
17 Their compensation is often based on a percentage of the
18 settlement.

19 (4) You are not required to hire a public
20 adjuster, but you have the right to do so.

21 (5) You have the right to contact your
22 attorney, your insurance company, your insurance company's
23 adjuster or attorney, or any other person regarding the
24 settlement of your claim.

25 (6) The public adjuster does not work for your

1 insurance company and is not paid by your insurance company.
2 You are solely responsible for paying the public adjuster.".

3 J. Subsection I of this section shall not apply to a
4 public adjuster providing public adjuster services on behalf of
5 a financial institution, a mortgage company or other default
6 servicer.

7 K. The contract shall be executed in duplicate to
8 provide an original contract to the public adjuster and an
9 original contract to the insured. The public adjuster's
10 original contract shall be available at all times for inspection
11 without notice by the superintendent.

12 L. The public adjuster shall provide the insurer
13 with a notification letter, which has been signed by the
14 insured, authorizing the public adjuster to represent the
15 insured's interest.

16 M. The insured has the right to rescind the contract
17 within three business days after the date the contract was
18 signed. The recession shall be in writing and mailed or
19 delivered to the public adjuster at the address in the contract
20 within the three-business-day period.

21 N. If the insured exercises the right to rescind the
22 contract, anything of value given by the insured under the
23 contract will be returned to the insured within fifteen business
24 days following the receipt by the public adjuster of the
25 cancellation notice."

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1 SECTION 10. A new section of Chapter 59A, Article 13 NMSA
2 1978 is enacted to read:

3 "[NEW MATERIAL] ESCROW OR TRUST ACCOUNTS.--A public
4 adjuster who receives, accepts or holds any funds on behalf of
5 an insured toward the settlement of a claim for loss or damage
6 shall deposit the funds in a non-interest-bearing escrow or
7 trust account in a financial institution that is insured by an
8 agency of the federal government in the public adjuster's home
9 state or where the loss occurred."

10 SECTION 11. A new section of Chapter 59A, Article 13 NMSA
11 1978 is enacted to read:

12 "[NEW MATERIAL] RECORDS OF PUBLIC ADJUSTER.--

13 A. A public adjuster shall maintain a complete
14 record of each transaction as a public adjuster. The records
15 required by this section shall include the following:

- 16 (1) the name of the insured;
- 17 (2) the date, location and amount of the loss;
- 18 (3) a copy of the contract between the public
19 adjuster and the insured;
- 20 (4) the name of the insurer, amount,
21 expiration date and number of each policy carried with respect
22 to the loss;
- 23 (5) an itemized statement of the insured's
24 recoveries;
- 25 (6) an itemized statement of all of the

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1 compensation received by the public adjuster, from any source
2 whatsoever, in connection with the loss;

3 (7) a register of all of the money received,
4 deposited, disbursed or withdrawn in connection with a
5 transaction with an insured, including fees, transfers and
6 disbursements from a trust account and all transactions
7 concerning all interest-bearing accounts;

8 (8) the name of the public adjuster who
9 executed the contract; and

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

13 B. Records shall be maintained for at least five
14 years after the termination of the transaction with an insured
15 and shall be open to examination by the superintendent at all
16 times.

17 C. Records submitted to the superintendent pursuant
18 to this section that contain information identified in writing
19 as proprietary by the public adjuster and accepted as
20 confidential by the superintendent shall be treated as
21 confidential by the superintendent, shall not be subject to the
22 Inspection of Public Records Act, shall not be subject to
23 subpoena and shall not be subject to discovery or admissible as
24 evidence in any private civil action."

25 SECTION 12. Section 59A-16C-4 NMSA 1978 (being Laws 1998,

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1 Chapter 115, Section 4) is amended to read:

2 "59A-16C-4. SUPERINTENDENT'S DUTIES.--The superintendent
3 shall:

4 A. initiate inquiries and conduct investigations
5 when the superintendent has reason to believe that insurance
6 fraud may have been or is being committed;

7 B. respond to notifications or complaints of
8 suspected insurance fraud generated by state and local police or
9 other law enforcement authorities and governmental units,
10 including the federal government and any other person;

11 C. review notices and reports of insurance fraud
12 submitted by authorized insurers, their employees, agents or
13 producers or by public adjusters and select those incidents of
14 alleged fraud that, in [~~his~~] the superintendent's judgment,
15 require further investigation and conduct the investigations;

16 D. conduct independent investigations and
17 examinations of insurance transactions and alleged insurance
18 fraud, conduct studies to determine the extent of insurance
19 fraud, deceit or intentional misrepresentation of any kind in
20 the insurance process and publish information and reports on
21 [~~its~~] the office of superintendent of insurance's examinations
22 and studies;

23 E. report incidents of alleged insurance fraud
24 supported by investigations and examinations to the appropriate
25 district attorney and any other appropriate law enforcement,

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1 administrative, regulatory or licensing agency and assemble
2 evidence, prepare charges and otherwise assist any prosecutorial
3 authority having jurisdiction over insurance fraud enforcement;

4 F. assist any official or agency of this state, any
5 other state or the federal government that requests assistance
6 in investigating insurance fraud;

7 G. maintain records and information in order to
8 produce an annual report of [~~his~~] the superintendent's
9 activities undertaken in connection with carrying out the
10 provisions of the Insurance Fraud Act; and

11 H. conduct, in cooperation with the attorney general
12 and the department of public safety, public outreach and
13 awareness programs on the costs of insurance fraud to the public
14 and how members of the public can assist themselves, the
15 superintendent and law enforcement officials in preventing and
16 prosecuting insurance fraud."

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underscoring material = new
~~[bracketed material]~~ = delete